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2	STATE OF HAWAI'I	
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9 TRANSCRIPT OF PROCEEDINGS

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12 The above-entitled matters came on for a Public
 13 Hearing at Ballroom #1 and #2, King Kamehameha's Kona
 14 Beach Hotel, 75-5660 Palani Road, Kailua-Kona,
 15 Hawai'i, commencing at 9:45 a.m. on July 15, 2010
 16 pursuant to Notice.

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

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1 A P P E A R A N C E S

2 COMMISSIONERS:
KYLE CHOCK
3 THOMAS CONTRADES
VLADIMIR DEVENS (Chairman)
4 RONALD HELLER
DUANE KANUHA
5 NICHOLAS TEVES, JR.

6 EXECUTIVE OFFICER: ORLANDO DAVIDSON
ACTING CHIEF CLERK: RILEY HAKODA
7 STAFF PLANNERS: SCOTT DERRICKSON

8 DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

9 AUDIO TECHNICIAN: WALTER MENCHING

10 Docket No. A10-787 Maui R&T Partners, LLC

11 For the Petitioner: JENNIFER BENCK, ESQ.

12

13 Docket No. A07-774 NORTH KONA VILLAGE, LLC

14 For the Petitioner: STEVEN LIM, ESQ.
JENNIFER BENCK, ESQ.

16 For the County: BRANDON GONZALEZ, ESQ.
Deputy Corporation Counsel
BOBBY JEAN LEITHEAD-TODD, ESQ.
17 Director, County Planning Dept.
PHYLLIS FUJIMOTO, Planner

18

19 For the State: BRYAN YEE, ESQ.
Deputy Attorney General
20 ABBEY MAYER, Director
Office of Planning

21

22 For the Intervenor NPS: GREGORY LIND, ESQ.
Office of the Solicitor,
23 U.S. Dept. of the Interior
National Historical Parks
24 KATHY BILLINGS, SALLIE BUCHAL,
M. MELIA LANE-KAMAHELE,
25 Kaloko-Honokohau National Historical Park

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1 July 15, 2010

2 CHAIRMAN DEVENS: Good morning. This is a
3 meeting of the State Land Use Commission. Today's
4 July 15, 2010. We're here at the King Kamehameha
5 Hotel for today's agenda.

6 But before we get started I wanted to
7 introduce Mr. Ron Heller who is our newest
8 Commissioner. I believe this is the first time he's
9 made the trip to Kona for a Commission hearing.

10 With that we'll go to the adoption of the
11 minutes. Anyone have any corrections or additions to
12 the minutes?

13 COMMISSIONER CHOCK: Move to approve,
14 Mr. Chairman.

15 COMMISSIONER CONTRADES: Second.

16 CHAIRMAN DEVENS: Show of hands. All those
17 in favor? It's unanimous, minutes adopted. Dan, you
18 want to brief us on the scheduling?

19 MR. DAVIDSON: Thank you, Chair Devens. We
20 have distributed, as typical, the tentative meeting
21 schedule for the upcoming months. Your summer break
22 kicks in after today with the next meeting August 18
23 and 19. Also Scott Derrickson sent you recently
24 another scheduling tool which hopefully is helpful to
25 you in terms of some more details.

1 Finally, in your packet of materials the
2 tentative schedule, the calendar for the first six
3 months of 2011 including furlough days is attached for
4 your information.

5 I will note that Hawai'i County, city and
6 county and the state all have furlough Fridays and
7 they all use different Fridays, which makes things a
8 little bit challenging. Anyway, you have the
9 schedule. Any conflicts or concerns by Commissioners
10 please contact Riley or myself. Thank you.

11 CHAIRMAN DEVENS: Thank you, Dan. Moving on
12 to Action A10-787 Maui R&T Partners, LLC to determine
13 whether the Land Use Commission is the appropriate
14 accepting authority pursuant to Chapter 343 Hawai'i
15 Revised Statutes of an environmental impact statement
16 relating to the development and reclassification of
17 approximately 253.05 acres from the Agricultural
18 District to the Rural and Urban Districts, portions of
19 Tax Map Key Nos. (2)2-2-024:016 and 017, and (2)
20 2-2-002-054.

21 Also to determine whether the proposed
22 action may have a significant effect to warrant the
23 preparation of an environmental impact statement
24 Pursuant to Chapter 343 Hawaii Revised Statutes.

25 On June 24, 2010 the Commission received the

1 petition for land use district boundary amendment
2 together with an Environmental Impact Statement
3 Preparation Notice.

4 On June 29, 2010 the Commission received
5 Petitioner's affidavit of mailing, Exhibit A and B,
6 Exhibit 6 is the Environmental Assessment
7 /Environmental Impact Statement Preparation Notice.

8 On July 12 the Maui County Department of
9 Planning contacted the LUC staff and informed them
10 that Maui County will not attend this hearing and that
11 Maui County agrees that the Commission should be the
12 accepting authority for the EIS and that an
13 environmental impact statement is warranted.

14 Let me briefly describe our procedure for
15 today on this docket. First, we'll have the parties
16 identify themselves for the record. I will then give
17 opportunity for the Petitioner to comment on the
18 Commission's policy governing reimbursement of hearing
19 expenses.

20 We will then call for those individuals
21 desiring to provide public testimony to identify
22 themselves. All such individuals will be called in
23 turn to our witness box where they will be sworn in
24 prior to their testimony.

25 After completion of the public testimony

1 portion of the proceedings the Petitioner will make
2 its presentation. Upon completion of the Petitioner's
3 presentation we will receive any comments from the
4 State Office of Planning. The Commission will then
5 conduct its deliberations.

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

9 MS. BENCK: Good morning, Chair,
10 Commissioners, and staff. This is Jennifer Benk. And
11 to my left is Steve Lim of Carlsmith Ball. We're
12 co-counsel with Martin Luna and Blaine Kobayashi of
13 the Carlsmith Ball Maui office. We're here to
14 represent Petitioners Maui R&T Partners, LLC.

15 Behind us are Mike Summers from Chris Hart
16 and Partners, a planning firm and Steve Perkins from
17 Maui R&T Partners.

18 MR. YEE: Good morning. Deputy Attorney
19 General Bryan Yee on behalf of the Office of Planning.
20 With me is Abbey Mayer from the Office of Planning.

21 CHAIRMAN DEVENS: Good morning. Before we
22 proceed further, Commissioner Heller, you wanted to
23 make a disclosure?

24 COMMISSIONER HELLER: Yes. Thank you,
25 Mr. Chairman. I wanted to disclose for the record

1 that my law firm, Torkildson Katz has, done some legal
2 work for Maui R&T Partners, LLC. I believe it was a
3 few years ago. I don't think there is any active
4 current ongoing work. And I was not personally
5 involved in doing that work myself.

6 I don't think it would affect my ability to
7 make an impartial decision in this matter, but I
8 wanted to make the disclosure so if anybody has a
9 concern about it they can deal with it appropriately.
10 Thank you.

11 CHAIRMAN DEVENS: Thank you. Do the parties
12 have any concerns or objections to this disclosure?

13 MS. BENCK: No concerns from the Petitioner.

14 MR. YEE: I think as long as there was no
15 involvement on this matter we have no problems with
16 the representation of the client itself. Thank you.

17 COMMISSIONER HELLER: I should add it was in
18 the general area of labor and employment law, not
19 anything to do with land use.

20 CHAIRMAN DEVENS: Also like to note for the
21 record that the Commission did receive a letter from a
22 Dick Mayer dated July 14, 2010 relating to this
23 matter, will be made a part of the record.

24 Ms. Benk, has our staff informed you of the
25 Commission's policy regarding the reimbursement of

1 hearing expenses and if so could you state your
2 client's position with respect to this policy.

3 MS. BENCK: Yes, Chairman, the staff has
4 informed us and the Petitioner will comply with the
5 Commission's policies.

6 CHAIRMAN DEVENS: Thank you. Is there
7 anyone in the audience at this time that desires to
8 provide public testimony on this item?

9 (Audience member approaching microphone)

10 MR. DAVIDSON: Are you on the second item,
11 'O'oma'?

12 AUDIENCE MEMBER: Yes.

13 CHAIRMAN DEVENS: This is just for Maui.
14 Anyone from the Maui R&T docket? Seeing none,
15 Ms. Benck, will you please proceed with your
16 presentation.

17 MS. BENCK: Yes, thank you. As already
18 indicated the Petitioner is seeking the
19 reclassification of approximately 253 acres from the
20 Agricultural State Land Use District to the Urban
21 State Legislature District and that's for the
22 redevelopment of the Maui Research and Technology
23 Park.

24 The Project Area is approximately 431 acres,
25 so a portion of that is this Petition Area.

1 However, the Petitioner's before you now to
2 ask the Commission to be the accepting authority for
3 the environmental impact statement that they will
4 prepare, because in order to develop the property as
5 planned there needs to be an amendment to the
6 community development plan on Maui.

7 So, again, the Petitioner is seeking an
8 amendment, will be seeking an amendment to the
9 Community Plan and will also be seeking a
10 reclassification from agricultural to urban.

11 And for those reasons will be preparing an
12 EIS and ask the Commission to be the accepting
13 authority for the EIS.

14 CHAIRMAN DEVENS: Thank you. Mr. Yee.

15 MR. YEE: The Office of Planning has no
16 objection to the Land Use Commission being the
17 accepting authority and supports the preparation of an
18 EIS for this matter.

19 CHAIRMAN DEVENS: Thank you. Commissioners,
20 your pleasure on this matter?

21 COMMISSIONER KANUHA: Mr. Chairman?

22 CHAIRMAN DEVENS: Go ahead.

23 COMMISSIONER KANUHA: On the matter of
24 docket A10-787 Maui R&T Partners, LLC I move that we
25 determine that the Commission is the appropriate

1 accepting authority pursuant to Chapter 343 Hawai'i
2 Revised Statutes of an environmental impact statement
3 relating to the development and reclassification of
4 the property in question.

5 And also that we determine that the proposed
6 action may have a significant effect and therefore
7 that the preparation of an environmental impact
8 statement pursuant to Chapter 343 Hawai'i Revised
9 Statutes be prepared.

10 CHAIRMAN DEVENS: We have a motion. Is
11 there a second?

12 COMMISSIONER CONTRADES: Second.

13 COMMISSIONER HELLER: Second.

14 CHAIRMAN DEVENS: Any discussion? Hearing
15 none, Dan, call for the vote.

16 MR. DAVIDSON: Thank you. Motion to be
17 accepting authority and a finding of significant
18 enviromental impact.

19 Commissioner Kanuha?

20 COMMISSIONER KANUHA: Yes.

21 MR. DAVIDSON: Commissioner Contrades?

22 COMMISSIONER CONTRADES: Yes.

23 MR. DAVIDSON: Commissioner Chock?

24 COMMISSIONER CHOCK: Yes.

25 MR. DAVIDSON: Commissioner Heller?

1 COMMISSIONER HELLER: Yes.

2 MR. DAVIDSON: Commissioner Teves?

3 COMMISSIONER TEVES: Yes.

4 MR. DAVIDSON: Chair Devens?

5 CHAIRMAN DEVENS: Yes.

6 MR. DAVIDSON: Six/zero passes. Thank you.

7 MS. BENCK: Thank you, Commissioners.

8 CHAIRMAN DEVENS: We'll take a few minutes

9 break.

10 (Recess in place was held.)

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1 CHAIRMAN DEVENS: We're back on the record.
2 This is a continued hearing on Docket No. A07-774
3 North Kona Village, LLC to consider the
4 reclassification of approximately 181.169 acres of
5 land currently in the Conservation District into the
6 Urban District at 'O'oma 2nd Kaloko, North Kona,
7 Hawai'i, Tax Map Key Nos. (3)7-3-009:004 and 7-3-009
8 for beachside residential community with mixed uses.

9 To give the public an overview of what we
10 have planned today, we're going to allow the parties
11 to finish their presentation by calling their final
12 witnesses. At that point hopefully the parties will
13 rest and we can then close the evidentiary portion of
14 this proceeding. At that time we will be calling on
15 the public to give the testimony that they wish to
16 give.

17 So I wanted to give you an overview what to
18 expect. There will be no vote by the Commission today
19 on this matter as we are trying to close the
20 evidentiary portion of the proceeding.

21 Continuing on, let me recite from the
22 record. From June 19 through July 8th, 2010 the
23 Commission received written correspondence from Doug
24 Perrine, Gemma Lay and Kathy McMillen.

25 On July 9, 2010 the Commission received OP's

1 Exhibit 9 alpha.

2 On July 12, 2010 the Commission received
3 Petitioner's rebuttal fifth list of exhibits,
4 Petitioner's Exhibit 96, and written correspondence
5 via email from George, Denise and Keoki Murphy.

6 From July 13 to 14, 2010 the Commission
7 received written correspondence via email from: Faye
8 Daniel Mike Reimer, and Cheryl King.

9 On July 14, 2010 the Commission received
10 OP's Fourth Amended List of Exhibits and Exhibit 31.

11 Let me briefly describe our procedure for
12 today on this docket. First, we'll have the parties
13 identify themselves for the record. Next, the Office
14 of Planning will present its final witnesses. We will
15 then call for the Petitioner to present its rebuttal
16 witness.

17 For the information of the parties, closing
18 arguments will be held after submission of the
19 proposed Decisions and Orders.

20 Those individuals desiring to provide public
21 testimony will have the opportunity to do so after the
22 parties have called their final witnesses. The reason
23 for setting the public testimony for later is to allow
24 the Commission to complete the evidentiary portion of
25 the hearing today.

1 Chair will also note for the parties and the
2 public that from time to time we will be calling for
3 short breaks as is necessary. Are there any questions
4 on our procedures for today?

5 MS. BENCK: Petitioner has no questions.

6 MR. GONZALEZ: County, no questions.

7 MR. YEE: No questions.

8 MR. LIND: No questions.

9 CHAIRMAN DEVENS: Hearing none, will the
10 parties identify themselves for the record starting
11 with the Petitioner.

12 MS. BENCK: Good morning, again,
13 Commissioners, Chairman and staff. This is Jennifer
14 Benck and Steve Lim representing Petitioner North Kona
15 Village, now known as 'O'oma Beachside Village.

16 CHAIRMAN DEVENS: Good morning.

17 MR. GONZALEZ: Good morning, Mr. Chair,
18 members of the Commission, Deputy Corporation Counsel
19 Brandon Gonzalez for the county of Hawai'i Planning
20 Department. To my right is Planning Director Bobby
21 Jean Leithead-Todd from the County of Hawai'i planning
22 department.

23 MR. YEE: Good morning. Deputy Attorney
24 General Bryan Yee on behalf of the Office of Planning.
25 With me is Abbey Mayer from the Office of Planning.

1 MR. LIND: Greg Lind from the Department of
2 Interior, Office of the Solicitor representing the
3 National Park Service. With me, to be soon sitting at
4 this chair, is Sallie Buchal from the National Park
5 Service.

6 CHAIRMAN DEVENS: Good morning to you all.
7 Are there any new exhibits the parties wish to offer
8 at this time?

9 MS. BENCK: Yes. Petitioner would like to
10 offer Exhibit 96, which was filed with the Commission
11 earlier this week, as you mentioned. That's a
12 PowerPoint presentation that will be presented by our
13 rebuttal witness, Tom Witten.

14 CHAIRMAN DEVENS: Any objections to the
15 offer?

16 MR. GONZALEZ: County, no objections.

17 MR. YEE: The Office of Planning has no
18 objection to the introduction of the exhibit. We just
19 did want to inform you that we reserve our right to
20 object if the rebuttal testimony is not a rebuttal of
21 evidence presented or is redundant of information
22 already presented.

23 CHAIRMAN DEVENS: So noted.

24 MR. LIND: No objection.

25 CHAIRMAN DEVENS: Exhibit 96 is accepted.

1 Any other exhibits the parties wish to offer?

2 MR. YEE: Chair, the Office of Planning has
3 Exhibit 9A, I believe, which is the amended testimony
4 of Brennon Morioka. As is typical of these cases,
5 discussion with the Department of Transportation has
6 continued through the evidentiary portion. So the
7 amended testimony I believe reflects those results.

8 In addition, we are submitting OP Exhibit 31
9 which is a draft of the noise compatibility program
10 update. This was referenced, I believe, by one of the
11 public witnesses, Kathy McMillen. She cited to a
12 portion of it.

13 So we just thought as the Commission seemed
14 interested in the contents that we'd give you the
15 entire document so you could see the context of the
16 provisions.

17 And we would only note for you that
18 subchapter 7 or chapter 7 is the area that the public
19 member testified about. So for your information we're
20 submitting Exhibit 31.

21 CHAIRMAN DEVENS: Any objections to those
22 two Exhibits 9A and 31 from OP?

23 MS. BENCK: Petitioner has no objection.

24 MR. GONZALEZ: County has no objections but
25 I want a clarification. OP Exhibit 31 the cover sheet

1 says "final." I believe counsel just said it was a
2 draft. What is it?

3 CHAIRMAN DEVENS: OP, you want to clarify
4 that?

5 MR. YEE: I apologize. It is a final
6 document. Thank you for that.

7 MR. LIND: No objection.

8 CHAIRMAN DEVENS: Exhibit 9A and 31 are
9 admitted into evidence. Any other exhibits the
10 parties want to offer at this time? Hearing nothing
11 else, Ms. Benk. I'm sorry, Mr. Yee you want to
12 proceed with your final witnesses?

13 MR. YEE: Thank you. Our next witness is
14 Director Brennon Morioka.

15 (Ms. Buchal now present)

16 CHAIRMAN DEVENS: Director, if we could
17 swear you in.

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

21 THE WITNESS: Yes, I do.

22 CHAIRMAN DEVENS: Thank you, sir. Please
23 state your name and address for the record and begin
24 your presentation.

25 THE WITNESS: Brennon Morioka, director for

1 the State Department of Transportation. Address is
2 869 Punchbowl, Honolulu, Hawai'i 96813.

3 CHAIRMAN DEVENS: Okay. Mr. Yee.

4 DIRECT EXAMINATION

5 BY MR. YEE:

6 Q Director Morioka, was OP Exhibit 9A prepared
7 at your direction?

8 A Yes, it was.

9 Q Does that constitute the written testimony
10 of the Department of Transportation?

11 A Yes, it does.

12 Q Would you please summarize your testimony.

13 A The Department of Transportation, although
14 we are not taking a position of support for the
15 Project, we are taking a position of no objection to
16 the Project.

17 And that position of no objection is
18 conditional upon acceptance of the recommended
19 conditions that we have made in our testimony, because
20 we believe that we have some valid concerns from both
21 the Airports' perspective as well as from the
22 Highways' perspective. If I can go over some of those
23 concerns and just summarize what our recommended
24 conditions are.

25 The primary concern for the airports is

1 obviously that this development falls directly under
2 an active runway, both approach and departure routes.
3 So noise and potential impacts to airport operations
4 is of our highest concerns.

5 Airplanes will typically fly approximately
6 400 feet above the majority of this development. But
7 it will not be out of question for an airplane to fly
8 as low as 200 feet above a portion of this property.
9 So we do have some concerns, especially from the noise
10 attenuation and mitigation areas.

11 One of the conditions that we are asking for
12 is that an aviation easement be placed. This
13 aviation easement is very important to us because it
14 will release and indemnify the state from many of the
15 issues that are common to airport operations including
16 noise, fumes and such.

17 Noise attenuation issues are also included
18 in our conditions, that all units exposed to noise
19 levels of 55 DNL must be mitigated as part of the
20 development themselves. And then no units, no
21 residential units be built within the areas of greater
22 than 60 DNL.

23 We are requesting that all submittals for
24 subdivision and for plans, design plans, be submitted
25 to the DOT for review and approval, because we do want

1 to ensure that the operations of the airport is not
2 negatively impacted.

3 Most importantly to us for the airport
4 issues is that of noise and that proper disclosures be
5 done as a part of sale or occupancies, and that it be
6 made very clear that neither the DOT nor the FAA will
7 participate in any form of mitigation with respect to
8 noise, both in the near term and in the long-term
9 future irregardless of what changes to the airport
10 master plan might occur.

11 So that kind of summarizes our positions on
12 the airport issues.

13 In terms of our concerns about highways,
14 obviously traffic, I think, is always on top of mind
15 for the people of West Hawai'i, although we have been
16 doing a lot and will continue to do more capacity
17 widening for this community in the very short-term.

18 Traffic will continue to be an issue,
19 especially as development ramps up and continues to
20 grow. So proper mitigation of traffic congestion is
21 very important to us.

22 So although it is tough for me to comment on
23 specifics, we do expect that the Petitioner will
24 submit and get approval from the DOT on a TIAR that
25 will identify all impacts, identify mitigation

1 efforts, as well as determine what the pro rata share
2 of that development is in paying for these
3 mitigations.

4 And that an agreement on what that pro rata
5 share and all what the potential mitigation measures
6 are, agreement be made with the DOT prior to final
7 subdivision of residential lots or prior to final plan
8 design for any commercial or multi-family units.

9 One of the other issues is also the interim
10 access to the site. The access will be restricted to
11 a right in/right out in the interim.

12 However, Queen Ka'ahumanu Highway is
13 considered a restricted access highway. In the long
14 term we will be closing down all access and going to
15 some form of grade-separated access at already
16 specified locations. So disclosure must be made that
17 the right in/right out access will be terminated at
18 some point.

19 Also in terms of this interim access, once
20 the property has access to either a northern or
21 southern fully channelized intersection, that's when
22 the DOT will use its discretion to close that right
23 in/right out access.

24 So at this point that's what I have to offer
25 in terms of DOT's position on the 'O'oma developments.

1 Q Just a couple points of clarification.

2 Mr. Ebisu testified that when airport plans change or
3 airport operations change so that existing residences
4 are affected, normally the FAA or DOT will pay for the
5 noise mitigation.

6 How is that affected by the proposed
7 condition that you're asking for?

8 A Typically if the DNL levels exceed
9 approximately 65 for whatever reason, and it was not a
10 preexisting condition, the FAA or the State DOT does
11 have programs to assist in mitigation of those noise
12 impacts.

13 But in this case because the development is
14 not currently there, whereas the airport currently
15 exists, we do have plans, but we also do not want to be
16 handcuffed long into the future should our plans
17 change.

18 Our master plan, although we do look out 20,
19 25 years, it is still a living document and priorities
20 can change, land uses can change. And so we need to
21 ensure that we have that flexibility and we do not
22 want to be able -- or we don't want someone coming
23 back after the fact when everyone knew very early on
24 that this is under an active approach and departure
25 route.

1 So I think this is a very fair way in
2 addressing this issue. That if this development were
3 to go forward that agreement that the DOT nor FAA will
4 come in and pay for any mitigations for whatever
5 reasons it is fair.

6 Q That would be part of the aviation easement
7 condition.

8 A Correct.

9 Q And just to be clear about the highways
10 issue. The right in/right out access is currently
11 considered to be an interim provision that it's going
12 to be allowed for 'O'oma?

13 A Every parcel that abuts the highway has a
14 legal right to access. Because we are widening the
15 highway, and there will be a median that separates the
16 highway, all existing access points that are not
17 currently identified as being a fully channelized
18 location will be converted to a right in/right out.

19 So this is -- this access is their legal
20 ownership to access the highway. But because we are
21 moving forward on working with the county and the
22 landowners on the makai side of Queen Ka'ahumanu, we
23 do believe that in the long-term interest of the
24 highway network system, both the county's roads and
25 the state's roads that having more controlled access

1 and at fully channelized locations and taking away
2 some of the right in/right outs would improve not only
3 the ability for residents to circulate more easily,
4 but also it's going to improve the flow of Queen
5 Ka'ahumanu Highway.

6 So in agreement to have that right in/right
7 out be closed at a point when 'O'oma has access to a
8 fully channelized intersection, whether to the north
9 or to the south, is something that we are looking in
10 terms of being able to protect the integrity of Queen
11 Ka'ahumanu Highway.

12 Q Just to go back a step, I just want to make
13 a point. So there is planned to be a channelized
14 intersection that 'O'oma will have access to at some
15 point in the future?

16 A There is. If you look at what the CDP for
17 Kona is, it does identify a makai parallel road. That
18 makai parallel road will connect to various
19 intersections that already exist or could potentially
20 be planned as a part of our widening.

21 So they do have access to one or two
22 intersections south of 'O'oma and potentially one to
23 the north of 'O'oma. But that is also subject to
24 those landowners completing their obligations and
25 making those connections.

1 So while 'O'oma, as a part of their regional
2 requirement, is going to be constructing their part of
3 the parallel makai road through their property, and
4 connecting to the properties both south and the north,
5 they will still have access to their right in/right
6 out until they actually have physical connection to
7 those other potential access points.

8 MR. YEE: Thank you. That's all the
9 questions I have.

10 CHAIRMAN DEVENS: Petitioner, any cross?

11 MS. BENCK: Yes, if I may.

12 CROSS-EXAMINATION

13 BY MS. BENCK:

14 Q Good morning.

15 A Good morning.

16 Q Thank you for coming today.

17 A Sure.

18 Q I have a couple of questions that might test
19 your memory a little bit. Just bear with me please.

20 The Department of Transportation, do you recall if
21 your agency commented on the EIS that was prepared for
22 'O'oma?

23 A You know, I can't say for certain but I
24 would assume that we probably did.

25 Q Just in the normal course.

1 A Correct.

2 Q And here's another memory test. Do you
3 recall discussing with Petitioner proposed conditions
4 of approval as long ago as maybe two, two and-a-half
5 years ago?

6 A If not longer, yes.

7 Q Okay. Great. Thanks. So, and what I'm
8 trying to get to is that the proposed conditions that
9 you included as attachment A to your Exhibit, these
10 aren't just conditions that you and Bryan dreamt up
11 over the last week or so?

12 A No. These have been issues that we've been
13 talking about for some time.

14 Q They're the product of a deliberate and
15 concerted effort with you and various people within
16 your department to ensure that if this Project goes
17 forward that the airport concerns and highway concerns
18 are adequately addressed?

19 A Yes.

20 Q Great. Thanks very much. I'll just ask one
21 more question about the airport because you
22 acknowledge a master plan is a master plan but things
23 can change and we just don't know. So while the
24 master plan indicates that runways will be moving
25 makai and perhaps north, which would, in effect,

1 lessen the noise impacts on 'O'oma, who knows if
2 that's going to happen.

3 A Correct.

4 Q If that doesn't happen do you believe that
5 the conditions, the airport-related conditions that
6 are suggested here would still adequately address the
7 noise concerns that the airport has?

8 A As long as the conditions remain in place in
9 perpetuity, yes.

10 MS. BENCK: Thank you very much. That's it
11 for my questions.

12 CHAIRMAN DEVENS: County?

13 MR. GONZALEZ: No questions.

14 CHAIRMAN DEVENS: Mr. Lind, have any cross
15 for this witness?

16 MR. LIND: No questions.

17 CHAIRMAN DEVENS: Any redirect, OP?

18 MR. YEE: We have no redirect.

19 CHAIRMAN DEVENS: Commissioners, any
20 questions for this witness? Commissioner Kanuha? I'm
21 sorry. Commissioner Heller.

22 COMMISSIONER HELLER: Yes. Just to clarify.
23 The avigation easement that you're talking about, this
24 would actually be a recorded encumbrance on the real
25 property?

1 THE WITNESS: Yes, I believe so, yes.

2 COMMISSIONER HELLER: So, for example, a
3 homeowner who purchased a residence in the proposed
4 subdivision would actually have something in their
5 deed, in their title to the land that said it was
6 subject to this easement.

7 THE WITNESS: Correct. And a part of our
8 conditions is that the DOT reviews and approves what
9 the disclosure statements are.

10 COMMISSIONER HELLER: Well, the disclosure
11 statement could be something different from what's
12 actually in the recorded deed to the property. My
13 question was there would be something in each actual
14 recorded deed to property that stated --

15 THE WITNESS: Yes.

16 COMMISSIONER HELLER: Thank you.

17 CHAIRMAN DEVENS: Commissioner Kanuha?

18 COMMISSIONER KANUHA: Thank you, Mr. Chair.
19 Brennon, I have some questions. You know, on the
20 TIARs, the department's recommendation is that they be
21 periodically updated.

22 THE WITNESS: Yes.

23 COMMISSIONER KANUHA: Every five years.

24 THE WITNESS: Or if there's a significant
25 change in the plans.

1 COMMISSIONER KANUHA: Either increased or
2 reduced. Okay.

3 THE WITNESS: Yes.

4 COMMISSIONER KANUHA: So in terms of if
5 this proposal is approved by us, then it has another
6 long process to go through before the county. So is
7 it conceivable -- well, let me put it this way: In the
8 design of their access improvements to Queen
9 Ka'ahumanu, your conditions look like it's structured
10 in two parts, kind of an interim right in/right out
11 improvement plan.

12 And then the long-range goal is to have the
13 Queen Ka'ahumanu Highway as a grade separated -- I
14 mean full access control facility grade separation.

15 THE WITNESS: Long term yes.

16 COMMISSIONER KANUHA: So in terms of
17 financing and planning then, are these conditions
18 structured that the Petitioner, if this is approved,
19 should, in fact, be working towards whatever
20 improvements are necessary to get their access up to
21 the level of a fully controlled grade-separated
22 interchange situation?

23 THE WITNESS: That's why we, for
24 developments that we know are going to take a long
25 time for full buildout we do require updated, periodic

1 updated Traffic Impact Analysis Reports because TIARs
2 are their best guesses. You're just assuming what's
3 going to happen in the future. So these updated TIARs
4 will then reflect over a period of time what the
5 realities are and whether or not your assumptions were
6 correct, accurate.

7 So the TIAR's will tell us whether or not
8 we're still on track or if other mitigations are
9 needed.

10 It also will change because as a development
11 is phased in their infrastructure also changes. So
12 things do change over time.

13 What one of the difficulties with 'O'oma's
14 access is that our condition of removing the right
15 in/right out is very much dependent on external
16 requirements, whether the landowners to the south
17 actually make the connection of the parallel, the
18 makai parallel road up to the southern border of
19 'O'oma, and if the landowners to the north make their
20 connection to the northern terminus of the road
21 through 'O'oma.

22 So they do not have full control on
23 basically the destiny of the road and their access to
24 access fully channelized intersections. So in the
25 interim in order to provide that access to the

1 property they must be provided at least at a minimum a
2 right in/right out. So that's kind of why we are
3 looking at it as an interim because the timing of that
4 is really dependent on external forces.

5 There was a while back an effort to
6 consolidate as many of the landowners as possible so
7 that there could be some form of community facilities
8 district where the infrastructure could be built as a
9 package and people are assessed fees based on their
10 pro rata share to the infrastructure needs in the
11 region. But that did not go very far.

12 That discussion was maybe three, four years
13 ago. And the whole community facilities district
14 concept kind of fell apart. So we're trying to find
15 some kind of balance in between the two in addressing
16 the needs of 'O'oma to access and our obligation to
17 provide them access versus looking at the long-term
18 integrity of Queen Ka'ahumanu and making sure that we
19 don't create too many changes over that period of
20 time.

21 So we think that this sequencing is the best
22 balance that we could find.

23 COMMISSIONER KANUHA: Thanks. That's a good
24 explanation. Do you recall right offhand whether or
25 not the department had a similar analysis for the

1 Shores at Kohanaiki project?

2 THE WITNESS: I do not recall back then.

3 Kohanaiki had never asked for full access. Kohanaiki

4 Shores had always planned on their development

5 utilizing the right in/right out, which was done

6 through an access easement through the mauka parcel

7 because they are considered landlocked.

8 So their initial plans were to develop a

9 much larger scale access and driveway from the highway

10 to their property. But in subsequent discussions with

11 a few other stakeholders in the area they have kind of

12 hui'd together to try and put together a proposal

13 working with us in consolidating all of the access

14 points around Hulikoa.

15 And so that is something that we have been

16 working on and is actually incorporated into our

17 design-build project to widen the highway.

18 However, that just addresses the

19 intersection needs. That still does not address the

20 need to build that parallel road. So that's still a

21 separate issue out there that someone's going to have

22 to address.

23 COMMISSIONER KANUHA: Thank you. Appreciate

24 it. Good answer.

25 CHAIRMAN DEVENS: Any other questions,

1 Commissioners? Hearing none, do the parties have any
2 follow-up questions to the testimony Director Morioka
3 has given in response to Commission's questions?

4 MS. BENCK: No questions from Petitioner.

5 MR. GONZALEZ: County none.

6 MR. YEE: No questions.

7 MR. LIND: No questions.

8 CHAIRMAN DEVENS: State, your next witness.

9 MR. YEE: Thank you. Our next witness is
10 Mr. Abbey Mayer.

11 ABBEY MAYER

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

14 THE WITNESS: I do. Aloha, Chair Devens,
15 Commissioners, my name is Abbey Mayer, director of the
16 State Office of Planning, 235 South Beretania Street
17 sixth floor, Honolulu.

18 The Office of Planning conditionally
19 supports the approval of the Petition from the
20 Conversation District to the Urban District. The
21 subject property is contiguous to the urban district
22 on its certain southern boundaries.

23 The Natural Energy Laboratory of Hawai'i
24 Authority or NELHA to the north still contains an
25 83-acre parcel that remains in the conservation

1 district, although NELHA has plans for bringing a
2 petition to urbanize that parcel as well.

3 The Petitioner has proposed a coastal
4 preserve to remain in the conservation district. This
5 contains historical and cultural sites and has the
6 highest exposure to aircraft noise on the property.

7 The urban district to the north of the
8 Petition Area consist of NELHA and the Kona
9 International Airport. The Petition Area is
10 designated for urban expansion on the county's General
11 Plan and the Kona Community Development Plan.

12 OP's support of the petition is based on
13 conditions that will prevent adverse impacts on both
14 the airport and on NELHA.

15 I'd like to spend some time discussing the
16 key conditions that the Office of Planning feels are
17 absolutely mandatory to impose in order to approve the
18 petition.

19 First, I'd like to say -- and I'll just
20 briefly say -- that the Kona Airport is the lifeline
21 into the Kona region. This region is and will be into
22 the future thoroughly dependent on the successful
23 operation of the Kona Airport. Those interests far
24 surpass any one particular development.

25 Airport operations should not be compromised

1 by the encroachment of incompatible uses. Increased
2 future operations should also not be jeopardized.

3 There were approximately 144,570 flight
4 operations at Kona Airport in 2007. This is shown a
5 pattern of increasing and is expected to increase over
6 the years. Approximately 21,685 flights per year
7 approach or take off from the south and will directly
8 impact the Petition Area.

9 In general the Office of Planning has worked
10 with the Department of Transportation to ensure that
11 conditions will be created that would mitigate the
12 impacts on the operations of the airport.

13 That said, we have also recommended -- part
14 of those conditions recommend disclosures to the
15 buyers so they know what they're getting into. We
16 have also talked about the need for mitigation in the
17 building envelopes that the homes and buildings that
18 would built in the Petition Area so as to mitigate the
19 noise impacts on the future residents and users of the
20 property.

21 The main thrust of our focus and our
22 recommendation of approval is the successful
23 mitigation of impacts on the airport itself. So we're
24 leaving it basically to the developer to take the risk
25 that they're gonna be able to provide a product that

1 the public's going to be interested to live there.
2 And that's their risk of this. So if the noise is too
3 great and they can't get the price they need to break
4 even that's their risk. So we're not going to
5 recommend denial based on that potential. But we're
6 recommending the petition move forward.

7 So the other big impact on state interest is
8 to NELHA. NELHA's dependent on pristine surface and
9 deep ocean water which may be impacted by surrounding
10 development.

11 The ongoing activities at NELHA will
12 continue to produce dust, odors, noise, solar
13 reflections, wastewater into injection wells which may
14 adversely impact the proposed residential, commercial
15 and school uses at the proposed North Kona Beachside
16 Village 'O'oma Project.

17 Sufficient buffers and other safeguards must
18 be imposed on the 'O'oma Project to allow the
19 continued operations at NELHA. So those are the main
20 areas of our concern.

21 I'd like to go through the conditions, kind
22 of briefly summarize especially those that are most
23 important to the state.

24 So first off there are eight conditions
25 related to the Department of Transportation, four to

1 Airports and four to Highways which you just heard
2 Director Morioka discuss. You had it just from him so
3 I won't go over those except to say that all of those
4 conditions, which have been stipulated to by the
5 Petitioner, need to be included in the final Decision
6 and Order for the state to support the redistricting
7 of the Project.

8 I'd also like to note, and Mr. Morioka
9 mentioned, that the continuation of those conditions
10 into perpetuity -- I'd like the record to reflect that
11 the state would most likely vehemently oppose any
12 future attempt to amend those conditions.

13 I would also like to raise as an issue to
14 the Commission that in so much as the Commission might
15 feel that the enforcement of these conditions is a
16 problem, then the state would also at that point
17 recommend denial.

18 I know enforcement of conditions has been a
19 tricky item. We've worked on several dockets together
20 regarding issues around enforcement from a 20-year
21 legal battle on the definition of the term "potable"
22 on a Lana'i case to a project up the road.

23 So while enforcement of conditions is a
24 concern, and clearly it's an item I feel that needs to
25 be addressed probably statutorily for this body going

1 future, in the end I still believe in the process and
2 believe in this Commission's ability to enforce.

3 But should any future Commission look back
4 at the record here I would like it to reflect that
5 these conditions, especially related to the DOT, are
6 absolutely essential.

7 NELHA has asked for four conditions.

8 1. Is that no residential or school use be
9 allowed or constructed within a hundred feet of the
10 NELHA property.

11 2. Was requesting landscape or vegetative
12 buffer along the property line.

13 3. Was a disclosure to perspective lessees
14 and purchasers that they're being located next to an
15 industrial -- light industrial area that may generate
16 nuisances such as noise, dust, odors, et cetera.

17 4th, and most importantly, a feed source
18 well for drinking water shall be constructed not less
19 than a quarter mile away from the NELHA property.

20 And we had testimony from the NELHA director
21 which noted the incompatibility or conflicting uses
22 between injection wells on the NELHA side and the
23 drinking water well on the 'O'oma side.

24 So we'd ask that the wells be constructed
25 outside that quarter mile radius so as to not prevent

1 NELHA's future use of their own property.

2 Other important conditions: Public schools
3 facility. I believe the Petitioner is close to
4 completing an agreement with the Department of
5 Education that would call for a cash contribution as
6 part of their impact fees.

7 We have a number of standard conditions
8 related to archaeological, historical and cultural
9 resources, burials and other archaeological and
10 historic sites.

11 The coastal preserve. I'd just like to make
12 note of the fact that in the proposed condition on the
13 coastal preserve and shoreline park management plan,
14 we had asked -- or the wording that we had submitted
15 called for the Petitioner to establish a long-term
16 comprehensive management plan.

17 And we'd plan to add implementation of this
18 management plan to that condition so not just the
19 establishment of the plan but also its implementation.

20 The agreement between the Petitioner and the
21 US National Park Service is also memorialized in our
22 proposed conditions and to be fully complied with.

23 Civil Defense. There is a fair-share
24 contribution to civil defense installation. And Civil
25 Defense by letter dated December 23rd, 2009 requested

1 that the developer install a solar-powered 121-decibel
2 omni-directional siren to provide outdoor siren
3 warning coverage for this new development. I believe
4 the Petitioner is willing to do that on behalf of
5 civil defense.

6 There's conditions related to public access
7 to the shoreline, established access rights of Native
8 Hawaiians. And those are also similarly essential.

9 There is an infrastructure deadline, OP's
10 standard completion of all backbone infrastructure
11 within 10 years. Condition, of course, demanding
12 compliance with representations to the Commission.
13 And also a condition requesting an automatic Order to
14 Show Cause.

15 Once again, I know we've been through the
16 issue of the automatic Order to Show Cause on several
17 dockets. Part of our consideration again on this, and
18 something I want to again bring to light because I
19 feel, again, this petition warrants an automatic Order
20 to Show Cause.

21 One of the concerns, because you have
22 potentially incompatible land uses both related to the
23 airport and NELHA, is that the Petitioner is actually
24 going to develop this Project. They're not going to
25 simply entitle it, take the uplift in value from the

1 entitlement and use that to swap or sell.

2 So in ensuring that the developer will
3 develop the product as it stated in its
4 representations we feel like the automatic Order to
5 Show Cause puts the burden on the developer. It takes
6 the burden off the state. And to the public, the
7 public has shown great concern on this docket. And
8 the automatic Order to Show Cause really puts the
9 burden on the developer.

10 If they appear like they're not going to
11 meet the 10-year infrastructure deadline, it puts the
12 burden back on them to come back and to explain why
13 they weren't able to meet that, to get an extension
14 from the Commission and takes burden off the state and
15 the public from coming to the Commission for a process
16 which can take years in order just to issue the Order
17 to Show Cause.

18 Lastly, I would like to mention for the
19 record that there's a state right-of-way. The state
20 right-of-way, the Petitioner has agreed to purchase
21 the state right-of-way. It needs to be purchased and
22 shouldn't be alienated without that purchase taking
23 place.

24 So I wanted to note in the record there's no
25 specific condition on that, but I did want to note on

1 the record that that's critical interest of the state.

2 I believe that's all my direct.

3 DIRECT EXAMINATION

4 BY MR. YEE:

5 Q Just for clarification. The state
6 right-of-way you were referring to is the right-of-way
7 identified outside of the existing trails?

8 A Yes. There was some confusion at one point
9 as to whether the right-of-way was, in fact, the trail
10 across the property. But it was determined that they
11 are two separate parcels and distinct. And that's why
12 that right-of-way needs to be purchased.

13 MR. YEE: No further questions, thank you.

14 CHAIRMAN DEVENS: Petitioner,
15 cross-examination?

16 MS. BENCK: Yes.

17 CROSS-EXAMINATION

18 BY MS. BENCK:

19 Q Mr. Mayer, thank you for coming today. I'd
20 like to, if I may, first express Petitioner's
21 appreciation of your conditional support. As you
22 know, as you indicated during your testimony we've
23 already stipulated to a number of conditions, DOT
24 conditions, in fact about 20 other conditions. So,
25 again, this is to acknowledge your support and express

1 our appreciation.

2 Now, if I may I'd like to ask a few
3 questions about the NELHA conditions. As you recall
4 those were not presented in your original testimony.
5 They sort of came up late in the day. There's only
6 four.

7 The first one is NELHA's request or Office
8 of Planning's request as opposed -- it's now your
9 position that there be a structure setback of a
10 hundred feet on the 'O'oma property.

11 And my question is: Does that mean that
12 'O'oma can count on a reciprocal 100-foot setback on
13 to the NELHA property? I know that NELHA is coming in
14 or at some point plans to come in for
15 reclassification. Are they going to get the same
16 hundred feet or was a 200-foot buffer not what was in
17 mind there?

18 A It's a good question. I would like to say
19 also that NELHA itself kind of came to the game a
20 little late. We've been requesting information from
21 them for quite a while. So for the Commission's sake
22 it wasn't Petitioner's avoidance of this issue because
23 it was kind of a late reaction from the NELHA board on
24 some of the issues here.

25 You know, as far as whether there would be a

1 hundred foot reciprocal buffer on the NELHA side of
2 the property, I don't exactly know what the plan or
3 the draft plan for NELHA says just yet. Although I
4 would presume when they bring a petition, if an
5 agreement can't be reached there's always potential
6 for intervention by neighboring property owners to
7 ensure that the right buffer exists.

8 Assuming from my oversight on the issues
9 before the Commission on behalf of the state I would
10 imagine that both sides would want a safe buffer. So
11 what that distance is I don't have the technical
12 information on.

13 Q Thank you. And that was just the point I
14 wanted to get clarified today. The hundred foot
15 buffer could we almost say it's an arbitrary number?

16 The interest is just to make sure that
17 there's some buffer between the buildings and
18 structures that house people on the 'O'oma property,
19 and the buildings and structures that house whatever
20 sort of development might be coming onto the NELHA
21 property?

22 A Yeah. And part of it is speculative in that
23 NELHA does not know what types of uses, what types of
24 lessees, what types of operations would be going on in
25 the areas that directly abut the property. So without

1 knowing specifically what types of uses it's hard to
2 recommend the specific safe distance.

3 Q Okay. So, again, the number is just to sort
4 of begin discussions. But the concern is as long as
5 there's some sort of buffer on either side NELHA
6 should feel protected.

7 A Right. NELHA had asked for a hundred feet
8 so we were recommending that, pushing that
9 recommendation forward.

10 Q Because, again, if what I gather from your
11 testimony, one of the biggest concerns is similar to
12 the airport issue to some extent, the closing of the
13 highway issue, the NELHA, the state doesn't want to be
14 troubled later on with our homeowners complaining:
15 "Hey, you never told us that there's industrial uses."
16 or, "You never told us there's airplanes flying
17 overhead."

18 So the disclosure of the location of the
19 industrial uses at NELHA would definitely address
20 NELHA's concerns?

21 A Yeah. And I think I've been over it
22 insomuch as residential uses can be incompatible and
23 create conflict with industrial, light industrial,
24 airport use, et cetera. We want to do our best to
25 mitigate those potential impacts if the Project is to

1 move forward.

2 Q Thank you. And I'll just wrap up with some
3 questions about the buffer, the quarter mile buffer.
4 I want to make sure that we all have a common
5 understanding on what's driving that request.

6 Can you explain to me what that 1320-foot or
7 quarter mile buffer relates to? What is precluded
8 within the quarter mile buffer?

9 A The quarter mile buffer -- my understanding
10 the quarter mile buffer from a drinking well precludes
11 injection wells being located within that quarter mile
12 radius.

13 Q Thank you. Is that new injection wells or
14 existing injection wells?

15 A Well, I would assume if it was an existing
16 injection well then the location of the drinking water
17 well would not be permitted within the radius.

18 Q Certainly new injection wells can't be
19 placed within the quarter mile radius of a
20 newly-established potable water source.

21 A That's my understanding.

22 Q So for NELHA to be requesting the quarter
23 mile buffer from their property line, should
24 Petitioner take that to mean that NELHA intends to
25 place injection wells along the boundary of our

1 property?

2 A That they would want the flexibility to do
3 so if that's what their future tenants need.

4 Q So the injection wells right up against our
5 property is a real risk. It's something we need to be
6 concerned about for any number of reasons.

7 A Yes.

8 MS. BENCK: With that I thank you very much.
9 No more questions.

10 CHAIRMAN DEVENS: County?

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

12 CROSS-EXAMINATION

13 MR. GONZALEZ:

14 Q Good morning, sir. In response to the
15 questions about the first condition requested by
16 NELHA, you mentioned that NELHA was speculating on the
17 types of uses, the adjacent area next the application
18 property, correct?

19 A They have, I think, a draft plan that hasn't
20 been released yet and plans to move forward to
21 urbanize the conservation parcel that abuts them. I
22 can't --

23 Q You recall making that statement, though,
24 right, about the speculating on the types of uses
25 NELHA was speculating on the future --

1 A Well, I may have said they're not certain
2 yet on what types of uses, but they would want to
3 leave the possibilities open for tenants that are
4 similar to those that exist.

5 Q But isn't it also true that the area that
6 they're speculating on still requires to get an
7 upzoning?

8 A Yes.

9 Q Okay. So it's speculation on top of
10 assumption of a favorable rezone, right?

11 A Yes.

12 MR. GONZALEZ: Nothing further, thank you.

13 CHAIRMAN DEVENS: Mr. Lind, any cross?

14 CROSS-EXAMINATION

15 BY MR. LIND:

16 Q Good morning. I'd like to direct your
17 attention to Page 6 of the Office of Planning's
18 written testimony, Exhibit 1. I assume you have it in
19 front of you?

20 A Page 6 Exhibit 1, yes.

21 Q If I have the same one you have, the bottom
22 of the page I'll quote it for you: The Division of
23 Aquatic Resources of the State Department of Land and
24 Natural Resources was initially very concerned that
25 development of the Project could still impact

1 nearshore water quality which would harm coral reef
2 communities in particular and coastal waters."

3 Then skipping down, "Thus in the absence of
4 any mitigation conditions the petition would be
5 unacceptable to the state." Do you see that?

6 A Yes.

7 Q So it's the position of the DLNR and Office
8 of Planning that mitigation conditions are needed to
9 make this development acceptable?

10 A Absolute, yes.

11 Q You mentioned the agreement between the Park
12 Service and the Petitioner. And I just want to ask
13 you a few questions about that. In both your written
14 and your oral testimony you state that, "The Office of
15 Planning does not object to the Petition provided that
16 the development is implemented in accordance with the
17 agreement between the Park Service and the
18 Petitioner." That's still your position?

19 A Yes.

20 Q So the Office of Planning supports including
21 the conditions in the agreement between Petitioner and
22 Park Service that are identified as development
23 conditions in that agreement in the Decision and Order
24 for this matter.

25 A Yes. I know there was discussion as to

1 whether the conditions should reference the agreement
2 or if the actual agreement should be memorialized
3 specifically in the conditions. In my mind the way
4 which best facilitates the enforcement and the
5 implementation of those conditions would be
6 satisfactory to the state.

7 Q You're saying either way?

8 A Either way.

9 Q Thank you. I'd like to ask you some other
10 questions, though. At a previous hearing in June
11 Mr. Moresco testified that most of the resorts on the
12 West Hawai'i Coast have desalinization plants to
13 provide freshwater.

14 Does the Office of Planning know of any
15 desalinization operations that provide potable water
16 that currently exist?

17 A Yes. Thank you for asking. We looked into
18 that question. And we found that there was
19 considerably -- it was considerably more common to use
20 desal for irrigation than it was for drinking water.
21 For drinking water it's fairly rare.

22 From correspondence with the Department of
23 Health we learned that in the region we could identify
24 only two desalination plants that serve for potable
25 drinking water, one at Kaupulehu, which serves about

1 1500 people and the Kona water service at Hualalai
2 Resort, which serves approximately 260 people. Both
3 were high-end communities. But, no, we didn't find
4 any county plants using reverse osmosis.

5 Q Do you know where those systems are located
6 in relationship to the Petition Area, rough
7 approximation?

8 A You know, I know where the communities are
9 but I'm not sure where the plants are located.

10 Q Okay. Where are the communities?

11 A North of here.

12 Q So not near the Petition Area.

13 A Not in the direct vicinity of the Petition
14 Area.

15 Q Okay. Thank you. Just a couple more
16 questions. You've some discussion about the request
17 of NELHA that there be a quarter mile buffer between
18 their property line for the location of the
19 groundwater source well for the desal plant if it's
20 put there.

21 If the groundwater source wells are not
22 located on the Project, then there would be no need
23 for that buffer, correct?

24 A Yeah, unless they were somehow within some
25 other border of NELHA, but, yes, for all intents and

1 purposes.

2 Q The suggestion to have the buffer for the
3 source well is only related to the groundwater
4 injection wells. There's not a preference otherwise
5 for having the source wells located closer to the
6 other boundary with Kohanaiki.

7 A It was mainly to leave, to not foreclose on
8 the possibility that future tenants might need
9 injection wells within a radius area.

10 Q Are you aware there's actually a
11 desalinization plant used for irrigation on the
12 property known as Kohanaiki?

13 A Yes. I've heard that there are desal plants
14 in various wells on that property.

15 Q Okay.

16 MR. LIND: No further questions.

17 CHAIRMAN DEVENS: Mr. Yee, any redirect?

18 REDIRECT EXAMINATION

19 MR. YEE:

20 Q Just to clarify a question. You were asked
21 whether the notification provision to tenants -- I'm
22 sorry, the notification to potential purchasers
23 regarding the NELHA location would address NELHA
24 concerns.

25 Did you mean to say that that would address

1 all of NELHA's concerns?

2 A No. It would address the concern that
3 future owners and residents are aware of the
4 activities at NELHA and their potential impact on the
5 quality of life in the Petition Area.

6 MR. YEE: That's the only clarification.
7 Thank you.

8 CHAIRMAN DEVENS: Commissioners, any
9 questions?

10 COMMISSIONER TEVES: I have a question.

11 CHAIRMAN DEVENS: Commissioner Teves.

12 COMMISSIONER TEVES: Mr. Mayer, knowing that
13 this land is conservation land, is there a shortage of
14 housing on this island that would make you want --
15 (applause) -- to turn this conservation land to
16 housing? I mean with all the land here and all the
17 potential developments, why would the State Office of
18 Planning want to take this land out of conservation?

19 (Applause).

20 CHAIRMAN DEVENS: Please, let the witness
21 answer. If you can hold your applause, let the
22 question and answers go through first.

23 THE WITNESS: From our analysis the public
24 really most heavily uses the areas around the
25 shoreline of the Project Area. And the long setbacks,

1 the conservation land that is on the shoreline that
2 would remain in the conservation district, in our mind
3 struck, struck a balance and was, I think, a real and
4 significant attempt by the Petitioner to have the uses
5 of the Project Area, which are more compatible with
6 the conservation district. So the recreational and
7 coastal uses which take place at the shoreline we feel
8 would still be able to take place there.

9 So the conservation value of the land mauka
10 of the shoreline setback area didn't seem to be as
11 critical as the conservation values of the land more
12 makai.

13 So we felt like they had preserved those
14 conservation values within the shoreline park. We
15 noted that this area is likely urbanized. I think one
16 regret that I have in this process that I didn't pick
17 up on early enough going back to the EIS stage, was
18 that there was not an alternative section analyzing
19 the feasibility of a light industrial use of the
20 property.

21 So in the state's point of view with the
22 industrial areas to the north, the resort and
23 residential areas to the south, the designations by
24 the county on their General Plan and LUPAG maps as
25 urban, we didn't foreclose the possibility of

1 urbanization of some type.

2 So then it becomes a matter of where's the
3 line? Along the shoreline. Is that a fair placement
4 of that line? Then what are the uses? And are the
5 possible incompatibilities of the uses mitigable?

6 COMMISSIONER TEVES: Thank you for your
7 answer. That's a great answer, but that still doesn't
8 convince me that this portion of conservation land
9 should be changed. Thank you.

10 CHAIRMAN DEVENS: Any other questions? Any
11 follow up questions to the responses given by
12 Director Mayer? Hearing none, any other witnesses,
13 Mr. Yee?

14 MR. YEE: No. Mr. Mayer is our last witness
15 and with that we would close our case.

16 CHAIRMAN DEVENS: Thank you. Thank you for
17 your testimony.

18 THE WITNESS: Thank you.

19 CHAIRMAN DEVENS: Ms. Benck, you have
20 rebuttal witnesses?

21 MS. BENCK: We do.

22 CHAIRMAN DEVENS: How many?

23 MS. BENCK: One.

24 CHAIRMAN DEVENS: Why don't we take a short
25 break and be back in about 5 minutes.

1 (Recess was held. 11:20)

2 CHAIRMAN DEVENS: We are back on the record.
3 Petitioner, you have your rebuttal witness?

4 MS. BENCK: Yes, we do. Thank you,
5 Chairman. Our rebuttal witness is Tom Witten. If
6 you'd like -- especially to address the concerns that
7 Office of Planning mentioned had at the start of
8 today's hearing, if you would like to have me
9 elaborate on what it is that Mr. Witten will be
10 rebutting I'd be happy to do so. Otherwise I can turn
11 it over and allow Mr. Witten to go forward with his
12 presentation.

13 CHAIRMAN DEVENS: Do any of the parties need
14 an offer on his testimony?

15 MR. YEE: If you could give an offer of
16 proof that'd be appreciated.

17 CHAIRMAN DEVENS: Do you have a short offer
18 you can give to OP?

19 MS. BENCK: Sure. I mean if what you're
20 looking for is specific issues that Mr. Witten's going
21 to be responding to, throughout the course of the
22 hearing, in fact most recently right before the break
23 there's been questions asked about the appropriateness
24 of reclassifying conservation land.

25 Mr. Witten is going to be able to rebut

1 those concerns through his testimony by walking
2 through the history of conservation land on this area
3 and on this property specifically.

4 And in part an understanding of that history
5 also requires an understanding of the county process
6 and the changes to the county plans.

7 Testimony has been offered that the Project
8 is consistent with the Kona CDP. However, looking at
9 the Kona CDP as the be-all end-all why this Project
10 should be approved really misses the progression
11 through time of both the State Land Use --

12 CHAIRMAN DEVENS: What's the offer, though?
13 If you can just tell us what the offer is. And if
14 Mr. Yee has any objections he can note them. If not
15 we can go ahead with the witness.

16 MS. BENCK: Well, what we'd like is for
17 Mr. Witten to go forward with his testimony.

18 CHAIRMAN DEVENS: You need any further on
19 that, Mr. Yee?

20 MR. YEE: Let me just note that maybe based
21 more on the review of the exhibit, the discussion of
22 the history of conservation appears to be new
23 information. But that the issue of whether or not
24 this land, which is in conservation, is or should
25 remain in conservation, the issue came at the

1 beginning of this case.

2 So I don't know that the issue was raised
3 subsequently and you need to rebut the issue. If
4 there were facts that were brought up, if someone
5 raised -- if you were rebutting particular testimony,
6 maybe even including the public, that's an
7 understandable basis for the rebuttal.

8 But if you're simply saying that the
9 question of whether or not this land should be moved
10 from conservation to urban is an issue you're trying
11 to rebut, that issue is -- I mean that's just the
12 basic issue of the case. And that's not a basis for
13 which you shouldn't have introduced the evidence at
14 the time of your initial case.

15 So, for example, they're going to talk about
16 the county process for consistency with the CDP. That
17 was fully discussed I think. It was raised prior to
18 their case. So I don't know why that would have to go
19 in through this witness at this time during rebuttal.

20 CHAIRMAN DEVENS: I agree, but I want to
21 give this witness a chance to testify. You can make
22 your objections as we go along.

23 MR. YEE: Okay.

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

1 and testified as follows:

2 THE WITNESS: Yes I do.

3 CHAIRMAN DEVENS: Please proceed.

4 THE WITNESS: Tom Witten, PBR Hawai'i, 1001
5 Bishop Street, Suite 650, Honolulu, Hawai'i.

6 Good morning, Commissioners. And I, as was
7 discussed, I'll hit on three main points in this
8 rebuttal testimony. Primarily it focuses on the
9 regional planning aspects of the Kona region both from
10 the state land use perspective and the county's plans
11 which have a long history.

12 First off, in 1971 the county adopted their
13 first General Plan for the island of Hawai'i. What's
14 shown here is what they refer as their LUPAG map, Land
15 Use Pattern Allocation Guide map.

16 And this area is shown, and we superimposed
17 on this exhibit the urban area designated within the
18 Kona, much discussed recently adopted Kona CDP.

19 So this is -- the red line that you'll see
20 on all those exhibits referred to that urban area
21 designated in the Kona CDP.

22 As you can see here we've highlighted
23 'O'oma, which is in 1971 with the recent completion of
24 the airport, opening of the airport in 1970, and that
25 section of Queen Ka'ahumanu Highway from Kailua-Kona

1 up to the airport was completed.

2 And, thus, the Land Use Pattern Allocation
3 Guide reflected the airport, future urban expansion
4 including portions of NELHA and Host Park. And the
5 'O'oma area was designated for conservation and open
6 area.

7 As the planning advanced the next update of
8 the General Plan was completed in 1989. In 1987 there
9 was actually a General Plan amendment for the subject
10 property that the county approved that included resort
11 uses at 'O'oma, resort and urban expansion uses.

12 In 1989 the majority of the resort use was
13 reduced to a small resort site down by the beach. And
14 the balance of the property remained in urban
15 expansion. Again, the reference to the Kona CDP urban
16 area.

17 At this juncture Kohanaiki was also
18 designated a resort area with various residential uses
19 just to the south.

20 In 2005, which is the most recent General
21 Plan update, the resort area was removed and the
22 coastal area generally where the coastal resources
23 were occurring, was shown in open space, but the
24 balance of the property remains as urban expansion.

25 So it's been over 20 years that the 'O'oma

1 lands have been planned by the county. Generally this
2 North Kona area planned by the county for urban
3 expansion.

4 MR. YEE: Mr. Chair?

5 CHAIRMAN DEVENS: Yes.

6 MR. YEE: This information does not appear
7 to rebut any information submitted, that has been
8 submitted by the parties in their case. It does not
9 seem to be rebutting any information that any of the
10 public witnesses have submitted after the close of
11 Petitioner's case. So all of this information should
12 have been submitted in their direct.

13 I notice there may be further information
14 further ahead in their presentation, but all the
15 discussion regarding the CDP and the LUPAG and the
16 General Plan does not seem to be relevant to any
17 information submitted by the parties.

18 CHAIRMAN DEVENS: I agree. That objection
19 will be sustained.

20 MR. GONZALEZ: I'd like to note that the way
21 I view it it is answering some of the public testimony
22 concerns that this area is designated conservation.
23 And it is explaining the history of the designation,
24 but it still falls within the Kona urban expansion
25 area.

1 So I think it addresses some of the concerns
2 that have been raised by public testimony that we've
3 heard over several hearings. I'd just like to put
4 that on the record.

5 CHAIRMAN DEVENS: Counsel, is the witness
6 going to go through all the attachments to the
7 exhibit?

8 MS. BENCK: Yes. That was the intention.
9 As I was explaining earlier the understanding, the
10 history of the Land Use Commission's reclassification
11 of conservation land, which is very much a point, has
12 been raised through parties' testimony, and through
13 questions by parties and specifically the
14 Commissioners.

15 To be able to answer that question
16 Mr. Witten really needs to explain that through not
17 just the Land Use Commission process but also the
18 county General Plan process and amendments thereto.

19 Looking at this as a black and white as a
20 conservation or urban, is it consistent with the Kona
21 CDP or not is an artificial distinction.

22 There's a lot more work that the state and
23 county has done from the early '60s to today that
24 brings us to the conclusion that we hope you agree
25 with that the property is proper for reclassification.

1 CHAIRMAN DEVENS: All right. We'll hear
2 some more.

3 MS. BENCK: Thank you.

4 THE WITNESS: Thank you, Chair. As
5 mentioned the Kona Regional Plan, the Kona CDP was
6 adopted and continues to include the 'O'oma area. I
7 was trying to give a background as sort of a framework
8 of the longer range planning that has gone on for the
9 North Kona area. And with that context it was the
10 effort to give you an overview.

11 I'll try to quickly go through the -- we
12 spoke about the traditional neighborhood design and
13 development plans and how the proposal at 'O'oma was
14 consistent with that. That was a primary feature of
15 the Kona CDP to encourage projects of this stature and
16 quality and design.

17 Looking at the conservation lands from an
18 islandwide basis you get an overview that over half
19 the island is conservation. In 2010 what the current
20 picture is is most of the area within the urban
21 planned area, the Kona CDP, has been reclassified from
22 conservation to urban.

23 We'll quickly go through and give you a
24 visual of the Land Use Commission's actions in this --
25 within the urban area of the Kona CDP. 1969 you had

1 Honokohau, actually the Kaloko-Honokohau area
2 designated for urban use which is a large part of the
3 National Park at this time. At this time the highway
4 had not been developed.

5 In the '70s there were several petitions
6 including the state airports HOST Park and in addition
7 the lands just to the south of the property,
8 Kohanaiki, were designated for urban use.

9 Moving into the '80s by decades you see
10 additional lands being designated: The Kaloko
11 industrial area mauka of Queen K, and additional NELHA
12 lands were also developed including the 83 acres that
13 are now a portion of 'O'oma that are in the urban
14 district and zoned.

15 In the '90s most of the activity,
16 conservation to urban restricting, occurred mauka of
17 the highway. There was a large -- the state land
18 holdings mauka of the highway were redistricted by
19 Office of Planning. There was some industrial
20 property, Kohanaiki Business Park, and I think that
21 was it.

22 In 2000 the additional mauka lands were
23 redesignated including Palamanui, the Hiluhilu
24 Development on the northern limits of the urban area
25 of the Kona CDP, the West Hawai'i Business Park and

1 some other expansion in the Queen Liliuokalani Trust
2 area with Waiopua or Kealakehe by the state. That
3 gives you a quick overview and brings us back to where
4 we are now.

5 Pretty much everything makai of the highway
6 and even mauka of the highway that's been planned for
7 over 20 years by the county for urban use has been
8 reclassified from a conservation district zone to an
9 urban zone.

10 The last remaining areas include 'O'oma and
11 the NELHA piece nextdoor and also the airport
12 expansion area that would be redistricted with their
13 master plan.

14 The coastal open space has been an issue
15 that was raised quite a bit as far as how does 'O'oma
16 fit into the regional perspective. This map just
17 shows from Kawaihae to Kailua and shows the extent of
18 major public open space, Kekaha Kai State Park, the
19 state land from Kiholo to Anae -- Waikoloa area, then
20 the Puako/Hapuna area.

21 And zooming in more specifically on how the
22 proposed open space conservation areas within 'O'oma
23 are proposed to function within this concept is the
24 old airport park which is now a county park, and the
25 concept of an airport-to-airport park system along the

1 shoreline.

2 What's shown here is the state or federal
3 lands that have been designated for open space
4 including the National Park Service, the Kohanaiki
5 shoreline area that's been planned and opened up for
6 public use, the 'O'oma proposal as is before you, an
7 archaeological preserve and shoreline park along NELHA
8 and HOST Park that gets you up north and ultimately to
9 Kekaha Kai State Park up to the north.

10 So there is an abundance -- there's an
11 initial effort by the county and state to plan for and
12 provide for an integrated open space system along the
13 shoreline area.

14 Specifically related to the conservation
15 district regulations, the general subzone, of which
16 most of this site is designated, the purpose as stated
17 in the statutes, is to basically "to designate open
18 space where specific conservation uses may not be
19 defined but where urban use would be premature."

20 I think we're at that junction where we've
21 shown that through the county's plans and their desire
22 to direct growth into the North Kona area, that the
23 time has come for this piece of the puzzle to be put
24 in place.

25 It also goes on: "The general subzone shall

1 encompass land the topography, soils, climate or other
2 related environmental factors that may not be normally
3 adaptable or presently needed for urban or rural or
4 agricultural uses."

5 So the general is a holding, somewhat of a
6 holding pattern for lands that didn't have the
7 cultural or environmental resources specific to
8 justify as conservation but would be available for
9 urbanization.

10 As I've shown, over the last 20 years the
11 Commission has taken action to pretty much follow the
12 county's planning for the region.

13 Specifically our plan still retains a
14 significant amount of conservation along the
15 shoreline. There's an additional 10 acres,
16 approximately 10 acres to the south where we're
17 urbanizing it just to have the flexibility to provide
18 for community facilities related to the shoreline,
19 parks and activities and with the balance of the
20 area -- with the balance of the area retained in open
21 space.

22 Again, we're proposing a 75-acre coastal
23 preserve area.

24 MR. YEE: Mr. Chair? At this point in the
25 presentation we would like to renew our objection.

1 Our review of the exhibit indicates the next several
2 slides is simply a repeat of a description of the
3 petition and what will be on the petition. So the
4 setback has already been discussed.

5 It's not raised by any of the parties again,
6 at least not through the slide on the Kona Airport
7 Master Plan. So renew our objection with respect to
8 what I anticipate will be simply a -- simply not a
9 rebuttal of the information but also a repeat of
10 information.

11 CHAIRMAN DEVENS: You have a response?

12 MS. BENCK: Yes. Thank you. If we may, I
13 think by Tom explaining more and accentuating the
14 amount of open space that this Project includes, it
15 both addresses the conservation district subzone
16 classifications.

17 Again, the property has got two subzones, as
18 Tom's already explained. One is a holding bin. And
19 he's already demonstrated that holding bin is no
20 longer appropriate once the land's ready for urban
21 uses.

22 So the setback information is relevant to
23 that point. It's also relevant to some questions that
24 were raised through the hearing, I believe, by the
25 Commission members about whether the property could

1 even be further set back.

2 That could be that the information has
3 somehow gotten muddy where the amount of setback this
4 Project proposes wasn't made clear. So Mr. Witten is
5 rebutting those issues by demonstrating the tremendous
6 amount of open space this Project includes.

7 CHAIRMAN DEVENS: Can he get right to that
8 then? Because some of it he's repeating an overview
9 of what we already know, have been told several times.

10 MS. BENCK: Thank you. Perhaps Tom going
11 straight to Page 26, you're correct some of these
12 photographs are familiar to you, especially one of the
13 site visit.

14 But right here again brings that amount of
15 setback relative to questions: Could you even pull
16 the development further back. I think we need to get
17 a better understanding of just how far this
18 development is getting pulled back.

19 To answer that, looking at it in context
20 with other land areas that we're probably all familiar
21 with could be helpful. So, Tom....

22 THE WITNESS: Sure. We did have some quick
23 photos in there that I think some of the Commissioners
24 who were not able to attend the site visit, but
25 characterize the amount of open space and visually the

1 separation from the proposed development are
2 overlooking the conservation and coastal preserve
3 area.

4 Just to give some context as far as scale
5 and visually because it is hard to grasp even when
6 you're on the site. This exhibit of Kailua Bay,
7 Kailua-Kona and here we are at King Kam Hotel. This
8 1100-foot buffer, this red line goes all the way up to
9 Hilo Hattie's if you're familiar with going up to
10 Palani Road, Hilo Hattie's store here.

11 At 1700, which is the furthest setback
12 proposed on our Project goes all the way up to the
13 First Hawaiian Bank.

14 There are significant -- to get the grasp of
15 the magnitude of how much setback and how much land
16 the Project is leaving in the coastal zone it is
17 significant.

18 Another comparison on O'ahu: Ala Moana
19 Beach Park and Ala Moana Center. Again, the 1100 feet
20 go up onto, almost go up to Sears on the parking deck
21 of Ala Moana Shopping Center.

22 And the 1700 foot setback goes almost to
23 Kona Street on the backside of Ala Moana Center so it
24 is a significant amount of land.

25 One element that was brought up in the --

1 brought up by one of the Commissioners was access,
2 vehicular access to the shoreline. We've taken that
3 to heart and have proposed this concept of having a
4 connector road, mauka-makai connector road, through
5 the Project Area so that vehicular access could be
6 achieved on the property.

7 Conceptually we had had a network -- we
8 proposed a network of bike paths and pedestrian paths
9 for the community to get down there. It was raised by
10 one of the Commissioners, "How do you get down there
11 with your cooler? Do you have to go back out to Queen
12 Ka'ahumanu Highway?"

13 And as proposed, the Kohanaiki property has
14 a public access road down the boundaries. So we're
15 proposing that as a primary connector. But we feel we
16 can work in through this preserve area a right-of-way
17 connection that would provide vehicular access through
18 the property down to the shoreline, the proposed
19 pavilion and parking facilities.

20 The trails -- the Airport Master Plan as was
21 noted and was referenced, this is the exhibit up
22 there, master plan. It shows basically the planned
23 urban uses and the expansion of the runways in the
24 mauka direction. There was a lot of discussion and
25 comments about the noise compatibility zones within

1 the proposed use.

2 And in earlier testimony there was some
3 confusion between -- we had in advance of the
4 county -- in advance of the state completing their
5 study we had a noise consultant prepare studies that
6 weren't quite -- the results weren't quite the same.

7 So we wanted to come back and quickly review
8 the compatibility of how the state's DNL contour lines
9 specifically line up, align with the proposed uses at
10 'O'oma.

11 Here's the 2013 noise contours. The 60 DNL
12 line is referred to of not having any residential
13 uses. We're clearly outside the 60 DNL at that point
14 in time, based on their projection.

15 And in their Long Range Noise Contour that
16 60 DNL line moves further makai. As they develop
17 their runways and flight patterns going more makai the
18 noise contours actually improve for the Project area.

19 This is just a combination showing the
20 migration of those noise contours and impact. I think
21 consistent with the state's testimony all of the
22 proposed residential uses are consistent and
23 compatible within those noise compatibility zones.

24 Quickly, in summary, and I think it would
25 probably speak for itself as far as the written

1 testimony, but consistency and the appropriateness of
2 reclassifying a portion of the conservation lands that
3 do not have the sensitive resources to an urban use
4 consistent with county plans and policies that have
5 been established for over 20 years and more recently
6 have been included for within the Kona CDP. Thank
7 you.

8 MS. BENCK: No questions from Petitioner.

9 CHAIRMAN DEVENS: County, any cross?

10 MR. GONZALEZ: No questions.

11 CHAIRMAN DEVENS: Mr. Yee?

12 MR. YEE: No questions.

13 CHAIRMAN DEVENS: Mr. Lind?

14 MR. LIND: No questions.

15 CHAIRMAN DEVENS: Commissioners, questions?

16 Any other witnesses?

17 MS. BENCK: No witnesses.

18 CHAIRMAN DEVENS: Do you rest at this time?

19 MS. BENCK: Yes.

20 CHAIRMAN DEVENS: We are going to work
21 through the lunch and go as long as we can today
22 because of the number of witnesses. One thing we want
23 to do, for those who have testified before and we're
24 going to go on an honor system, we're going to limit
25 the testimony to two minutes.

1 For those would have not testified at any
2 time we're going to allow three minutes and we'll give
3 a 30-second warning.

4 One of the purposes is that we want to try
5 to get through everyone, give everybody a fair
6 opportunity to be heard in this proceeding. We also
7 ask if you're testifying again that you can limit your
8 testimony to new testimony, new thoughts that you may
9 have, instead of repeating what has already been said
10 because we do have a record of what has been said
11 before.

12 MR. DAVIDSON: First witness is Jing Jing
13 Tsong followed by Tom Lamont.

14 THE WITNESS: Thanks for taking the time to
15 listen to my testimony this morning.

16 CHAIRMAN DEVENS: I have to swear you in
17 first, I'm sorry, Ma'am.

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

21 THE WITNESS: Yes, I do.

22 CHAIRMAN DEVENS: If you could state your
23 name and address and proceed with your testimony.

24 THE WITNESS: My name is Jing Jing Tsong. I
25 live at 73-4325 Lihilihi Place in Kailua-Kona.

1 MS. ERICKSON: Can you speak into the
2 microphone, please.

3 THE WITNESS: Is this better?

4 CHAIRMAN DEVENS: Yes.

5 THE WITNESS: In response to Mr. Mayer's
6 earlier testimony that because we don't use land it's
7 not valuable so we can build on it, I want to respond
8 that just because the sky is open and we don't use it
9 doesn't mean we fill it up. The open space is
10 critical to our quality of life.

11 In a study by the 2009 Trust for Public Land
12 the importance of open land is because of a higher
13 quality of life which attracts tax-paying businesses.
14 It boosts local economies by attracting tourists and
15 supporting outdoor recreation.

16 And it's also the cheapest way to safeguard
17 the delicate coastline ocean environment, something
18 that's critical in the situation, given the proximity
19 of NELHA.

20 In a community where funding for public
21 services is stretched, 'O'oma provides a stretch of
22 coastline where traditional Hawaiian culture is
23 practiced and where community gathers. 'O'oma is our
24 community center in its most sacred form, open space.

25 Preserving 'O'oma as open space is a smart

1 investment in protecting the environment, stimulating
2 the economy, strengthening community and perpetuating
3 traditional Hawaiian culture. Thank you.

4 CHAIRMAN DEVENS: Thank you for your
5 testimony. Let's see if there's any questions for
6 you, Ma'am. Parties have any questions for this
7 witness?

8 MR. MITSUDA: No questions.

9 CHAIRMAN DEVENS: Commissioners? Hearing
10 none we'll move to the next witness.

11 MR. DAVIDSON: Tom Lamont.

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

15 THE WITNESS: I do.

16 CHAIRMAN DEVENS: Have you testified before?

17 THE WITNESS: No.

18 CHAIRMAN DEVENS: If you can state your name
19 and address?

20 THE WITNESS: Yeah. My name's Tom Lamont,
21 74-1503 Haokuni Street, Kailua-Kona, Hawai'i. One
22 thing that I'd like the Commission to look at is --
23 I'm a flight instructor, been flying for 45 years. My
24 whole background's aviation. I worked for United
25 Airlines.

1 One of the things when I heard about this
2 proposal how close the airport was gonna be -- or the
3 new development's gonna be to the airport -- I
4 couldn't believe it.

5 One thing you have to look at is the noise,
6 that's always an issue, but also what happens if an
7 airplane goes down. We have small airplanes, we have
8 corporate jets and bigger airplanes.

9 Where I'm from, where I learned to fly, and
10 where I taught flying was in basically the San Jose,
11 California area. And over the years lookin' at all
12 the different airports in the area, what's happened is
13 the community was too close around the airport and
14 airplanes have crashed close by.

15 So over the period of time like, example,
16 San Jose Airport. San Jose Airport bought up a lot of
17 the subdivisions around the airport. Why? Because
18 the noise and encroachment there.

19 Well, with this proposal it seems like it's
20 gonna be allowed that here's this new housing area
21 where there's going to be kids and stuff right there
22 close to the airport. I just can't understand that.

23 There's another example, Reid-Hillview
24 Airport where they wanted to put in a shopping center,
25 a mall. What was mitigated was to take that structure

1 down 25 feet, make the top of it strong enough to
2 withstand an airplane crashing on the top. Sure
3 enough, over the period of years airplanes have
4 crashed.

5 The other thing is --

6 CHAIRMAN DEVENS: 30 seconds.

7 THE WITNESS: -- when you look at the flight
8 patterns 'cause we can land at both ends of the
9 runway, definitely that's right over where the
10 proposal is. To me that's an unsafe situation.
11 You're going to have an airplane that's going to crash
12 into that one of these days and there's going to be
13 people living there.

14 CHAIRMAN DEVENS: Parties have any questions
15 for this witness?

16 MR. YEE: No questions.

17 CHAIRMAN DEVENS: Commissioners? Hearing
18 none, thank you very much. Next witness.

19 MR. DAVIDSON: Greg Trebon.

20 THE WITNESS: Good morning, everybody. My
21 name's Greg Trebon. I live at 75-1027 Henry Street in
22 Kailua-Kona.

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

1 THE WITNESS: I swear to tell the truth.

2 CHAIRMAN DEVENS: Have you given any
3 testimony in this matter?

4 THE WITNESS: No. This will be the first
5 time.

6 CHAIRMAN DEVENS: Go ahead. Thank you.

7 THE WITNESS: I really rise in opposition to
8 the proposal. My background is I'm the Chairman of
9 the Hawai'i County General Aviation Council. I'm also
10 the director of the flight operations for one of the
11 small companies at the airport. I was also the only
12 pilot on the technical advisory committee for the
13 airport master plan. And, of course, I've flown
14 approximately 2,000 flights out of Kona Airport.

15 Frankly, the fundamental issue, we lack a
16 proper land use criteria around the state's airports
17 including Kona Airport. I would encourage you to take
18 that on as a long-term issue.

19 What's been described as noise patterns and
20 stuff are very interesting. But what's very
21 interesting to me is we are all homeowners. We all
22 have houses that we live in. Think of your own
23 residence.

24 Can you imagine 30 to 50 times a day an
25 aircraft flying over your house at 200, 400 feet?

1 What would your wife, you children, yourself think
2 about that? That's essentially what we're setting up
3 there.

4 The noise contour patterns do not reflect
5 the patterns at the airport. Between 8 and 10,000 per
6 year will fly directly over the 'O'oma residential
7 area as they work mauka and that depart to the north.

8 That's going to induce friction. There is a
9 discussion of mitigating that with avigation
10 easements. Around our nation avigation easements have
11 proved to be totally ineffective in terms of long-term
12 operational restrictions on airports and those types
13 of things. As you know Kona Airport is a valuable,
14 precious community resource.

15 CHAIRMAN DEVENS: 30 seconds.

16 THE WITNESS: -- and it needs to be
17 preserved. We are fortunate to be in a position right
18 now that we cannot encourage residential uses of that
19 land. If it needs to be urbanized then it needs to be
20 those types of activities that are compatible with the
21 close proximity to an airport. Thank you.

22 CHAIRMAN DEVENS: Thank you. Parties have
23 any questions for this witness? Commissioners?
24 Commissioner Kanuha.

25 COMMISSIONER KANUHA: Thank you,

1 Mr. Chairman. Sir, what uses would be compatible?

2 THE WITNESS: I think I personally am
3 empathetic and supportive of the community's desires
4 for open spaces.

5 What's not compatible is schools,
6 residential uses, high density general public use.
7 Light industrial as is proposed around the airport or
8 is currently occurring at NELHA would be compatible,
9 low density of people, the risk associated with that.

10 But at a very personal level if you just
11 think of -- and 30 to 50 is a low number -- flying
12 over your house at 2 to 400 feet every day, that's
13 really what we're talking about here. That's
14 significant.

15 COMMISSIONER KANUHA: Thank you.

16 CHAIRMAN DEVENS: Thank you.

17 MR. DAVIDSON: Next witness Mary Jo Lake
18 followed by Stefan Buchta.

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

22 THE WITNESS: I swear to tell the truth.
23 I'm Mary Jo Lake. I live at 76-5823 Mamalahoa Highway
24 Holualoa. And I'm here today just to plead with the
25 Land Use Commission to keep the space open. The

1 governors before us decided that that land was going
2 to be held in conservation.

3 I just remembered 1959 we became a state. I
4 don't know when it went into conservation, but I know
5 that Honolulu was already big. New York City was
6 already big. So, um, they thought let's just keep
7 this land in conservation. It wasn't zoned RS-10. It
8 wasn't zoned agricultural. It wasn't zoned leasehold
9 or resort. It's conservation and let's keep it that
10 way. Thank you.

11 CHAIRMAN DEVENS: Parties, any questions?

12 MR. GONZALEZ: No questions.

13 MR. YEE: No questions.

14 CHAIRMAN DEVENS: None, Commissioners?

15 Thank you very much.

16 MR. DAVIDSON: Stefan Buchta followed by Ben
17 Dysart.

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

21 THE WITNESS: Yes.

22 CHAIRMAN DEVENS: State your name and
23 address.

24 THE WITNESS: Stefan Buchta, 1994
25 Kalaniana'ole Avenue in Hilo.

1 CHAIRMAN DEVENS: Have you testified before?

2 THE WITNESS: I've never testified in my
3 life.

4 (Laughter)

5 CHAIRMAN DEVENS: Go ahead.

6 THE WITNESS: First experience with the
7 community. So I have a few things that I'd like you
8 to keep in mind from my testimony. If you have only
9 three things to take away from my testimony those
10 would be the ones.

11 No. 1 is the impact on the tourism product.

12 No. 2 I think the business plan as I've
13 studied all the formal documents on the website is
14 highly questionable and highly risky.

15 No. 3 there is a lot of unknowns.

16 The energy required for desalinization to
17 the quality of the community, is that available? It
18 could be used for electricity? There is significant
19 architectural -- archaeological resources on the shore.
20 There's a hale mua there. There's several heiaus.

21 If you just walk it yourself you can see
22 there's significant remains there. Bringing more
23 density to those remains is not clear what it's going
24 to do with the resources. These are my minor
25 concerns.

1 My major concerns are my first impression of
2 Kona Airport flying into it, driving through Kailua
3 Town through these open areas was one of awe. We are
4 touching that first impression that every tourist
5 comes through when they drive into Kailua-Kona by
6 taking away that open view.

7 And we're adding space on the coastline but
8 on the highway visually there's already a lot of
9 commercial -- I apologize for the word clutter on the
10 left-hand side, metal, Costco, whatever type
11 buildings, we're on the right-hand side creating a
12 high density community. (Buzzer)

13 Number 2 objection: Business plan. There's
14 no market for this Project right now. The kama'aina
15 who are targeted do not have the money to purchase
16 these properties. We are in a potential W style
17 recession. The developer claims they're going to come
18 out of it. It's very questionable. We might, might
19 not. It's conjecture.

20 And the other segment, potential segment of
21 mainland buyers, it might not be interested due to the
22 closeness of the industrial uses and the combination
23 of close industrial uses and also the airport noise,
24 of course. So I don't see a market for this Project.
25 This might become another empty hull.

1 Of course Hokulia has a very different
2 business model but it is an empty hull. We already
3 have a lot of those in the area. It would be a shame
4 to take away those historic lands for a failed,
5 essentially a failed business. So that's why I
6 opposed this development.

7 But I have to say just -- five seconds -- I
8 do like the general idea of having high density
9 housing. I think the plan is excellent. I've looked
10 through it.

11 Having this mixed residential living use is
12 great because we're too reliant on automobiles with
13 low gas mileage in Hawai'i. We need to get away from
14 driving. I don't see any in this area. Please build
15 close to Kailua Town.

16 CHAIRMAN DEVENS: Any questions from the
17 parties? No questions. Commissioners? Seeing none,
18 next witness.

19 MR. DAVIDSON: Ben Dysart, followed by Pete
20 Lindsey.

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

24 THE WITNESS: I do.

25 CHAIRMAN DEVENS: State your name and

1 address for the record, please.

2 THE WITNESS: Ben Dysart 75-5296 Mamalahoa
3 Highway.

4 CHAIRMAN DEVENS: Have you testified in this
5 case before?

6 THE WITNESS: Not before the Land Use
7 Commission, no.

8 CHAIRMAN DEVENS: Go ahead.

9 THE WITNESS: Members of the Commission,
10 thank you for the opportunity to testify on the Kona
11 Airport issue. Generally large airports tend to
12 locate a reasonable distance away from populated
13 areas. This has all been covered earlier so I kinda
14 wasn't prepared for that.

15 Land developers seem to feel the intervening
16 land is desirable partly because it's so close to
17 the airport.

18 CHAIRMAN DEVENS: Can you talk into the
19 microphone to help the court reporter out.

20 THE WITNESS: Sure. Conflicts such as
21 restricting overflights during the evening and things
22 like that come up as soon as the people who, as
23 someone else has said, are subjected to 20, 30, 40
24 flights a day over their house. They'll have the
25 easements, and they'll have their agreements already

1 made but they're not gonna listen to that. Twenty
2 years from now they'll say; "Listen, there are now 40
3 airplanes going over my house continuously."

4 They're going to continue. They're going to
5 organize and they're going to say, "We want to
6 restrict flights." That happens everywhere in the
7 United States. I was in San Jose also.

8 And at one of the local airports in San Jose
9 every two or three years they want to close it partly
10 because they built a school right off at the end of
11 the runway.

12 What the first man said is another
13 tremendous thing. Most of the accidents in the United
14 States that are aircraft accidents, fortunately there
15 is hardly any, but most of them occur on approach and
16 departure for airports. And this is an area that's
17 right underneath that. I can't emphasize that any
18 more.

19 Generally we have general aviation operation
20 flight instruction, helicopter flight instruction.
21 I'd like to emphasize that we should retain the
22 significant flight-related open spaces and to minimize
23 future complaints and flight restrictions. Thank you.

24 CHAIRMAN DEVENS: Any questions from the
25 parties? Hearing none, Commissioners? Hearing none

1 thank you.

2 MR. DAVIDSON: Pete Lindsey followed by
3 Jonathan Lee.

4 xx

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

8 THE WITNESS: Yes, I do.

9 CHAIRMAN DEVENS: State your name and
10 address.

11 THE WITNESS: My name is Pete Lindsey. I'm
12 from Kuhio Hawaiian Village Homestead up Kamuela.

13 CHAIRMAN DEVENS: Pete, have you testified
14 before?

15 THE WITNESS: No.

16 CHAIRMAN DEVENS: Go ahead.

17 THE WITNESS: I'm the field representative
18 for Hawaiian Labor Union Local 368 on the construction
19 side. Just to tell you a little bit about us. We're
20 the one that does -- we're attendants to all the
21 different craft. We do the hard work. We put in the
22 pipe. We put in the concrete and run the jack hammer,
23 all that.

24 To the honorable members of the State Land
25 Use Commission, Hawaiian Labor Union Local 368 on

1 behalf of our over 400 active members and retirees who
2 reside on the Big Island support the A07-774 North
3 Kona Village, LLC, 'O'oma 2nd request to consider
4 reclassification of the approximately 181.169 acres of
5 land currently in the Conservation District into the
6 Urban District.

7 We support the 'O'oma Beachside Village
8 Development which would build needed affordable
9 housing for our members and Big Island residents. Our
10 members and retiring in West Hawai'i want their
11 children and grandchildren the opportunities to reside
12 in the West Hawai'i close to their family and 'O'oma
13 Beachside Village would provide this opportunity.

14 'O'oma Beachside Village Development was
15 awarded the 2009 outstanding planning award by the
16 Hawaiian Chapter of America Planning Association.
17 It's a project that has been well planned and will be
18 a positive addition to the West Hawai'i community.

19 It will also create many jobs for our
20 members on the Big Island at a time when our
21 out-of-work bench is huge. The jobs this development
22 will create will be a large boost to the Big Island
23 construction industry.

24 Thank you very much for this opportunity to
25 testify in support of this request.

1 CHAIRMAN DEVENS: Okay. We'll make your
2 written testimony part of the record. Parties, any
3 questions? Hearing none, Commissioners? None. Thank
4 you very much.

5 MR. DAVIDSON: Jonathan Lee followed by
6 Diane Corcoran.

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

10 THE WITNESS: Yes.

11 CHAIRMAN DEVENS: State your name and your
12 address.

13 THE WITNESS: Jonathan Lee, 47-761 Hui Kelu
14 Street, Kaneohe, Hawai'i.

15 CHAIRMAN DEVENS: Have you testified before
16 in this matter?

17 THE WITNESS: No, I haven't.

18 CHAIRMAN DEVENS: Go ahead.

19 THE WITNESS: Good afternoon. My name is
20 Jonathan Lee. I'm a member of the Plumbers and Fitters
21 Local 675 Honolulu, Hawai'i and all the other islands.
22 And I'm here to speak in favor of this 'O'oma to see
23 this go forward.

24 As Pete said we're a labor union. We want
25 to see proper jobs and put our people to work here on

1 the islands. We want to see our children -- and I'm
2 speaking for our members here on the island -- to get
3 jobs to go to work and pay bills like everybody else.
4 So like to show support. Thank you.

5 CHAIRMAN DEVENS: Parties, any questions?
6 Commissioners? Hearing none, thank you for your
7 testimony.

8 MR. DAVIDSON: Diane Corcoran followed by
9 Dr. Eddie Hand.

10 DIANE CORCORAN
11 being first duly sworn to tell the truth, was examined
12 and testified as follows:

13 THE WITNESS: I swear to tell the truth. I
14 have testified before. I hear people saying they're
15 worried.

16 CHAIRMAN DEVENS: Would you state your name.

17 THE WITNESS: My name is Diane Corcoran,
18 77-297 Kalani Way, Kailua-Kona.

19 CHAIRMAN DEVENS: Thank you. Go ahead.

20 THE WITNESS: Thank you. Good afternoon.

21 CHAIRMAN DEVENS: Good afternoon.

22 THE WITNESS: You know, I worry about
23 people's jobs too. It's a beautiful development.
24 Build it somewhere else. You saw how little open
25 space we have left. And you seem to think, oh, so

1 much has gone, take the rest. The opposite. We only
2 have that left. Save it for us. Keep a little teeny
3 piece of green there on the coast please. Thank you
4 so much for listening.

5 (Applause)

6 CHAIRMAN DEVENS: Any questions from the
7 parties? Commissioners? Next witness.

8 MR. DAVIDSON: Dr. Eddie Hand, M.D. followed
9 by Curtis Muraoka.

10 CHAIRMAN DEVENS: Is the doctor here?
11 Doesn't look like here's here. We'll go to the next
12 witness.

13 MR. DAVIDSON: Curtis Muraoka followed by
14 Janice Palma-Glennie.

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

18 THE WITNESS: I do.

19 CHAIRMAN DEVENS: State your name and your
20 address, and have you testified in this before?

21 THE WITNESS: I have.

22 CHAIRMAN DEVENS: Go ahead.

23 THE WITNESS: Curtis Muraoka, P. O. Box 1250
24 Captain Cook, 96704. I hear a lot of discussion about
25 the presence of a school, and I'm here representing

1 West Hawai'i Explorations Academy which has existed at
2 NELHA for 16 years. We're an award-winning public
3 charter school.

4 Recently our adequate yearly progress came
5 out and we have probably the top score in reading in
6 the state. We're a science hands on -- (applause) --
7 thank you -- we're a science hands on program.

8 Our current situation, because of the Kona
9 Airport expansion, is that we have to relocate.
10 Because we have had such a really tremendous
11 partnership with NELHA the only place we can locate is
12 up into the, near the gateway center which is just
13 outside the 55 DNL impact zone from the long-term
14 noise impacts.

15 The developer next door at 'O'oma has
16 proposed to create another charter school program
17 that -- and he's come and discussed with us basing his
18 charter school on our model.

19 So we're in favor of the 'O'oma development.
20 And I'm here to talk basically about the educational
21 element.

22 I just came back from the national charter
23 school conference in Chicago where the ground swell of
24 support for local community-based education and hands
25 on education is growing in leaps and bounds.

1 The Obama administration supports charter
2 schools very actively and vigorously. So we're
3 looking forward to a long-term relationship with
4 NELHA.

5 Even though there are problematic elements
6 that people perceive in the community, we are also in
7 support of the 'O'oma development based on the
8 educational element.

9 CHAIRMAN DEVENS: Parties, any questions?
10 Hearing none, Commissioners? Thank you.

11 MR. DAVIDSON: Janice Palma-Glennie followed
12 by Malia Chaul.

13 JANICE PALMA-GLENNIE
14 being first duly sworn to tell the truth, was examined
15 and testified as follows:

16 THE WITNESS: I do.

17 CHAIRMAN DEVENS: And you testified before.

18 THE WITNESS: I have. And I'm going to --
19 it's hard to fit it into two minutes. I'll do my
20 best.

21 CHAIRMAN DEVENS: Please state your name and
22 your address.

23 THE WITNESS: My name is Janice
24 Palma-Glennie. I'm in Kailua-Kona. 4849 is my post
25 office box.

1 CHAIRMAN DEVENS: Thank you.

2 THE WITNESS: I'm speaking on behalf of the
3 Surfrider Kona Kai Ea Chapter today regarding our
4 group's opposition to 'O'oma's reclassification. And
5 we'd like to thank you, Commissioners, for your
6 diligence in determining whether there's a compelling
7 need at this time to reclassify a significant portion
8 of what's left of North Kona's coastal conservation
9 land.

10 I'd like to mention that each of the earlier
11 presenters' summary points, six summary points were
12 patently false.

13 A past successful community -- there's been
14 past successful community legal actions as well as
15 decades of community hands on efforts to protect the
16 'O'oma Kohanaiki area. And they give clear proof that
17 public benefit is not what this reclassification is
18 about.

19 Despite Petitioner's claims, surf-related
20 organizations have remained steadfast in their
21 commitment to protecting 'O'oma's conservation status.
22 And we've worked tirelessly for its protection for
23 over 20 years.

24 OBV's plan doesn't fit the public's vision
25 of balanced long-term community health nor does it

1 fulfill state mandates to protect critical coastal
2 resources.

3 Petitioner claims that the Project fits
4 with the goals, community goals and needs as outlined
5 in the Kona Community Development Plan are
6 disingenuous. And claiming that coastal areas should
7 be in urban use because they're in the UA area is
8 patently untrue.

9 I took part -- I've been taking part in the
10 KCDP process. Even though I don't speak for the
11 action committee I am on it. Claims that OBV plans
12 fit with the protocol they never even went through
13 showed PR creativity as well as an inability of
14 Hawai'i County planners to come up to speed with new
15 county law and land use planning paradigms.

16 Decades ago the state made a conscious
17 effort to take the airport away from residential areas
18 and made the area around it open, compatible uses like
19 industrial.

20 In fact, a change of zone would be required
21 in the industrial portion of this property to allow
22 residential use for this Project.

23 Again, the state's plan to keep the airport
24 area safe and flexible would be undermined by creating
25 residential and commercial development in this area.

1 This group of Commissioners can uphold past
2 denials of reclassification of 'O'oma --

3 CHAIRMAN DEVENS: I'm sorry, your time has
4 run out. Parties have any questions? Commissioners,
5 any questions? Hearing none, next witness.

6 MR. DAVIDSON: Malia Chaul followed by
7 Kathleen McMillen.

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

11 THE WITNESS: I do.

12 CHAIRMAN DEVENS: Have you testified before?

13 THE WITNESS: No, I have not.

14 CHAIRMAN DEVENS: State your name and
15 address.

16 THE WITNESS: Malia Chaul, 77-6479 Akai
17 Street, Kailua-Kona. I have nothing more to say than
18 this: It was very clear, I appreciated those maps
19 that were put up just for the public. It was all
20 covered.

21 It was interesting to me that he would put
22 that up trying to get more of our land turned into
23 urban land. It was clear initially it was all
24 conservation land. It was all ours. It is slowly but
25 surely all turned to urban.

1 None of that conservation land, very little
2 of that conservation land was on the coastline. Our
3 community needs our coastline. Someone, Mr. Teves,
4 asked earlier whether or not there was a need for
5 housing. There obviously is a need for employment.
6 Our contractors, our construction workers, our workers
7 need work. But this is not -- this is not -- that's a
8 selfish request. We all need something. I realize
9 it's your livelihood. This is your life you're vested
10 in, this is, it's what you're doing.

11 But your community, my 'ohana, your 'ohana
12 needs this land to stay the way it is. Families are
13 built here. Relationships are built here.

14 No -- it's just not necessary. Please keep
15 our land conservation, what little we have left.
16 That's all I have to say.

17 CHAIRMAN DEVENS: Parties have any
18 questions? Hearing none, Commissioners? None. Thank
19 you.

20 (Applause).

21 MR. DAVIDSON: Kathleen McMillen followed by
22 Shannon Jacob Klinc.

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

1 THE WITNESS: I do. My name's Kathleen
2 McMillen, 75-5768 Makalina Place, Kailua-Kona,
3 Hawai'i. I have testified before. I want to thank
4 the Land Use Commission and particularly the State
5 Planning Office for taking a serious look at the
6 impacts of this Project.

7 My testimony here has been focused on the
8 airport's needs. I feel at least I have been heard.
9 I appreciate that finally State DOT has finally had a
10 presence here at this meeting.

11 However, I disagree with the state's
12 position of taking no position, the state DOT offers.
13 While I understand politics involved, with all the
14 facts on the record I do feel that DOT-A should be
15 taking a strong position against this Project.

16 FAA mandates that the DOT Airports Division
17 protect the airport from encroaching development.
18 That's my main point I want to make.

19 I think it's unrealistic to place the burden
20 of responsibility on landowners and developer to do
21 what is right for the general welfare of Kona
22 citizens. Why risk depending on implementation and
23 enforcement of so many conditions?

24 I personally in my business have seen very
25 haphazard enforcement of deed restrictions and CC&R's.

1 Please do not approve the rezoning.

2 CHAIRMAN DEVENS: Parties, questions?

3 Hearing none, Commissioners? None. Thank you.

4 (Applause)

5 SHANNON JACOB KLINE

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

7 and testified as follows:

8 THE WITNESS: Yes.

9 CHAIRMAN DEVENS: Name and address.

10 THE WITNESS: Shannon Jacob Kline. Old

11 Tobacco Road, Honaunau.

12 CHAIRMAN DEVENS: Had you testified before
13 in this case?

14 THE WITNESS: I have not. I've never been
15 to the meeting so I don't claim to know the
16 intricacies of what's going on here. But as a surfer
17 I am here to say I feel like our island of Hawai'i has
18 an opportunity to show that it values natural
19 resources for what they are, areas of nature and not
20 something to be developed.

21 As Commissioner Teves has stated, do we need
22 to put more buildings here when there are -- I drive
23 around and see plenty of delapidated areas within Kona
24 Town that could be developed and improved without
25 jeopardizing existing open space.

1 What happens -- to me in this area is
2 concerning if it's developed, if this beach village is
3 developed and no one wants to live there due to the
4 noise? Just because it's out of the decibel zone
5 doesn't mean that it won't be loud.

6 Just today I was at WHEA dropping my son off
7 at camp and two military jets flew over. And my whole
8 body felt like it was going to explode it was so loud
9 I personally would not want to live anywhere near the
10 airport even if I was out of the zone.

11 I have found another interesting thing is
12 that it seems like a lot of people want to promote
13 this development and they're making decisions, are
14 from O'ahu.

15 And I have been to O'ahu. And I don't want
16 to live somewhere that's quite that developed and
17 looks like that. I would probably leave the island if
18 it became like that.

19 I really feel it's important to really keep
20 our open space open for (buzzer)-- okay, I'll say the
21 cycle of development should be examined in light of
22 the state our planet is in right now. We are a
23 microcosm of the world and we should show we in
24 Hawai'i are prepared to preserve and protect our lands
25 and our sea.

1 CHAIRMAN DEVENS: Parties, questions? None.
2 Commissioners, questions? None. Next witness.

3 MR. DAVIDSON: Chac Robbins followed by
4 Phillip Jaenisch.

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

8 THE WITNESS: Yes.

9 CHAIRMAN DEVENS: Can you state your name
10 and your address and if you've testified before.

11 THE WITNESS: My name's Chac Robbins. I live
12 at 77-6538 Naniloa Drive in Kailua-Kona. I'd just like
13 to say that --

14 CHAIRMAN DEVENS: Have you testified in this
15 matter?

16 THE WITNESS: No, sir, I have not.

17 CHAIRMAN DEVENS: Go ahead.

18 THE WITNESS: I just want to say I'm very
19 opposed to this development mainly because there's so
20 much -- like so many people said before -- there's so
21 many empty houses hanging out around here,
22 unaffordable housing. And this is supposed to be the
23 affordable housing for the people of the land.

24 But I can't imagine anyone that lives in
25 Hawai'i right now that would want to live underneath

1 the airport and having the planes flying over every
2 day with the noise.

3 The other thing is, you know, I recognize
4 the needs for work on the island. The state has been
5 trounced by the economy recently.

6 And I don't think that building more houses
7 is a sustainable way to stimulate our economy because
8 once the house is built it's done, it's pau, it's
9 over.

10 All you do is get revenue for the taxes.
11 There's nothing for the people once it's built.
12 There's better uses for energy for our builders, for
13 those developers, yeah. I think that's it. Thank you
14 for your time.

15 CHAIRMAN DEVENS: Parties, questions? None.
16 Commissioners? No questions.

17 MR. DAVIDSON: Phillip Jaentsch followed by
18 April Sutton. (No response) April Sutton followed by
19 Jeremy Jaentsch.

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

23 THE WITNESS: Yes, I do.

24 CHAIRMAN DEVENS: Have you testified?

25 THE WITNESS: I have not.

1 CHAIRMAN DEVENS: Name and address.

2 THE WITNESS: My name is April Sutton, P. O.
3 Box 4251, Kailua-Kona.

4 CHAIRMAN DEVENS: Go ahead.

5 THE WITNESS: The Big Island is known for
6 its beauty, its environmental prestige, its relaxed
7 pace. The Big Island is not known for its
8 metropolitan way of life. People come here from the
9 mainland, from Chicago, from Phoenix, from Los Angeles
10 to get away from the urban sprawls.

11 They come here and fall in love with the
12 majesty of the ocean and the land. We on the island
13 sometimes take this for granted. We can enjoy an
14 afternoon down at Ke'ei. We can go on a morning hike.
15 And of course we can go on a swim, dive or surf break
16 any time.

17 We realize how lucky we are, though, when we
18 take a weekend trip to Honolulu, a metropolis that's
19 über developments have eroded away many of the beaches
20 leading to declining health of the surrounding ocean.

21 By going forward with this Project we begin
22 to lose our identity parcel by parcel as a majestic,
23 wide open Big Island. If we lose our island identity
24 why will people visit? Why will people stay?

25 We are discussing cutting back conservation

1 lands, lands that's designated as such to keep it from
2 changing, being damaged or lost. We cannot afford to
3 lose any land. We cannot afford to lose our identity.
4 Thank you.

5 CHAIRMAN DEVENS: Any questions from the
6 parties? Commissioners? No questions. Thank you.

7 MR. DAVIDSON: Jeremy Jaentsch followed by
8 Cheryl Kornberg. Cheryl Kornberg?

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

12 THE WITNESS: I do.

13 CHAIRMAN DEVENS: Name and address.

14 THE WITNESS: Cheryl Kornberg, P. O. Box
15 1433 Kailua-Kona.

16 CHAIRMAN DEVENS: Have you given testimony
17 in this matter?

18 THE WITNESS: Yes.

19 CHAIRMAN DEVENS: Go ahead.

20 THE WITNESS: Thank you for giving me the
21 opportunity. I won't say the same thing I did before.
22 But after listening to all the testimony sounds like
23 clearly we, you know, we need to keep this an open
24 space not only for the ocean, the health of the ocean,
25 The airport really needs the space.

1 I mean after listening to these other
2 testimonials it's like it seems so clear that why
3 bring in problems?

4 We have an opportunity or you have the
5 responsibility, which you have the great
6 responsibility here, of keeping it open. And I know
7 you get more taxes and things, more jobs.

8 I empathize with people for jobs. We do
9 need them but there's problems here. So you tell the
10 people that are buying, "Sign this disclosure."

11 Excuse me? Disclosures always hold up?
12 Talk to a few attorneys here. I don't think that's
13 going to do it. I think we are just getting into a
14 big problem. And it is a real concern.

15 And I want to keep -- you know, there's open
16 space in the mountains, and everything that you can't
17 get to those. There's not access. This is one of the
18 beaches we can get to, we can actually walk to. We
19 don't have to go like 300 miles to get to it like some
20 of the other open space. And we have a beautiful
21 island here. Let's just keep it for the kids and keep
22 it that way. Thank you so much.

23 CHAIRMAN DEVENS: Questions from the
24 parties? None. Commissioners? None.

25 MR. DAVIDSON: Shannon Rudolph followed by

1 John Frank, Jr.

2 THE WITNESS: Aloha.

3 SHANNON RUDOLPH,

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

5 and testified as follows:

6 THE WITNESS: Yes, I do.

7 CHAIRMAN DEVENS: State your name and

8 address.

9 THE WITNESS: My name is Shannon Rudolph.

10 My address is Post Office Box 243, Holualoa, Hawai'i

11 96725.

12 CHAIRMAN DEVENS: Have you testified in this

13 matter before?

14 THE WITNESS: Yes, I have. Aloha. At the

15 last Kona hearing one of the developer's expert

16 consultants stated that she had done a rental study of

17 available housing and determined the rentals were

18 needed in this area.

19 This assumption is ridiculous, and the

20 developer should ask for his money back. The

21 consultant said she did not look into areas south of

22 the proposed development where all the empty housing

23 is to determine whether more housing was needed, but

24 instead, looked north all the way to Waikoloa, a 25

25 mile stretch of most barren lava and hotels.

1 Mr. Moresco deserves a refund on that skewed study.

2 I looked up foreclosures the other night,
3 402 foreclosures just in town, not counting nearby
4 surrounding areas of many subdivisions, a multitude of
5 condos and beyond.

6 This doesn't even consider the short sales.
7 I hear permits have already been pulled for an
8 additional 7,000 housing units that have never even
9 been built.

10 Many major developers' promises to our
11 planning development have gone belly up along with
12 their investments in a terrible economy that may not
13 get better for most of us.

14 Letters to the editor are frequent from
15 residents in opposition to the rezone of 'O'oma,
16 despite a poor economy. And many local builders and
17 construction workers say no to the 'O'oma rezone.

18 A recent newspaper poll said 89 percent of
19 the respondents were not in favor of this Project in
20 this place at this time.

21 If you vote in favor of this Project you are
22 either looking at our community in utter contempt or
23 you need to have your head examined.

24 The community does not want this Project at
25 this location and they have spoken loud and clear

1 three times.

2 In closing, I want to bring up the incident
3 that I overheard from a Commissioner to his buddy
4 while on break at the last Kona hearing. He made a
5 snide comment that the public should -- doesn't show
6 up at these hearings to listen and learn, only to
7 testify. And I said that's because they have to work
8 for a living.

9 Residents do not get paid for the hundreds,
10 if not thousands of hours this issue has already taken
11 from our lives, our family and our work. Everyone in
12 this room is making good money except John Q. Public.
13 Whether this Project goes through or not I consider
14 these wasted hours the price I have to pay for living
15 in such a wonderful place.

16 CHAIRMAN DEVENS: Ma'am, was this something
17 that you had submitted? Did you want to make this
18 part of the record? This photo?

19 THE WITNESS: Yes.

20 CHAIRMAN DEVENS: Do you want this part of
21 the record?

22 THE WITNESS: Yes, I do. That photo is from
23 600 people that showed up at the county meeting,
24 public meeting, just because they were gonna close the
25 gate at 'O'oma. If you want to see the public testify

1 you have a night meeting.

2 CHAIRMAN DEVENS: We'll make this part of
3 the record. Let me ask the parties if they have any
4 questions for you. Hearing none, Commissioners --I'm
5 sorry. Commissioner Teves.

6 COMMISSIONER TEVES: When was this meeting?

7 THE WITNESS: Six months ago.

8 COMMISSIONER TEVES: Who was it that closed
9 the gate?

10 THE WITNESS: They locked the gate at
11 'O'oma.

12 COMMISSIONER TEVES: The owners, not the
13 county.

14 THE WITNESS: NELHA locked the gate at
15 'O'oma because DBEDT didn't give 'em the money for
16 security. So they locked the lateral access. And 600
17 people showed up at that meeting... at night. You
18 should come back here to vote at night.

19 CHAIRMAN DEVENS: Hang on. Parties have any
20 questions given that response? Mr. Yee.

21 MR. YEE: Just to be clear I believe she's
22 determined 'O'oma's geographic area rather than the
23 Project site. So the landowner was NELHA actually.
24 Thank you.

25 CHAIRMAN DEVENS: Commissioners? Thank you.

1 MR. DAVIDSON: John Funk, Jr. followed by
2 Sandor Barantz.

3 JOHN O. FUNK, JR.
4 being first duly sworn to tell the truth, was examined
5 and testified as follows:

6 THE WITNESS: I do.

7 CHAIRMAN DEVENS: Name and address.

8 THE WITNESS: John Funk, Jr. My address is
9 almost anywhere here on the Big Island 'cause I love
10 it so much.

11 CHAIRMAN DEVENS: Have you testified before?

12 THE WITNESS: I haven't testified before --

13 CHAIRMAN DEVENS: Go ahead.

14 THE WITNESS: -- in a meeting like this.
15 Well, big changes going for the fast, I guess, quick
16 changes, you know. 'O'oma. 'O'oma -- as you can see
17 kinda nervous. I love that place. I surf there any
18 chance I get, you know. But I do love the Big Island
19 also. As people we gotta look and think about changes
20 because there's things that can go up or go down.

21 I've been looking around here seeing changes
22 all my life ever since I was born here, born and
23 raised. It's been a struggle, you know, going through
24 the changes and being raised up here and seeing how
25 things are developing to us, the people.

1 And just holding it in, you know, it's kind
2 of hard to express it, you know, and let it out to
3 everyone. But I'm not for this, you know, building
4 and stuff like this.

5 If we need jobs and we don't have money. I
6 guess for me I'm a survivor so I can go get my own
7 food. I learned from my grandfathers. I'm a survivor
8 myself. I get my water where I get my water. It's
9 not from the pipe all the time. Sometimes you gotta
10 struggle fo' survive.

11 I just hope, you know, when the decision is
12 made it's made for the people and by the people. And
13 I thank you guys for giving me the opportunity fo'
14 come in front of you guys, speak my testimony.
15 Mahalo.

16 CHAIRMAN DEVENS: Parties, any questions,
17 questions? None. Commissioners? Thank you.
18 (Applause).

19 MR. DAVIDSON: Sandor Baranil followed by
20 George Wilkins.

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

24 THE WITNESS: I do.

25 CHAIRMAN DEVENS: Have you testified before?

1 THE WITNESS: I haven't.

2 CHAIRMAN DEVENS: Name and address.

3 THE WITNESS: My name is Sandor Baranil. I
4 live at 73-1044 Ahuani Street Kailua-Kona. Ladies and
5 gentlemen of the Land Use Commission, this proposed
6 Project couldn't be put in a more unacceptable or
7 unsuitable place.

8 When you were talking about the open ocean
9 area between Kailua and Kekahakai, you know, that one
10 part -- you guys already have the big chunk. All the
11 other pieces run from the ocean to the Queen Highway.

12 But I see that your place has already been,
13 is an almost half way there, a big chunk. You know,
14 we don't want to do that. We don't want any more.
15 And I work in the construction industry. And I've
16 been unemployed for two years.

17 You know what? To hell with the job. The
18 'aina is what counts. It's not the money. It's not
19 what all these suits come from O'ahu dictating to us
20 what we want. We don't want -- we want conservation
21 land. That's why we're here 'cause we respect the
22 land. And we want it.

23 We don't want developers coming in here with
24 the guise of saying, "Hey, affordable housing.
25 Affordable housing." \$350,000 home for affordable

1 housing. Common people look at each other and go, "My
2 God, what planet are these guys from? What planet are
3 you from?" you know?

4 And it doesn't -- you know, taking rezoning
5 just gives these people another way to make an
6 enormous amount of money on a level that's, my God,
7 it's incredible.

8 It's shameful. It's shameful how they want
9 to come back and change the rules of the game to take,
10 take, take, take, take. Enough of that. I ask the
11 Land Use Commission to deny this request for rezoning
12 for the people of this island who do not want this.
13 Thank you.

14 (Applause)

15 CHAIRMAN DEVENS: Any questions for the
16 parties? None. Commissioners? None.

17 MR. DAVIDSON: George Wilkins followed by
18 Curtis Crabb.

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

22 THE WITNESS: I do.

23 CHAIRMAN DEVENS: You've testified before?
24 Sir, you've testified before, correct?

25 THE WITNESS: Yes, I have. I'm on a

1 different subject today.

2 CHAIRMAN DEVENS: No problem. Please state
3 your name and address.

4 THE WITNESS: Thank you. My name is George
5 Wilkins. I live up Kaloko Drive 73-1410 A. I have in
6 the past testified about the sea level, sheet of
7 freshwater which is running out to sea under every
8 development carrying pollutants directly into the
9 ocean with nothing being done about it.

10 Today I want to take a different approach.
11 I sit here having spent 42 years as a professional in
12 Hawai'i on both the university and working for the
13 federal government.

14 I've served eight years as chairman of the
15 governor's Marine Advisory Council, 20 years of as
16 Chairman of the Sea Grant Research Advisory Council.
17 We pioneered, I and George Curtis, the infrared aerial
18 survey of the entire Kona Coastline showing huge
19 amounts of freshened water flowing out to sea.

20 We pioneered slant drilling under the
21 coastline showing how you could put pipelines out into
22 the ocean from a point well inshore without building
23 giant concrete barricades at the shoreline.

24 We testified many, many, many times about
25 the damage that developers allied with the county and

1 the state have done to our coastal environment. Quite
2 frankly, I'm full up to here with talking for 40 years
3 when no one's listening.

4 We do have problems here, very serious
5 problems. We have over 10,000 commitments, freshwater
6 commitments to potential developers here just in North
7 Kona. And I say that having helped dig up the
8 information.

9 And I spent five years as pro bono
10 representative to the County Water Commission from
11 North Kona. That's the output of more than six brand
12 new wells that we don't have.

13 If we had the wells we don't have the
14 infrastructure, the pipelines to lead them down, the
15 freshwater, down to the shoreline where people living
16 along Ali'i Drive are now imbibing sodium in their
17 drinking water at five times the level that the EPA
18 has judged is dangerous to the health.

19 I don't know how many people we're killing
20 with such high levels of sodium and chloride in our
21 water.

22 CHAIRMAN DEVENS: Sorry. You time is up.

23 THE WITNESS: Okay.

24 CHAIRMAN DEVENS: Parties have any
25 questions? Hearing none, Commissioners? Hearing

1 none, thank you.

2 MR. DAVIDSON: Curtis Crabb followed by
3 David Carlson.

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

7 THE WITNESS: I do.

8 CHAIRMAN DEVENS: Have you testified before?

9 THE WITNESS: I have not.

10 CHAIRMAN DEVENS: State your name and
11 address.

12 THE WITNESS: My name is Curtis Crabb. I
13 live at 708 Leikukui Place, Molokai. And before I
14 start with my testimony I want to address a procedural
15 issue I think needs to come before this board, is that
16 you should have these meetings at 6:00 at night
17 because statewide, people are not represented. I'll
18 just leave it at that.

19 (Applause).

20 I come today as a Native Hawaiian -- not
21 just as a Native Hawaiian -- I come to address the
22 unrepresented Hawaiians here. But more-so I'd like to
23 strike a clause for the developer here.

24 Lai'opua there's 47 outstanding foreclosures
25 right now, Native Hawaiian Homelands. Okay? Built by

1 non-union contractors those homes sold for \$300,000.

2 And basically people have this round about revolving
3 door can't make their payments.

4 Now, if I can't say that the Native Hawaiian
5 population at Lai'opua here is a greater population
6 then who are going to be the customers for your homes?
7 Think about that one. Okay.

8 I want to address the issues about the
9 access. I'm with Save Our Surf also. I'm not
10 speaking on behalf of Save Our Surf. But the access,
11 water issues, our rights, land use, iwi, developers
12 burying on our iwi, our bones on Kaua'i, that's
13 something that needs to be addressed there.

14 Also the issue about wastewater. Uncle here
15 talked about wastewater. I'm an electrical
16 contractor. That's been my living for three
17 generations for my family. I'm also in wastewater
18 now.

19 We go to conferences, here in Hawai'i, to
20 Ohio to learn about how people are drinking their
21 Tylenol, okay, that comes out in their okoles, in
22 their wells, also antibiotics, also chemotherapy drugs
23 that pollute, okay, their drinking water which is,
24 like, 400 feet away from their homes. They have
25 wells.

1 That's a concern here. I talked to their
2 attorney here about how this Project's gonna go ahead
3 and mitigate their wastewater. Okay. I understand
4 perfectly well that it's gonna be monitored. But I
5 tell you UV and chlorination doesn't work.

6 We are very filthy animals. We're pigs.
7 We're human being. Okay. A hundred okoles at NELHA?
8 All right. Three to 4,000 okoles at 'O'oma? No can.

9 I beg your indulgence to listen, okay, about
10 access, okay, in Ko'olina on O'ahu. Daily they're
11 denied people access to the beach there. Well
12 documented. That's gonna happen right here.

13 (Applause)

14 CHAIRMAN DEVENS: Sir, your time's up. See
15 if the parties have any questions. No questions.
16 Commissioners? No questions. Thank you.

17 MR. DAVIDSON: 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: I do.

23 CHAIRMAN DEVENS: Have you testified before?

24 THE WITNESS: Yes, I have.

25 CHAIRMAN DEVENS: Name and address.

1 THE WITNESS: David Carlson. 77-131 La'aloa
2 Kailua-Kona. I just want to cover as a retired United
3 Captain of the airport problem again, just lightly.

4 I've flown into small towns and big cities.
5 and the same thing happens over and over that's
6 happening here. You have eight miles. We move the
7 airport once. Now you're moving housing in near it
8 again. There was talk here about changing the flight
9 path which would mitigate some of the sound.

10 That's one of the things that happens before
11 you have to close an airport. The next thing that
12 happens is you put a curfew on the airport. And then
13 you move the airport.

14 Twenty years from now this is gone. People
15 have talked about the noise level that's not that bad
16 out there. Ninety percent of the aircraft coming in
17 here are light aircraft. Hawaiian, Go, Alaska
18 Airlines are all considered the small aircraft. Just
19 the big ones are all flying short distances out of
20 here. The only big aircraft is one 747 that comes in
21 here and it goes on to Honolulu with a light load.

22 The larger and larger aircraft that are
23 being constructed will be flying in here and you're
24 going to end up housing, making too much noise.
25 They're going to demand that you move that airport.

1 Just a quick note. I live up off Ali'i
2 Drive on La'aloa. My drive to town is through what's
3 called medium density. There are three spots along
4 that Ali'i Drive that you can see the water. This
5 high density just eliminates our view. And I think
6 the people of Kona, and the tourists, all of us
7 deserve that this space be left open.

8 CHAIRMAN DEVENS: Any questions, parties?
9 None. Commissioners? None, thank you.

10 (Applause)

11 MR. DAVIDSON: Winfield Chang followed by
12 Mark Travalino.

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

16 THE WITNESS: I do. My name is Winfield
17 Chang. I reside 73-1432 Kaloko Drive.

18 CHAIRMAN DEVENS: And you have testified
19 before.

20 THE WITNESS: I have testified before. And
21 I kind of resent this 2-minute limitation. I was cut
22 off during the earlier testimony. People come here
23 taking time from their jobs for two minutes and you
24 want public testimony? I think that's a little
25 ridiculous.

1 Anyway, continuing on with what I have to
2 say. I, along with an overwhelming majority of the
3 community have taken the time to testify. And
4 organizations such as the Kona Hawaiian Civic Club
5 advocate protection of the natural beauty of West
6 Hawai'i. And that is our only objective.

7 We have been attempting to illustrate the
8 needless change that threatens our way of life and the
9 irreversible harm to some 180 acres of precious and
10 rapidly shrinking pristine coastal conservation set
11 aside for the recreational enjoyment of the many
12 families in our community.

13 The developer's dismay at the overwhelming
14 opposition to his Project gives us just a glimpse of
15 what is fundamentally wrong in reclassifying the
16 Project in question.

17 Open space enriches our spirit and sustains
18 the quality of life we need to preserve for future
19 generations. The only thing that is guaranteed by
20 high density development is severe traffic gridlock.

21 I am profoundly grateful for living here
22 every morning when watching the horrendous traffic
23 reports being televised on morning news shows from
24 Honolulu. It is a very sobering wake-up call.

25 With all the information presented here at

1 hearings, the current planning director insists on
2 supporting this ill-conceived Project in obvious
3 defiance to the wishes of the community she is sworn
4 to serve.

5 In her long-standing bias for the
6 development in West Hawai'i, going back to her tenure
7 on the county council and corporation counsel and her
8 current position, her operating anthem in West Hawai'i
9 has consistently been, "Build, Baby Build" to the
10 detriment of public safety when offered mitigating
11 options providing mauka and makai evacuation routes
12 and roads previously stipulated by the developers.

13 While the current administration is
14 inexplicably enamored by her performance, it might do
15 her well to remember that she is just another
16 political appointee in the long list of career
17 bureaucrats.

18 Although she serves at the pleasure of the
19 mayor, the last time I looked government is still
20 mandated by the will of the people. Thank you.

21 CHAIRMAN DEVENS: Any question from the
22 parties? None. Commissioner, questions? Thank you.

23 (Applause)

24 MR. DAVIDSON: Mark Travalino, followed by
25 Kawika Marquez.

1 MARK TRAVALINO

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

4 THE WITNESS: Yes, I do. Mark Travalino.

5 CHAIRMAN DEVENS: State your name and
6 address and have you testified before?

7 THE WITNESS: Yes, I have. My name's Mark
8 Travalino, 73-1228 Kilani Street, Kailua-Kona,
9 Hawai'i, 96740. And, yes, I have testified before.

10 First off I want to thank you guys for the
11 chance to come and speak in front of you guys today.
12 I'm a resident of Kona for over 20 years. I've worked
13 heavy construction mostly with the labor union. Right
14 now I'm a statewide organizer with the labor union.

15 As far as our membership goes we got about a
16 third of our guys on the bench. Everybody's kind of
17 hungry, unemployment is running out. I don't see no
18 extension. This development, it's a glimmer of bright
19 light to us guys.

20 You know, we see something coming up on the
21 private sector which we haven't seen in a long time.
22 Everything kinda died down Kukio, KD, lot of projects,
23 that's fallen apart.

24 Mr. Moresco comes in. This is a real good
25 award-winning plan. I think it's the right thing at

1 the right time. Let's get our guys back to work
2 again. That's all I have to say. Thank you.

3 CHAIRMAN DEVENS: Any questions from the
4 parties? None. Commissioners? No questions. Thank
5 you very much.

6 MR. DAVIDSON: Kawika Marquez followed by
7 Charles Flaherty.

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

11 THE WITNESS: I do.

12 CHAIRMAN DEVENS: State your name and
13 address and proceed.

14 THE WITNESS: Kawika Marquez, P. O. Box 691,
15 Kealahakua 96750.

16 As stated in your earlier reports,
17 testimony, that the area is going to be developed.
18 One of the social impacts would be is that because of
19 the heavy traffic and the transportation from work to
20 West Hawai'i or wherever folks live also causes a
21 social impact on the family. As a result, less time
22 with the family.

23 I think this Project offers an opportunity
24 for live/work from within the surrounding areas. And
25 that I feel confident that the developer has gone

1 through all the steps necessary to the negative
2 responses in regards to the Project.

3 But most of all is that because of the
4 enlargement of development on the business side in
5 West Hawai'i in this particular area, as testified
6 earlier in regards to the expansion of the airport,
7 that there are going to be folks in those areas that
8 would be able to afford these types of residences in
9 the area.

10 And I think for the social health and
11 possibly lessening of impact of traffic that this
12 Project should be made available to our community.
13 Thank you.

14 CHAIRMAN DEVENS: Any questions from the
15 parties? None. Commissioners? None. Thank you.

16 MR. DAVIDSON: Charles Flaherty followed by
17 Toni Owen.

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

21 THE WITNESS: I do. I have testimony here
22 also from Marie Aguilar. She had to go to work. She
23 asked that I submit this. I'll bring it over to have
24 it entered into the record.

25 CHAIRMAN DEVENS: Okay. You have testified

1 before?

2 THE WITNESS: Yes, I have testified before.

3 CHAIRMAN DEVENS: State your name and
4 address and go ahead.

5 THE WITNESS: My name is Charles Flaherty,
6 P. O. Box 922, Captain Cook, Hawai'i 96704.

7 My testimony is centered around explaining
8 why I believe this is a speculative development.
9 Specifically Mr. Lim, who's representing the 'O'oma
10 Beachside Village, he operates out of Hilo. Yet he's
11 represented many, many West Hawai'i developers over
12 the years and is a champion of speculative development
13 in this area.

14 I have provided you with testimony and a map
15 that I submitted to the Kona County Development Plan
16 steering committee detailing flooding and other
17 illegal issues surrounding several developments in the
18 Waiaka FEMA flood plain.

19 As you can see Mr. Lim represented several
20 of these developments. Through research I learned
21 that Mr. Lim, who was also an investor in one of these
22 developments -- it was being touted as an affordable
23 housing project -- the investors in this project
24 contributed \$9,000 to the 2006 political campaigns of
25 three Hilo County Council representatives: Mr. Higa,

1 Mr. Ikeda, and Mr. Yoshimoto.

2 The property had been originally purchased
3 for \$1 million. After the rezoning was granted and
4 all those council people voted for it, the property
5 was put on the market for \$7.5 million. And it sits
6 undeveloped today.

7 Mr. Lim also represented Charles Schwab's
8 Palamanui project last year. And with
9 Ms. Leithead-Todd supported a county rezoning
10 ordinance to reduce and delay promised public
11 benefits. She and Mr. Lim argued that the changes
12 were necessary to have the first stage of a new West
13 Hawai'i University campus completed later.

14 I've provided you with a spread sheet which
15 details \$4500 of political contributions from Mr. Lim
16 during 2008 and 9 to Mayor Billy Kenoi, Council
17 Members Jake Yoshimoto, Ikeda and Councilmember Guy
18 Enriques. All these politicians supported the
19 developer, and the ordinance was passed.

20 This past weekend we saw the headline in
21 West Hawai'i Today: "Palamanui stalled despite relaxed
22 conditions and promised progress."

23 I have also provided you with county
24 ordinance 97-34 --

25 CHAIRMAN DEVENS: I'm sorry, your time is

1 up.

2 THE WITNESS: Was that two minutes or three
3 minutes?

4 CHAIRMAN DEVENS: That was two. You
5 testified before.

6 THE WITNESS: What about this?

7 CHAIRMAN DEVENS: You can give it to our
8 clerk and we'll make it part of the record.

9 THE WITNESS: I prepared three minutes of
10 testimony. And I took a lot of time and took a lot of
11 money printing this out. I would like to finish my
12 last minute of testimony.

13 Your application is arbitrary, capricious.
14 At the last minute I was caught off. The last two
15 testifiers were allowed to ramble on for, like, 10
16 minutes. So I would like to have my last minute,
17 please.

18 CHAIRMAN DEVENS: I'm trying to apply the
19 rule consistently.

20 THE WITNESS: How many testifiers are there?

21 CHAIRMAN DEVENS: If you want to turn it in
22 you can turn it in. If you don't want to turn in it's
23 up to you. I'm going to ask the parties if they have
24 any questions right now for you. Do the parties have
25 any questions? Commissioners have any questions?

1 Thank you very much.

2 MR. LIM: I have my one question to clarify.

3 CHAIRMAN DEVENS: Go ahead, Mr. Lim.

4 MR. LIM: I didn't represent the Palamanui
5 developer.

6 THE WITNESS: You were at the planning
7 commission meeting speaking for them, the planning
8 commission.

9 CHAIRMAN DEVENS: I'm sorry. There's a
10 question; there's an answer and that's it.

11 MR. DAVIDSON: Next testifier Toni Owen
12 followed by Gemma Leg.

13 THE WITNESS: Hi.

14 TONI OWEN

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

17 THE WITNESS: I swear to tell the truth.

18 CHAIRMAN DEVENS: Have you testified before?

19 THE WITNESS: Never testified.

20 CHAIRMAN DEVENS: Give your name and address
21 and proceed.

22 THE WITNESS: Toni Owen, P. O. Box 439
23 Holualoa, 96745. I'm a local girl. I came from
24 O'ahu. I've been here for 20 years. I came because
25 of the open lands here on the Big Island. I'd like it

1 to keep it that way. It seems like, you know, it's
2 such a no-brainer, you know.

3 You don't even have to think about it, just
4 keep it conservation land. It's, you know, everything
5 is about money these days. But this is priceless to
6 us.

7 It affects our culture. We are on an
8 island. We live -- we are surrounded by water. Water
9 is so much a part of our culture. Keep it that way,
10 you know. Don't, don't sell out. Don't sell out
11 because it's just a small piece of land there. Don't
12 sell it out to make a subdivision that you can do --
13 you can make the subdivision up mauka across the
14 street. Make it somewhere else.

15 Why go through all the pilikia of the noise,
16 of the water, of access? I mean why deal with all of
17 that when nobody wants that to begin with? So just
18 keep it conservation. You know, give us that.

19 And I'm an unemployed construction worker.
20 I would like to have work. But I don't want it that
21 way. You know, it's not the right way to have the
22 subdivision there.

23 And the Planning Department, I mean even you
24 said so yourself at the Planning Department that it is
25 not, you know, why -- what have you stated something

1 oh, sorry, um, that it was ill advised, your Planning
2 Department it was ill advised -- sorry, I'm sorry I
3 have to end it there. But it isn't.

4 It's not a planned -- it's not a good plan.
5 So I wouldn't see why the Planning Department would
6 even want to approve it. Thank you for your time.
7 Mahalo.

8 CHAIRMAN DEVENS: Parties, have any
9 questions? None. Commissioners? None. Thank you.

10 MR. DAVIDSON: Gemma Lej.

11 AUDIENCE MEMBER: Not here.

12 MR. DAVIDSON: Karen Eoff followed by
13 Glennon Gingo.

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

17 THE WITNESS: I do.

18 CHAIRMAN DEVENS: Have you testified before?

19 THE WITNESS: Yes, I have.

20 CHAIRMAN DEVENS: Okay. Your name and
21 address.

22 THE WITNESS: My name is Karen Eoff. My
23 address is P. O. Box 1602 Kailua-Kona 96745. I
24 submitted previous written testimony on behalf of
25 Kohanaiki 'Ohana, so you have that. I won't go back

1 into that.

2 But today I just on a personal level wanted
3 to say that I did take part in the last two contested
4 case hearings in the late '80s, and early '90s
5 regarding the reclassification at the State Land Use
6 Commission the request to rezone 'O'oma.

7 And I would say to you today that the same
8 reasons exist. The reasons that was denied previously
9 are even more valid today. The only thing I see
10 that's different is that the discussion on both sides
11 of the issue is far more sophisticated. So you have
12 the community a lot more informed and you have the
13 developers and their PR people much more polished.

14 So I would say it's a hard decision but you
15 have to base it on the criteria that's before you.
16 And I ask you not to base it on projections because
17 those have never come true for us.

18 The projections that were made in the late
19 '80s and the early '90s none of that has come true.
20 That's why we have the stalled developments.

21 So I would say that the testimony on the
22 side of the opposition may be more, more valid today
23 because it's based on true facts that we see in our
24 community. So it's sad that we've divided our
25 community even to where people are wearing buttons. I

1 mean it just saddens me today that we're still doing
2 this.

3 I hope you look just at the criteria. If we
4 are at a cross roads like the man from PBR said, that
5 maybe we should reevaluate and keep this land in
6 conservation for now until we have a valid need to
7 change it. Thank you.

8 CHAIRMAN DEVENS: Parties, have any
9 questions? None. Commissioners, any questions?
10 None. Thank you. For the record we'll make part of
11 the record what Mr. Flaherty submitted. It's a letter
12 dated June 17, 2010 from a Marie Aguilar and Phillip
13 Mosher.

14 MR. DAVIDSON: Glennon Ginko (sic) followed
15 by Ron Michell.

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

19 THE WITNESS: I do.

20 CHAIRMAN DEVENS: And you have testified
21 before?

22 THE WITNESS: Yes.

23 CHAIRMAN DEVENS: Name and address.

24 THE WITNESS: For the record Glennon Gingo.
25 I'm flattered by "Ginko" but it's Gingo. P. O. Box 396

1 Holualoa, 96725. I know I have two minutes. I
2 appreciate you're sitting through your lunches as
3 well.

4 A couple points I want to make that are
5 add-ons to my last testimony of course. We had a lot
6 of aviation people here talking. But if they will
7 recall that the Aloha Airlines group used the
8 antiquated aircraft since 1966. They had
9 Pratt-Whitney engines.

10 And if we're still flying those aircraft
11 today which were outlawed on the mainland in 1985 for
12 their noise signature, they're actually about three
13 times as loud as the Globe Masters that currently fly
14 in that the Air Force uses. So just food for thought.
15 Didn't want to see Aloha go but, of course, the noise
16 went with it.

17 Sewer treatment. The sewer treatment plant
18 for the development is actually at a higher quality
19 standard than the county currently has. Just food for
20 thought.

21 Safe, clean access to the shoreline for
22 families to enjoy the area, I think that's a great
23 idea. Precedent setting setbacks away from the ocean,
24 excellent idea. A home for WHEA, West Hawai'i
25 Explorations Academy. Curtis, I think he got a great

1 opportunity there. I totally support it.

2 In closing I've never been a union guy. In
3 fact I've been one of those guys that would cross the
4 line. I'll tell you right now, I'm standing on the
5 line with my union brothers and sisters supporting
6 this Project.

7 CHAIRMAN DEVENS: Thank you. Any questions
8 from the parties? None. Commissioner? Hearing none,
9 thank you.

10 MR. DAVIDSON: Ron Michell followed Hannah
11 Springer.

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

15 THE WITNESS: Yes, I do.

16 CHAIRMAN DEVENS: Have you testified before?

17 THE WITNESS: Yes, I have.

18 CHAIRMAN DEVENS: Okay. Name and address.

19 THE WITNESS: Ron Mitchell, P. O. Box 2627
20 Kailua-Kona, Hawai'i.

21 I've been at this ahupua'a since 2003,
22 March of 2003. I was asked to go there by PKO by
23 actually Karen's husband and her. We took care of
24 Kohanaiki. We had a need to get 'O'oma to take care
25 of that place when Cliff Morris had it.

1 Because after cleaning up Kohanaiki of
2 undesirables, people that were MPA's, people with no
3 permanent address, we had to do that on 'O'oma to make
4 sure that Kohanaiki was okay.

5 Finally we picked up Kohainaiki. Yes, the
6 developer paid. We also picked up numerous containers
7 of rubbish in the beginning, about seven of them. And
8 besides needles, drug activity that was there, plus
9 people defecating all over the place and surfers
10 dropping their opala too. Surfers now. That's my
11 mana'o. I support the Project.

12 CHAIRMAN DEVENS: Any questions from the
13 parties? Hearing none, Commissioners? None. Thank
14 you.

15 MR. DAVIDSON: Hannah Springer. That's the
16 least registered speaker.

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

20 THE WITNESS: I do.

21 CHAIRMAN DEVENS: Have you testified before?

22 THE WITNESS: I have not.

23 CHAIRMAN DEVENS: Name and address and go
24 ahead.

25 THE WITNESS: My name is Hannah Kihalani

1 Springer. My address is 72-3403 Mamalahoa Highway,
2 Kailua-Kona 96740.

3 No o ka ha'a ha'a. I'm a kama'aina of
4 Kekaha which includes the land of 'O'oma. I am a
5 member of and stand with the Surfrider Kona Kai Ea
6 chapter and the Kohanaiki 'Ohana in opposition to the
7 application for reclassification before you.

8 I have family among the supporters of this
9 application, and aloha nui to them. I have friends on
10 both sides of the debate and this intertwining among
11 us is part of the strength of our community. I pray
12 their diversity of opinion not diminish the aloha
13 among us.

14 A 1993 application for reclassification from
15 the conservation designation was denied. The findings
16 of facts and Conclusions of law rendered by the
17 Commission then are still germane.

18 As before, the Commission must ask: Does the
19 application to reclassify the property conform to the
20 standards applicable to establishing boundaries of the
21 Urban District as set forth in section 15-15-18 of
22 Hawaii Administrative Rules?

23 Has the Petitioner conclusively proven that
24 the proposed reclassification is necessary to
25 accommodate growth and development without significant

1 cumulative adverse effects upon the environmental
2 quality of the property and surrounding area?

3 Have the Petitioner's market studies
4 accurately supported and substantiated the need for
5 additional residential units in Kona Nei? "Kona Nei"
6 refers to Kona as it truly is now, not as it was in
7 2007, not hypothetically, but as it truly is.

8 Throughout Kona we see the houses remaining
9 on the market month after month. Is there really any
10 need for additional residential units in Kona Nei?
11 Really?

12 Despite the previous approvals, projections,
13 assurances, and efforts, failing development at
14 neighboring Kohanaiki represents a daily reminder of
15 the tremendous environmental, social and visual
16 impacts of unnecessary coastal-dependent development.

17 I pray those impacts are not compounded by
18 approval of this application to reclassify these lands
19 at 'O'oma into the urban designation. Retain the
20 conservation designation.

21 Na'u ka oia me ka mahalo.

22 CHAIRMAN DEVENS: Ask the parties if they
23 have any questions. If not, Commissioners? No
24 questions. Thank you very much. That concludes the
25 public testimony. Why don't we take a two minute

1 break for the court reporter.

2 (Recess was held.)

3 CHAIRMAN DEVENS: We're going to get
4 started. We're back on the record. The parties have
5 all now rested and completed their presentations
6 before the Commission.

7 The Commission will therefore declare the
8 evidentiary portion of this proceeding to be completed
9 subject to the receipt of various follow-up reports
10 and/or answers that may have been requested during the
11 course of this hearing.

12 We direct that the parties draft their
13 individual proposed findings of fact, conclusions of
14 law and decision and order based upon the record in
15 this docket and serve the same upon each other and the
16 Commission.

17 The proposed findings of fact must reference
18 the witness as well as the date, page and line numbers
19 of the transcripts to identify your facts.

20 In addition to the transcript, the exhibits
21 in evidence should also be referenced. We note for
22 the parties that the Commission has standard
23 conditions which we'd like the parties to consider in
24 preparing the proposed orders. A copy of the standard
25 conditions may be obtained from the Commission staff.

1 Should any of the parties desire to
2 stipulate to any portion or all of the findings of
3 fact, conclusions of law, and decision and order,
4 they're encouraged to do so.

5 Regardless of whether the parties pursue a
6 partial or fully stipulated order, we direct that each
7 party file its proposal with the Commission and serve
8 copies on the other parties no later than the close of
9 business on August 23, 2010. Again, the date is a
10 August 23rd, 2010.

11 All comments or objections to the parties'
12 respective proposals shall be filed with the
13 Commission and served upon the other parties no later
14 than the close of business on September 7, 2010.
15 Again, the deadline is September 7, 2010.

16 Any responses to the objections must be
17 filed with the Commission and served on the other
18 parties no later than the close of business on
19 September 17, 2010. Again, September 17, 2010 is the
20 deadline.

21 However, could I prevail on the parties to
22 consult with staff early in the process to ensure that
23 technical and non-substantive formatting protocols
24 observed by the Commission are adhered to.

25 Oral arguments will be scheduled after

1 receipt of the parties' respective filings.

2 Are there any questions with respect to our
3 post-hearing procedures from any of the parties?

4 Hearing none, the Commission would like to
5 thank each and every one of you for your efforts in
6 efficiently presenting your case in this matter.

7 We also appreciate the public coming out for
8 the testimony that's been given in this matter. We
9 will seriously consider all of the evidence that's
10 been submitted. We look forward to receiving the
11 submittals from the parties.

12 With that, Mr. Davidson, is there any other
13 business on the agenda?

14 MR. DAVIDSON: No, Mr. Chair.

15 CHAIRMAN DEVENS: We therefore adjourn for
16 the day. Thank you very much.

17 (The proceedings were adjourned at 1:20 p.m.)

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1 C E R T I F I C A T E

2

3 I, HOLLY HACKETT, CSR, RPR, in and for the State
4 of Hawai'i, do hereby certify;

5 That I was acting as court reporter in the
6 foregoing LUC matter on the 15th day of July, 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

15 DATED: This _____ day of _____ 2010

16

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18

19

20 _____
21 HOLLY M. HACKETT, CSR #130, RPR
22 Certified Shorthand Reporter

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24

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