

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. )  
\_\_\_\_\_ )

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9 TRANSCRIPT OF PROCEEDINGS

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12 The above-entitled matter came on for a public hearing  
13 at Ballroom #1, King Kamehameha's Kona Beach Hotel,  
14 75-5660 Palani Road, Kailua-Kona, Hawai'i commencing  
15 at 9:35 a.m. on Thursday, June 17, 2010 pursuant to  
16 Notice.

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

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COMMISSIONERS:  
KYLE CHOCK  
THOMAS CONTRADES  
VLADIMIR DEVENS  
LISA JUDGE  
DUANE KANUHA  
NORMAND LEZY  
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NICHOLAS TEVES, JR.

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Docket No. A07-774 NORTH KONA VILLAGE, LLC

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National Historical Parks  
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M. MELIA LANE-KAMAHELE,  
Kaloko-Honokohau National Historical Park

For the State Office of Planning: BRYAN YEE, ESQ.  
Deputy Attorney General  
ABBEY MAYER, ABE MITSUDA

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1 June 17, 2010

2 CHAIRMAN PILTZ: This is a continued hearing  
3 on Docket No. AO7-774 North Kona Village, LLC. Let me  
4 briefly describe our procedures for today. First,  
5 we'll have the parties identify themselves for the  
6 record.

7 As noted yesterday those individuals  
8 desiring to provide public testimony will have the  
9 opportunity to do so at the conclusion this morning.  
10 And at 1:30 also this afternoon we'll continue with  
11 the public testimony.

12 Also let me remind all of those public  
13 testimony that since March 3rd has been transcribed  
14 as part of the record for those who have already  
15 testified, the Commission would appreciate if you  
16 would confine your testimony to new information.

17 In addition, a three minute time limit will  
18 be applied to the testimony and we will enforce this.  
19 The reason for this is to allow all parties to present  
20 their cases to the Commission. And I thank you for  
21 that.

22 Hawai'i County, are you ready for your  
23 testimony, your presentation?

24 MR. GONZALEZ: Good morning, Mr. Chair.  
25 Yes, the County is ready.

1                   CHAIRMAN PILTZ: Go ahead.

2                   MR. GONZALEZ: We'd like to call as our  
3 witness Bobby Jean Leithead-Todd, county planning  
4 director, county of Hawai'i.

5                   BOBBY JEAN LEITHEAD-TODD  
6 being first duly sworn to tell the truth, was examined  
7 and testified as follows:

8                   THE WITNESS: Yes, I do.

9                   CHAIRMAN PILTZ: Proceed. Name, address,  
10 please.

11                  THE WITNESS: Bobby Jean Leithead-Todd  
12 director, County Department of Planning, 118 Lukia  
13 Place, Hilo, Hawai'i.

14                  MR. GONZALEZ: Mr. Chair, also as a matter  
15 of housekeeping, yesterday the County of Hawai'i  
16 Planning Department distributed to the Land Use  
17 Commission an enlarged version of attachment 1 to  
18 county of Hawai'i's Exhibit 1. It's the same content  
19 in information except it's just a larger version. And  
20 actually the color is more accurate. So we felt it  
21 would be easier for the Commissioners to read.

22                  CHAIRMAN PILTZ: So noted. Go ahead.

23                  THE WITNESS: Thank you.

24                  MR. GONZALEZ: Thank you, Mr. Chair. Thank  
25 you, Madam Director.

1 DIRECT EXAMINATION

2 BY MR. GONZALEZ:

3 Q Director, could you please inform the  
4 Commission what the Planning Department's position is  
5 on this docket?

6 A The department, after having reviewed both  
7 the General Plan and the Kona Community Development  
8 Plan, supports the request to amend the State Land Use  
9 boundary maps and reclassify the land.

10 Q Thank you. Could you tell me what is the  
11 county General Plan land use designation of the  
12 property?

13 A The land use designation has two  
14 designations. Most of the property is in what we  
15 consider urban expansion. Then the makai portion is  
16 in open.

17 Q And is a majority of the property designated  
18 in urban expansion?

19 A Yes. The majority of the property is urban  
20 expansion.

21 Q And what does urban expansion allow for for  
22 uses?

23 A It allows for a variety of uses including  
24 the commercial and residential components that are  
25 proposed by the development.

1           Q     Could you tell us what the shoreline area is  
2 designated as?

3           A     The shoreline area is designated open in the  
4 LUPAG map.

5           Q     And what does the open designation refer to?

6           A     That's consistent with trying to keep it  
7 open and undeveloped with the exception of putting in  
8 things like park facilities, parking lots, things that  
9 would enhance the use of the area.

10          Q     Is the proposed reclassification of the  
11 property to urban consistent with the General Plan  
12 land use designation?

13          A     Yes, it is.

14          Q     When was the Kona Community Development Plan  
15 adopted?

16          A     I believe it was the end of 2008.

17          Q     I believe we had testimony that it was in  
18 September 2008.

19          A     That's about right.

20          Q     Could you describe for us briefly what is  
21 the Kona Community Development Plan land use  
22 designation for the property?

23          A     The area is included -- I think if you refer  
24 to the large map that we passed out, our exhibit, our  
25 attachment 1. If you're looking at that map you'll



1 see a red line surrounding portions of Kona that  
2 designates the Kona urban area.

3 The Kona urban area is the area in which we  
4 are supposed to try and direct development of Kona.  
5 And this particular property is located within the  
6 Kona urban area.

7 Q According to a land use policy articulated  
8 in the Kona CDP, the future growth in Kona to be  
9 directed to the Kona urban area as delineated on  
10 attachment 1 to Exhibit 1?

11 A Yes, it is.

12 Q How is the Kona urban area defined in the  
13 Kona CDP?

14 A As I mentioned earlier it's defined on the  
15 map as basically an area extending from Keauhou down  
16 past Keahole. And from the shoreline area mauka to a  
17 line that sometimes follows the Old Mamalahoa and  
18 sometimes follows a little bit below the Old  
19 Mamalahoa.

20 Q Thank you. Is there a policy in the Kona  
21 CDP that establishes a minimum of 1,000 foot open  
22 space no-build setbacks for open space next to the  
23 shoreline?

24 A Yes, there is on Page 4-39 of the Kona CDP.  
25 And this would be under policy LU- I believe 1.6 we

1 talk about the thousand foot setback. And we also  
2 talk about trying to protect the makai portion of  
3 'O'oma.

4 Q Is the developer's proposal to set a  
5 no-build shoreline setback of 1,000 to 1700 feet  
6 consistent with the Kona CDP policy?

7 A Actually think their proposal is from  
8 1100 feet to 1700 feet. And it's consistent with the  
9 policy in the Kona CDP that says in areas where the  
10 property is large enough to have a 1,000 foot setback  
11 that we would try and impose that.

12 I think the CDP recognizes that there may be  
13 proposals that come to us and properties that don't  
14 have the ability to do that kind of setback. So it  
15 specifically says just where we have the opportunity  
16 to impose that kind of setback that we should do it.

17 Q Thank you. Is the proposed 'O'oma Beachside  
18 Development -- 'O'oma Beachside Village -- consistent  
19 with the Kona CDP's land use pattern and shoreline  
20 setback policies?

21 A Yes, it is.

22 Q I believe a question was posed yesterday on  
23 whether or not leaving land in the conservation  
24 classification was consistent with the Kona CDP. Do  
25 you recall a question to that nature yesterday?

1           A     I think there was some type of a question  
2 like that.

3           Q     Would leaving the land in conservation  
4 classification be consistent with the Kona CDP?

5           A     It would be consistent with a portion of the  
6 Kona CDP. There are a number of guiding principles.  
7 And one of those is protecting natural resources,  
8 preserving coastline areas.

9                     And so if I were to look at just one segment  
10 of the CDP, then I would say that leaving it in  
11 conservation is consistent.

12                    But when we review these applications we  
13 look at a plan in its whole, in its totality, not just  
14 one section or one page out of a plan.

15                    And so in looking at this, the plan  
16 envisions what we call kind of like a floating zone  
17 for TNDs or the traditional neighborhood type of  
18 design. The plan calls for things like providing  
19 connectivity in transportation choices, providing  
20 housing choices.

21                    And when you look at all of those including  
22 multi-use, this hits many of those objectives.  
23 Because the plan protects the makai portion of 'O'oma  
24 from development. It will provide public access to  
25 the public. There will be a beach park area. It also

1 fits into what we call a compact village design which  
2 is called for in the Kona CDP.

3 It has bike paths and pedestrian  
4 inter-connectivity. It's got multi-use. It's got  
5 shopping opportunities that are close to residential,  
6 all of which is asked for in the CDP.

7 So when you look at the plan and the  
8 multiple things that it calls for, it fits what's  
9 asked for in the CDP.

10 There's even language in the CDP that when a  
11 project comes in and it fits this definition of a TND,  
12 the county is required under the CDP to support a  
13 proposed State Land Use boundary amendment to go to  
14 the urban, particularly in an area where it's already  
15 been designated for urban expansion under the county  
16 General Plan.

17 Q Thank you, Director.

18 I have no further questions. And I will  
19 turn her over for cross-examination. But I reserve my  
20 right for any redirect. Thank you.

21 CHAIRMAN PILTZ: Petitioner, any questions?

22 MS. BENCK: Just a couple of quick questions  
23 if I may, Ms. Leithead-Todd.

24 xx

25 CROSS-EXAMINATION

1 BY MS. BENCK:

2 Q The Kona CDP, is that a county or state  
3 document?

4 A It is a county document.

5 Q Thank you. Who has the final authority for  
6 making determinations on consistency with the Kona  
7 CDP?

8 A Planning director.

9 Thank you very much. That's all my  
10 questions.

11 CHAIRMAN PILTZ: Okay. OP?

12 MR. YEE: We have no questions.

13 CHAIRMAN PILTZ: Intervenor?

14 MR. LIND: No questions.

15 CHAIRMAN PILTZ: Office of Planning, do we  
16 have -- I'm sorry. Commissioner Kanuha.

17 COMMISSIONER KANUHA: Thank you,  
18 Mr. Chairman. Good morning, Bobby Jean. Just a  
19 couple questions for clarification. The General Plan  
20 is adopted how?

21 THE WITNESS: It's adopted by ordinance by  
22 the county council. The CDPs were created -- this is  
23 kind of new territory for the county -- they were  
24 created under the umbrella of the General Plan. There  
25 is specific language in the General Plan that says the

1 CDPs are to be adopted by ordinance. And there's also  
2 language in the General Plan which says when there's  
3 an inconsistency between the General Plan and the CDP  
4 the General Plan rules.

5 COMMISSIONER KANUHA: Okay. Thank you.  
6 Now, assuming a petition, not necessarily this  
7 petition, but a petition to go into the Urban District  
8 is sanctioned by the Commission, what happens next in  
9 the entitlement process?

10 THE WITNESS: Well, in the entitlement  
11 process I would assume that before actually submitting  
12 something to the county a developer like this one or  
13 anyone else would first come to the Planning  
14 Department.

15 In this case because this is a project in  
16 Kona I would refer them to the Kona office where we  
17 have set up a Kona design center, which is a  
18 multi-department -- it's kind of an informal  
19 committee.

20 When a project comes through we're going to  
21 pull somebody from the public works department. We're  
22 going to pull somebody from fire department, police  
23 and try to get input, provide input to a developer  
24 before they submit a proposal that would ultimately go  
25 to the Planning Commission and then to the County

1 Council for adoption.

2 But what we would be doing is probably  
3 pre-consultation for whether the specific project that  
4 they are proposing meets with our village design  
5 guidelines, which we are in the process of adopting.

6 We have a contract out with PlaceMakers for  
7 the Honokohau TOD. And part of that contract is for  
8 them to draft what are going to ultimately be adopted  
9 as village design guidelines.

10 It's to kind of implement the vision of the  
11 CDP into something that's actually adopted by rules  
12 and/or possibly by an ordinance.

13 And so that the plan that they're actually  
14 showing may have to be tweaked. We may decide that we  
15 want more bike paths, more pedestrian. We may decide  
16 that the configuration may need to be a little  
17 different to conform to the CDP. But that would  
18 happen, hopefully, before they actually submitted a  
19 proposal.

20 Once that occurred and that pre-consultation  
21 occurred, then they would submit an application for  
22 rezoning with the county. It would be given to my  
23 department. We would then make a recommendation on it  
24 to the Planning Commission. The Planning Commission  
25 would then hold public hearings. The public hearings

1 would be before the Leeward Planning Commission so  
2 they would take place here in Kona.

3           The Leeward Planning Commission would then  
4 make its recommendation on the proposed rezoning. And  
5 then it would go up to the county council. The county  
6 council would probably hold a minimum of three  
7 meetings because there would be at least one meeting  
8 at the planning committee level and two meetings at  
9 the county council level.

10           But in applications that tend to draw a lot  
11 of community interest it's usually been the practice  
12 of the county council to hold additional meetings and  
13 including public night meetings. And I envision  
14 something like this particular application, because of  
15 the size and because of public interest, would go to  
16 additional public hearings.

17           COMMISSIONER KANUHA: Thank you. That's all  
18 the questions I have.

19           CHAIRMAN PILTZ: Any other questions,  
20 Commissioners? Commissioner Lezy.

21           COMMISSIONER LEZY: Good morning, Madam  
22 Director.

23           THE WITNESS: Good morning.

24           COMMISSIONER LEZY: Thanks for your  
25 testimony. Couple brief questions. You testified, if



1 I heard you correctly, that under the General Plan  
2 that some portion of the Petition Area has been  
3 designated as open?

4 THE WITNESS: Yes.

5 COMMISSIONER LEZY: Are you able to show us  
6 on the Petition Area map what portion is designated as  
7 open?

8 THE WITNESS: The way we lay the General  
9 Plan out it's not metes and bounds. We kind of draw a  
10 line. And the intent -- what you have, let's start  
11 with the NELHA parcel. You have open that comes here,  
12 then it kind of jogs up.

13 Then it comes across and then you go down  
14 Kohanaiki and Kohanaiki it's a wavy line on Kohanaiki.  
15 Over here we have it designated as kind of a straight  
16 line that ran kind of like this.

17 The intent was to have some flexibility to  
18 protect at a minimum a thousand feet but possibly up  
19 to 1400 feet, or to have the line perhaps go closer to  
20 the ocean in some areas and farther inland in other  
21 areas, depending physically what's on the property so  
22 that it would be kind of a case-by-case scenario.

23 So even though the GP has a straight line  
24 across, when you actually work on a project you may  
25 end up with a line that meanders. Because what you

1 may have is a specific archaeology or anchialine ponds  
2 that you want the line to go further in. And in other  
3 areas if there isn't as much of those resources then  
4 the line could go the other way. And that's kind of  
5 the vision when we get this out on the GP.

6 COMMISSIONER LEZY: If I understand  
7 correctly then, it looks to me like the intent of the  
8 General Plan is met in, at least in the proposed  
9 petition development by that shoreline park as far as  
10 the open area's concerned.

11 THE WITNESS: Yeah. The open area here runs  
12 from 1100 to 1700 feet. So it's very consistent.  
13 It's not a straight line but it's very consistent with  
14 the vision of the General Plan to have a significant  
15 belt along the ocean.

16 And I note that that open space belt on the  
17 'O'oma property is significantly larger than the open  
18 space belt on NELHA's property and the open space belt  
19 that we have on Kohanaiki.

20 And I think that part of that was kind of  
21 reflecting what we knew the plans at Kohanaiki already  
22 and it was already urban. We had already worked some  
23 of that out.

24 So sometimes what you do in a General Plan  
25 you try to reflect what's actually on the ground.

1 Then you make amendments.

2 And then when you're looking at stuff that  
3 hasn't been developed yet what you have is basic, kind  
4 of a broad brushstroke of what you envision. So in  
5 this case the makai portion is envisioned as open and  
6 the bulk of the property is envisioned as urban  
7 expansion.

8 COMMISSIONER LEZY: Thank you.

9 CHAIRMAN PILTZ: Commissioner Kanuha.

10 COMMISSIONER KANUHA: Mr. Chairman, one more  
11 follow up question. Ms. Leithead-Todd, you know, in  
12 looking at the County's Exhibit No. 1 which is the  
13 Kona CDP development plan, is there any reason why an  
14 open space buffer along the shoreline is not shown on  
15 the CDP?

16 THE WITNESS: I don't know why they don't  
17 have that on the CDP. But I envision that it is  
18 because those open space buffers are included in the  
19 General Plan.

20 So the CDP could not -- even though you have  
21 that Urban Growth Boundary, if the General Plan says  
22 that the area along the coast is supposed to be open,  
23 then my department would follow the General Plan  
24 rather than the CDP and say that you can't develop all  
25 the way right up to the shore even if the red line is

1 there.

2 COMMISSIONER KANUHA: Okay. Thank you.

3 CHAIRMAN PILTZ: Commissioner Judge.

4 COMMISSIONER JUDGE: Thank you, Chair Piltz.

5 Good morning, Ms. Leithead-Todd.

6 THE WITNESS: Good morning.

7 COMMISSIONER JUDGE: I know we're talking  
8 about the General Plan designation but could you  
9 remind me, what is the current county zoning on the  
10 Petition Area?

11 THE WITNESS: The portion that's involved in  
12 this particular application is open. The mauka  
13 portion, which is not a part of the State Land Use  
14 application, is currently industrial.

15 So in order to effectuate the particular  
16 proposal by 'O'oma there would be two pieces that  
17 would have to be rezoned. The mauka portion would  
18 have to go from industrial to residential/commercial  
19 mix.

20 And the makai portion, which is basically  
21 from where the line for what was, I think, intended to  
22 be the old Mamalahoa Trail, where they actually  
23 thought the trail was, just kind of a diagonal line,  
24 that portion down to where, the other where it meets  
25 where it would be left in open, that would also have

1 to be rezoned from open to mixed residential and  
2 commercial.

3 COMMISSIONER JUDGE: Okay. Thank you.

4 CHAIRMAN PILTZ: Let me ask a question.  
5 When was this General Plan adopted?

6 THE WITNESS: The General Plan was adopted  
7 in February of 2005.

8 CHAIRMAN PILTZ: And CDP?

9 THE WITNESS: September 2008.

10 CHAIRMAN PILTZ: Okay. Good enough. Thank  
11 you. Any other questions, Commissioners?

12 THE WITNESS: I just wanted to add one thing  
13 if any of you are familiar with the CDP. That's on  
14 Page 4-46 where it addresses rezoning. Any project  
15 that's more than 20 acres basically has to come in as  
16 a TND. And when we reviewed 'O'oma it was consistent  
17 with what a TND is supposed to be.

18 Under that section of the CDP it  
19 particularly addresses State Land Use applications.  
20 And it says, "Where rezoning application meets the  
21 above criteria the county shall support a State Land  
22 Use Urban Boundary Amendment for lands within the  
23 county urban expansion area."

24 So when my staff reviewed this, because it  
25 fit the TND, we then dropped to the section on State

1 Land Use applications. And because it fits the TND we  
2 felt that we were bound by the language in the CDP  
3 that says we have to support the reclassification.  
4 And that's how we analyzed it.

5 CHAIRMAN PILTZ: Thank you. Thank you for  
6 the clarification. Any other questions,  
7 Commissioners? Redirect?

8 MR. GONZALEZ: One second, Mr. Chair.  
9 (pause) Thank you, Mr. Chair. No further questions.

10 CHAIRMAN PILTZ: Park Service.

11 MR. LIND: Good morning. We have one,  
12 Sallie Buchal. She's out right now. But in the  
13 interim I would like to introduce the new  
14 superintendent for the National Park, Kathy Billings.  
15 She's behind me.

16 CHAIRMAN PILTZ: Please do so.

17 MR. LIND: We have been with an acting  
18 superintendent for a few months and now she's here for  
19 the duration.

20 CHAIRMAN PILTZ: Thank you. Thank you for  
21 the introduction.

22 SALLIE BUCHAL,  
23 being first duly sworn to tell the truth, was examined  
24 and testified as follows:

25 THE WITNESS: I do.

1                   CHAIRMAN PILTZ: Your name and address for  
2 the record.

3                   THE WITNESS: My name is Sallie Buchal. The  
4 address is Kaloko-Honokohau National Historical Park  
5 4786 Kanalani Street, Unit 14, Kailua-Kona 96740.

6                   CHAIRMAN PILTZ: Proceed.

7                                   DIRECT EXAMINATION

8 BY MR. LIND:

9           Q       Would you indicate your position with the  
10 National Park Service, your educational background and  
11 whether or not you have testified before this  
12 Commission.

13          A       Yes. Aloha, Commissioners. I'm the marine  
14 ecologist and the chief of integrated resources at  
15 Kaloko-Honokohau National Historical Park. And I  
16 offer testimony for the Intervenor.

17                   I've worked for the National Park Service  
18 for nine years. And in that time, all of that time at  
19 the National Park at Kaloko-Honokohau. I have a  
20 Bachelor's Degree in Biology with an emphasis in  
21 Marine Science from the University of California at  
22 Santa Cruz.

23                   And I have a Master of Science in Wildlife  
24 Science with an integrated minor in oceanography and  
25 statistics from Oregon State University.

1                   And I've previously testified for the  
2 National Park Service before the Land Use Commission  
3 once as an expert witness in the area of marine  
4 ecology.

5           Q     Please describe your duties and  
6 responsibilities.

7           A     Yes. In Hawaiian culture natural and  
8 cultural resources are inextricably intertwined. I'm  
9 in charge of both cultural and natural resource  
10 management at the Park.

11                   The National Park Service uses a science  
12 based management approach. And it's my job to  
13 protect, restore and manage our culture and natural  
14 resources based on sound scientific data.

15                   I and my staff inventory, establish baseline  
16 conditions, monitor and conduct research on our  
17 resources.

18                   And as resource manager I take a  
19 precautionary approach. I must make an informed,  
20 educated decision based on available evidence,  
21 peer-reviewed published literature and the advice of  
22 subject area experts regarding restoration, threats to  
23 resources and alternatives for protection of Park  
24 resources.

25                   My job also includes establishing



1 partnerships with universities and other government  
2 agencies in order to facilitate projects on natural  
3 and cultural resource management.

4 Q Why did the National Park Service intervene  
5 in this matter?

6 A The National Park Service intervened in this  
7 matter to ensure that if the proposed development  
8 proceeds that it is completed and maintained with  
9 effective protection for the nationally significant  
10 cultural and natural resources in the National Park.

11 And in doing so that it provides for the  
12 preservation and perpetuation of traditional and  
13 customary Native Hawaiian practices in the Park.

14 Q Could you address some of the concerns of  
15 the National Park?

16 A Yes. The concerns of the National Park  
17 Service regarding the potential impacts from the  
18 proposed Project are well documented in our comments  
19 on the draft environmental impact statement and in our  
20 testimony before the Commission on January 8th, 2009.

21 In response to these comments, and in order  
22 to avoid costly and time-consuming proceedings before  
23 the LUC, over the last year and-a-half the Petitioner  
24 and the National Park Service negotiated an agreement  
25 to address our concerns regarding the potential for

1 impacts from groundwater withdrawal and potential  
2 groundwater and ocean pollution resulting from the  
3 proposed development.

4 The agreement's been introduced into the  
5 record as Intervenor's Exhibit 4 and Petitioner's  
6 Exhibit 28.

7 The National Park Service does not ask the  
8 Commission to enforce or supervise the agreement.  
9 That's between the National Park Service and the  
10 Petitioner.

11 Rather, the National Park Service requests  
12 that the provisions identified in the NPS/OVB  
13 agreement as development conditions be included by the  
14 Commission in the Final Decision and Order in this  
15 matter. These development conditions are found on  
16 pages 2 to 6 of Intervenor's Exhibit 4 within the  
17 agreement.

18 The National Park Service believes that  
19 including the development conditions in the Final  
20 Decision and Order is clearly within the authority and  
21 mandate of this Commission, and it's supported by  
22 information already in the record for this matter.

23 Including the conditions in the Decision and  
24 Order makes these protective conditions enforceable by  
25 state and county agencies.

1           Q     What are the issues about developments  
2 around the Park for the Park Service?

3           A     Mauka and adjacent land use activities in  
4 and adjoining the four ahupua'a of the National Park  
5 are of significant concern to the National Park  
6 Service.

7                     And as shown on Intervenor's Exhibit 1 the  
8 Petitioner's proposed development lies a little over  
9 half a mile north of the National Park and shares the  
10 same resources as the Park, the same aquifer and the  
11 same marine environment. And if it's okay may I  
12 approach the map and point out a few specifics.

13                   CHAIRMAN PILTZ: Yes, go ahead.

14                   THE WITNESS: I thought this was a big map.  
15 I hope everyone can see well enough. I have a  
16 pointer. Here's the National Park right here. I'll  
17 just point out some features of the Park first 'cause  
18 I'll list off their names and that may help.

19                   Up here at the north -- is it easier if I  
20 use my finger or you can see the pointer? Kaloko  
21 Fishpond is right here. Aimakapa Fishpond and its  
22 wetland is on the southern portion.

23                   'Ai'opio fish trap is here. Honokohau  
24 Harbor is right here. The orange is the coral reef in  
25 the Park. The blue dots are the anchialine pool

1 locations. Here's the Petition Area is No. 1 on the  
2 map. And I'm going to refer to a couple of other  
3 developments that were before the LUC.

4           No. 11 up here is the Shopoff Development  
5 Kule Nei. No. 6 the TSA docket. And No. 8 is the  
6 Lanihau. Not numbered is McClean Honokohau  
7 Properties. I'll also be mentioning that. A few  
8 other things. The red dots represent the pumping  
9 wells above the Park.

10           And in particular this development is The  
11 Shores of Kohanaiki adjacent to the National Park.  
12 These eight red dots are groundwater pumping wells for  
13 their RO system. The green is their injection well.  
14 They're using this solely for irrigation for their  
15 golf course.

16           So as you can see by Exhibit 1 shows the  
17 National Park is quickly becoming an urban park,  
18 surrounded within its watershed by industrial and  
19 light industrial parks, medium to high density  
20 residential developments, a golf course on its  
21 northern boundary, that's at the Shores of Kohanaiki  
22 and a desalination plant immediately adjacent to the  
23 Park.

24           Even the best designed development may  
25 present significant adverse impacts to these shared

1 resources. As this Commission itself stated in the  
2 TSA matter, quote, "This Commission is acutely aware  
3 that continuous development is planned for this  
4 coastline.

5           Although each developer might claim that  
6 only a small amount of pollution will result from  
7 their development and the area's ecosystem will show  
8 little effects, these developments and their impacts  
9 are cumulative, and absent strong mitigation measures  
10 have the potential to devastate the fragile resources  
11 of the coastal and marine aquatic environments of the  
12 entire Kona coastal region." End quotes.

13           Q     How's the National Park Service addressing  
14 the concerns about development?

15           A     As urban development is surrounding the Park  
16 and has accelerated, the National Park Service has  
17 similarly increased its involvement in the planning  
18 and permitting processes associated with these  
19 developments.

20                     Accordingly, the National Park Service  
21 intervened in the TSA and Lanihau matters before this  
22 Commission. And the National Park Service withdrew  
23 petitions to intervene in the McClean and Shopoff  
24 matters after those petitioners, with the concurrence  
25 of the LUC, agreed to include protective conditions in

1 their decision and orders for those projects.

2           The February 14, 2002 findings of fact,  
3 conclusions of law and decision and order for the TSA  
4 matter, which is submitted as Intervenor's Exhibit 6,  
5 has served as the basis for development conditions  
6 concerning wastewater, stormwater and pollution  
7 prevention that have been imposed by this Commission  
8 on subsequent developments surrounding the Park;  
9 Lanihau, now known as West Hawai'i Business Park,  
10 McClean and Shopoff.

11           The TSA findings of fact comprehensively  
12 addressed the National Park and its unique resources,  
13 the negative impacts from nonpoint source pollution  
14 including wastewater treatment and disposal, surface  
15 runoff to groundwater via drainage wells and the  
16 current lack of state laws and county codes adequately  
17 regulating pollutants in wastewater and drainage for  
18 the protection of significant environmental resources.

19           Over 50 percent of the 475 TSA findings of  
20 fact were devoted to the issues of pollution and  
21 protecting the resources of the National Park.

22           Many of the findings of fact in TSA matters  
23 are directly relevant to this proceeding. And my  
24 written testimony submitted earlier this week  
25 references those specific findings for you.

1           Q     Would you please briefly describe the  
2 history of the National Park.

3           A     Certainly.

4           CHAIRMAN PILTZ:   Just a second.  We have  
5 that on the record.  Can we skip that?  She's reading  
6 verbatim and we have -- all our Commissioners have  
7 that.

8           MR. LIND:  We could skip it.  We were trying  
9 to make sure everybody heard it.

10          CHAIRMAN PILTZ:  Let's skip that and go to  
11 the next section.

12          MR. LIND:  Sure.  I have no problem with  
13 that.  As a point of order would you like to skip to  
14 the next section about the Park Service managing the  
15 Park?

16          CHAIRMAN PILTZ:  No.  We are aware of the  
17 significance of the Park Service but we do have a  
18 limited time today.  And if you could briefly, because  
19 she's reading verbatim what we have in front of us.  
20 So if she can go ahead and shorten it, briefly  
21 describe it but not verbatim because we have the  
22 verbatim issue right in front of us, I'd appreciate  
23 it.

24          MR. LIND:  Absolutely.

25          CHAIRMAN PILTZ:  So if you want to continue

1 with that go ahead but it can't be read directly from  
2 this. We have the record. It is on the record.  
3 Please.

4 MR. LIND: Sure. I'm going to turn to the  
5 important resources within the Park.

6 Q Could you describe the natural resources in  
7 the Park that we're trying to protect?

8 A Yes. The natural and cultural resources in  
9 the Park make it the special place that it is. In the  
10 TSA matter this Commission found that Kaloko-Honokohau  
11 is a, quote, "natural and cultural resource of the  
12 utmost value to both the state of Hawai'i and the  
13 nation as a whole representing some of the state's  
14 most important natural systems, habitats and valued  
15 cultural, historical and natural resources."

16 The Commission also recognized the economic  
17 value of this coastal National Park providing such  
18 exquisite natural, recreational and cultural  
19 resources.

20 The Park's resources are described in detail  
21 in the Intervenor's Exhibits 2, 3, 6, 7, 8, 9 and 16.

22 Q Just as a matter of limiting the time that  
23 we're discussing here, could you just focus on the  
24 importance of water resources to the National Park.

25 A Certainly. Water resources in the National



1 Park and the national historic landmark that shares  
2 its boundary, the Honokohau Settlement National  
3 Historic Landmark, are nationally significant cultural  
4 and natural resources. And groundwater quality and  
5 groundwater quantity are vital to those resources.

6 In the TSA matter this Commission found that  
7 the water in the National Park whether the water in  
8 the fishponds, the anchialine pools or the ocean water  
9 is a critical park resource in and of itself.

10 And in the TSA there were a large number of  
11 findings regarding the important water resources in  
12 the National Park.

13 Groundwater enabled human settlement of this  
14 arid region where there were no streams or even  
15 intermittingly for drinking water. And the ponds,  
16 pools, wetlands and marine waters of the Park are fed  
17 by groundwater discharge from the basal aquifer.

18 The brackish water in marine ecosystems of  
19 the National Park are partly, or in some cases solely  
20 dependent upon this groundwater to maintain their  
21 current composition and functioning.

22 Traditional and customary Native Hawaiian  
23 practices within the Park rely heavily on the quality  
24 and quantity of the groundwater.

25 Noting the connection between the natural

1 and cultural resources in the Park this Commission  
2 found in TSA that any impacts to waters in the  
3 National Park would in and of itself be an impact to  
4 cultural resources.

5 I'd also like to emphasize that the  
6 resources in the National Park that I just described,  
7 indeed all the marine resources of the Kona coast and  
8 Hawai'i whether stemming from tourism or commercial  
9 activities such as fishing, the marine resources  
10 provide significant economic value to the local  
11 community in a variety of ways.

12 For example, the marine resources in the  
13 Park provide diverse fish populations for shoreline  
14 and nearshore fishing, subsistence fishing and 15 days  
15 mooring buoys for recreational diving.

16 The National Parks themselves have been  
17 shown by a study by the National Parks and  
18 Conservation Association to have significant private  
19 sector economic value to their communities.

20 The net benefit of coral reefs to Hawai'i's  
21 economy are estimated at \$360 million per year. The  
22 estimated asset value of the state of Hawai'i's  
23 410,000 acres of potential reef area in the main  
24 islands is estimated at nearly 10 billion.

25 These estimates are the actual economic

1 value, do not include an estimate of the intrinsic  
2 value of the reefs.

3           The economic value of the Kona coast in  
4 particular is estimated at 17.7 million. With  
5 recreational value at 45 percent of those total  
6 benefits.

7           This Commission also recognized the economic  
8 importance of both the Park and the coastal and marine  
9 resources in the TSA matter.

10         Q     Would you summarize the concerns of the  
11 National Park Service with the proposed development.

12         A     Yes. The primary concerns to the National  
13 Park Service are the potential impacts to water  
14 quality and quantity and the ability of the National  
15 Park Service to continue to meet its congressional  
16 mandate to preserve, protect and perpetuate the  
17 cultural and natural resources in the Park that depend  
18 on that water quality and water quantity.

19           The specific concerns to the National Park  
20 are four-fold. First, the potential impacts from the  
21 withdrawal of groundwater and the injection of  
22 hypersaline water back into the groundwater.

23           Second, the potential impacts from nonpoint  
24 source pollution to groundwater and marine resources.

25           And, third, the potential impacts from the

1 use of treated wastewater this close to the ocean  
2 especially when the groundwater is so close to the  
3 surface.

4 And, fourth, what monitoring will be  
5 implemented to detect any adverse impacts that do  
6 occur and monitor the effectiveness of any protective  
7 measures.

8 Q Can we turn to the National Park Service  
9 agreement and the actual specifics of the development?

10 A Yes.

11 Q Can you describe the concerns with the  
12 reverse osmosis water system that's proposed and how  
13 the agreement addresses that?

14 A Yes. The groundwater in the National Park  
15 and the Petition Area -- the groundwater where the  
16 National Park and the Petition Area are located are  
17 increasingly being tapped for water, as a source of  
18 water for human use.

19 The FEIS for the Petitioner's proposed  
20 Project does not analyze the effects of the existing  
21 desalinization plant that's located between the  
22 National Park and the Petition Area at the Shores of  
23 Kohanaiki that I mentioned before.

24 This plant began operating in November of  
25 2008. They have eight pumping wells. They're

1 permitted to extract up to 2.2 million gallons per day  
2 of brackish groundwater and to reinject .72 million  
3 gallons a day of concentrate back into the  
4 groundwater.

5           So we're concerned because increased water  
6 withdrawals can change the flow and salinity of  
7 groundwater that ultimately discharges to coastal and  
8 marine waters in the National Park and the surrounding  
9 area.

10           And adverse impacts from reduced water flow  
11 include changes to salinity, changes to the anchialine  
12 pool ecosystem and to endangered water bird habitat.  
13 Reduced flow may also adversely affect traditional and  
14 customary Native Hawaiian practices.

15           The proposed development will be part of  
16 this increased groundwater development.

17       Q     How does the agreement address their  
18 proposed system? I'm skipping over the details that  
19 we have in our testimony.

20       A     The Petitioner proposes to provide water for  
21 the development by desalinating seawater or brackish  
22 groundwater through reverse osmosis or RO plant. The  
23 Petitioner estimates up to 1.9 million gallons per day  
24 of groundwater called feed water will be necessary for  
25 the RO plant to produce the needed water for the

1 proposed development.

2           The groundwater production wells will take  
3 water from the same aquifer that underlies the  
4 National Park. And the byproduct of desalination will  
5 be a concentrated solution with a salinity of 60 parts  
6 per thousand. That's more than two times the salinity  
7 of the feed water if it's taken from a groundwater  
8 well.

9           The hypersaline concentrate will be injected  
10 back into the aquifer. Neither the amended petition  
11 nor the FEIS identified the specific source of the  
12 feed water.

13           Instead, both documents state that the feed  
14 water from the RO plant may come from the Natural  
15 Energy Laboratory Hawai'i Authority, and ocean water  
16 or groundwater production wells that may be located on  
17 the Petition Area or any number of other places.

18           So similarly the location of the RO plant  
19 and its associated injection wells are not specified  
20 but could be located in a number of different sites  
21 including on the Petition Area.

22           According to the amended Petition in the  
23 FEIS the groundwater production wells, the RO plant,  
24 injection wells could be located as close as one mile  
25 to the Park.

1           Q     How does the agreement address our concerns?

2           A     The development conditions in the agreement  
3 are designed to address some of the concerns of the  
4 National Park Service regarding the proposed RO  
5 system.

6                     The Petitioner, as described in the FEIS,  
7 will obtain its feed water either from ocean water,  
8 from NELHA or from groundwater protection wells  
9 located adjacent to the RO plant, and be located at  
10 one of three specific places or in a more general  
11 location mauka of the Petition Area.

12                    The Petitioner has agreed that the amount of  
13 RO water shall be no more than is needed to provide  
14 sufficient potable and non-potable water for the  
15 Project.

16                    In the event that the Petitioner obtains RO  
17 feed water from groundwater wells, regardless of where  
18 they're located, the Petitioner has agreed that the  
19 wells should be drilled to a depth that's sufficient  
20 to tap groundwater containing at least 25 parts per  
21 thousand total dissolved solids.

22                    The Petitioner has also agreed to monitor  
23 its RO feed water sources and to include an additional  
24 well near the production wells that will monitor water  
25 levels, specific conductions for salinity and

1 temperature.

2           Finally, the Petitioner has agreed to  
3 discharge the RO concentrate through the injection  
4 wells into groundwater that contains at least 30 parts  
5 per thousand total dissolved solids.

6           The agreement therefore commits the  
7 Petitioner to construct and operate the RO system that  
8 was described in the amended petition in the FEIS.  
9 More importantly as the system upon which the  
10 Petitioner based its hypothesis for -- and assumptions  
11 regarding the level of impacts of this system.

12           So the agreement also commits the Petitioner  
13 to measure the actual effect of the RO system, the  
14 actual effect the RO system will have on the aquifer  
15 and only then will we be able to know that  
16 Petitioner's assumptions are correct.

17       Q     In the spirit of the request from the  
18 Commissioners I'll ask you to just briefly summarize  
19 non-point source pollution before we turn to that.

20       A     Sure. Non-point source pollution is any  
21 pollution that's not from a point source. It's when  
22 rainwater, stormwater or irrigation water moves across  
23 the lands and it carries with it -- from across  
24 impermeable surfaces such as roofs, roadways, parking  
25 lots, and it carries with it all the pollutants that



1 have been left there by a variety of sources.

2           And additionally when rainwater and other  
3 waters move through wastewater leachate carrying --  
4 from individual wastewater systems, also carrying  
5 those nutrients and other contaminants into ground and  
6 surface water.

7           So essentially non-point source pollution  
8 includes sediments, nutrients, toxins, metals,  
9 floatables, pharmaceuticals, and pathogens. And this  
10 is especially here in Kona because Kona's recharge --  
11 the Kona aquifer is recharged by rainwater. And we  
12 have very little soil. And the lava is highly  
13 permeable.

14           So water moving across the land quickly  
15 goes to groundwater carrying everything that it  
16 encounters with it. And those waters then discharge  
17 to our coastal waters, anchialine pools, fishponds and  
18 our marine waters.

19       Q     I'm going to ask you now just to talk about  
20 how the proposed Project addressed non-point source.

21       A     Absolutely. So 66 percent of the proposed  
22 Project Area will be developed and will include -- and  
23 that area will include a significant amount of  
24 roadways, parking lots, residences, commercial areas,  
25 these impermeable surfaces that I just mentioned. And

1 those are exposed to petroleum products, pesticides,  
2 fertilizers, all of those other contaminants that I  
3 mentioned earlier.

4           So in the Project Area the surface and  
5 stormwater runoff is planned to be managed through a  
6 system of catch basins and drain lines that will  
7 dispose of runoff into dry wells. And other runoff  
8 including irrigation water will also -- which will  
9 come from the wastewater system -- also infiltrate  
10 down to groundwater.

11           And it's important to note that dry wells  
12 are simply holes in the ground. And there's no  
13 inherent non-point source pollution control device in  
14 drywells that will remove pollutants. Drywells are  
15 simply organized to control volume and not pollution.

16       Q     How did the proposed Project address  
17 non-point source pollution?

18       A     Initially the Petitioner didn't address the  
19 problem of non-point source pollution in their Draft  
20 Environmental Impact Statement. However, in response  
21 to comments by the National Park Service and others  
22 the Petitioner included in the Final Environmental  
23 Impact Statement as a part of their proposed  
24 development a list of items designed to reduce  
25 non-point source pollution impact to groundwater and

1 marine waters.

2           This list was taken from previous decision  
3 and orders issued by this Commission for developments  
4 adjacent to or near the National Park, especially the  
5 TSA Decision and Order.

6           Q     How does the agreement between the Park  
7 Service and the Petitioner address non-point source  
8 pollution?

9           A     The agreement addresses non-point source  
10 pollution in several ways. First, the Petitioner's  
11 agreed to design and construct and maintain BMPs, Best  
12 Management Practices, to prevent violation of the  
13 state's water quality standards; to design subsurface  
14 drainage structures with debris catch-basins that will  
15 remove rubbish and sediments.

16               And design and construct landscaped areas  
17 and other areas as structural BMPs that will treat  
18 first flush runoff to remove pollutants from surface  
19 waters and stormwater runoff.

20               What that means is when you get, you have  
21 those pollutants that are in a very dry area like this  
22 laying on the ground for a long time, you get an  
23 intense rainfall. That first flush of water  
24 discharging down is carrying the highest level of  
25 pollutants. That's called the first flush.

1               So the requirements in the agreement will be  
2 binding on subsequent owners through covenants,  
3 conditions and restrictions, CC&R's that will be  
4 recorded against the property.

5               And a draft of the CC&R's is included in  
6 Exhibits 4 as -- excuse me, it's included as an  
7 Appendix to the agreement which is Intervenor's  
8 Exhibit 4, Petitioner's Exhibit 28.

9               Secondly, the Petitioner has agreed to  
10 develop a pollution prevention plan. And that  
11 addresses all categories of permitted uses within the  
12 Project and also addresses environmental stewardship  
13 and non-point sources that can be generated from any  
14 uses allowed within the Project Area.

15              And as I mentioned before the approach to  
16 creating necessary controls for non-point source  
17 pollution is taken directly from conditions that this  
18 Commission has imposed on other developments adjacent  
19 to or near the National Park.

20              In particular the draft CC&R's are modeled  
21 after the CC&R's recorded for the Lanihau property.

22              And the Petitioner's agreed to make the  
23 pollution prevention plan consistent with the  
24 pollution plan already recorded against the Lanihau  
25 property.

1                   Finally, the Petitioner has agreed to  
2 monitor, to monitoring requirements to measure the  
3 effectiveness of these controls.

4                   And I want to reiterate that all of the  
5 conditions regarding the non-point source pollution  
6 that are required in the agreement were found by this  
7 Commission in the TSA matter to be necessary to  
8 protect resources in the Park.

9           Q       Let's turn now to wastewater disposal. Can  
10 you describe how the agreement address that?

11          A       First of all, just take a moment to describe  
12 the proposed system and then I'll -- very briefly and  
13 I'll talk about how the agreement addresses it.

14                  As described in the amended petition in the  
15 Final EIS the Petitioner proposes to construct their  
16 private wastewater treatment plant. They're going to  
17 be using treated wastewater for irrigation throughout  
18 the Project Area. The excess treated water that's not  
19 used for irrigation is proposed to be injected into  
20 the groundwater.

21                  The treated wastewater will be R1 which  
22 means that it's tertiary treated for removal of  
23 pathogens. The treated wastewater will then in the  
24 end also become another source of non-point source  
25 pollution.

1           The agreement address this by requiring the  
2   Petitioner to connect to the Kealakehe wastewater  
3   treatment plant, if that connection is accessible to  
4   the Project before the county of Hawai'i approves the  
5   change of zone.

6           Then in the event that there's no connection  
7   successful or available and no connection to another  
8   public wastewater treatment plant, then Petitioner  
9   will develop its own private wastewater treatment  
10   plant as described in the amended petition and the  
11   FEIS.

12           So the agreement requires that the  
13   Petitioner ensure that the total concentrations -- the  
14   concentrations of total nitrogen and total phosphorus  
15   are reduced to less than 5 milligrams per liter for  
16   total nitrogen and less than 2 milligrams per liter  
17   for total phosphorous or lower, if required by the  
18   Hawai'i Department of Health.

19           So similar to provisions dealing with the RO  
20   system the agreement requires Petitioner to build its  
21   private wastewater treatment plant as described and  
22   analyzed in the FEIS.

23           The Petitioner is also required to monitor  
24   the concentrations of nutrients coming out of the  
25   wastewater treatment plant monthly.

1           Q     Let's turn to the groundwater monitoring  
2 system you mentioned. Would you describe how the  
3 agreement addresses groundwater monitoring for  
4 pollutants.

5           A     I forgot to mention one thing. There is  
6 also the comfort station at the beach park. The  
7 agreement addresses that by requiring, if they use an  
8 individual wastewater system, that it have enhanced  
9 nutrient removal or that it be a composting station.

10                   Back to your question on the groundwater  
11 monitoring.

12           Q     How's the agreement address groundwater  
13 monitoring for pollutants?

14           A     So groundwater monitoring is the only way to  
15 test the assumptions set in the FEIS that there will  
16 be no significant impact on the National Park  
17 resources. Or to evaluate the effectiveness of any of  
18 the protective measures that are imposed.

19                   The agreement requires the Petitioner  
20 develop a groundwater monitoring plan to detect  
21 pollutants in the groundwater below the Petition  
22 Area -- the Project Area.

23                   So the agreement includes that the  
24 Petitioner must install at least three monitoring  
25 wells, one hydrologically upgradient from the Project

1 and two downgradient.

2           And the agreement also requires Petitioner  
3 develop a sampling and analysis plan that includes  
4 sampling, shipping protocols, analytical procedures,  
5 and, importantly, a quality assurance project plan.  
6 And this will specify quality control performance  
7 criteria.

8           The quality assurance plan will include  
9 things like method detection limits that at least an  
10 order of magnitude lower than the ambient groundwater  
11 concentrations for these nutrients.

12           Water quality parameters to be monitored  
13 include Ph, temperature, salinity, nitrate, ammonia,  
14 dissolved organic nitrogen, total dissolved solids,  
15 total nitrogen, phosphate, dissolved organic  
16 phosphorus, total phosphorus and any other parameters  
17 that may be required to monitor by the County Planning  
18 Commission or the Department of Health.

19           The agreement also provides that monitoring  
20 will begin at least six months prior to the start of  
21 grading activity and shall be conducted quarterly for  
22 two years, annually thereafter or as required by the  
23 DOH or the county.

24           Q     Finally, would you state from the Park  
25 Service's point of view why the Land Use Commission



1 should include the development conditions as defined  
2 in the agreement with the Park Service in any Decision  
3 and Order issued for this matter?

4       A     The Petitioner's already included the  
5 development conditions as part of its proposed Project  
6 either in the FEIS or in its request to include the  
7 conditions in the Decision and Order.

8             The state of Hawai'i Office of Planning has  
9 stated that it supports the inclusion of the  
10 development conditions in the D&O. And, moreover, the  
11 development conditions dealing with the non-point  
12 source pollution control issues, wastewater/  
13 groundwater monitoring are the same conditions that  
14 have been applied in the past by this Commission for  
15 other proposed developments near or adjacent to the  
16 National Park.

17            All of the development conditions address --  
18 this is really -- a key point is that all the  
19 development conditions address matters that are not  
20 mandated by other local, state or federal agencies.

21            The development conditions are needed to  
22 protect the fragile cultural and natural resources of  
23 the National Park along the Kona Coast for the benefit  
24 of the people of Hawai'i and for our nation as a  
25 whole.

1 MR. LIND: No further questions.

2 CHAIRMAN PILTZ: Okay. Petitioner,  
3 questions?

4 MS. BENCK: One questions, please.

5 CHAIRMAN PILTZ: Okay.

6 CROSS-EXAMINATION

7 BY MS. BENCK:

8 Q Hi, Sallie. On February 1st the National  
9 Park Service filed its Statement of Position with the  
10 Land Use Commission. I'm going to read a sentence  
11 from that.

12 It says, "The National Park Service does not  
13 object to the Petition for Boundary Amendment as set  
14 forth in the petition and supporting documents  
15 provided that the development conditions are  
16 implemented as part of Petitioner's Project."

17 Is that still the National Park Service's  
18 position?

19 A Yes, it is.

20 MS. BENCK: Thank you very much. And I have  
21 no further questions.

22 CHAIRMAN PILTZ: Hawai'i County?

23 MR. GONZALEZ: No questions.

24 CHAIRMAN PILTZ: Okay. OP?

25 MR. YEE: I have a series of what I hope are

1 friendly leading questions which actually just lead up  
2 to one particular issue.

3 CROSS-EXAMINATION

4 BY MR. YEE:

5 Q As I heard your testimony I understood that  
6 you said basically the Park Service has important  
7 resources. And water's important both in and of  
8 itself and to those resources, right?

9 A Correct.

10 Q And you mentioned four specific provisions  
11 that you're concerned about that require mitigation,  
12 withdrawal of water, non-point source pollution, the  
13 wastewater and then monitoring.

14 A Yes.

15 Q And then you described a variety of things  
16 such as regulations and what kind of groundwater can  
17 be withdrawn, Best Management Practices such as debris  
18 catch basins and a variety of requirements on how you  
19 treat wastewater and what you do with it afterwards.  
20 Correct?

21 A Correct.

22 Q The fourth issue was monitoring. And I  
23 understand from the monitoring information you get you  
24 can become more educated and you can figure out  
25 whether or not pollution is occurring.

1           My question to you is what do you do with  
2 the -- what I didn't find in the testimony is what do  
3 you do with the information after you get it?

4           A     Well, as you just mentioned -- I'll just  
5 reiterate. The importance of monitoring is to be able  
6 to provide an early warning system so that actions can  
7 be taken.

8           So those monitoring data are very important  
9 data for county agencies, state agencies, federal  
10 agencies in order to observe what is happening and  
11 then take action, if needed, to correct a problem or  
12 prevent a problem from happening. Early warning is  
13 the key. So those data are very useful to all of us  
14 for those reasons.

15           In the OP exhibits from the department --  
16 the Division of Aquatic Resources, they're very  
17 interested in reliable monitoring data for protection  
18 of the state's marine resources. So there's  
19 definitely an interest by all parties concerned with  
20 how those data will be used.

21           Q     I don't disagree. But with this information  
22 is it possible to detect the source of the pollution?

23           A     Well, for the Petitioner's Project they're  
24 going to have a well, a monitoring well upgradient,  
25 then wells downgradient.

1           The idea behind that monitoring regime is to  
2 be able to identify background levels as to what is  
3 entering the Project and what is coming out of the  
4 Project. So this gets at that situation. That  
5 particular scenario, that's sort of the bare minimum  
6 to capture that.

7           Q     So with that you can figure out whether you  
8 need to look at the Petition Area or outside the  
9 Petition Area if you're noticing higher pollution  
10 levels? Right?

11           If you have one upgradient and one  
12 downgradient you know where at least between the  
13 Petition Area or somewhere outside the --

14           A     Right.

15           Q     -- Petition Area you know where the  
16 pollution is coming from.

17           A     That's the idea behind strategically  
18 positioning your monitoring wells, yes.

19           Q     And that will help you then investigate or  
20 direct the investigation if you're finding higher  
21 pollution levels, correct?

22           A     Absolutely.

23           Q     And if you do find higher pollution levels  
24 why is that? In addition to any mitigation efforts  
25 you or the National Park Service might itself take,

1 would that also be of assistance to the regulatory  
2 agencies?

3 A Absolutely. It will assist the State DOH  
4 whether any water quality standards are being  
5 violated. Will help with DAR's management of the  
6 marine waters. Yes, those data will be used to assist  
7 state agencies and county as well.

8 Q And to help them identify who might be the  
9 source.

10 A Yes.

11 Q In then addition to that would the National  
12 Park Service also have a law that it could enforce to  
13 the extent that there are impacts to the Park?

14 A Yes. The National Park Service -- I'm going  
15 to forget the exact name of it -- the Resource  
16 Protection Act I believe it's called, 19JJ, it's  
17 referred to, yes, does allow for the National Park  
18 Service to seek restoration for resources that have  
19 been damaged, yes.

20 MR. YEE: Thank you. I have nothing  
21 further.

22 CHAIRMAN PILTZ: Commissioners, questions?  
23 Before we do that we'll take a 5-minute break.

24 (Recess was held.)

25 CHAIRMAN PILTZ: We're back in session.

1 Commissioners, questions? Commissioner Kanuha.

2           COMMISSIONER KANUHA: Thank you,  
3 Mr. Chairman. Thanks, Sallie, for your rather  
4 extensive testimony. In the past I've expressed  
5 several overriding concerns with some of the positions  
6 that the National Park has taken in regard to  
7 petitions coming before us.

8           Don't get me wrong. I understand that the  
9 Park is in a tough situation because of where it is  
10 and all of the -- basically I think you said it best  
11 where it's turning into an urban resource type Park.

12           But I think what I need some better handle  
13 on is maybe I'll start backwards and I'll kind of take  
14 off on some of the comments from OP with regard to  
15 monitoring.

16           So I guess my question -- you may have  
17 submitted it somewhere through the EIS process or  
18 within your testimony -- but one of my questions with  
19 regard to monitoring is what kind of baseline data  
20 does the Park itself have that you can use to measure  
21 against what these potential impacts are from, you  
22 know, surrounding projects?

23           THE WITNESS: That's a good question. Yes,  
24 the Park, especially in the last decade where we have  
25 seen this increase around us, as I said we use a

1 science-based management approach. And a big part of  
2 that's collecting baseline data on all our resources  
3 and ecosystems.

4           The National Park Service has a program  
5 called -- it's a national program across the country,  
6 an inventory and monitoring program. It's a separate  
7 group and branch in each region where they  
8 specifically look at certain, what they call vital  
9 signs. These are the respiration, the heart rate, the  
10 things that are to indicate that there's a problem.

11           Water quality is one of them and we collect  
12 data in the National Park. So we have been over time  
13 building up a baseline data because we do need to be  
14 able to identify is there a change and where is that  
15 change coming from.

16           So most of the studies that we are doing  
17 right now with regard to natural resources in the Park  
18 are directed at just that: Establishing our baseline,  
19 establishing the modes of entry for certain pollutants  
20 into the Park.

21           And we work with the US Geological Survey in  
22 particular on that. They're a very high standard of  
23 science. For example, you can trace the origin of  
24 waters into the Park with methods like isotope  
25 tracing. We have established a baseline. We are



1 working on that continually.

2 COMMISSIONER KANUHA: So you have one or  
3 you're working on one?

4 THE WITNESS: Well, there's such a thing  
5 conditions are always changing, correct? As  
6 everything changes that's where the monitoring comes  
7 in. So we have a current condition baseline is the  
8 most accurate way of putting it.

9 A baseline would be prehuman approach to  
10 these islands. Then after that we as humans tend to  
11 change things. So we can't get that. But what is the  
12 baseline now? So the establishment of the Parks in  
13 1978. So we try to go back to that as much as we can  
14 with data and move forward.

15 So we have baseline water quality data,  
16 baseline archaeological data for how those sites are.

17 COMMISSIONER KANUHA: So do you have enough  
18 data or has enough time elapsed to give you some  
19 indication of whether or not these concerns you have  
20 are valid? Or are there still potential impacts?

21 THE WITNESS: Um, that's a great question.  
22 There are -- we have -- there are impacts to the Park.  
23 We have shown there have been changes. So we have  
24 actual impacts, observed impacts, as well as predicted  
25 impacts to Park resources.

1               So the observed impacts we have changes in  
2   salinity in the Park's water resources. For example,  
3   I didn't get to mention in my testimony, but in my  
4   written testimony you'll find that Honokohau Bay,  
5   which is the southern part of the Park, in 2008 was  
6   designated as 303D impaired water body for elevated  
7   nutrients by the state. 303D is the Clean Water Act.

8               So now that water body has a statement of  
9   impairment for elevated nutrients.

10              Also the US Geological Survey Study, which  
11   is our Exhibit 9, predicts or demonstrates that there  
12   will be, with increasing pumping, a reduction in  
13   groundwater levels in the Park and potentially that  
14   could lead to increased salinity. So reduction in  
15   flow, reduction of level and a potential increase in  
16   salinity.

17              COMMISSIONER KANUHA: You know, I think this  
18   testimony is the first one that I can recall where the  
19   Park Service seems to be making an attempt to define  
20   where you believe the impact area is.

21              And in this recent testimony it does seem to  
22   narrow it down to the area mauka and basically  
23   covering the four adjacent ahupua'a.

24              I think one of the questions I asked of  
25   Gerry Bell sometime ago was: How far mauka does the

1 Park, you know, anticipate that activities would have  
2 some potential impacts to the water quality concerns.

3 THE WITNESS: Well, we took a watershed  
4 approach.

5 COMMISSIONER KANUHA: Okay.

6 THE WITNESS: Which is really the Hawaiian,  
7 the traditional ahupua'a management approach. In fact  
8 our Exhibit No. 2 is what we refer to as the Spirit  
9 Report. I highly recommend if you can read the first  
10 few pages of it it will clarify.

11 This is a report that was written to  
12 Congress during -- to support the authorization of the  
13 Park. So it was an advisory, congressional advisory  
14 commission report.

15 And it talks about the Hawaiian water cycle,  
16 what affects the lands above and around affects the  
17 Park. The ability of the Park to manage its resources  
18 is a little difficult because we are just at the  
19 coast.

20 But in our enabling legislation it  
21 directs -- our enabling legislation "Directs the  
22 Secretary of the Interior to the best of his or her  
23 ability to manage the Park," and it uses the word "the  
24 ahupua'a, "with the ahupua'a style of management"  
25 which is a watershed management.

1                   So essentially we are talking about our  
2   entire watershed all the way up to the top, the  
3   ahupua'a.

4                   COMMISSIONER KANUHA: Utilizing I guess  
5   that's your exhibit on the wall behind you?

6                   THE WITNESS: Yes, Exhibit No. 1.

7                   COMMISSIONER KANUHA: I was looking at it  
8   during the break. Is that the general area of  
9   concern? Does it go any further north, any further  
10  south?

11                  THE WITNESS: We have to look at each. Our  
12  watershed is our general area of concern. But you  
13  also have to remember, as I testified, that the area  
14  has essentially no soil and highly permeable lava.

15                  So the extent of the aquifer, which is all  
16  of the groundwater that contributes to the Park's  
17  water, is a bit bigger than the surface watershed.

18                  So the best way that I can answer your  
19  question is to say that we're certainly concerned  
20  about what's immediately above and around the Park.  
21  But then with regard to the aquifer we have to look at  
22  each individual development or well development,  
23  groundwater development by itself and make a  
24  determination based on that development whether we  
25  think that may impact Park resources or not and what

1 actions we may need to take.

2               So I can't draw a big line for you and say  
3 we're gonna -- you'll see us for everything within  
4 this line. You'll see us for everything that's  
5 adjacent or immediate or within close proximity of the  
6 Park. But we may be intervening if we determine a  
7 specific -- you have to look at the specifics of each  
8 proposed project whether we think that might affect  
9 Park resources.

10              COMMISSIONER KANUHA: Okay. Because on that  
11 map you show a series of wells too, right?

12              THE WITNESS: Yes.

13              COMMISSIONER KANUHA: Potable water wells  
14 both private and public.

15              THE WITNESS: That's right.

16              COMMISSIONER KANUHA: And I think that also  
17 leads into where this is going to end up. Because we  
18 spent a lot of time over the last couple days in  
19 particular talking about the extent of the Kona CDP,  
20 the General Plan.

21              So to implement those things and, you know,  
22 petitions before the Commission is just one segment.  
23 You know, there's going to be a lot of other impacts  
24 that are not necessarily related to the Commission.

25              There's, as you show on your map, there's

1 water wells. There's going to be a major mid-level  
2 road project that, you know, that's obviously going to  
3 contribute something to non-point runoff.

4           So, again, I'm wondering at what point  
5 there's enough information, again, based on the  
6 numerous negotiations the Park has had with various  
7 petitioners coming before the Commission, that the  
8 Park can come up with kind of a standardized condition  
9 or, you know, a structure that either we or the county  
10 or the state and the individual petitioners besides  
11 private folks, the government as well, can be  
12 comfortable with and, you know, so you don't have  
13 to -- or we don't have to deal with, you know,  
14 specifics on a project-by-project basis. Because, you  
15 know, I don't know where it's going to end.

16           The county has a new facility going in just  
17 mauka of that. Again, the mid-level road's going to  
18 go in. If this plan is to be implemented, you know,  
19 it's just gonna be a lot of stuff going.

20           I would hate to see the Park have to  
21 intervene or threaten to intervene on every little  
22 thing in order to accomplish what they feel they need  
23 to accomplish. And I think we all want to support  
24 that.

25           But I'm just wondering whether or not we're

1 going to get to a point where something like that  
2 could be developed for everybody's benefit.

3 THE WITNESS: I couldn't agree more. It's  
4 true with regard to our intervening. We're trying to  
5 follow the model of TSA and that each development gets  
6 something a little different based on what kind of  
7 development, what kinds of threats they pose.

8 The state of Hawai'i does have a non-point  
9 source pollution control plan. It's never been fully  
10 implemented. That sort of thing would go a long way  
11 to stopping this one-by-one individual action that at  
12 this time we have to take because currently, although  
13 there are plans to ultimately address this through the  
14 Legislature, currently there aren't any state or  
15 county laws or regulations that control non-point  
16 source pollution.

17 Impacts from water withdrawal are a separate  
18 matter. But that also is a big concern. Development  
19 is exceeding what we can see the capacity for water.

20 COMMISSIONER KANUHA: Thank you. That's all  
21 I have.

22 CHAIRMAN PILTZ: Commissioners, any other  
23 questions? One question. You mentioned three  
24 monitoring wells. And you have any specific depths  
25 where these wells should be?

1                   THE WITNESS: I have to look in the  
2 agreement to see if the depths of the monitoring wells  
3 are --

4                   CHAIRMAN PILTZ: If that's been addressed  
5 that's fine.

6                   THE WITNESS: Okay.

7                   CHAIRMAN PILTZ: The other thing is has  
8 there been or is there a problem with algae bloom in  
9 the area?

10                  THE WITNESS: Um, algae is a significant  
11 concern, and it's something that the National Park  
12 Service is monitoring on a regular basis. At this  
13 time we're not seeing within the National Park an  
14 algae problem.

15                  We're a fisheries management area. That  
16 means that aquarium fishing is banned within the Park  
17 waters. Fish that are targeted under the aquarium  
18 fishing -- well, fish that are targeted by aquarium  
19 fishers are plant eaters, algae eaters, must have a  
20 lot of sea turtles. So those fish provide that  
21 service of helping keep the algae in check. But it's  
22 a fine balance. We lose the fish, we lose the plant  
23 eaters. There's a lot of nutrients out there. So  
24 currently, to answer your question, no, we're not  
25 seeing a problem.



1                   CHAIRMAN PILTZ: Okay. So essentially the  
2 algae that you have is in check. Is there any problem  
3 with any alien species of algae there?

4                   THE WITNESS: Absolutely. We do have  
5 Acanthophora Spicifera. This is an alien red algae,  
6 likely came from Guam. It's invaded Kaloko Fishpond.  
7 It has been seen outside the fishpond. We are  
8 monitoring it very closely.

9                   We had a project a number of years back to  
10 study how to remove and control that algae. We  
11 published that in the Journal called Pacific Science.  
12 So, yes, that alien algae is a problem. It's also  
13 been found in Honokohau Harbor.

14                  CHAIRMAN PILTZ: Thank you. Commissioners?  
15 Redirect?

16                  MR. LIND: Just one question.

17                                 REDIRECT EXAMINATION

18 BY MR. LIND:

19           Q       Is there evidence that there are pollutants  
20 within the Park resources currently?

21           A       Yes. We have detected contaminants within  
22 the Park groundwater.

23                  MR. LIND: No more questions.

24                  CHAIRMAN PILTZ: Thank you. Office of  
25 Planning?

1 MR. YEE: For our next witness? For our  
2 witness?

3 CHAIRMAN PILTZ: Yes, your next witness.

4 MR. YEE: Thank you. Our next witness is  
5 Gail Suzuki-Jones.

6 GAIL SUZUKI-JONES  
7 being first duly sworn to tell the truth, was examined  
8 and testified as follows:

9 THE WITNESS: I do.

10 CHAIRMAN PILTZ: Would you state your name  
11 and address for the record.

12 THE WITNESS: Yes. It's Gail Suzuki-Jones,  
13 235 South Beretania, room 506, Honolulu, Hawai'i  
14 96804.

15 CHAIRMAN PILTZ: OP, your witness.

16 MR. YEE: Thank you.

17 DIRECT EXAMINATION

18 BY MR. YEE:

19 Q What is your current position?

20 A I'm Energy Analyst at the State Energy  
21 Office.

22 Q Was Office of Planning Exhibit 5A, your  
23 amended written testimony, and 28 your PowerPoint  
24 presentation prepared by you or at your request?

25 A Yes.

1                   MR. YEE: And just for the Commission's  
2 information these were admitted into evidence.

3                   CHAIRMAN PILTZ: So noted.

4                   MR. YEE: Thank you.

5           Q       Please describe your position in this  
6 docket.

7           A       Our position is that LEED-Silver level  
8 should be standard for the market rate housing and  
9 commercial development. And for the affordable  
10 component using the Green Communities' checklist.

11          Q       Would you summarize your testimony, please.

12          A       Okay. Living here in Hawai'i we know we're  
13 all very vulnerable. We live in the middle of the  
14 Pacific Ocean. There are hurricanes, global warming  
15 and here on the Big Island there is also the challenge  
16 of the vog.

17                   We also have many opportunities. We have  
18 solar and winds resources. We have a year 'round  
19 growing cycle. So we have the opportunity for both  
20 food and energy self-sufficiency.

21                   Hawai'i, however, is the most petroleum-  
22 dependent state in the country. And here's a little  
23 chart that summarizes that.

24                   And the Hawai'i Clean Energy Initiative is  
25 what we at the Energy Office, as well as others, have

1 been working hard to achieve. It's a national  
2 partnership to achieve 70 percent clean energy by  
3 2030.

4           It's a way to increase Hawai'i's energy  
5 security, capture the economic benefits, demonstrate  
6 innovation and build a workforce of the future. It's  
7 also a way to serve as a model for the rest of the  
8 country.

9           And here on the Big Island there are at  
10 least several if not more LEED projects that have been  
11 built. The Natural Energy Lab of Hawai'i Gateway  
12 project is a LEED platinum project.

13           There's the Waikoloa Hilton's Dolphin Quest  
14 which is also LEED-Silver.

15           We have Kanu o ka 'Aina Learning Center that  
16 has been or is in the process of getting LEED  
17 Certified. There's also the HPA's science center.  
18 There are other LEED projects in the works.

19           So Act 155 was signed into law last year  
20 requiring a tremendous amount of energy efficiency to  
21 be achieved by the year 2030. And buildings account  
22 for a large percentage of that.

23           All of you know that the cheapest form of  
24 energy is the energy that's not used. So we have been  
25 working hard to increase the awareness of programs

1 such as Energy Star, LEED and the Green Communities  
2 initiative.

3           The Energy Star Homes program is something  
4 that the U.S. EPA and DOE have instituted. And homes  
5 that achieve this standard are in the top 20 to  
6 30 percent of the homes of their similar types.

7           There are Energy Star qualified homes all  
8 over our state. Here's some of the features that are  
9 included in Energy Star homes.

10           This is a list of some of the partners.  
11 Sonny Ventures I know is here on the Big Island. A  
12 lot of these developers have signed on to become  
13 Energy Star partners in the state.

14           And here's a list of the benefits. The  
15 Energy Star label is a third-party certified label.  
16 It gives consumers confidence that these projects and  
17 products are indeed energy efficient, lower ownership  
18 cost, they're higher performing and it's actually a  
19 very good investment for resale.

20           And here's some facts and figures on Energy  
21 Star homes on O'ahu. Energy Star is a prerequisite  
22 for LEED for Homes as well as a requirement for the  
23 Green Communities checklist. And there are now  
24 actually, I think it's 40 Energy Star commercial  
25 buildings in the state. Here's some of the benefits

1 in terms of reducing carbon emissions.

2           Then: What is LEED? For those of you on  
3 the Commission I know you've seen and heard about  
4 LEED. LEED is Leadership in Energy and Environmental  
5 Design. It's a tool. It can be used as a score card.  
6 It's also a seal of quality from third-party  
7 certification.

8           Then LEED-recognized performance in the  
9 areas of energy, water, indoor environmental quality.  
10 It also recognizes smart site selection and  
11 development, good material selection and innovation  
12 and education and awareness.

13           Here's some facts and figures about LEED in  
14 Hawai'i and the number of LEED accredited professional  
15 certified projects, registered projects and the number  
16 of homes that are in the process.

17           So what we're advocating for is a commitment  
18 to Energy Star, a commitment to Water Sense, which is  
19 also an EPA program, and a commitment to waste  
20 management as well as good indoor air quality, green  
21 operations maintenance, and of course green and  
22 affordable housing.

23           That's a good segue to the Enterprise Green  
24 Communities Initiative. Their goal is to green all  
25 affordable housing by the year 2020. Attachment C in

1 Exhibit 5A goes into some details on this.

2           The Hawai'i Built Green Program is a program  
3 that was established almost a decade ago that verifies  
4 not through third-party but self-certification green  
5 homes in Hawai'i. And the checklist is also available  
6 as an attachment.

7           This is just a quick slide on Kaupuni  
8 Development by DHHL in Wai'anae on O'ahu with 18 net  
9 zero energy homes. This just shows how this can be  
10 done in affordable housing. It will be completed  
11 probably sometime next year. This just gives a list  
12 of some of the features.

13           So the state of Hawai'i and the HCEI Clean  
14 Energy Initiative we have pretty aggressive goals to  
15 reach. We need the help and participation of all  
16 entities both public and private sector to  
17 participate.

18           We want everyone to lead by example.  
19 LEED-Silver is kind of just a benchmark for that.  
20 Energy Star is very important as well as the Green  
21 Communities Initiative.

22           I also wanted to mention that we're working  
23 with Department of Energy's National Renewable Energy  
24 Lab as well as Building America Teams to help local  
25 developers and developers of housing in Hawai'i to

1 achieve these goals.

2                   So working together I think we can all  
3 achieve a clean energy future, 70 percent clean energy  
4 by 2030.

5           Q       Thank you.

6                   That's all the questions we have. She's  
7 available for cross-examination.

8                   CHAIRMAN PILTZ: Petitioner, questions?

9                                   CROSS-EXAMINATION

10 BY MS. BENCK:

11           Q       Hi, Ms. Suzuki-Jones. Thanks for your  
12 testimony today. I have just a few questions for you.  
13 Through your testimony I heard you talk about LEED  
14 certification. But then I heard you talk about  
15 different, other energy efficiency measures like  
16 Energy Star.

17           A       Right.

18           Q       So I want to find out is the state's goal to  
19 maximize energy efficiency? Or is the state's goal  
20 solely to promote LEED certification?

21           A       It's actually energy efficiency is one  
22 component of it. In order to achieve energy  
23 self-sufficiency renewable energy and going beyond  
24 energy efficiency is important as well as achieving  
25 water efficiency, resource efficiency and good indoor



1 air environmental quality.

2           So LEED encompasses all of those. So it's  
3 beyond energy efficiency. That would be -- that would  
4 be my response.

5       Q     Thank you. Is LEED-Silver essential to  
6 accomplish those goals? Or can those goals be  
7 accomplished outside the LEED-Silver certification?

8       A     They may be accomplished outside the  
9 certification. However, LEED provides that  
10 third-party verification in a systematic way to make  
11 sure that what is built and developed and maintained  
12 is something that was designed.

13           So you can design and plan some, you know,  
14 development but if it's not certified by a third-party  
15 entity you're never guaranteed that you're going to  
16 get the same result. So that's what LEED provides is  
17 that verification and certification.

18       Q     Thank you. Is the state currently required  
19 to build structures to LEED-Silver?

20       A     Yes. There is a mandate for state agencies  
21 to build to LEED-Silver as well as to improve their  
22 existing buildings to LEED-Silver level. And we're  
23 working very diligently to achieve that. I think  
24 there are over a dozen LEED government, state  
25 government projects right now that are underway or

1 have been completed.

2           And we are working on Energy Star labeling  
3 all of the facilities over 5,000 square feet by the  
4 end of this year with Energy Star Portfolio Manager.

5           Q     So when you say the state is mandated that  
6 means that it's, absolutely it must construct to a  
7 LEED-Silver certification?

8           A     Yes. Also as everyone knows our budget  
9 considerations have led to a lot of cutbacks, cutbacks  
10 in projects and personnel. So what we're doing is  
11 working hard with the existing budgets that we have in  
12 order to achieve that.

13          Q     So HRS 196-9 that says that "to the extent  
14 possible" the state should do those things, is that  
15 what you're referring to?

16          A     Right.

17          Q     So practical considerations come into play  
18 on whether or not the state has to fulfill a LEED  
19 certification aspiration.

20          A     Right.

21          Q     Thank you.

22          A     That is part of our limitation.

23          Q     If I could I'm just going to ask a couple  
24 more questions. If you could help me out. In your  
25 testimony you gave figures on what it costs to

1 register a project for LEED and then also the  
2 certification costs.

3           You said it was about \$225 to register and  
4 certification cost is about 300. You conclude that  
5 it's about 2500 bucks to go through the certification  
6 process.

7           What I'm hoping you might be able to tell us  
8 is what it actually costs to put the necessary LEED  
9 features into a home, how many thousands of dollars it  
10 cost to build a home to the LEED-Silver standards.

11       A     Right. Well, it really depends on the  
12 project. It's highly dependent on the planning also  
13 of the layout of the lots. It's dependent on a lot of  
14 different items and variables.

15           So it's something that it's impossible for  
16 me to sort of predict right now since I think  
17 that's -- this is the only information that's  
18 available right on the planned development. I think  
19 if there were more detailed plans, elevation sections,  
20 specifications we could be able to do that.

21       Q     I understand it would be extremely difficult  
22 for you to do that for this Project. But if you could  
23 even give us a rough order of magnitude -- there was  
24 testimony yesterday. I don't know if you were here.

25       A     No, I wasn't.

1 Q But the testimony yesterday indicated it  
2 could be, you know, upwards of 30, 40, even \$50,000 to  
3 build a home to LEED-Silver criterial. I'm just  
4 wondering if you could give us any ballpark.

5           A       It would depend on what features you decided  
6   to design into the Project.  For example, if you  
7   wanted it to be a Net Zero Energy home, the higher  
8   range of \$50,000 could be an estimate just for the  
9   photovoltaic system alone.

10           And that would also depend on whether or not  
11 there was air conditioning or natural ventilation.  
12 It's really highly variable. That's all I can say.

13 Q So I think my last question will be: Has  
14 your department or have you undertaken an analysis of  
15 any projects you can identify for us and what it cost  
16 to just make those projects or those buildings LEED  
17 Certified?

18           A       We are actually in the process of doing just  
19   that.  We don't have any of the results.  We need to  
20   get a number of projects to assess in order to do the  
21   study to make it a statistically representative  
22   sample.  So we are in the process of doing that right  
23   now.  Once we get that we'll be able to share it.  But  
24   at the current time we don't have that information.

25 MS. BENCK: Thank you. That concludes my

1 questions.

2 CHAIRMAN PILTZ: Thank you. Hawai'i County,  
3 your questions.

4 MR. GONZALEZ: Thank you, Mr. Chair.

5 CROSS-EXAMINATION

6 BY MR. GONZALEZ:

7 Q Good morning.

8 A Good morning.

9 Q Thank you for being here. Isn't it true --  
10 could you go back to your presentation slide relating  
11 to Kaupuni. Isn't it true that this project is being  
12 underwritten by federal grants?

13 A There's some funding from the NAHASDA  
14 program to help offset some of the costs of the  
15 renewable system for the affordable, because it's an  
16 affordable housing project. And on DHHL land they're  
17 able to supplement some of the development costs with  
18 NAHASDA funding.

19 Q So it is receiving federal grant money for  
20 its project, right?

21 A Right.

22 Q Isn't it true that the land that this  
23 project is located on was given to Department of  
24 Hawaiian Home Lands by the Consuelo Foundation?

25 A Right. That's true.

1 Q So the land was free, right?

2 A Right.

3 Q Isn't it true that the projected publicized  
4 price for these affordable homes are supposed to be  
5 within the \$260,000 to \$320,000 range?

6 A That sounds about right.

7 Q Thank you. No further questions.

8 CHAIRMAN PILTZ: Thank you.

9 MR. LIND: No questions.

10 CHAIRMAN PILTZ: Commissioners, any?

11 REDIRECT EXAMINATION

12 BY MR. YEE:

13 Q Just briefly. If the homes will all have  
14 Energy Star appliances and will have alternative  
15 energy such as photovoltaic, do you believe it would  
16 cost 30 to 50,000 more dollars in order to bring -- or  
17 is it likely -- let me rephrase that.

18 Is it necessary to spend 30 to \$50,000 in  
19 addition in order to bring that home to a LEED  
20 standard?

21 MR. GONZALEZ: I hate to object, Bryan, but  
22 I think it's vague. I don't know what homes you're  
23 referring to. Can he be a little more clear?  
24 Mr. Chair, if there could be more clarification on  
25 that.

1                   MR. YEE: Referring to the homes on this  
2 Project.

3                   MR. GONZALEZ: Thanks, Bryan.

4                   THE WITNESS: I don't think that amount is  
5 necessary.

6                   MR. YEE: That's all I have.

7                   CHAIRMAN PILTZ: Anything from the  
8 Commissioners? Thank you.

9                   THE WITNESS: Thank you very much.

10                  CHAIRMAN PILTZ: At this time we're going to  
11 take public testimony. Any persons out there wishing  
12 to testify at this time? There's a list. We'll get  
13 the list there. First person up will be Burke  
14 Matsuyama. Burke.

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

18                   THE WITNESS: I do.

19                   CHAIRMAN PILTZ: State your name and address  
20 for the record.

21                   THE WITNESS: My name is Burke Matsuyama.  
22 And I'm the president of the Kohanaiki Business Park  
23 Association. I have the written testimony prepared  
24 for you guys to read. And I know you're stretched for  
25 time so let me summarize.

1                   CHAIRMAN PILTZ: Thank you.

2                   THE WITNESS: Like you I was here at  
3 yesterday's meeting. And I heard the testimony from  
4 different witnesses. And I was really taken by the  
5 comments made by the developer Dennis Moresco.

6                   In his testimony he indicated that there are  
7 two major elements to this development that caught his  
8 eye from the start. The first is that the shoreline  
9 is such a big part of the attractiveness of his  
10 Project that provides its unique stature and its  
11 competition to other projects in the Kona area.

12                  However, the second element that he pointed  
13 out, the negative element, was that of the airport,  
14 the noise components that I know all of you are  
15 concerned about.

16                  But on behalf of my Association I would like  
17 to present to this body a major concern within the  
18 community. And that element is traffic. And the  
19 reason why I bring this up is specifically because of  
20 the recent award for Queen Ka'ahumanu widening by  
21 HDOT. They plan to redo the highway, expand the  
22 highway by the end of this year.

23                  Now, for the Commissioners' information, the  
24 state plans to restrict all left-turning vehicles for  
25 landowners between Hina Lani Street and Ka'iminani



1 Drive by right in/right out only policy following the  
2 widening of Queen Ka'ahumanu Highway.

3 All left-turning vehicles emanating and  
4 entering 'O'oma, NELHA, Shores of Kohanaiki, the  
5 county park at Pine Trees and our subdivision will be  
6 directed to Hina Lani Street and Ka'iminani Drive to  
7 execute U turn maneuvers.

8 Now, within the traffic study presented by  
9 Warren Matsumoto, he has identified a major component  
10 for traffic mitigation regarding the project to be  
11 Huliko'a Drive.

12 The preservation of Huliko'a intersection is  
13 vital to operation of the highway as it will alleviate  
14 congestion to Hina Lani Street and Ka'iminani Drive  
15 intersection by greatly reducing the amount of  
16 U-turning traffic.

17 It is estimated that U-turning traffic from  
18 'O'oma alone will cost motorists between 1 to  
19 \$2 million extra a year in gasoline costs, wear and  
20 tear on their vehicles, lost time, not to mention  
21 pollution, additional congestion on the highway and  
22 increased highway maintenance cost to the taxpayers  
23 totaling \$400,000 a year. This is what is estimated  
24 by our consultants who we have hired to try to  
25 establish the intersection.

1                   Secondly, the Traffic Impact Analysis  
2 Report, which Warren talks about, assumes that the  
3 intersection at Huliko'a Drive will be constructed.  
4 However, as currently designed there is no provision  
5 for a signalized intersection at Huliko'a Drive within  
6 the Queen Ka'ahumanu Phase 2 widening.

7                   The Shores of Kohanaiki and our organization  
8 have been working with the state Department of  
9 Transportation to provide this intersection. But as  
10 of this time the state has told us to either come up  
11 with \$2 million or be restricted to right in/right  
12 out.

13                   'O'oma was asked to participate in the  
14 funding of this intersection but has declined. Our  
15 members and the Shores have offered to a fair-share  
16 contribution to this public benefit. However, we'll  
17 not shoulder the costs for impacts that are generated  
18 by other developments in the area.

19                   For example, 2008 Fehr and Peer traffic  
20 study that was jointly commissioned by the Shores,  
21 'O'oma and our organization concluded that the 'O'oma  
22 Project will contribute over 40 percent of the traffic  
23 to Huliko'a intersection.

24                   We strongly urge the LUC to require the  
25 'O'oma Project to contribute their fair-share to the

1 intersection.

2               Secondly, a vital part of 'O'oma's Traffic  
3 Impact Analysis Report is the Project's future  
4 connectivity to the Kona Community Development Plan  
5 frontage roadway to alleviate its impact on Queen K.

6               The first phase of this roadway is being  
7 paid for by the Shores and will only happen if  
8 Huliko'a intersection is built. Without Huliko'a  
9 acting as the southern terminus the frontage road does  
10 not work.

11              Again, 'O'oma is counting on infrastructural  
12 developments paid for by others to mitigate their  
13 impacts.

14              We ask the LUC to require 'O'oma property  
15 owners to participate in the funding of this  
16 intersection concurrently with the Queen Ka'ahumanu  
17 widening project, and work with NELHA to fund the  
18 northern extension of the frontage roadway to  
19 Ka'iminani Drive.

20              The basic question to this Commission is  
21 whether the project the size of 'O'oma can adequately  
22 be served by right in and right out only. Because  
23 that is the present design approved by HDOT for the  
24 Queen Ka'ahumanu Phase 2 widening. All other  
25 solutions, alternatives presented by the developers

1 are purely speculative.

2           We respectfully request that this Commission  
3 reevaluate the traffic mitigation plan proposed by  
4 'O'oma. We feel that the plan inadequately addressed  
5 the Project's impact to our community especially  
6 within the right in/right out guidelines mandated by  
7 HDOT.

8           We need the Commission's kokua. If all  
9 developments work together there can be fair public  
10 and private partnership in infrastructural  
11 development.

12           It is unfair for one property owner to fund  
13 the majority of the infrastructure when another  
14 property owner creates the majority of the impacts.  
15 Thank you.

16           CHAIRMAN PILTZ: Petitioners? You should  
17 have some questions.

18           (Audience laughter).

19           MR. LIM: Thank you, Mr. Chairman. Good  
20 morning, Mr. Matsuyama.

21           THE WITNESS: Good morning.

22           MR. LIM: We've been working together  
23 through Dennis Moresco and his team with the Kohanaiki  
24 Business Park, and Shores at Kohanaiki on the Huliko'a  
25 intersection.

1           At one time we were participating in the  
2 memorandum of agreement with the county at that time  
3 when they thought they could get some funding, which  
4 funding subsequently lapsed. However we did  
5 participate.

6           Let me ask you questions now with that as  
7 background. So the three people at least so far that  
8 have been participating at the Huliko'a intersection,  
9 this is the intersection located to the south of the  
10 'O'oma project right immediately fronting the  
11 Matsuyama Store front right there on Queen K Highway.

12           Is it true that the Kohanaiki Business Park  
13 Association has an existing Land Use Commission  
14 condition requiring it to fund its portion of highway  
15 improvements at the Huliko'a intersection?

16           THE WITNESS: No.

17           MR. LIM: You've satisfied that condition.

18           THE WITNESS: In terms of funding the  
19 intersection?

20           MR. LIM: You satisfied your Land Use  
21 Commission condition of approval.

22           THE WITNESS: Well, what happened was during  
23 the Land Use Commission, and it's applied to all  
24 landowners in the area, is there is this condition of  
25 right in/right out to all landowners. So once Queen K

1 becomes four lane we all lose our left-turning  
2 ability. That was the condition set forth by the Land  
3 Use Commission.

4 MR. LIM: I think that's a condition --  
5 isn't that the condition set forth by the DOT's four  
6 lane widening of Queen K Highway?

7 THE WITNESS: That's right.

8 MR. LIM: When you did your initial Land Use  
9 Commission reclassification for your Project isn't it  
10 true you had a condition of approval that said that  
11 the business park would have to make improvements to  
12 the Queen K Highway to service its Project?

13 THE WITNESS: Correct.

14 MR. LIM: I don't know if you know this, but  
15 is it also true that the Shores at Kohanaiki project  
16 across the street also has a similar condition to make  
17 its improvements to the intersection at the Queen K  
18 Highway?

19 THE WITNESS: But we -- they do. And we did  
20 make our improvements to the highway. We do have a  
21 channelized intersection there. That's why we  
22 presently have left-turning movements on Queen K.

23 MR. LIM: So your problem with the Queen K  
24 Highway widening is not caused by 'O'oma Beachside  
25 Village. It's caused by the DOT's plan to widen it to

1 four lanes and put a median in blocking your left  
2 turns.

3 THE WITNESS: I think the problem we all  
4 face together, Steve, not us, not the Shores, all of  
5 us because what's going to happen with this new  
6 schematic the DOT is going to lay down on our  
7 community, is there's going to be hell to pay at Hina  
8 Lani and Ka'iminani.

9 You know we all -- when I went to see Dennis  
10 I was very confident that he was going to understand  
11 the situation we all face. And yesterday, you know,  
12 when he indicated that he as a big, big developer must  
13 constantly figure out ways to make his Project more  
14 competitive, you know.

15 What is it going to be when he has the  
16 albatross like us around his neck where if my  
17 customers want to get out from my center and want to  
18 head toward Kailua south, the state is requiring all  
19 of us that that customer gotta head north two and a  
20 half miles, do one U-turn at Ka'iminani and then head  
21 into Kailua. What kind of competitive edge do I have?  
22 What kind of competitive edge does Dennis have to  
23 market his project?

24 You know, when you talk about one unique  
25 lifestyle to the 'O'oma Village, what kind of unique

1 lifestyle is that going to be when the homeowners and  
2 the customers who come to their center gotta head two  
3 and a half miles one way before they can even get out  
4 of their project?

5               So it's all of our problems, not Shores, not  
6 Kohanaiki Businesses Park. I'm here to bring to the  
7 people of Kona and this Commission what we're facing  
8 now. You know, it's not something that's gonna be  
9 done because they couldn't handle the RFP award. That  
10 thing is a done deal.

11              The design is being down right now as we  
12 speak. Unless this issue is resolved in the  
13 integration of Huliko'a intersection -- I think it  
14 jeopardizes all our business interests in the area not  
15 only for business, but recreational and residential.  
16 It's unworkable.

17              For example, for Hina Lani in order to do  
18 the U-turns you gotta make one separate U'y. Two left  
19 turns at Hina Lani because right now the left turns  
20 are at full capacity. You know, if there's one  
21 Commissioner from Kona he knows already they're going  
22 to be two left turns at Hina Lani if Huliko'a is not  
23 built.

24              Now, that improvement is not only on Queen  
25 K. It has to have a mirror image on Hina Lani in



1 order to be able to receive it. Now, if one car is on  
2 the outside lane who wants to do a U'y, it's going to  
3 be a nightmare, you know. You're going to need to  
4 expand Hina Lani out humongously to handle two left  
5 out/two right in, right going toward the airport.  
6 They gotta condemn.

7           And the first right in Hina Lani I think  
8 they gotta close 'em because they cannot cross all  
9 these lanes that they gonna require. That's what I  
10 wanna bring up today.

11           MR. LIM: I understand your frustrations.  
12 And I know Mr. Moresco is in the same boat as you with  
13 respect to that issue. But that is -- isn't that the  
14 DOT's requirement not 'O'oma Beachside Village?

15           THE WITNESS: Exactly. But what I'm saying  
16 is we cannot afford to pass an entitlement program  
17 without getting first this thing resolved because this  
18 community deserves better.

19           We have to -- we have to make sure that the  
20 types of projects that we approve on this highway is  
21 being able to be accommodated by the highway design.

22           If the design cannot accommodate the volume  
23 of the high -- you're talking about 1200 homes,  
24 200,000 square foot footprint on the commercial. I'm  
25 only 20,000 square feet in my subdivision.

1                   MR. LIM: Mr. Matsuyama, you indicated in  
2 your testimony fairly early on while we were, 'O'oma  
3 Beachside Village was participating with yourself and  
4 Shores of Kohanaiki, initially that we had dropped  
5 out.

6                   At least my recollection of the recent  
7 events was that isn't it true that the Kohanaiki --  
8 Shores at Kohanaiki is already entitled zoning, SMA  
9 state land use?

10                  THE WITNESS: Correct.

11                  MR. LIM: And also the Kohanaiki Business  
12 Park Association, that project is also fully entitled  
13 and sold out I think already?

14                  THE WITNESS: Correct.

15                  MR. LIM: Isn't it true that Mr. Moresco  
16 declined to participate because he doesn't have any of  
17 his land use entitlements at this point in time?

18                  THE WITNESS: Correct.

19                  MR. LIM: My recollection -- and I'm not  
20 sure on this, I'm going to ask you though, my  
21 recollection, we -- from the 'O'oma Beachside Village  
22 through his agents we discussed with you maybe within  
23 the last six months that we asked that the Shores at  
24 Kohanaiki and the Kohanaiki Business Park Association  
25 provide us with some form of a plan where we could at

1 some point in time participate with you but not be  
2 able to give upfront cash.

3 THE WITNESS: Correct.

4 MR. LIM: No further questions.

5 CHAIRMAN PILTZ: Hawai'i County?

6 MR. GONZALEZ: No questions.

7 CHAIRMAN PILTZ: OP?

8 MR. YEE: No questions.

9 CHAIRMAN PILTZ: Intervenor?

10 MR. LIND: No.

11 CHAIRMAN PILTZ: Commissioners, questions?

12 Go ahead.

13 COMMISSIONER KANUHA: Howzit, Burke? Can  
14 you just clarify where your project is? So you're at  
15 the intersection of...?

16 THE WITNESS: Huliko'a.

17 COMMISSIONER KANUHA: Huliko'a.

18 THE WITNESS: Correct.

19 COMMISSIONER KANUHA: So --

20 THE WITNESS: And you can see the diagram.

21 COMMISSIONER KANUHA: Yes. In the diagram  
22 you're right in the middle of where these new traffic  
23 improvements will be done as it relates to Ka'iminani  
24 and also Hana lani.

25 THE WITNESS: Correct.

1 COMMISSIONER KANUHA: Okay. Thanks.

2 CHAIRMAN PILTZ: Okay. Any other questions?

3 Fine. Thank you. Next person will be Marian Wilkins.

4 Is David here? David "Bones" Inksten?

5 THE WITNESS: On top of all that testimony

6 and stuff I feel very inadequate.

7 DAVID "BONES" INKSTEN

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

9 and testified as follows:

10 THE WITNESS: Yes, I do.

11 CHAIRMAN PILTZ: And you're bringing in some

12 new testimony, right?

13 THE WITNESS: Yes. Basically new. 81-6420

14 Mamalahoa Highway Kealahkekua, Hawai'i. And I've lived

15 up there for quite a few years.

16 This is the fourth time I've been to these

17 meetings. Each time I've tried to explain why the

18 people of Kona, the Big Island, do not wish to have

19 you reclassify the 'O'oma lands from conservation.

20 For over 40 years my family and friends have enjoyed

21 the property just like it is and was.

22 Each meeting is mostly people that wish to

23 have the land kept just as it is and certainly must

24 realize that by now. There is absolutely no reason

25 why you all should allow a wealthy developer and his

1 high-priced lawyers to convince you otherwise.

2           And the man who was just here about the  
3 traffic is one certain thing why all of you folks  
4 should listen to what's going on. The traffic is  
5 totally terrible. We've tried everything that there  
6 is. So just try to listen to what's going on. We  
7 don't need 600 homes, 1500 apartment condominiums or  
8 shopping centers at the old Pine Trees. The Pine  
9 Trees was nice the way it is. Your family, my family,  
10 everybody's family enjoys goin' there.

11           With all of those people there there won't  
12 be any way to get there. I don't care what anybody  
13 says about how there will be thousands of feet and  
14 everything. You look at that, it's totally bull.

15           Anyway, I don't know really what  
16 conservation means. It's conservation land. We  
17 should conserve it. That's why it's conservation  
18 lands. I didn't look it up in the dictionary or  
19 anything. I'm pretty sure it means conserve it.

20           Mr. Moresco doesn't see why anyone should  
21 complain as no one's using the land. Of course nobody  
22 is using it. It's open land. If you want to walk up  
23 through the rocks you can. That doesn't mean there  
24 has to be big houses there or condos or shopping  
25 centers or big roads or anything like that.

1                   It's conservation. That's why it's kept  
2 that way. So let's keep Kona Kona, what the  
3 developers have left of it. We need some open space.  
4 And this land was placed in conservation for a reason.

5                   I have several things like I have written  
6 down here. One is the wastewater. After listening to  
7 the Park Service lady, I realize that there's going to  
8 be a lot of wastewater. I didn't think -- I thought  
9 about it but I didn't write it down before.

10                  But once the wastewater is coming and all of  
11 a sudden the ocean becomes polluted or what are we  
12 going to do? Go around to all those people in those  
13 houses and tell, "Oh, look, you can't flush your  
14 toilet. You can't water your lawn. You can't do this  
15 or that." We're stuck and that's it. There's  
16 nothin' else to say about it.

17                  Now, the Park, I've seen this happen before.  
18 They put in the condominiums, the houses, the parking  
19 lots and everything. They're full of people that are  
20 living there and their friends.

21                  And pretty soon we have to pay like we do to  
22 get into this hotel. So there you're stuck with  
23 parking. You wanna go surfing, you wanna go swimming  
24 or sit on the beach you have to pay. That's what'll  
25 happen.

1                   And there's not a setback. I find it  
2   questionable. And I don't see no thousand feet. I  
3   measured it. It doesn't seem like there's gonna be  
4   any thousand feet. And there's lots of places where  
5   there isn't thousand feet.

6                   At whose discretion is the thousand feet  
7   gonna be? Whether they start to bulldoze and do all  
8   that who knows who's gonna go where and who's gonna  
9   measure it?

10                  Now, landing at the airport. I brushed on  
11   this last time or the time before when I was here.  
12   One reason is because years and years ago we used to  
13   ride horses up and down the coastline. And one time  
14   it was very hot. Took my shirt off, an airplane  
15   swooped down, big black chunks of goo landed on me. I  
16   felt them landing on me. Okay?

17                  So pretty soon these houses 6,000 houses  
18   whatever are going to be built there and these  
19   people'll be out on their lawn watering in their  
20   bathing suits and a plane's gonna swoop over. All of  
21   this is gonna happen, the noise and whatever, what are  
22   we gonna do? Build a new airport? Aha! That's  
23   already happened once. We've already moved it out  
24   there. Now here we're going to go again. We're going  
25   to build a new airport? It probably won't be that

1 long.

2           And I was just wondering is this particular  
3 development certified by LEED? The LEED thing was  
4 very interesting. So who says they have to build  
5 these LEED houses if they're going to cost another  
6 thousands and thousands of dollars.

7           Basically that's all I have to say. I just  
8 wanted to spit it out so you guys can hear how I feel  
9 and a lot of friends and family, probably maybe a lot  
10 of people in this room feel. Thank you.

11           CHAIRMAN PILTZ: Thank you. Questions from  
12 the Petitioner?

13           MS. BENCK: No questions.

14           CHAIRMAN PILTZ: How about County?

15           MR. GONZALEZ: No questions.

16           CHAIRMAN PILTZ: State?

17           MR. YEE: No questions.

18           CHAIRMAN PILTZ: Park Service?

19           MR. LIND: No questions.

20           CHAIRMAN PILTZ: Thank you very much. The  
21 next person will be Marianne Wilkins followed by Ted  
22 Leaf.

23                           MARIAN WILKINS

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



1 THE WITNESS: I do.

2 CHAIRMAN PILTZ: Your name and address  
3 please.

4 THE WITNESS: Marian Wilkins, 73-1410 A  
5 Kaloko Drive, Kailua-Kona 96740.

6 CHAIRMAN PILTZ: Go ahead.

7 THE WITNESS: I have testified before. And  
8 I still am very concerned about the answers that are  
9 still being given as to where the beach access will be  
10 and where the parking will be for the 'O'oma  
11 development.

12 As of now -- I think Mr. Young is here, am  
13 still being told that they're going to share an access  
14 with Kohanaiki project whose land they don't own.  
15 'O'oma does not own it.

16 And I'm wondering what pie-in-the-sky is  
17 it -- what happens if 'O'oma -- if Kohanaiki does not  
18 want to share the access with 'O'oma? This is still a  
19 very huge concern. And I think that needs to be  
20 settled.

21 I don't see it. I haven't heard anybody  
22 talk about that. Maybe you have, but I haven't. I  
23 don't know. I still don't know.

24 So I asked Mr. Young about: What happens if  
25 that access is not approved by Kohanaiki? And he said

1 well, they're considering going through the middle of  
2 that project, the whole 'O'oma Project. I said,  
3 "That's not going to happen."

4 I would really like to hear someone address  
5 beach access. Because, again, like everybody else has  
6 testified, it's a huge, huge issue. And at this point  
7 I would be very much against having the 'O'oma Project  
8 built because I think there are too many unanswered  
9 questions.

10 And also, again, even the Land Use  
11 Commission I know is still having problems with the  
12 development at Kuilima on O'ahu, Turtle Bay Resort.  
13 Used to be Kuilima. We used to live there. And  
14 there's a parking lot. The last I saw you had to pay  
15 to get in there.

16 We really need some really good rules or  
17 laws or whatever the Commission calls for any  
18 development, that this will not happen here like the  
19 Mauna Kea, 25 parking spots, no bicycles allowed,  
20 things like that. We have to know what's gonna  
21 happen. This is what worries all of us. Thank you.

22 CHAIRMAN PILTZ: Petitioner, questions?

23 MS. BENCK: No questions.

24 MR. GONZALEZ: County, no questions.

25 MR. YEE: No questions.

1 MR. LIND: No questions.

2 CHAIRMAN PILTZ: Anything, Commissioners?

3 Thank you. Ted Leaf? Oh, he's coming in. Is there  
4 any other person here that would like to testify.

5 Okay. Come on up.

6 MR. WILKINS: I was asked yesterday to be  
7 here this morning. I'm George Wilkins. I thought you  
8 might have forgotten me.

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

12 THE WITNESS: I do.

13 CHAIRMAN PILTZ: Name and address please.

14 THE WITNESS: My name is George Wilkins. I  
15 live up Kaloko with my wife. 73-1410A Kaloko Drive,  
16 96740, Kailua-Kona.

17 CHAIRMAN PILTZ: And you have some new  
18 testimony for us.

19 THE WITNESS: I do. I did testify a month  
20 ago about the nature of what I call the second surface  
21 in 'O'oma. The surface you see looking at it from the  
22 atmosphere and the surface underneath where the  
23 seawater underlies the land and captures any  
24 freshwater that comes down from the mountain as a thin  
25 layer as it ducts that layer out to the sea.

1                   That particularly in 'O'oma is probably  
2 never more than a few inches thick 'cause you're near  
3 the ocean. The impedance of further flow to the ocean  
4 is low and there's no back pressure to back the water  
5 up.

6                   It's going to be a very difficult layer to  
7 pump up to the surface. It will probably be quite  
8 saline the moment you start pumping. So I really  
9 downgrade the value of that brackish water layer as a  
10 source for freshwater for 'O'oma. Perhaps as a source  
11 for RO, reverse osmosis, but even then it's doubtful.

12                  I've been a resident of Hawai'i for 42  
13 years working entirely in ocean science and  
14 technology. And I worked especially here along the  
15 Kona Coast when I was with the University of Hawai'i,  
16 first, with George Curtis of the University of Hawai'i  
17 running the infrared video flights all along the West  
18 Coast of the Big Island looking for sources of fresh  
19 or brackish water floating out to sea.

20                  We have seen literally rivers of lava  
21 especially at Honokohau Harbor, and Anaeho'omalu  
22 freshwater, drinkable water actually in most cases,  
23 but floating for a mile or more out to sea having a  
24 not yet perfectly known impact on the flora and fauna  
25 offshore.

1                   But I'm going to talk today about what  
2 happened to the water that we use on the land, what  
3 are its sources, how do we get rid of it. What are  
4 the impacts?

5                   First of all, almost all natural runoff from  
6 the hills onto the land will sink to this underwater  
7 seawater surface that I talked about, and will flow  
8 downhill or down pressure until it reaches the open  
9 ocean. It will follow a very broad swath, even wider  
10 than that of the 'O'oma property and will carry with  
11 it all landside pollutants picked up along the way.

12                  Cleansing, collecting or filtering this  
13 water will range from very difficult to impossible. I  
14 think you're going to be forced to waving goodbye to  
15 that water as it flows by you and empties into the  
16 beach right exactly at the waterline within the wash  
17 of the surf where it's going to have the worst  
18 possible contamination impacts on people who also want  
19 to occupy that narrow swath of beach.

20                  Second. Any freshwater converted to sewage  
21 within the development must be given on advance level  
22 tertiary or at best secondary treatment before it is  
23 released to the ocean.

24                  Second stage treatment, what is used in  
25 Honolulu, for example, will deliver an unacceptable

1 load of organics into the ocean if it is dumped into  
2 that narrow band of beachside water.

3           Even so, final delivery to the sea should  
4 and must be accomplished by pipeline or shaft to a  
5 point hundreds of feet below sea level and thousands  
6 of feet offshore. That is it must dissipate in  
7 relatively deep and distant seawater.

8           Remember, this water is essentially fresh,  
9 therefore very bouyant in seawater. And as they  
10 learned to their dismay at Ma'alaea on Maui it will  
11 rapidly rise up into the ocean and the surface of the  
12 ocean with horrible impacts on the ecology of the  
13 area.

14           Third. I haven't heard it discussed at all  
15 here, any water used for irrigation within the  
16 development will probably be impossible to collect,  
17 concentrate and/or deliver to the sea because it is  
18 introduced to the land over such a broad area.

19           You're in the same category as you are with  
20 the brackish water that floats down from the mountain  
21 on top of the seawater surface.

22           It will permeate downward to sea level, will  
23 follow the seawater surface until it's released to the  
24 ocean. As in case one, all fertilizers and  
25 insecticides, poisons and organics picked up by this

1 water will also reach the ocean. This third case is  
2 the most dangerous of all at 'O'oma. And to my  
3 critical eye, has not been treated by the developer.

4 In fact, all we are getting on these issues  
5 of water disposal are arm wavings. There's no solid  
6 engineering, no solid science offered. And I think  
7 you should not allow them to go until you get decent  
8 technical, professional answers.

9 I say that not being inherently against  
10 'O'oma at all. It's the finest development plan I  
11 have seen in 20 years on the Kona Coast.

12 Now, what are the possible solutions?  
13 Partial solution No. 1. Operate the development with  
14 minimized use of water for irrigation. This will  
15 reduce Case 3 irrigation water flow, but may not do  
16 much to lessen the flow of nutrients, poisons and  
17 organics into the freshwater sheet at sea level.

18 Expert, and I emphasize impartial study is  
19 needed to develop this solution.

20 Partial solution 2. Build an inland trench  
21 near the shoreline perhaps within the 300-foot zone,  
22 perhaps slightly mauka I don't know on that one, to  
23 collect all fresh or brackish water so that it can be  
24 treated and/or disposed of well offshore.

25 By well offshore I'm talking about perhaps a

1 mile offshore, more than a hundred, maybe 200 feet  
2 below the surface. But accessible by divers who  
3 might, for example, lay in a steel pipeline to a  
4 dispersion point.

5           This trench need not be very deep because  
6 its purpose is to collect brackish water which is just  
7 below the surface of the ocean and not very deep into  
8 the subsurface formation.

9           It could even be designed as a brackish  
10 water marsh of the type commonly seen along Southern  
11 California shorelines.

12           Again, expert and impartial studies are  
13 needed on this subject. Similar approaches will be  
14 needed by adjacent developments because you can't put  
15 a trench just along the shoreward limits of 'O'oma  
16 without involving Kohanaiki, NELHA and other adjacent  
17 properties.

18           One last comment I'd like to make on sources  
19 of freshwater. I think without RO you're not going to  
20 get them from the 'O'oma property. The brackish water  
21 lens is too thin. You can't pump it without  
22 destroying it, disrupting it. I believe you can buy  
23 water from the county. It's available. Even with  
24 8 percent price increase they're trying to get now  
25 it's cheap.



1           There are several wells that have gone in up  
2 mauka above Mamalahoa Highway. The only thing lacking  
3 is infrastructure, pipelines to bring them down to the  
4 Queen K Highway.

5           The second source that should be seriously  
6 considered -- and this may be the only place in which  
7 I deviate from the National Park Service -- I really  
8 loved Sallie's testimony -- that's the Honokohau  
9 Harbor were recently on a study for the University of  
10 Hawai'i we identified almost a hundred discrete lava  
11 tube type freshwater flows into the Honokohau Harbor  
12 from the mauka side, some of them that big around and  
13 you couldn't hold yourself in the opening against the  
14 rush of the water.

15           With salinity so low that to my jaded 78-  
16 year-old test they tasted fresh, that indicates to me  
17 the percentage, the content of salt in the water was  
18 somewhere between 2 and 3 percent. That puts you in a  
19 range -- you can't survive on this for a lifetime but  
20 you can run it through an RO plant at very much  
21 reduced pressure.

22           And pumping pressure is the greatest cost of  
23 an RO plant. You could power an RO plant off  
24 Honokohau water with probably no more than 100 PSI  
25 rather than a thousand PSI. And there's enough water

1 flowing into Honokohau to supply the entire city of  
2 Kailua-Kona.

3 Now, it needs to be considered. You're very  
4 close to Kohanaiki. You're very close to the National  
5 Park. You're very close to 'O'oma. So if you purify  
6 the water it would cost rather little to get it there.  
7 That's all I have to say.

8 CHAIRMAN PILTZ: Thank you. Petitioner.

9 MS. BENCK: Thank you. No questions.

10 MR. GONZALEZ: County no questions.

11 MR. YEE: No questions, thank you.

12 MR. LIND: No questions.

13 CHAIRMAN PILTZ: Commissioners? Okay.

14 Thank you. The next person will be Mark Travalino.

15 THE WITNESS: Good morning.

16 MARK TRAVALINO

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

19 THE WITNESS: I certainly do.

20 CHAIRMAN PILTZ: Name and address please.

21 THE WITNESS: My name is Mark Travalino,  
22 17-1228 Hina Lani Street, Kailua-Kona, Hawai'i. I'll  
23 make this brief because I know it's lunchtime. I'm a  
24 statewide organizer for a labor union, okay, speaking  
25 of behalf of Hawai'i Labor Union local 368.

1           There are over 400 active members and  
2 retirees that reside here on the Big Island. We do  
3 support the AO-774 North Kona Village LLC 'O'oma  
4 Kaloko North Kona Hawai'i request to reconsider  
5 reclassification of the 181.169 acres of land in the  
6 Conservation District into the Urban District.

7           Actually right now during this time of  
8 economic hardship we have a lot of our members out of  
9 work. Things are really slow. Their unemployment's  
10 running out. This development will create much needed  
11 jobs for our members on the Big Island. And the jobs  
12 created with this development I believe myself  
13 personally will boost the island construction  
14 industry. That's all I have.

15           CHAIRMAN PILTZ: Thank you. Questions,  
16 Petitioner?

17           MS. BENCK: No questions thank you.

18           CHAIRMAN PILTZ: County?

19           MR. GONZALEZ: No questions.

20           CHAIRMAN PILTZ: State?

21           MR. YEE: No questions.

22           CHAIRMAN PILTZ: Park Service?

23           MR. LIND: No questions.

24           CHAIRMAN PILTZ: Okay. Commissioners?

25 Okay. Thank you. We've got one more here and then

1 we'll take a break for lunch. Michelle Tomas.

2 MICHELLE TOMAS

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

4 and testified as follows:

5 THE WITNESS: I do.

6 CHAIRMAN PILTZ: You have some new testimony

7 for us, right?

8 THE WITNESS: Yes, sir.

9 CHAIRMAN PILTZ: Make it brief. Your name  
10 and address, please.

11 THE WITNESS: I'm sorry. My name is  
12 Michelle Tomas, P. O. Box 337, Kailua-Kona 96845.

13 First off I'd like to say that the information given  
14 by the Petitioner's expert witness Mr. Ebisu regarding  
15 noise levels was confusing for me, just a lay person.

16 According to him the noise-sensitive uses,  
17 residences and school align inside the 60 DNL line  
18 while non-sensitive, the makai commercial and  
19 recreational sites fall between the 60 and 65 DNL  
20 contours.

21 Just as a reminder, DNL is a measure of the  
22 average noise over a 24-hour period in decibels with  
23 nighttime noise carrying a slightly higher weight than  
24 daytime noise.

25 You have to understand I work at the

1 airport. This just flashed in my mind as I got off  
2 work last night. So I had to quickly put this down.  
3 My thoughts may be jumbled but I have all my paperwork  
4 you guys can look at.

5           With this in mind are you aware that  
6 according to the Airport Noise and Capacity or ANCA  
7 Act of 1990 a ban was placed on stage 2 airplanes in  
8 the contiguous United States after December 31st,  
9 1991? Only in Alaska and Hawai'i can these airplanes  
10 be operated.

11           If you're familiar with Aloha Airlines their  
12 planes were loud. They operated Boeing 737-200 series  
13 or stage 2 airplanes. Aloha Airlines went out of  
14 business. And the profitable side of the business,  
15 the cargo division, was sold to Saltchuk Resources out  
16 of Seattle.

17           These stage two airplanes, which is now  
18 Aloha Air Cargo, operate out of Kona Airport. They're  
19 located on the south side of the airport closer to  
20 'O'oma than, you know, the north side. Aloha Air  
21 Cargo runs daily operations. Their arrival times into  
22 Kona Airport are at 2:45 a.m.; 2:50 a.m; 9:15 p.m. and  
23 10:52 p.m. depending on the day of the week. Their  
24 departure from Kona Airport ranges from 3:55 a.m;  
25 10:25 p.m. and 11:04 p.m. depending on the day of the

1 week.

2               So taking into consideration that these  
3 flights operate during the nighttime hours I would say  
4 that the DNL lines located on the map provided by  
5 Mr. Ebisu are an average. But the actual sound level  
6 at nighttime would be at a higher DNL due to stage 2  
7 aircraft.

8               According to the airport regulations for  
9 Kona International Airports there's no airport curfews  
10 that would restrict operation of Aloha Air Cargo at  
11 this time.

12              I would also like to submit the Airport  
13 Noise and Capacity Act, the Aloha Air Cargo  
14 information which states that they use these  
15 airplanes, the Aloha Air Cargo schedule stating their  
16 times, hours of operation and also the airport noise  
17 regulations for Kona International Airport as well as  
18 Hilo International Airport. Okay.

19              On that note I would also like to add in  
20 2008 there was a pilot program for the Hilo Airport.  
21 Two homes were sound insulated along the 65 DNL line  
22 in the Keaukaha community. Cost of the program was  
23 \$513. The Noise Mitigation Land Use Planning Program  
24 that Hilo Airport is dealing with are what we will  
25 have to deal with in Kona if this Project goes forth.

1 That was stage 1.

2           Okay. Yesterday during testimony air  
3 pollution was brought up. And I heard that water  
4 would be used as a means to control the dust caused by  
5 construction. During this time I assume all water  
6 from this measure would seep into the ground and go  
7 into the anchialine ponds, then into the ocean  
8 creating potential water quality issues.

9           As your expert witness Tom Schnell testified  
10 yesterday that native praying shrimp, which he said  
11 there's a rating of five, occupied ponds along the  
12 coast at 'O'oma. Along with that shrimp there's 'opae  
13 ula. That's not acceptable.

14           According to your expert witness Tom Schnell  
15 from O'ahu he said the time has come, it's appropriate  
16 to reclassify 'O'oma. Well, according to public  
17 testimony from the Kona community the majority of  
18 people don't want 'O'oma reclassified from  
19 conservation to urban development.

20           My last thing. (Addressing Mr. Moresco) I  
21 met you yesterday. Very nice to meet you. But I need  
22 to make comments. Regarding your testimony -- oh, in  
23 response to Mr. Moresco's testimony yesterday you said  
24 you just don't get it. You're not sure what the  
25 community concern is.

1           Well, during the site visit we did not go  
2 from Queen Ka'ahumanu Highway to the ocean. We went  
3 from the ocean to the setback. We cannot go from  
4 Queen Ka'ahumanu Highway to the ocean because he has a  
5 chain across it. He has this nice beautiful sign  
6 (showing photos) and then a chain. He's wondering why  
7 we don't respect this plan. He doesn't respect us.

8           Before he came along this Project was used.  
9 He said it's just an empty piece of property right now  
10 where people dump their trash. My friends and I, we  
11 walk the property. We pick up trash. (Displaying a  
12 picture) This is a cave. We did not go in. We said  
13 our chants. We said our aloha in case it's bulldozed.

14           This is the Mamalahoa Trail. And while they  
15 plan to protect it, parts of it will be demolished or  
16 damaged for road access.

17           This is another cave. This is where the  
18 cave is located. In this area (using map). This is  
19 what we see from the ocean. This is Hualalai. This  
20 is where I live. This is where a lot of us in the  
21 community live.

22           This is what we see when we go down to the  
23 ocean and we have fun with our kids, our families, our  
24 friends. That's going to be blocked. The view is  
25 going to be blocked.



1                   We have the same goals as Mr. Moresco. Um,  
2 but he said he wants to provide for his family.  
3 That's what this Project means to him. He wants to  
4 provide for his son. But we want to provide a  
5 cultural background for our children which would  
6 include 'O'oma, one of the few shoreline open spaces  
7 left in Kona.

8                   I know you want to provide for your family  
9 but aren't you a millionaire? Correct me if I'm  
10 wrong. (addressing Mr. Moresco)

11                  He also talked about his investment which is  
12 a hundred percent monetary. Our investment is much  
13 more than monetary. It's our sense of history, our  
14 connections to our family, our neighborhoods, our  
15 friends. That's 'ohana. Locals had a lot of  
16 tolerance. Everyone is welcome to the land. We get  
17 along.

18                  As you can see we have come together from  
19 all walks of life to stand up to you because you, in  
20 effect, want to change our way of life. That's not  
21 acceptable. (addressing Mr. Moresco.) That's it.

22                  CHAIRMAN PILTZ: Thank you. Petitioner?

23                  MR. LIM: I just have a question on one  
24 aspect of the testimony, Ms. Tomas. Thank you. With  
25 respect to the statement about the objection to

1 chaining off of the mauka jeep road that goes through  
2 the 'O'oma Project.

3 Are you aware that the reason for doing that  
4 was that the -- we don't know who it was -- but  
5 someone from the public was coming in to dump rubbish,  
6 old cars, batteries.

7 And that Mr. Moresco and his group was  
8 responsible with Ron Mitchell's help, to remove one of  
9 those big Rolloff containers worth of rubbish and  
10 tossing materials from the 'O'oma property?

11 THE WITNESS: I beg to differ. If you go  
12 there -- this picture was taken this morning at  
13 6:49 p.m. (sic) Just a little bit makai the trash is  
14 still there. My friends and I, who are pictured in  
15 here, we picked up what we could with our hands with  
16 our trash bag. We're not getting paid.

17 As far as really malama the 'aina we're  
18 doing the best we can. But there's those of us we're  
19 willing to do more but you make it impossible.

20 (addressing Mr. Moresco)

21 MR. LIM: I think that Mr. Moresco would  
22 welcome the opportunity. And now you've met him  
23 please follow that up. Thank you.

24 CHAIRMAN PILTZ: Okay. County?

25 MR. GONZALEZ: No questions.

1 CHAIRMAN PILTZ: State?

2 MR. YEE: No questions.

3 CHAIRMAN PILTZ: Park Service?

4 MR. LIND: No questions.

5 CHAIRMAN PILTZ: Petitioners? We're going  
6 to take a recess for lunch. We'll be back at 1:30.

7 (Recess was held. 1:35)

8 CHAIRMAN PILTZ: We'll hear public  
9 testimony. Again, I remind you that we'll enforce the  
10 three minute rule. We have a timer set for two  
11 minutes. After you hear the button or the sound you  
12 have one minute to conclude. And I will slam the  
13 gavel at the end of three minutes.

14 So we have -- we are scheduled to leave at 3  
15 o'clock from here. So please understand our timing is  
16 short. This Commission will return again at another  
17 time. So I think we're in good shape as far as  
18 testimony.

19 So let me get the first one. All right  
20 Subhadra Corcoran. (no response) Ted Leaf?

21 UNIDENTIFIED SPEAKER: He's not here yet,  
22 Commissioners. He's coming.

23 CHAIRMAN PILTZ: Robert Frettas?

24 ROBERT FRETTAS,  
25 being first duly sworn to tell the truth, was examined

1 and testified as follows:

2 THE WITNESS: I do.

3 CHAIRMAN PILTZ: Would you state your name  
4 and address.

5 THE WITNESS: Robert Frettas, Jr.

6 CHAIRMAN PILTZ: And your address, Sir?

7 THE WITNESS: 74-369 Ahiahi Street, Kona  
8 Acres.

9 CHAIRMAN PILTZ: And your testimony today is  
10 all new testimony for us?

11 THE WITNESS: Yes.

12 CHAIRMAN PILTZ: Okay. Go ahead.

13 THE WITNESS: I participated in the onsite  
14 viewing of the area. And it appeared that everything  
15 that we were being told was not really what's going to  
16 happen. A lot of people don't really know what the  
17 place looked like. And I been going there since a  
18 little boy down the old 'O'oma Trail.

19 (addressing Mr. Moresco) So I know that when  
20 you're telling that you're gonna do this, you're gonna  
21 do that and when I asked the very simple question: So  
22 that means it's going to stay the way it is?

23 Oh, no. We are going to change this. We're  
24 going to change that. There will be no traffic going  
25 through so you'll not be able to drive. So actually

1 there's no camping.

2           A lot of things they were saying was not  
3 true. And you asked me, "Where does this trail end?"  
4 It ended on my grandfather's porch 'cause that's where  
5 the horse stopped and the donkeys stopped. The thing  
6 is that their beach home was at Keahole Point. They  
7 used that trail as their highway all the way up the  
8 mountain, past the Kula house which is where we live  
9 on Ahiahi. That was their middle home. And it ended  
10 up at their mauka house which is above Matsuyama  
11 Store. That's where the trail ended, 'O'oma Kalaoa.

12           The thing is that our family's presence that  
13 trail is an historical trail. It was our highway. It  
14 is not to be damaged. It is not to be disrupted. It  
15 is not to do anything. The thing is our family's  
16 presence has always been there and it's still there.  
17 The thing is that your development is not true. What  
18 you're saying is not true. Definitely a lot of things  
19 that will be happening is you're saying --

20           CHAIRMAN PILTZ: One minute.

21           THE WITNESS: -- you're saying is not going  
22 to happen. So a lot of promises and things that you  
23 made to us is not true. So I believe that this  
24 development should not happen. And that it should  
25 remain conservation. And if you want to try again you

1 can try again later but not now. Thank you very much.

2 CHAIRMAN PILTZ: Thank you. Petitioner?

3 MR. LIM: No questions.

4 CHAIRMAN PILTZ: State?

5 MR. YEE: No questions.

6 CHAIRMAN PILTZ: County?

7 MR. GONZALEZ: No questions.

8 MR. LIND: No questions.

9 CHAIRMAN PILTZ: Commissioners? Okay. Next  
10 person Jeff Middleton followed by Wayne Mahi.

11 JEFF MIDDLETON

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

14 THE WITNESS: I do.

15 CHAIRMAN PILTZ: State your name and  
16 address.

17 THE WITNESS: Jeff Middleton. P. O. Box 367  
18 Holualoa 96725. This is new testimony. Mr. Freitas  
19 mentioned the trail. We have laws in place. I don't  
20 know if the laws have been considered at this point.  
21 Or I'm afraid maybe the developers aren't aware of  
22 laws. And if they are aware then they could probably  
23 stay within the law. But they're not aware of the  
24 law.

25 Chapter 264 Hawaii Revised Statutes

1 regarding all trails and non-vehicular rights-of-way  
2 in the state shall be declared to the public  
3 rights-of-way the Hawai'i Act of 1892. All state  
4 trails once established shall continue on until  
5 lawfully disposed of pursuant to Chapter 171 HRS.

6 That means it has to be -- these trails, if  
7 they have been established before 1892, are historical  
8 and they're protected by the laws unless it's  
9 abandoned by due process of law. Due process of law  
10 is pursuant to Chapter 171. The state can document  
11 the existence of a trail -- (inaudible)

12 MS. ERICKSON: Excuse me. Can you slow,  
13 please, for the court reporter.

14 THE WITNESS: Okay. If you can document the  
15 trail exists pursuant to 1892, which this trail can,  
16 the trail is not just the one that he mentioned up the  
17 mauka to his grandfather's place and the house in  
18 between. That's an established trail -- excuse me?  
19 But the trail from OTEC to Kohanaiki was also the  
20 trail.

21 That has to be protected. What's going on  
22 in the development plans there's totally disregard of  
23 these laws and these trails. I'll show you where the  
24 trail is being stopped and being ignored, right here.

25 CHAIRMAN PILTZ: You have one minute.

1                   THE WITNESS: (off mic at exhibit) Thank  
2 you. The existing Jeep trail that goes all the way up  
3 mauka to his grandfather's house and their house right  
4 here, it's stopped, going to be bulldozed all the way  
5 through here.

6                   The subdivision would be fine if you would  
7 recognize this, pay attention to it and stayed within  
8 the law.

9                   (back on mic) Unless it's taken out by  
10 Chapter 171 it's illegal to do it. Therefore at this  
11 time without the -- it's just the education -- without  
12 the education of what we need to do in order to  
13 preserve these. It's not just fishing rights along  
14 the ocean. It's the use, the tradition, the  
15 historical rights as well.

16                  So there's two things that I think makes it  
17 at this point in time an unfavorable granting to give  
18 to change to conservation of these properties.

19                  CHAIRMAN PILTZ: Thank you, Jeff.

20                  THE WITNESS: Any questions?

21                  CHAIRMAN PILTZ: Any questions?

22                  MR. LIM: No questions from Petitioner.

23                  MR. GONZALEZ: No questions.

24                  MR. YEE: No questions.

25                  MR. LIND: No questions.



1                   CHAIRMAN PILTZ: Thank you. Wayne Mahi  
2 followed by Kathleen McMillen.

3                   WAYNE MAHI  
4 being first duly sworn to tell the truth, was examined  
5 and testified as follows:

6                   THE WITNESS: Yeah.

7                   CHAIRMAN PILTZ: Okay. Please have a seat.  
8 State your name and address.

9                   THE WITNESS: Wayne Mahi. My street address  
10 is 73-4273 Kalaoa, Highway 190.

11                  CHAIRMAN PILTZ: Go ahead.

12                  THE WITNESS: I'm here to keep 'O'oma  
13 conservation. I don't want no development on that  
14 property 'cause it's the only access we have to go to  
15 the beach. Everyone else in Kona, the whole island  
16 goes there. And I'm a descendant and also a  
17 descendant of Kohanaiki. They call it Kohanaiki but  
18 we call it Koneki.

19                  Some of the descendants sold out to the  
20 developers. That's how they got through to go  
21 through. Now I'm asking the land Commission to watch  
22 these people, these developers trying to buy out our  
23 descendants' signature. There were about eight of  
24 them.

25                  But I didn't sell out to them. And neither

1 did about 30 of us. But that's another way a  
2 developer can do it.

3 If they want to develop any subdivision or  
4 condos, do it above the highway at Queen Ka'ahumanu.  
5 That's where Costco is. That's where Wal-Mart and  
6 Kmart is. And Sports Authority is about over a mile  
7 away from the shoreline.

8 You know, they should build mauka of the  
9 highway not makai. They should leave it all for the  
10 public use only. That's all. Leave it in  
11 conservation.

12 CHAIRMAN PILTZ: Thank you. Petitioner,  
13 questions.

14 MR. LIM: No questions.

15 CHAIRMAN PILTZ: County?

16 MR. GONZALEZ: No questions.

17 CHAIRMAN PILTZ: State?

18 MR. YEE: No questions.

19 MR. LIND: No questions.

20 CHAIRMAN PILTZ: Anyone here? Kathleen  
21 McMillen followed by Ulrich Bonne.

22 KATHLEEN McMILLEN,  
23 being first duly sworn to tell the truth, was examined  
24 and testified as follows:

25 THE WITNESS: I do.

1 CHAIRMAN PILTZ: Address and name, please.

2 THE WITNESS: Kathleen McMillen, 75-5768  
3 Makalena Place, Kailua-Kona, Hawai'i.

4 CHAIRMAN PILTZ: All right.

5 THE WITNESS: Okay. This is my third time  
6 coming before you with testimony about the impact of  
7 noise from Kona Airport. I also have comments to add  
8 about traffic problems.

9 I want to start by commenting on the  
10 testimony presented by 'O'oma's noise consultant at  
11 the last meeting. Almost all his testimony was based  
12 on what's supposed to happen long term at Kona  
13 Airport, particularly a second or third runway being  
14 built.

15 Given the budget constraints that we have in  
16 the past and particularly now I want to give an  
17 example from a practical point of view. An entire new  
18 international terminal was supposed to have been built  
19 at the Kona Airport in the early 1990s. Preliminary  
20 plans were done. It was cut from the budget in 1991.

21 And as of today there are still no concrete  
22 plans for it to be built, nor is there anywhere near  
23 the infrastructure to support it.

24 So I question the timing of long-term plans  
25 for future runways. They will have to happen

1 eventually, but I think it's much longer term than any  
2 of us expect. If anything I think we will have a lot  
3 more traffic on the existing runway which only makes  
4 the noise problem worse.

5           Quite frankly, I am frustrated that State  
6 Airports Division has not had a strong, forceful  
7 presence at these meetings. They are clearly mandated  
8 by the FAA to protect the airport from encroaching  
9 development.

10           But then I realized after reading more of  
11 the noise compatibility study in the master plan  
12 that's in the draft form, and that's where this  
13 exhibit comes from, we do not presently have enough  
14 strong measures in place to tie DOT-A and the Hawai'i  
15 County Planning Department when inappropriate  
16 development like 'O'oma gets on the local agendas.

17           However, when the noise study is approved  
18 there are recommendations to help revolve that weak  
19 link between the county and the State DOT-A. I'm  
20 going to quote the recommendations from the noise  
21 study that comes right out of the master plan  
22 document.

23           CHAIRMAN PILTZ: One minute.

24           THE WITNESS: These are, quote "DOT-A should  
25 encourage Hawai'i County to amend its General Plan to

1 include land use compatibility thresholds based on DOT  
2 compatibility guidelines.

3 DOT-A should encourage Hawai'i County to  
4 adopt an Airport Influence Area, which is shown in  
5 green which 'O'oma is completely contained within that  
6 Airport Influence Area. DOT-A should encourage  
7 Hawai'i County to adopt an airport compatibility  
8 checklist for discretionary review of projects within  
9 the vicinity of the airport. DOT-A should encourage  
10 Hawai'i county to discourage rezoning parcels within  
11 the 2013 60 DNL Noise Contour," unquote.

12 The 60 DLN contour I drew in is the pink  
13 line going across that parcel. Note in Exhibit D  
14 that's provided in my written testimony that if this  
15 last recommendation was implemented today, DOT-A  
16 should then be asking the County Planning Office to be  
17 against the rezoning action now before you since over  
18 half of 'O'oma is in the designated are. (Beeper  
19 sounding)

20 CHAIRMAN PILTZ: Thank you.

21 THE WITNESS: I have more to say but...

22 CHAIRMAN PILTZ: We will be back. Thank  
23 you. I'm sorry. We do have your written testimony  
24 here. It's on the record. So thank you very much.  
25 Questions?

1 MR. LIM: No questions from the Petitioner.

2 CHAIRMAN PILTZ: County?

3 MR. GONZALEZ: No questions.

4 CHAIRMAN PILTZ: State?

5 MR. YEE: No questions.

6 CHAIRMAN PILTZ: Park Service?

7 MR. LIND: No questions.

8 COMMISSIONER JUDGE: One question.

9 CHAIRMAN PILTZ: Go ahead, Commissioner.

10 COMMISSIONER JUDGE: Can you tell me what  
11 document you were referring to? You were stating  
12 proposals from some document. Which document are you  
13 referring to, referencing, rather?

14 THE WITNESS: In draft form there's the Kona  
15 Master Plan document. It has not been fully  
16 completed. However, it's available online with what  
17 has been done so far. Part of that document includes  
18 the noise compatibility study. That's where this  
19 comes from. And the quotes were recommendations from  
20 that study that should be implemented. They are not  
21 implemented yet.

22 My concern is they have all these  
23 recommendations. We are going to have all these  
24 encroaching developments before it's implemented.

25 In other words, the mechanism for the state

1 to talk better with the county, the airports division  
2 to get all their airport influence area and all the  
3 recommendations that are now in that master plan but  
4 haven't been implemented yet. The timing is just,  
5 it's not compatible.

6 COMMISSIONER JUDGE: Whose study is this?

7 THE WITNESS: It is done by the state  
8 airports division.

9 COMMISSIONER JUDGE: The state, state of  
10 Hawai'i Airports Division.

11 THE WITNESS: The state is contracted to do  
12 this, yes.

13 COMMISSIONER JUDGE: Okay. It's their  
14 study.

15 THE WITNESS: Yes. If you look up Kona  
16 Master Plan, Google it you'll find it online.

17 COMMISSIONER JUDGE: Thank you.

18 CHAIRMAN PILTZ: Thank you. Next person is  
19 Ulrich Bonne followed by David Carlson.

20 ULRICH BONNE

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

23 THE WITNESS: I do.

24 CHAIRMAN PILTZ: State your name and address  
25 for the record and continue.

1                   THE WITNESS: By name is Ulrich Bonne. And  
2 I live in Kailua-Kona.

3                   CHAIRMAN PILTZ: Go ahead.

4                   THE WITNESS: I'm a chemical physicist  
5 semi-retired and with a group of Friends of NELHA we  
6 are in the process of writing a proposal to  
7 demonstrate on a bench scale the feasibility of energy  
8 storage based on air source ammonia.

9                   We plan to rent space at NELHA. And I'm  
10 concerned that if there is a high density community  
11 next door that we may get more complaints than we  
12 would if the land was still in the conservation  
13 status.

14                  So I'm here to simply plead that there is  
15 enough buffer space if this development goes forward  
16 so that we can still do our energy storage research  
17 without inconveniencing people nextdoor. Thank you.

18                  CHAIRMAN PILTZ: Petitioner?

19                  MR. LIM: No questions.

20                  CHAIRMAN PILTZ: County?

21                  MR. GONZALEZ: No questions.

22                  CHAIRMAN PILTZ: State?

23                  MR. YEE: Just to be clear. The Friends of  
24 NELHA is associated with but is a separate and private  
25 entity from NELHA, correct?



1 THE WITNESS: Correct.

2 MR. YEE: Thank you. That's all.

3 THE WITNESS: We plan to rent space at NELHA  
4 so we can set up the bench scale demonstration.

5 MR. YEE: Thank you.

6 MR. LIND: No questions.

7 CHAIRMAN PILTZ: Lisa. One question. Lisa.

8 COMMISSIONER JUDGE: When you mentioned  
9 buffer space, in your mind what is that buffer space?  
10 Do you have an idea in your head what that is?

11 THE WITNESS: Enough space to provide enough  
12 dilution to any unplanned leak of ammonia. And that I  
13 suppose could mean anywhere from a thousand to  
14 2,000 feet approximately.

15 COMMISSIONER JUDGE: A thousand to  
16 2,000 feet. Okay. Thank you.

17 CHAIRMAN PILTZ: David Carlson followed by  
18 Winfield Chang.

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

22 THE WITNESS: Yes.

23 CHAIRMAN PILTZ: State your name and address  
24 for the record.

25 THE WITNESS: David Carlson, 73-1422 Kaloko

1 Drive, Kona, Hawai'i.

2 CHAIRMAN PILTZ: Go ahead.

3 THE WITNESS: I'm going to speak strictly to  
4 the airport thing. I'm an ex-Air Force pilot and a  
5 retired United Airlines captain. And had a lot of  
6 experience in flying in Europe, Asia all over the  
7 United States.

8 And I've seen, since I started flying in  
9 1959, what happens is going on here. We moved the  
10 airport from here in town, right out here, and moved  
11 it 8 miles out. Now, even that, we're talking bigger  
12 and bigger aircraft. And there's going to be bigger  
13 ones. The 747 is going to be a smaller one here  
14 fairly soon.

15 They're going to be coming into Kona and  
16 leaving Kona soon to further destinations. Flying to  
17 the West Coast from here does not require a plane to  
18 be very full. And they're not very big. These are  
19 757, 767s out of here.

20 When they start putting in a 747 fairly full  
21 going to Sydney or Asia somewhere, even on to Europe,  
22 we're going to be talking an 800,000-pound aircraft or  
23 greater. And the sound level, of course, increases  
24 greatly as these aircraft become bigger and bigger and  
25 heavier and heavier.

1               Even at today's level, I live up Kaloko at  
2 the 2,000 foot elevation, on a day when the west wind  
3 a little overcast I can hear the aircraft up there.  
4 And it's going to be continually worse.

5               I first started flying in 1959 to Las Vegas.  
6 At the time Nellis Air Force base was six miles from  
7 town. No houses. These hotels were just two-story  
8 little hotels out with big billboards in those days.  
9 Pretty soon Nellis is ready to be closed because it's  
10 too much noise.

11              Los Angeles Airport was built out in the  
12 rice fields. Pretty soon the City of Los Angeles had  
13 to buy the houses back around the airport because it  
14 got noisier and noisier and people complained so much  
15 all that's left there is commercial dwellings.

16              Here the Air Force is going to put in soon a  
17 short runway so that they can do heavy commercial --  
18 heavy aircraft test landings, short field landings.  
19 And those are extremely noisy. They put out every  
20 device they can to make it require a high power  
21 settings for landing.

22              When they come in at a high power setting,  
23 as soon as they touch down they throw everything into  
24 reverse at the high speed and high power. And it's  
25 noisy. This is going to be our legacy out here at

1 Keahole. And we cannot allow homes to be built near  
2 that. It's just going to be a constant mess. Thank  
3 you.

4 CHAIRMAN PILTZ: Thank you. Petitioner?

5 MR. LIM: No questions.

6 CHAIRMAN PILTZ: County?

7 MR. GONZALEZ: No questions.

8 MR. LIND: No questions.

9 CHAIRMAN PILTZ: Anyone here? Okay. Thank  
10 you, Mr. Carlson. Winfield Chang followed by Roy  
11 Beckland.

12 WINFIELD CHANG

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

15 THE WITNESS: I do.

16 CHAIRMAN PILTZ: State your name and address  
17 for the record.

18 THE WITNESS: My name is Winfield Chang.  
19 And I reside at 73-1432 Kaloko Drive in North Kona.  
20 I'm, again, testifying for the third time as an  
21 extremely concerned private citizen and a Native  
22 Hawaiian.

23 I would first like to commend the legal  
24 counsel for the Petitioner for her excellent  
25 preparation yesterday parading expert witnesses to

1 elicit the desired response. Regardless of whether it  
2 contained their personal opinion or personal  
3 recommendation to support the proposed development of  
4 the lands of 'O'oma was skillfully executed.

5           It was fascinating to hear the kind of  
6 responses by paid consultants and her line of  
7 questioning in an effort to convince the LUC to  
8 reclassify conservation lands to a change from  
9 conservation to urban use for the specific purpose of  
10 high-density development.

11           Perhaps the most telling testimony was from  
12 the Petitioner who repeated the ridiculous sound byte  
13 that this is the right development at the right time  
14 and the right place. This was echoed by Ross Wilson  
15 of Current Events at the last hearing.

16           This would be a most laughable public  
17 relations sound byte if it weren't so desperate.  
18 Continuing to repeat it will never make it true.

19           Any casual observer would recognize how  
20 those assumptions are riddled with inaccuracies and  
21 untruths. This is perhaps the most ill-conceived  
22 development at the wrong place at the wrong time in  
23 the current economic turn-down and the present  
24 inventory of homes available.

25           What developer with the litany of

1 award-winning accolades suggests that a residential  
2 development under the flight pattern of the Kona  
3 International Airport was desirable?

4           The proposed expansion of the airport to  
5 accommodate touch-and-go future exercises by the Air  
6 Force will only accelerate the decibel levels  
7 currently present and supposedly not a concern by the  
8 Petitioner.

9           As to the timing of the development, nothing  
10 has changed since Mayor Kim rejected the proposed  
11 development. Queen Ka'ahumanu is still the major  
12 infrastructure along 'O'oma and we as a community know  
13 full well the speed of which improvements are  
14 concluded. (beeper sounding)

15           If the first phase of the expansion --

16           CHAIRMAN PILTZ: One minute.

17           THE WITNESS: -- is any indicator will be  
18 years before we can expect the second phase to be  
19 completed, particularly in light of the monumental  
20 deficit position of both the state and the county.

21           In testimony given by your expert Warren  
22 Yamamoto reporting on the Traffic Input Analysis (sic)  
23 was most telling to suggest that the infrastructure  
24 provided by the developer and its mixed-use plan would  
25 be self sustainable.

1                   His claim that 500-600 homes proposed,  
2   quote, "should have a minimal effect" was most  
3   fascinating. If the current proposed plan of 500-600  
4   homes, and assuming two cars per unit, it would render  
5   this analysis grossly inaccurate.

6                   It is inconceivable to me that residents of  
7   this community would not shop at Costco or fill their  
8   cars up with gas. Then there is Macy's, Lowe's, Home  
9   Depot, Safeway, et cetera.

10                  However, the testimony provided by the  
11   Petitioner himself was far more revealing than the  
12   testimony that preceded him. (beeper going off)

13                  When asked by an astute Commissioner how he  
14   would respond to the overwhelming opposition provided  
15   by members of the community in prior public hearings,  
16   he states that the process thus far that required  
17   years of thoughtful consideration and the pride with  
18   which he worked with the community, he was completely  
19   dismayed by the overwhelming negative attitude.

20                  CHAIRMAN PILTZ: Thank you, Mr. Chang.

21                  THE WITNESS: You're welcome. You do have  
22   copies of that?

23                  CHAIRMAN PILTZ: Yes, we do. Questions  
24   anyone upfront?

25                  MR. LIM: No questions.

1 MR. YEE: No questions.

2 MR. GONZALEZ: No questions.

3 MR. LIND: No questions.

4 CHAIRMAN PILTZ: Anyone, questions back  
5 here? Okay. Thank you. The next person is Roy  
6 Beckland followed by Cheryl King.

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

10 THE WITNESS: Yes I do. My name is Roy  
11 Beckland. I live at 73-4341 Eole Place, Kailua-Kona.  
12 First of all let me state I'm not a public speaker.

13 CHAIRMAN PILTZ: Have a seat. That's okay.

14 THE WITNESS: This is the first I've ever  
15 done anything like this. But I feel compelled that I  
16 have to do this because I've seen the coastlines of  
17 Kona just being eaten up. And this is one of the last  
18 places and use it frequently.

19 So I know that the beach is where the local  
20 people that live here can go with their families and  
21 have a good time, have privacy. Nobody's staring at  
22 them. Nobody's judging them. It's one of our last  
23 places. You have to draw the line somewhere.

24 My grandmother was from Kalapana in Hilo.  
25 She was pure Hawaiian from ali'i class. When she got



1 married her husband told her after the overthrow that,  
2 "The ali'i is no more. This is the ali'i, the  
3 dollar." I don't want to see that happen here. I  
4 don't want to see all the coastline of Kona gone  
5 because this, the dollar.

6           You know, it's all the local people don't  
7 have anywhere to go anymore to enjoy. You can still  
8 camp there sometimes. I'm sure the camping would be  
9 gone after this.

10           So I'm just kind of appealing to the heart  
11 aspect. I don't have the facts like everybody else.  
12 It's just that I know that I use that area and I know  
13 a lot of good people that do. And I hate to see it  
14 spoiled.

15           In the past I've seen local people, they get  
16 very uncomfortable when developments like this move in  
17 and it's bought up by wealthy people in other places.  
18 And they come in and they're judgmental. They're  
19 judgmental to local people the way they act, the  
20 things they do. I'm not being racist here. I'm not  
21 talking Hawaiian. I'm talking local people, the  
22 people that live here. That's all I have to say.

23           CHAIRMAN PILTZ: Thank you. Any questions?

24           MR. LIM: No questions.

25           MR. GONZALEZ: No questions.

1 MR. YEE: No questions.

2 MR. LIND: No questions.

3 CHAIRMAN PILTZ: Okay. Anyone here? Thank  
4 you. Cheryl King followed by Charles Flaherty.

5 CHERYL KING

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

8 THE WITNESS: I do.

9 CHAIRMAN PILTZ: Name and address for the  
10 record.

11 THE WITNESS: My name is Cheryl King. I  
12 live at 77-645 Ono Road in Kailua-Kona. I have been  
13 in front of you before. I don't need to repeat  
14 everything I said before. I mentioned I feel this is  
15 conservation land. It should stay that way.

16 We don't need the individual dwellings in a  
17 hot area. It's not energy efficient. It's near an  
18 airport. It will have negative impacts on the  
19 airport, the National Park and NELHA. Water problems,  
20 traffic congestion. There's no compelling need to  
21 rezone this property.

22 What I especially wanted to relate is that I  
23 happened to sit next to Mr. Moresco and his son at the  
24 last Land Use Commission meeting in Waikoloa on this  
25 subject.

1           After hearing all the negative testimony I  
2 asked him what possessed him to purchase conservation  
3 land for development. He said it was a principle of  
4 good development to fill in around existing  
5 development. In other words, fill in the holes.

6           I strongly disagree with this assessment as  
7 it applies to conservation land. I hope you do too.  
8 Thank you.

9           CHAIRMAN PILTZ: Questions, Petitioner?

10          MR. LIM: No questions.

11          CHAIRMAN PILTZ: County?

12          MR. GONZALEZ: No questions.

13          MR. YEE: No questions.

14          MR. LIND: No questions.

15          CHAIRMAN PILTZ: None here. Thank you. We  
16 have Charles Flaherty followed by Claire Bajo.

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

20          THE WITNESS: Yes, sir.

21          CHAIRMAN PILTZ: State your name and address  
22 for the record.

23          THE WITNESS: Charles Flaherty, 79-7460  
24 Mamalahoa Highway, Suite 207, Kealahkekua, Hawai'i  
25 96750. On the maps I had handed around I'd like to

1 have those back. It took a Freedom of Information Act  
2 request, kind of an act of God. Those are maps that  
3 the community used during a public charrette.

4           What I would like for you to notice is that  
5 the area that it contains, this Project Area, does not  
6 have the conservation, the area designated as  
7 conservation. Only it basically reflects the current  
8 application even though that charrette was done three  
9 years ago.

10           So during the Kona Community Development  
11 Plan process we were led to believe that that was not  
12 conservation land.

13           I'm going to skip part of my testimony for  
14 time because there's only three minutes. There is a  
15 report in here that I would like for you to read. The  
16 results of sampling of wastewater tracers at, near  
17 Kealahou Wastewater Treatment Plant in Kona. It's a  
18 51-page report. We spent about \$750 printing that  
19 report for you, so please read it. It explains to you  
20 why injection wells pollute the ocean, how they  
21 pollute the ocean and pollute up to one mile of  
22 shoreline per injection well.

23           Since it's being represented in the media,  
24 if you refer to Exhibit A of the testimony I  
25 presented, that the Moku O Kona Royal Order of

1 Kamehameha I supports this petition via letter to the  
2 editor of West Hawai'i Today, from Mr. Alike Desha  
3 which you see in Exhibit B, I would like to show  
4 documentation of prior and existing relationships  
5 between 'O'oma Beachside Village, Peter Young of OBV  
6 consultant, Ho'okuleana, Ross Wilson of OVB consultant  
7 Current Events, and the Moku O Kona chapter of the  
8 Royal Order of Kamehameha I.

9           If you'll refer to Exhibit C you'll see that  
10 Moku O Kona formed a non-profit organization on June  
11 27, 2006 called Hale Mua Cultural Group. Two months  
12 then-Chair of the Board of Land and Natural Resources,  
13 Peter Young, placed on the Board of Land and Natural  
14 Resources' agenda a request to approve a curatorship  
15 agreement between the State Department of Land and  
16 Natural Resources and Hale Mua for Ka'awaloa Village  
17 in Kealakekua Bay State Park, Exhibit D.

18           Alike Desha, Mahealani Pai and Gordon Leslie  
19 testified that they were for Moku O Kona and Hale Mua.  
20 The only two members of the public who attended the  
21 O'ahu meeting were Betsy Morgan and Geoff Hand, each  
22 of whom owns a kayak company that operates in  
23 Kealakekua Bay.

24           Coincidentally these two companies are the  
25 only ones --

1                   CHAIRMAN PILTZ: One minute.

2                   THE WITNESS: -- have been able to obtain  
3 permits from the DLNR to land kayaks at Ka'awaloa. As  
4 you know, Peter Young is now a consultant for OVB.  
5 Prior to becoming head of DLNR he was a deputy  
6 managing director for the county of Hawai'i under  
7 Mayor Kim. Mayor Kenoi's current deputy managing  
8 director, Wally Lau is listed as director of Hale Mua  
9 in Exhibit C.

10                  If you refer to Exhibit E you will see that  
11 Moku O Kona is also assisting with the restoration of  
12 the Ahuena He'iau located just outside this hotel.  
13 Exhibit F lists Ross Wilson as the director of Ahuena  
14 He'iau, Inc. which is currently restoring that he'iau.  
15 The minutes of the March 3rd LUC meeting state that  
16 Mr. Wilson read Mr. Desha's testimony into the record  
17 in his absence.

18                  If you'll refer to Exhibit G you'll see that  
19 the Archaeological Inventory Survey shows that 'O'oma  
20 Beachside Village property was the property of the  
21 Kingdom of Hawai'i at the time of the overthrow.

22                  In 1899 a Mr. J.A. Maguire acquired a land  
23 grant. And in 1907 -- well, the bottom line with that  
24 is that the Archaeological Inventory Survey shows that  
25 this land was -- it is ceded lands.

1           CHAIRMAN PILTZ: Okay. Just to let you know  
2 that we do have a copy of your testimony, your written  
3 testimony. It is on the record.

4           THE WITNESS: I'll be following with the  
5 other items I was not able to cover in my testimony.

6           CHAIRMAN PILTZ: Questions by Petitioner?

7           MR. LIM: I just have one question. It's  
8 kind of a sensitive issue. Mr. Flaherty, are you --  
9 because the Royal Order of Kamehameha through Alika  
10 Desha has supported the Project, are you alleging that  
11 Mr. Alika Desha and the Royal Order of Kamehameha was  
12 somehow bribed or bought, that their testimony  
13 supporting this Project was somehow bribed or bought?

14          THE WITNESS: First of all, when I read  
15 Mr. Desha's letter I didn't think it was supporting  
16 the Project. I thought he was supporting the process  
17 that the developer was going through in consulting  
18 with the community. I did not think that it did.

19          However, since that time the consultants and  
20 media for some reason have portrayed his letter as  
21 support. What I'm trying to point out is that there  
22 are relationships between all these individuals. And  
23 when you're dealing with -- well, even a nonprofit  
24 organization there's conflict of interest policies.

25          MR. LIM: My question is pretty simple. Are

1 you alleging that somehow Mr. Alika Desha or the Royal  
2 Order of Kamehameha was somehow bought out for the  
3 issuance of that letter?

4 THE WITNESS: I have no knowledge of that so  
5 I would not make that statement.

6 MR. LIM: Okay.

7 CHAIRMAN PILTZ: County, any questions?

8 MR. GONZALEZ: No questions.

9 CHAIRMAN PILTZ: State?

10 MR. YEE: No questions.

11 MR. LIND: No questions.

12 CHAIRMAN PILTZ: Commissioners? Thank you,  
13 Charles. Next person is Claire Bajo followed by  
14 Subhadra Corcoran. Claire?

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

18 THE WITNESS: I do.

19 CHAIRMAN PILTZ: Name and address please.

20 THE WITNESS: My name a Claire Bajo, P. O.  
21 Box 302 Kailua-Kona, Hawai'i 96745. I have spoken in  
22 front of you in the March meeting. And I would just  
23 like to add to that.

24 I have since slept at the Pine Trees beach  
25 area in the last two months and did monitor the air



1 traffic noise from 7:00 at night to 7:00 or 8:00 in  
2 the morning. It was very minimal noise. I slept on  
3 the beach without any tents or, you know, any kind of  
4 vehicles around it. It was very peaceful. I slept  
5 till morning. I appreciated the quietness of the land  
6 even though there was traffic, air traffic flying by.

7 I'm also a realtor and business owner in  
8 West Hawai'i. I've seen how developers can approach  
9 the Land Use Commission or not.

10 I respect 'O'oma coming through the front  
11 door as opposed to Hokulia trying to come through the  
12 back door with an elite development that didn't  
13 appease the local people at all.

14 To me the integrity of Mr. Moresco coming  
15 forward receiving public scrutiny and also  
16 integrating what the public has given him is very  
17 respectful. And I appreciate that as a Hawaiian and  
18 local person in the community.

19 I also utilized the law of the aloha spirit  
20 which is Hawaii Revised Statutes 5-7.5 which is that,  
21 you know, we must be kind to others without expecting  
22 anything in return.

23 It seems that Mr. Moresco has reciprocated  
24 that input, citizen scrutiny and citizen input adding  
25 it to his development. And I can only support it

1 because of that. There's good reciprocation. And he  
2 has been able to preserve the parks as we had  
3 requested. Also I would love to see more of the land  
4 utilized.

5 CHAIRMAN PILTZ: One minute.

6 THE WITNESS: Like the old airport where we  
7 have areas that the public can use. And I would  
8 appreciate that if it's true that the development as  
9 it stands has to be true to what they present to you,  
10 then I would appreciate that it would come through as  
11 he says. Thank you.

12 CHAIRMAN PILTZ: Petitioner, questions?

13 MR. LIM: No questions.

14 CHAIRMAN PILTZ: County?

15 MR. GONZALEZ: No questions.

16 CHAIRMAN PILTZ: Bryan?

17 MR. YEE: No questions.

18 CHAIRMAN PILTZ: Park Service?

19 MR. LIND: No questions.

20 CHAIRMAN PILTZ: Anyone at the Commission?

21 Subhadra Corcoran? No. Ted Leaf? (No response).

22 Okay. Shannon Rudolph.

23 THE WITNESS: Aloha.

24 SHANNON RUDOLPH,

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

1 and testified as follows:

2           THE WITNESS: Absolutely. I didn't bring my  
3 glasses so bear with me. I was reading the comments  
4 in West Hawai'i Today an article today and it said  
5 that Mr. Modesto didn't understand -- Moresco,  
6 sorry -- doesn't understand the opposition to his  
7 project and isn't sure what the complaints of the  
8 community are.

9           Well, I guess like many corporations these  
10 days he wasn't listening to the people who have spent  
11 thousands of hours trying to get him to listen. I  
12 don't know what community he spend time engaging but  
13 it certainly wasn't any of my friends. Now, I  
14 testified before and I just want to make two points  
15 here.

16           He mentions that the issue of the rezoning  
17 and the resale keeps popping up. That's because  
18 that's what we're used to. As for him taking the  
19 long-term view, well, he's right when he said he has a  
20 lot to learn about Hawai'i.

21           This is the last of the conservation areas  
22 between town and the airport. And the community needs  
23 this last piece of open space. You heard them  
24 yourselves. Our area is going to grow and keep  
25 growing.

1                   And we need a few spaces close to town where  
2 we don't have to look at a big development. That's  
3 why we have been fighting for this land for decades.  
4 The county needs to buy it.

5                   Yesterday I overheard a Commissioner say,  
6 "Why does the community only come out to these  
7 meetings to testify and not listen?" Well, when  
8 residents hear something like that they think that the  
9 deal has already been done. And it's upsetting.

10                  I'll tell you the reason why they don't come  
11 to these middle-of-the-day meetings is because they  
12 have to work for a living. And they've heard all this  
13 before and they're sick of it.

14                  Many believe this issue has already been  
15 decided because the economy is bad that you will okay  
16 anything. Is that my time or do I have a minute?

17                  UNIDENTIFIED SPEAKER: A minute.

18                  THE WITNESS: Let me tell you the local  
19 paper's poll says the community overwhelmingly opposes  
20 this rezone, and have had for decades. If you can't  
21 hear them it's because you aren't listening either. I  
22 think Mr. Moresco has been duped by his partners and  
23 it's not up to the community to make him whole. He  
24 knew what he was buying. Thank you.

25                  CHAIRMAN PILTZ: Shannon, could you give us

1 your name and address for the record.

2 THE WITNESS: Yes. Shannon Rudolph, P. O.  
3 Box 243 Holualoa, Hawai'i, 96725.

4 CHAIRMAN PILTZ: Questions by the  
5 Petitioner?

6 MR. LIM: Just a couple questions.  
7 Ms. Rudolph, you were familiar with the 'O'oma  
8 property. You've gone there before.

9 THE WITNESS: Yes.

10 MR. LIM: Can you go to the drawing back  
11 there behind you on your left, which is the  
12 Petitioner's Exhibit 3A figure 1 to the Final EIS, and  
13 show on the map where it is that you've been on the  
14 property in terms of your use of the property?

15 THE WITNESS: All over the whole beach. Not  
16 inland.

17 MR. LIM: Okay. So let's say fair --  
18 makai -- is it fair to say it's makai of the proposed  
19 setback?

20 THE WITNESS: I'm talking about the whole  
21 development.

22 MR. LIM: Yes.

23 THE WITNESS: I think it's in the wrong  
24 place.

25 MR. LIM: But to answer my question you were

1   only down at the beach.   That's the only place you  
2   used the property.

3               THE WITNESS:   Right.   It's private property.

4               MR. LIM:   Okay.   No further questions.

5               CHAIRMAN PILTZ:   Okay.   County, questions?

6               MR. GONZALEZ:   No questions.

7               CHAIRMAN PILTZ:   State?

8               THE WITNESS:   But it should be owned by the  
9   county.

10              (Audience laughter)

11              MR. YEE:   No questions.

12              MR. LIND:   No questions.

13              CHAIRMAN PILTZ:   Okay.   Anyone here?   Thank  
14   you.   Who do we have here?   Mr. Leaf, Ted Leaf, are  
15   you here?

16                              DR. THEODORE LEAF

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

19              THE WITNESS:   Yes.

20              CHAIRMAN PILTZ:   Name and address for the  
21   record.

22              THE WITNESS:   Yeah, I'm kinda loud anyway  
23   because I'm a little hard of hearing so we talk loud.  
24   Dr. Theodore N. Leaf. P.O. Box 45, Kailua-Kona,  
25   Hawai'i 96745.   And I'm known in the community as Ted

1 so you can call me Ted. Thank you.

2 Dear State Use Land Commissioners: I have  
3 been in support of the proposed 'O'oma development for  
4 some time and have heard people talking about how bad  
5 it will be to live in 'O'oma because of the airplane  
6 noise. And would like to comment on that.

7 I've been at 'O'oma several times at  
8 different times of the day and most recently last  
9 month when the Commissioners toured the land. I  
10 stayed for sometime afterwards to specifically listen  
11 for noise from the airplanes and did not hear annoying  
12 sounds that I've heard others testify about.

13 The flight path is compass bearing 17  
14 degrees. Again, 17 degrees which is far out over the  
15 war. And the planes don't come over the land until  
16 they are on the NELHA property. As the planes come in  
17 for landing I continued to talk to others and carry on  
18 a normal conversation without raising my voice.

19 I don't believe there will be noise issues  
20 for the residents of 'O'oma. And I'd like to take my  
21 ruler and go to the map and point that out to you, if  
22 I may.

23 CHAIRMAN PILTZ: You may. And would you  
24 take the microphone with you.

25 THE WITNESS: Pardon?

1                   CHAIRMAN PILTZ: Take the microphone with  
2 you.

3                   THE WITNESS: I'm looking for the airport  
4 here. The runway is -- I don't know why I don't see  
5 it. Can I have some help? It's not on here, is it?  
6 (audience speaking) Yeah, well, it's not on here.

7                   But anyway I checked it out on the flight  
8 map that you, I guess you call it the airplane flight  
9 map, flight chart. They call it chart. The planes  
10 are far out on that 17 degrees.

11                  CHAIRMAN PILTZ: Okay.

12                  THE WITNESS: Thank you.

13                  CHAIRMAN PILTZ: All right. Petitioner?

14                  MR. LIM: No questions.

15                  CHAIRMAN PILTZ: County?

16                  MR. GONZALEZ: No questions.

17                  CHAIRMAN PILTZ: State?

18                  MR. MITSUDA: No questions.

19                  MR. LIND: No questions.

20                  THE WITNESS: Thank you.

21                  CHAIRMAN PILTZ: Thank you, Ted. Is  
22 Subhadra Corcoran --

23                  THE WITNESS: It's probably on that map  
24 there. May I look at it?

25                  CHAIRMAN PILTZ: That's okay. I think we



1 know where the airport is on several different maps.

2 Thank you.

3 THE WITNESS: Thank you.

4 CHAIRMAN PILTZ: Is there anyone else here  
5 in the audience that would like to testify that  
6 hasn't? Okay. Commissioners? Okay. Young man, come  
7 on up.

8 MELVIN G. MASON, JR.  
9 being first duly sworn to tell the truth, was examined  
10 and testified as follows:

11 THE WITNESS: 'Ae.

12 CHAIRMAN PILTZ: Pardon?

13 THE WITNESS: Yes.

14 CHAIRMAN PILTZ: Okay. State your name and  
15 address for the record.

16 THE WITNESS: My name, English name is  
17 Melvin G. Mason, Jr. My inoa is Ha Makuaki E Moku. I  
18 reside on the island of Hawai'i, moku e Hawai'i. It's  
19 really interesting to share like many have shared  
20 their mana'o, their thoughts and their feelings about  
21 development and how it carries out concerns in holding  
22 due process. As the Commission, as a board, is who  
23 you are to exist. It's interesting to see.

24 I just came back from New York City. And  
25 the value of life is pretty depleted there. No

1 'ohana, family values. Granted, most of the money is  
2 zoned, developed there.

3           This Federal Reserve note, the dollar.  
4 Semantics is that Hawai'i is a unique place, very  
5 unique. Most of you have experienced, have not  
6 experienced Hawai'i in its own true meaning. We have  
7 to all survive. We gotta live. We gotta eat. But  
8 until you know how to malama ika 'aina o Hawai'i.  
9 Take care the land and the sea of Hawai'i, then maybe  
10 you guys can consider doing business.

11           I'm also a businessman. But the character  
12 of it all I expressed with some elders and kupuna -- I  
13 want to commend Ted to standing up as much as he  
14 feels, to be laughed at, to be mocked. Shame on you  
15 all. I'm here to speak for those that cannot speak,  
16 the kupuna and the keiki, the future of Hawai'i.

17           The values is that when you go on top of the  
18 mountain, Hualalai, and you look down below you look a  
19 hundred years ago, 300, 400, even a thousand years ago  
20 what this land was and is still the true aloha, a real  
21 kind of aloha.

22           You know, sharing my moku o hau where I come  
23 from it's interesting, you know. My great great  
24 grandmother sister's Tutu Liliuokalani. That close.  
25 But yet I'm also related to the white man with the

1 guns who took over Hawai'i. (Beeper sounding)

2 I know we need to live in harmony, to be  
3 pono, to be righteous, but yet what do you value? Who  
4 do you value? Many things we waha nui, only talk,  
5 talk, talk. No action. You know there are many ways  
6 we can actually signify Hawai'i to make that yuan,  
7 that dollar, the real aloha 'cause most of the world  
8 does not have it.

9 And if we keep on developing it shall be  
10 like New York City, then the values of your 'ohana and  
11 your family values where then? And where would be our  
12 children's children's children's children?

13 How will you value this 'aina? I know the  
14 semantics of the ceded lands, the layout, the Akaka  
15 Bill, what's going on. Everybody fear. There is so  
16 much fear going on right now you guys don't even value  
17 anything yet. You have to look into yourselves  
18 understanding who you are. Mahalo.

19 CHAIRMAN PILTZ: Thank you. Petitioner,  
20 questions?

21 MR. LIM: No questions.

22 CHAIRMAN PILTZ: County?

23 MR. GONZALEZ: No questions.

24 CHAIRMAN PILTZ: State?

25 MR. YEE: No questions.

1 MR. LIND: No questions.

2 CHAIRMAN PILTZ: Commissioners? Thank you  
3 for your testimony. Do we have any other person that  
4 would like to testify? Yes, would you please come  
5 forward.

6 SOLOMON K. AKAU  
7 being first duly sworn to tell the truth, was examined  
8 and testified as follows:

9 THE WITNESS: I do.

10 CHAIRMAN PILTZ: Would you have a seat and  
11 state your name and address for the record?

12 THE WITNESS: 23-744 Kailua, Hawai'i.

13 CHAIRMAN PILTZ: And your name is?

14 THE WITNESS: Solomon K. Akau.

15 CHAIRMAN PILTZ: Go ahead, Mr. Akau.

16 THE WITNESS: In 1960s -- my dad is William  
17 Akau. He was the wharfinger, jack-of-all-trade in  
18 Kawaihae. And as I listen to the committee and all  
19 the inputs for and against I'm very happy because my  
20 dad started this whole thing with Mr. Rockefeller.

21 When he came here he bought up the land from  
22 Parker Ranch and he started the Mauna Kea Beach Hotel,  
23 one of the first in that area. So my father fought  
24 Rockefeller 1960. He died in 1973.

25 Then my brother William Aiu Akau continued

1 the case and he won the Ala Ka'akai Trail. There are  
2 things that I see that needs to be done a lot more  
3 thorough. For example, a lot of places in here in  
4 Kona there's access trails from the main road that  
5 goes out to the ocean front.

6           Of course that time they didn't have any  
7 planning in this area. So everything is so close on  
8 top of the pahoehoe in front of all the what you call  
9 the area that has businesses here in Kona. So they  
10 make small accesses to go out there.

11           You know, Mr. Rockefeller when he left, and  
12 he told my father that he was very honored to meet him  
13 because my dad was well versed in all of the rules and  
14 regulations of the queen and the kings at that time.  
15 He could point out on a map -- I'm telling you my dad  
16 is, his mind is like a tape recorder.

17           He used to ride around with Mr. Carter on a  
18 horse and he could tell Mr. Carter all the names of  
19 the various places on this island from one side to the  
20 next. This is how well he understood it.

21           So whenever you have developers come into  
22 the area, you know, progress is fine because it brings  
23 more jobs for the people. And that is good. But  
24 sometimes they forget. You know, they forget to go to  
25 the kupunas and ask questions, sit down, talk to the

1 kupunas. They will tell you all the conditions in  
2 various areas before you develop and you build.  
3 Because when the Hawaiians give a certain name for  
4 areas it has a very thorough meaning, meaning of that.  
5 And the meaning sometimes is good, sometimes it's bad.

6               So especially when you had -- my dad said  
7 there was over 400,000 Hawaiians here at one time from  
8 the north down to the south according to his kupunas  
9 what they told him. And there was many, many  
10 Hawaiians.

11              You know, the Hawaiian kupunas they were  
12 like doctors, they understood it, they knew, their  
13 degrees is from hard work, hard work and understanding  
14 what their kupunas told them. And this way it carried  
15 on because your genealogy is very important.

16              The 'aina is very important. So it behooves  
17 you who are leaders here whenever you come into the  
18 area or whoever's in charge of selling any parcels you  
19 should come and ask.

20              You see, when my father cut that chain, the  
21 road that came from Kawaihae to Puako, his friend told  
22 him, he says, "Bill, when was the last time you been  
23 down to Spencer Park?" My dad says, "Maybe two weeks  
24 ago." He says, "You better go down check." My dad  
25 ask him, "Why?"

1                    "There's a cement pole with a chain-link  
2 fence going around."

3                    My dad walked up into his tool shed, came  
4 out with a bolt cutter, got in his truck, went down to  
5 Spencer Park and he dropped it. When he dropped the  
6 chain, there is a Filipino guy that works security for  
7 Mr. Rockefeller, says, "Hey, Mr. Rockefeller going to  
8 take you to court."

9                    My dad told him, he say, "You tell  
10 Mr. Rockefeller I will see you in court." Yep. And  
11 my dad fought him from 1960 to 1973 when he died in  
12 March. And my brother Bill won that case. So the Ala  
13 ka'akai and all the trails that I notice lot of people  
14 talking there's several kinds of trails here from the  
15 ocean to the land.

16                   CHAIRMAN PILTZ: One minute.

17                   THE WITNESS: Around the island. See? Then  
18 they made other new ones. So you have to understand  
19 before you do anything, before you plan anything you  
20 should talk to the kupunas in the area. You know,  
21 Corps of Engineers gave may dad plenty books for my  
22 dad to read, we got it at home, about these plans they  
23 were going to do.

24                   But did you do your homework? You have to  
25 do your homework. You cannot sit in your office. You

1 have to go out. You have to meet the people. People  
2 have a lot of pros and cons like today. Lot of 'em  
3 have their interest, telling you about their  
4 interests, giving you their inputs. And I think it's  
5 time that we should listen.

6 Open the ears and listen, listen because the  
7 people that lives in this area, they know. Like our  
8 kupuna they know. Because they gave it the name of  
9 this particular -- every name they give that  
10 particular place has a meaning. And you have to  
11 understand it.

12 CHAIRMAN PILTZ: Mahalo. Thank you very  
13 much. Let me ask if they have some questions for you.  
14 Petitioner?

15 MR. LIM: No questions.

16 CHAIRMAN PILTZ: County?

17 MR. GONZALEZ: No questions.

18 CHAIRMAN PILTZ: State?

19 MR. YEE: No questions.

20 CHAIRMAN PILTZ: Park Service?

21 MR. LIND: No questions.

22 CHAIRMAN PILTZ: Mahalo. Anyone else in the  
23 audience? Yes.

24 NOVA LEE

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



1 and testified as follows:

2 THE WITNESS: Yes.

3 CHAIRMAN PILTZ: Repeat your name and  
4 address for the record.

5 THE WITNESS: Nova Lee, 76-5985 Mamalahoa  
6 Highway, Holualoa, Hawai'i, 96725.

7 CHAIRMAN PILTZ: Go ahead.

8 THE WITNESS: So just to compare where the  
9 most popular places are to live in the world.  
10 Boulder, Colorado just got voted the best city to live  
11 in. Just to give you a contrast of the 43 (inaudible)  
12 acres that is the township, 13,433 acres are habitat  
13 conservation areas, 14,145 acres are natural areas.  
14 4,220 acres are passive recreation areas, 3,291 acres  
15 are agricultural areas. They maintain over 125 miles  
16 of trails. These are the sort of places that people  
17 all over the world want to live.

18 In addition, the response to the comment  
19 that the inland areas are not used by the public, only  
20 the makai areas, I'd like to state that every single  
21 day when people drive down the highway they gaze upon  
22 the ocean and they feel a peace of mind. They use it  
23 every single day.

24 Because if it is developed they will see  
25 nothing but a row of houses which will be housing like

1 LA or New York or an undesirable place. The more you  
2 develop there will be no need for houses because  
3 people will go up elsewhere. That's not what we want.  
4 We want to make this place desirable. Why would  
5 anybody want to live here if it is completely  
6 developed? Thank you.

7 CHAIRMAN PILTZ: Petitioner, questions?

8 MR. LIM: No questions.

9 CHAIRMAN PILTZ: County?

10 MR. GONZALEZ: No questions.

11 MR. YEE: No questions.

12 MR. LIND: No questions.

13 CHAIRMAN PILTZ: Commissioners? Okay.

14 Thank you. Anybody else. Okay.

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

18 THE WITNESS: I do.

19 CHAIRMAN PILTZ: Your name and address for  
20 the records.

21 THE WITNESS: My name John Hatchie. My  
22 address is 74-941 Kealakehe Street, apartment A13  
23 Kailua-Kona, Hawai'i.

24 CHAIRMAN PILTZ: Go ahead.

25 THE WITNESS: Um, I just heard about this

1 that you're going to develop more, which is good. We  
2 need the economy to roll. We need more jobs. I was  
3 part of that machine that started building five, six  
4 years ago down here in Hualalai and Kukio. And just  
5 saw it balloon, the traffic from over here all the way  
6 down there.

7           And I see the work on the roads are way  
8 behind. You gotta keep up with. So the planning has  
9 always been bad.

10           I was born and raised in Papakolea. That's  
11 the first Hawaiian homestead they gave to the  
12 Hawaiians. When they gave us the land they thought  
13 they'd breed us out. They just about did. We're all  
14 mixed now, most of us. We have very few pure  
15 Hawaiians left.

16           And like Uncle was saying you have lands  
17 from the mountain to the sea. And they have names.  
18 And we went and we gathered swamp tomatoes where Ala  
19 Moana Center is today. And my grandfather would catch  
20 fish and the kids would pick swamp tomatoes. That was  
21 our dinner and because we knew where to find 'em.

22           The Filipinos would eat watercress in their  
23 food. They would throw it into the stream up in the  
24 cane fields. And the wild watercress would grow on  
25 the sides of these streams that the Chinese laborers,

1 Portuguese, Filipinos dug holes in tunnels all the way  
2 through the mountain up in 'Iao, towards 'Iao Valley,  
3 the west side.

4               So I've lived in Maui for ten years. I got  
5 to Maui in 1978. There was one traffic light on that  
6 island. It was beautiful. It was up there in Wailuku  
7 by the courthouse. I lived there ten years. And when  
8 I left there was 30.

9               Lahaina, Ka'anapali everything just -- Kihei  
10 just ballooned. In ten years we went from one traffic  
11 light to 30. Traffic was -- they had to build another  
12 highway, way behind planning. They should have built  
13 the highway before they built the houses. You see  
14 what I'm saying?

15              And then Native Americans -- or Native  
16 Hawaiian we have never been recognized. Everybody  
17 else seems to get theirs. But like Uncle said, you  
18 have guys don't come in and don't talk to the locals  
19 about what we get from the ocean in this part of the  
20 island, what we gather from the mountains. And then  
21 we keep getting locked out.

22              That's the big -- my biggest problem is the  
23 public access. You guys call it public access. Well,  
24 all of a sudden we can't even go through this little  
25 stretch by the old airport. They have a security

1 guard these multimillion dollar homes there. If  
2 you're going to take the public access you better be  
3 on that and off of it. They don't want you walkin'  
4 the shoreline. They don't want you in there.

5           They locked us out of the mountains where  
6 the fresh watercress were, where there was fresh,  
7 there was pumpkin patches, squash patches. They keep  
8 putting gates, locks up. And they never asked. Next  
9 thing you know it's open, it's free then they start  
10 putting locks down and locking us out.

11           That's what makes me mad. When they develop  
12 all of a sudden no trespassing. They forget that we  
13 use this ocean to feed our families. This is our  
14 subsistence. We don't depend on everything from the  
15 grocery store. Our culture, our kupunas taught us how  
16 to live off this land, how to take care of it.

17           They didn't have to come here and teach us  
18 conservation. We called it kapu system. We knew when  
19 the fish were breeding. We didn't take the fish. We  
20 knew when lobsters were breeding we don't take  
21 lobsters between June and September.

22           So when you guys think and you plan we had a  
23 plan. Okay? And the plan was good. And it fed us.  
24 The ocean was clean. I've seen reefs die all the way  
25 down in Maui from the time I got there. And I could

1 dive in these areas. Within five years the whole reef  
2 is dead. As a diver nothing's there. It's a  
3 graveyard. It's like a no man's land. It's just like  
4 untouchable. Nothing will grow. It becomes silt and  
5 just like the bottom of a river that's got that mucky  
6 black stuff but this is white.

7           And it's the runoff from the cane fields and  
8 all the DDT and all the pesticides they put in there  
9 when they did the cane it finally got to the system.

10           Now, we've got buildings here on the  
11 shoreline. When the pipes break through what does it  
12 leak out; underground pipes, underground utilities  
13 leaks right back to the ocean. Everything that's  
14 there. Then the tides rise and lower and it's just  
15 flushed right back into the ocean. Kills that part of  
16 the ocean.

17           So when you guys do this planning, plan it  
18 well. Like Uncle said, talk to the locals because  
19 we've taken care of this land and that's why it's  
20 still here. It's not bombed out. It's not fished out  
21 because we have taken care of it the best we could.

22           We need some more laws. We need to tighten  
23 up some of this overfishing we've got because there's  
24 nothing out there anymore hardly. You don't ever see  
25 thousand pound marlins come in. It's ridiculous, you

1 know? So think about the planning. Plan it well if  
2 you're going to develop it and stop locking us out.

3 CHAIRMAN PILTZ: Thank you. Questions?

4 MR. LIM: No questions.

5 CHAIRMAN PILTZ: County?

6 MR. GONZALEZ: County, no questions.

7 MR. YEE: No questions.

8 MR. LIND: No questions.

9 CHAIRMAN PILTZ: Okay. Commissioners?

10 Anyone else in the audience like to testify at this  
11 time? Okay. Seeing none, we're adjourned.

12

13 (The proceedings were adjourned at 2:40 p.m.)

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## 1 C E R T I F I C A T E

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3 I, HOLLY HACKETT, CSR, RPR, in and for the State  
4 of Hawai'i, do hereby certify;

5 That I was acting as court reporter in the  
6 foregoing LUC matter on the 17th day of June 2010;

7 That the proceedings were taken down in  
8 computerized machine shorthand by me and were  
9 thereafter reduced to print by me;

10 That the foregoing represents, to the best  
11 of my ability, a true and correct transcript of the  
12 proceedings had in the foregoing matter.

13

14 DATED: This \_\_\_\_\_ day of \_\_\_\_\_ 2010

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19 HOLLY M. HACKETT, CSR #130, RPR  
20 Certified Shorthand Reporter

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