

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

LAND USE COMMISSION
STATE OF HAWAI'I

ACTION

DOCKET NO. A94-706 KAONOULU RANCH

)
)
)
)

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for a Public Hearing at the Courtyard Maui Kahului Airport, Haleakala Room, 532 Keolani Place, Kahului, Maui, Hawai'i, commencing at 10:00 a.m. on November 1, 2012, pursuant to Notice.

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

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

2 COMMISSIONERS:

3 KYLE CHOCK, CHAIR
4 RONALD HELLER, VICE CHAIR
5 THOMAS CONTRADES
6 LANCE M. INOUYE
7 CHAD McDONALD
8 ERNEST MATSUMURA

9 EXECUTIVE OFFICER: DAN ORODENKER
10 CHIEF CLERK: RILEY HAKODA
11 STAFF PLANNERS: BERT SARUWATARI
12 DEPUTY ATTORNEY GENERAL: SARAH HIRAKAMI, ESQ.

13 AUDIO TECHNICIAN: WALTER MENCHING

14 Docket No. A94-706 KAONOULU RANCH (Maui)

15 For the Intervenors
16 Maui Tomorrow Foundation, Inc.,
17 South Maui Citizens for Responsible Growth
18 Daniel Kanahale:

19 TOM PIERCE, JR., ESQ.

20 For the County: MICHAEL HOPPER, ESQ.
21 Deputy Corporation Counsel
22 JANE LOVELL, ESQ.
23 Deputy Corporation Counsel
24 WILL SPENCE, Planning Drtr.
25 ANN CUA, Planner

For the State: JESSE SOUKI, ESQ.
Director Office of Planning
RODNEY FUNAKOSHI
Office of Planning

Respondents: JOEL KAM, ESQ.
Honuaula Partners, LLC
JONATHAN STEINER, ESQ.
Piilani Promenade South, LLC
Piilani Promenade North, LLC
Honuaula Partners, LLC

I N D E X

	PUBLIC WITNESSES	PAGE
1		
2		
3	Patricia Ross	18
4	Thomas Kelly	19
5	Bill Kamai	22
6	Ivan Lay	24
7	Christian Tackett	27
8	Robin Knox	29
9	Katherine M. Andrade	32
10	Eric Yoshizawa	34
11	Mike Moran	36
12	Esther Juan	38
13	Elden Liu	39
14	Robert W. Martin	42
15	Abel Kaho'ohanohano, Jr.	44
16	Robert Offerman	46
17	Marilyn Chapman	49
18	Tom Blackurn-Rodríguez	51
19	Mary Phillips	53
20	Patricia Nuckolls	56
21	Richard Emery	59
22	Pamela Tumpap	61
23	Joan Martin	65
24	Perry Artates	67
25	Danny Collier	69

I N D E X cont'd

1		
2	DOCKET WITNESS	PAGE
3	MARTIN LUNA, ESQ.	
4	Direct Examination by Mr. Steiner	155
	Corss-Examination by Mr. Kam	182
5	Cross-Examination by Mr. Souki	183
	Cross-Examination by Mr. Pierce	197
6	Rebuttal Examination by Mr. Steiner	205
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 CHAIRMAN CHOCK: (Gavel) Good morning. I'd
2 like to call our meeting to order. Our first item of
3 business today is the adoption of the minutes. Do I
4 have a motion to approve?

5 VICE CHAIR HELLER: So moved.

6 COMMISSIONER CONTRADES: Second.

7 CHAIRMAN CHOCK: It's been moved and
8 seconded. Any opposed? Minutes are approved.
9 Executive officer, can you brief us on our upcoming
10 meeting schedule.

11 MR. ORODENKER: Mr. Chair, tentatively we
12 have on November 15th and 16th back here on Maui for a
13 continuation of this hearing, if necessary, and
14 discussion of the Land Use Commission Administrative
15 Rules amendments.

16 On December 6th, once again we are back
17 here on Maui for the West Maui Land oral arguments
18 and decision-making. There's time for a continuation
19 of this hearing if so necessary. We also have a Waiko
20 Industrial Park site visit.

21 On January 10th and 11th we have the West
22 Maui Land Adoption of Order here on Maui. Thank you.

23 xx

24 xx

25 xx

1 CHAIRMAN CHOCK: Thank you, Dan. This is a
2 hearing and action meeting regarding Docket No.
3 A94-706 Order to Show Cause and subsequent motions.
4 Will the parties please identify themselves for the
5 record.

6 MR. STEINER: Good morning, Commission,
7 Chair. Jonathan Steiner on behalf of Piilani
8 Promenade North and Piilani Promenade South as well as
9 Honuaula Partners, LLC.

10 MR. KAM: Good morning, Commission and
11 Chair Chock. Joel Kam on behalf of Honuaula Partners.

12 MR. HOPPER: Thank you, Mr. Chair, Members
13 of the Commission. Michael Hopper, deputy corporation
14 counsel for the county of Maui Department of Planning.
15 With me is Jane Lovell, deputy corporation counsel and
16 Will Spence, planning director and Ann Cua staff
17 planner.

18 MR. SOUKI: Good morning, Chair and
19 Commissioners. Jesse Souki for the Office of
20 Planning. And with me today is Rodney Funakoshi from
21 Office of Planning.

22 MR. PIERCE: Good morning, Mr. Chair. Tom
23 Pierce on behalf of the Intervenors Maui Tomorrow,
24 South Maui Citizens for Responsible Growth and Daniel
25 Kanahele. To my left is Mark Hyde who's the president

1 of South Maui Citizens for Responsible Growth. And
2 behind me I have the executive director of Maui
3 Tomorrow and Daniel Kanahele.

4 CHAIRMAN CHOCK: Good morning, everyone.
5 There's been a lot activity and filings on this matter
6 since our last hearing. So I would like to briefly
7 summarize this. And we'll go through it. And please
8 bear with me because there has been a lot of activity.

9 On August 24th, 2012 Movant's Motion for
10 Order to Show Cause was granted.

11 On September 6th, 2012 the Movant's
12 Petition to Intervene in Show Cause hearing was
13 granted, and a pre-hearing conference scheduled.

14 On September 10th the LUC's Order granting
15 Movant's Motion for Hearing, Issuance of Order to Show
16 Cause and other Relief was mailed to the parties.

17 On September 11th, the LUC's pre-hearing
18 Order was mailed to the parties.

19 September 21st the Commission received
20 Intervenors' Motion for Decision on the pleadings on
21 Honuaula Partners, LLC's Motion for Order bifurcating
22 Docket No. 94-706 and Suspending Show Cause Hearing as
23 to Honuaula Partners, LLC or Alternative Hearing Date.

24 On October 10th the Commission received a
25 sixteenth annual report of Piilani Promenade South,

1 LLC and Piilani Promenade North, LLC, Successor
2 Petitioner to Kaonoulu Ranch and the sixteenth annual
3 report of Honuaula Partners, LLC, Successor Petitioner
4 to Kaonoulu Ranch.

5 October 22nd the Commission received
6 Movant's pre-hearing Motion on Burden of Proof and
7 Motion to Take Testimony Of Carla Flood via telephone.

8 On October 25th the Commission mailed the
9 Agenda Notice for November 1st and 2nd LUC meeting to
10 the parties and statewide and Maui mailing lists.

11 October 29 the Commission received the
12 Department of Planning, county of Maui's Motion to
13 Exclude Evidence Related to the 1998 Kihei-Makena
14 Community Plan and determination of scope of review
15 Exhibit A.

16 October 30 the Commission received Honuaula
17 Partners, LLC Notice of Withdrawal of Motion for Order
18 to Bifurcate Docket No. A94-706 and Suspending Show
19 Cause Hearing as to Honuaula Partners, LLC filed on
20 September 14th, 2012.

21 On October 31st we received public
22 testimony via e-mail from the following individuals:

23 Joan Junger JDV, no name given, Kelly
24 Shimabukuro, Maurice Shimabukuro, Ben and Tiffany
25 Prangnell, Laurie and Bob Kerr, JP Grund, Cindy

1 Canham, Larry Broadstone, Marie Kimmey, Karin Taylor,
2 Jane Best, Cheryl Logsdon, Gloria Garrett-Azzara, and
3 Bonnie West.

4 We've also received all of the parties'
5 witness lists, exhibit lists, rebuttal witness lists
6 and exhibits as well as all of the responses and
7 filings from the parties regarding the various motions
8 that have been filed.

9 Let me briefly describe our procedure for
10 today on this docket. First, the Chair will seek a
11 Motion to Amend th Agenda to add county of Maui's
12 Motion to Exclude Evidence related to the 1998
13 Kihei-Makena Community Plan and Determination of Scope
14 of Review Received by the Commission on October 29,
15 2012.

16 We will then hear Maui County's Motion to
17 Exclude Further Public Testimony. If the Motion is
18 we will move on to hearing the remaining motions. If
19 the motion is denied we will call individuals desiring
20 to provide public testimony to identify themselves.

21 All such individuals will be in turn called
22 to our witness box where they will provide their
23 testimony. After public testimony, if allowed, the
24 Commission will hear the Intervenors' Pre-hearing
25 Motion on Burden of Proof Intervenors' Pre-hearing

1 Motion *In Limine* regarding the scope of evidence;
2 county of Maui's Motion to Exclude Evidence related to
3 the 1998 Kihei-Makena Community Plan and Determination
4 of Scope of Review; and the Motion to Take Testimony
5 of Carla Flood Via Telephone.

6 After all these motions on the agenda have
7 been addressed and decided upon, evidence and argument
8 on the Order to Show Cause and other relief will be
9 taken.

10 At the conclusion of the presentations of
11 oral argument and after the questions from the
12 Commissioners and the answers that follow, the
13 Commission will conduct its deliberations on the Order
14 to Show Cause. Are there any questions on our
15 procedure for today? Parties?

16 MS. LOVELL: No questions.

17 THE WITNESS: Chair will now entertain a
18 Motion to Amend the Agenda to add county of Maui's
19 Motion to Exclude Evidence Related to the 1998
20 Kihei-Makena Community Plan and Determination of Scope
21 of Review by the Commission on October 29, 2012.

22 Commissioners, what is your pleasure?

23 VICE CHAIR HELLER: So moved to amend the
24 agenda.

25 COMMISSIONER McDONALD: Second.

1 CHAIRMAN CHOCK: It's been moved and
2 seconded. Executive Officer, poll the Commission.

3 MR. ORODENKER: Commissioner Heller?

4 VICE CHAIR HELLER: Yes.

5 MR. ORODENKER: Commissioner McDonald?

6 COMMISSIONER McDONALD: Yes.

7 MR. ORODENKER: Commissioner Matsumura?

8 COMMISSIONER MATSUMURA: Yes.

9 MR. ORODENKER: Commissioner Contrades?

10 COMMISSIONER CONTRADES: Yes.

11 MR. ORODENKER: Commissioner Inouye?

12 COMMISSIONER INOUYE: Yes.

13 MR. ORODENKER: Chair Chock?

14 CHAIRMAN CHOCK: Yes.

15 MR. ORODENKER: Mr. Chairman, the motion
16 carries unanimously.

17 CHAIRMAN CHOCK: It's been moved and
18 seconded to amend the agenda to add the County's
19 motion. County's Motion to Exclude Evidence Related
20 to the 1998 Kihei-Makena Community Plan and
21 Determination of Scope of Review is now on our agenda.

22 Let me remind you that the Commission will
23 be addressing the motions in this order this morning:
24 Intervenors' pre-hearing Motion on Burden of Proof
25 followed by Intervenors' Pre-hearing Motion *In Limine*

1 regarding scope of evidence, then county of Maui's
2 Motion to Exclude Evidence Related to the 1998
3 Kihei-Makena Community Plan and Determination of Scope
4 of Review.

5 And then the Motion to Take Testimony of
6 Carla Flood Via Telephone; followed by the Commission
7 conducting a full evidentiary hearing on the Motion of
8 the Order to Show Cause.

9 Maui County's Motion to Exclude Further
10 Public Testimony. County of Maui, are you prepared to
11 make a presentation at this time?

12 MS. LOVELL: Yes. Thank you, Chair. I
13 will be presenting the motion. Jane Lovell, deputy
14 corporation counsel. (mic off) I will be presenting
15 the motion.

16 CHAIRMAN CHOCK: I'm sorry?

17 MS. LOVELL: Jane Lovell, deputy
18 corporation counsel. I will be presenting the motion.

19 CHAIRMAN CHOCK: Proceed.

20 MS. LOVELL: Thank you. As the Commission
21 is aware the proceeding that you are here to hear is
22 not a district boundary amendment. It is a not a
23 hearing on an entitlement. It is not the usual kind
24 of public meeting that the Commission holds.

25 Instead, the Commission today is acting as

1 judge and jury and is judging whether the proposed
2 developer of this Project is in violation of the terms
3 and conditions of the district boundary amendment
4 Decision and Order that was previously entered in this
5 docket.

6 Just as public testimony is not allowed in
7 a trial in a court, it is our position that public
8 testimony beyond what has already been given in this
9 docket will be unduly burdensome on the very limited
10 time that this Commission has to give to this matter.

11 Public testimony is certainly enshrined in
12 our way of doing business in Hawai'i. But it is
13 governed by chapter 92 of the Hawai'i Revised
14 Statutes. Chapter 92-6 indicates, however, that it
15 does not -- that the Sunshine Law does not apply to
16 adjudicatory functions exercised by a board and
17 governed by section 91-8 and will 91-9, in other
18 words, contested case hearings such as the one we are
19 about to embark on.

20 The Commission also has the capacity under
21 its own rules to limit testimony, especially testimony
22 that is unduly repetitious.

23 Finally, I believe that most of the public
24 testimony that was heard previously in this docket and
25 that is proposed by the many people you see here

1 today, will not be relevant and directed to the very
2 specific issue that you have to consider, namely: Has
3 a violation of a specific term or condition of the
4 Decision and Order occurred?

5 Therefore, for those reasons we ask that
6 the public testimony in this docket be limited to that
7 which has already been heard. Thank you.

8 CHAIRMAN CHOCK: Thank you. Mr. Steiner,
9 do you have a presentation you'd like to offer?

10 MR. STEINER: Just briefly, Mr. Chair.
11 Piilani Promenade has joined in the motion filed by
12 the county of Maui. The concern is, as Ms. Lovell
13 stated, the burden upon the Commission given the
14 limited amount of time.

15 That being said we do appreciate there's a
16 lot of members of the public here who wish to be
17 heard. We would abide by whatever decision the
18 Commission wishes to make.

19 CHAIRMAN CHOCK: Thank you. Mr. Kam.

20 MR. KAM: Thank you, Chair. We have
21 nothing to add on top of our written submissions. We
22 just rest on our written submissions on this motion.

23 CHAIRMAN CHOCK: Thank you. Office of
24 Planning.

25 MR. SOUKI: Just to quickly summarize. We

1 did file a written response. We generally oppose. We
2 agree that the Commission has authority to limit the
3 testimony to what is relevant and not cumulative. But
4 we also note that Chair Heller did on August 24th
5 limit testimony, and told the public that if the
6 motion was granted a full evidentiary hearing would be
7 scheduled. So the public may have held back on their
8 testimony in anticipation of this hearing.

9 Also we draw your attention to Hawaii
10 Administrative Rules 15-15-58B which I think provides
11 some guidance in these matters. The Commission may
12 desire to hear at a hearing and allow representatives
13 from citizens of community groups to testify. So
14 that's our position. Thank you.

15 CHAIRMAN CHOCK: Thank you, Mr. Souki.
16 Mr. Pierce.

17 MR. PIERCE: Mr. Chair, Intervenors are in
18 support of opportunities for the public to speak out
19 and have an opportunity to weigh in especially when it
20 deals with land use important land use issues such as
21 the ones we have before us. Having said that, we will
22 be deferring to the Commissioners to determine what is
23 appropriate to assure an orderly and efficient
24 hearing.

25 CHAIRMAN CHOCK: Thank you, Mr. Pierce.

1 County, rebuttal?

2 MS. LOVELL: No, no need, thank you.

3 CHAIRMAN CHOCK: Okay. Commissioners, any
4 questions of the parties? Chair's going to deny
5 Motion to Exclude Further Public Testimony at this
6 time.

7 Ladies and gentlemen of the public, we will
8 be hearing public testimony and calling witnesses up
9 to our witness box where you will be sworn in. We do
10 have a 2-minute time limit on your testimony. And as
11 it's been stated by the parties, we'd like you to be
12 sure that your testimony is not redundant and it is
13 specific to the matter that we're here to discuss
14 today.

15 If you're not signed up, please see Riley
16 up here in the front of the room. And he can make
17 sure you're signed up to testify. We'd like to move
18 through those proceedings as efficiently as possible.
19 So I appreciate it. I know we have a full house
20 today, standing room only. So if you can please work
21 with Riley as discreetly as possible so we can move
22 through this. Dan.

23 MR. ORODENKER: Thank you, Mr. Chair. The
24 first public witness a Patricia Ross followed by
25 Thomas Kelly.

1 CHAIRMAN CHOCK: Good morning, Ma'am.

2 THE WITNESS: (off mic) Good morning.

3 Thank you for being here. I'm Patricia Ross -

4 CHAIRMAN CHOCK: Ma'am? Ma'am --

5 THE WITNESS: 2495 South Kihei Road.

6 CHAIRMAN CHOCK: I need to swear you in
7 before you begin.

8 THE WITNESS: Oh, I'm sorry.

9 PATRICIA ROSS

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

12 THE WITNESS: Yes.

13 CHAIRMAN CHOCK: Please state your name and
14 address into the microphone for the record, please.

15 THE WITNESS: Patricia Ross, 2495 South
16 Kihei Road, No. 316, Kihei, Maui, Hawai'i 96753.

17 CHAIRMAN CHOCK: Two minutes.

18 THE WITNESS: My contention is that the
19 public, that we as citizens of South Maui who have
20 been there since 19- well, we bought here in 1979 --
21 and we've had input to many community things for the
22 good of Maui. What we are feeling now is being
23 excluded from the overall planning of the shopping
24 center. We would like to see it become a win/win
25 situation for everybody.

1 Address the infrastructure, the needs of
2 the community, the fact of the impact of the noise of
3 the shopping center who will impact our new high
4 school -- if we ever get it. And we would just like
5 to be a part of the planning. We've sort of been
6 excluded.

7 And I think the developer could benefit if
8 he would say what he could give back to the community:
9 Shelter, a room, a multipurpose room in case of
10 continuing tsunamis or earthquakes, to put the people
11 in the mall where they can go to be safe instead of
12 further impact on our little Kihei communities. All I
13 have to say.

14 But remember Maui is the No. 1 island in
15 the world for 18 years. We wish to keep that. The
16 reason people come here is the serenity --

17 MR. ORODENKER: Ten seconds, please.

18 THE WITNESS: -- the beauty, the peace.
19 Not to shop at a mall. They've done that before
20 they've come. Thank you.

21 CHAIRMAN CHOCK: Thank you, Ma'am.
22 Parties, any questions for this testifier? (No
23 questions). Commissioners? Thank you for your
24 testimony.

25 MR. ORODENKER: Thomas Kelly followed by

1 Bill Kamai.

2 THOMAS KELLY

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

5 THE WITNESS: I do.

6 CHAIRMAN CHOCK: Your name and address for
7 the record.

8 THE WITNESS: My name's Tom Kelly. I live
9 at 3150 Wailea Ala Nui Unit 3102 with my wife where we
10 are property owners and taxpayers.

11 CHAIRMAN CHOCK: Proceed.

12 THE WITNESS: To start with let me tell you
13 that I am a developer in the past. I'm very pro
14 economic development. I am for sustainable growth.
15 And I have championed job creation throughout my
16 professional career.

17 Having said that it might be a surprise
18 that I have concerns about this opportunity. This is
19 not about the developers. The developers are simply
20 trying to maximize profits for the investors using
21 this land in question.

22 What is of concern is that you have to
23 recognize that the people of South Maui, Maui Meadows,
24 Makena, Waialea and Kihei have one primary artery. We
25 live in a cul-de-sac: One way down, one way back.

1 Kihei Road is not an alternative route. It serves
2 local business and residents and is congested a good
3 deal of the time.

4 So this is my primary concern. And having
5 said that, it is apparent to me that there's some lack
6 of input. You could perhaps, you know, claim a
7 disregard for public input as the developers proceeded
8 with these two malls.

9 They must have rationale and research that
10 suggests Southern California style side-by-side mega
11 malls are in the best interest of the people of South
12 Maui. If they do so I hope that you haven't.

13 But it also concerns me a great deal that
14 17 years later putting two mega malls beside a
15 proposed high school in addition to affordable houses,
16 suggest traffic congestion that is potentially absurd.
17 Does anyone sense potential accidents?

18 MR. ORODENKER: Ten seconds.

19 THE WITNESS: Well, let me conclude. It's
20 unfortunate. Can I submit written testimony?

21 CHAIRMAN CHOCK: Absolutely.

22 THE WITNESS: All right. I'll leave behind
23 my full text. Let me just conclude by suggesting to
24 you that this is also about government transparency
25 and accountability. I think that the Kihei-Makena

1 Plan, the Order that was issued, that I believe there
2 are numerous examples of non-compliance over a period
3 of time as well as the recent guidelines developed by
4 the county commission need to be taken into account
5 for any development on this island. Thank you very
6 much, Commissioners.

7 CHAIRMAN CHOCK: Thank you. Parties, any
8 questions? Commissioners? Thank you for your
9 testimony.

10 MR. ORODENKER: Bill Kamai followed by Ivan
11 Lay.

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

15 THE WITNESS: I do.

16 CHAIRMAN CHOCK: Name and address for the
17 record.

18 THE WITNESS: My name is Bill Kamai. I am
19 a service representative for the Hawai'i Regional
20 Council of Carpenters. And I reside at 117 Kaulana Na
21 Pua Circle, Wailuku.

22 CHAIRMAN CHOCK: Proceed.

23 THE WITNESS: Aloha and good morning,
24 Commissioners. Thank you for coming to Maui. I would
25 like to ask for your support of the Piilani Promenade

1 in its application. Aside from the obvious community
2 benefits of approving this application with the
3 creation of 1800 retail jobs, 200 construction jobs,
4 it also means the expediting of the first increment of
5 our Upcountry Highway which is a much needed
6 alternative route for traffic congestion both for
7 North Kihei and Upcountry.

8 As was mentioned earlier by the earlier
9 testifier regarding an alternative route for tsunamis,
10 fires, or any kind of emergencies, Kihei is indeed
11 located in a cul-de-sac. And this Upcountry Highway
12 would help relieve some of that.

13 This Project would need to upgrade to an
14 existing water line with a million gallon water tank
15 to be built to ease the pressure in the area and to
16 help supply Kihei High School.

17 Other similarly zoned areas in Kihei is the
18 Kihei-Wailea Gateway Plaza located at the south end of
19 Piilani Highway. It was zoned M-1 light industrial
20 just like this property is. It consists of bars,
21 restaurants, other businesses, retail stores as well
22 as Subway store. And it's all permitted uses under
23 this current zoning.

24 The dedication of the water tank to the
25 county, property tax revenues to county coffers,

1 \$750,000 paid by the developer to DOE -- hopefully it
2 will be used for Kihei High School.

3 Also \$1.25 million in fees paid from the
4 developer to the State Department of Transportation
5 are just some of the many benefits to the retail
6 workers, construction workers, community, the county,
7 and the state which would benefit should this
8 application be approved.

9 And last but not least we're not building a
10 nuclear power plant. We're building a retail shopping
11 center. Thank you.

12 CHAIRMAN CHOCK: Thank you, Mr. Kamai.
13 Parties, any questions? Commissioners? Thank you for
14 your testimony.

15 MR. ORODENKER: Ivan Lay followed by
16 Christian Tackett.

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

20 THE WITNESS: I do.

21 CHAIRMAN CHOCK: Your name and address for
22 the record, please.

23 THE WITNESS: My name is Ivan Lay. And I
24 reside at 2565 Kokomo Road, Haiku, Hawai'i, Upcountry.
25 I'm also a field representative for the Hawai'i

1 Regional Council of Carpenters.

2 I'd like to talk a little bit about
3 boosting our economy. Earlier you heard that this
4 would create 200 construction jobs for us. These
5 construction jobs, if you break it down, comprise of
6 carpenters, plumbers, electricians, carpet layers,
7 masons. It's a large group here that need work right
8 now. With our fluctuating economy these families are
9 looking for some stability in their household. And
10 these jobs will help to create this.

11 Also in the retail portion 1800 jobs.
12 You're looking at clerks, janitorial people,
13 salespeople, stock persons, store manager, regional
14 manager, truck drivers, distributors. And again this
15 will help to stabilize their work, their economy,
16 their household because they'll have work and it opens
17 up opportunities for them.

18 In our line of work, in carpentry, a lot of
19 benefits come with working. This includes health and
20 welfare. We go to work. We accumulate hours. We're
21 able to take our families to the doctor to take care
22 of them. So there's a lot of other things that fall
23 behind this.

24 Under the quality products that will be
25 sold at these outlet stores, giving Maui residents an

1 opportunity to buy quality products at a reasonable
2 price without having to purchase an airplane ticket
3 just to get to the these stores.

4 This will help to boost our economy with
5 tax sales and it keeps our people here. And we don't
6 have to just our gasoline. Well, I guess gas on the
7 plane.

8 Eclipse Development has also committed to
9 complete the first segment of the highway that will go
10 from Kihei to Upcountry. I live in Makawao. So this
11 venue to Kihei is a big opportunity for us. This will
12 help us save gas for us, our children, everyone that
13 wants to go to the beach on the weekend.

14 In 1995 the Petitioner proposed a light
15 industrial commercial subdivision. There were no
16 conditions imposed by the State LUC that restricted
17 the use of the property.

18 MR. ORODENKER: Ten seconds.

19 THE WITNESS: Under the light industrial
20 zoning it does allow for retail development. Examples
21 of this will be the Maui Marketplace and the Lahaina
22 Gateway Center. Land development is a very risky
23 thing nowadays. We need some time fluctuations with
24 the zoning.

25 Zoning is what keeps us in line with the

1 different trends that go on. Thank you.

2 CHAIRMAN CHOCK: Parties, any questions?
3 Commissioners? Thank you for your testimony.

4 MR. ORODENKER: Christian Tackett followed
5 by Mike Moran.

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

9 THE WITNESS: I do.

10 CHAIRMAN CHOCK: Name and address.

11 THE WITNESS: My name is Christian Tackett.
12 I live at 787 Wailupi Drive, Wailuku, Hawai'i.

13 CHAIRMAN CHOCK: Proceed.

14 THE WITNESS: I'm a product of Hawai'i
15 public schools. I attended Wailuku Elementary, Iao
16 and Baldwin. And I sometimes come to these meetings
17 when I can get away from work or it seems like it will
18 have a big impact on the place where I grew up.

19 It always interests me to see that there's
20 hardly anybody of my age group with families and kids.
21 I think that's probably because either they can't
22 afford to come because they have no job or they're
23 busy making the money that's gonna feed those kids.

24 I believe what you have on the table is a
25 project. During the hardest of times I've survived

1 three years of this type of economy. And it's been
2 rough. And I've seen lots of my people in my trade
3 go under. I've seen lots of families trying to get
4 medical, and can't get medical just because of the
5 nature of the trade that we're in.

6 And I believe, as you sit through and
7 you'll see the testimony come up it'll be the same as
8 with a lot of the other testimonials that have gone by
9 as the people that come up and testify against it are
10 people that come here and they want to keep the type
11 of life that they came here and first perceived.

12 Then there's the people on the other side,
13 the people like me, that we need the work every day.
14 We need to go to work every day, we need to feed our
15 kids and we need to buy the clothes. I covet -- I
16 covet the fact that people have the ability to retire
17 here. And at the end of my trade that avenue probably
18 won't even be there for me. But as long as I can stay
19 working I can live in this state for a while.

20 MR. ORODENKER: 10 seconds.

21 THE WITNESS: So I guess the only guarantee
22 that I can give you is if this Project doesn't go
23 through then the keawes and the rocks and the dirt
24 will stay the same. But if this Project does go
25 through children will be fed and rents will be paid

1 and birthdays will go on and the working class will
2 benefit. So thank you.

3 CHAIRMAN CHOCK: Parties, any questions?
4 Commissioners? Thank you for your testimony.

5 MR. ORODENKER: Mike Moran followed by Mona
6 Sorry.

7 MIKE MORAN

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

10 THE WITNESS: I do.

11 CHAIRMAN CHOCK: Name and address.

12 THE WITNESS: My name is Mike Moran, 167
13 Aha'aina Way in Kihei. Chair, I would like to request
14 if I could swap with a young lady to take my position.
15 She needs to leave early. Is that --

16 CHAIRMAN CHOCK: Sure. What's her name?

17 THE WITNESS: Name is Robin Knox.

18 CHAIRMAN CHOCK: Robin come forward,
19 please.

20 ROBIN KNOX

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

23 THE WITNESS: I do.

24 CHAIRMAN CHOCK: Your name and address?

25 THE WITNESS: My name is Robyn S. Knox.

1 And my address is 28 Waikalani Place, Kihei.

2 CHAIRMAN CHOCK: Proceed.

3 THE WITNESS: Thank you, Chair and
4 Commission for allowing us to testify to day. You may
5 remember I testified as an expert witness before you
6 on another case. Today I'm an extremely well informed
7 citizen in front of you. I have for the past few
8 years served as the Southwest Maui Watershed Plan
9 Coordinator. So I've had the opportunity for two
10 years to study this watershed.

11 What I want you to know is that in my
12 opinion -- and I also live just below the Project in
13 the watershed. So I'm in the area of impact of
14 drainage and other issues.

15 I want you to know that I think there is
16 too much impervious surface. And that meeting the
17 county's recently adopted water quality-based
18 stormwater standards for drainage design will not
19 solve the problem because those standards assume that
20 a large number of small storms move more sediment and
21 water into the ocean than a very new number of large
22 storms. And we know from our data that that is the
23 opposite of our watershed on the leeward side. We
24 have very little rainfall. And we have very large
25 storms when they happen.

1 This area in our Watershed Plan was
2 identified as an area for restoration of riparian
3 corridors to try to us R1 water to put some vegetation
4 back out there, because our data as well as the state
5 climatology office data confirms that we are having
6 less rainfall overall, less frequent events. But when
7 they do come they are more intense, more inches per
8 hour and more water in a short time. And because of
9 the drought there's no vegetation to hold the water.

10 So what the Watershed Plan envisions for
11 this area is riparian corridor restoration. I did
12 approach the developers to try to engage in a
13 discussion about watershed planning. They did not
14 seem to think it was a valuable investment of their
15 time at that point.

16 MR. ORODENKER: Ten seconds.

17 THE WITNESS: I would encourage everyone to
18 participate in the watershed planning because it's a
19 facilitated, non-adversarial setting in which to
20 discuss some of these issues. And I think that the
21 Commission's decisions could be better supported also
22 if they understood what was in our Watershed Plan and
23 there's some opportunity to present that. Thank you
24 very much.

25 CHAIRMAN CHOCK: Thank you. Parties?

1 Commissioners? Thank you for your testimony.

2 MR. ORODENKER: Mona Sorry followed by
3 Katherine Andrade. Mona C. Bin Sorry (no response)
4 Katherine Andrade followed by Eric Yoshizawa.

5

6 KATHERINE ANDRADE

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

9 THE WITNESS: I do.

10 CHAIRMAN CHOCK: Name and address.

11 THE WITNESS: Katherine Andrade, 279
12 Humupea Place, Kihei, North Kihei.

13 CHAIRMAN CHOCK: Proceed.

14 THE WITNESS: I live in North Kihei, born
15 and raised. My ohana and I fully support the
16 projected Maui Outlets and Piilani Promenade North and
17 South. The shopping malls will benefit everyone in
18 Kihei. We have to progress as an economy one way or
19 another. And this is just a start.

20 For instance, what are the benefits of a
21 huge area that is abandoned, dry and dead going to be
22 my generation and the next? What good is the same
23 piece of land to a tourist who's expecting lush, green
24 land? Nothing. It's an eyesore if you ask them.

25 I drive my daughter to school every morning

1 and I have to see this depressing piece of land not
2 being but to good use. I don't understand the point
3 that Maui Tomorrow is trying to make about the
4 projecting malls obstructing the view of the land that
5 was once called Kaonoulu Ranch.

6 Either way it's going to be developed. Why
7 not have a place that our Kihei community can shop and
8 walk around instead of driving to Kahului? Gas prices
9 are ridiculous as is. And I have to drive all over
10 the island. Why? Because nothing is in Kihei. It's
11 not the time that it takes to drive to Kahului. It's
12 the gas mileage.

13 Building this mall is making Kihei a better
14 place to live by one word: jobs. Let's face it. The
15 unemployment rates in Maui are ridiculous. Shopping
16 malls create many jobs: construction and retail as
17 opposed to the light industrial jobs that require you
18 to obtain a trade degree or a license.

19 I work at a hotel in North Kihei. And I
20 have spoke with tourists from around the world. And
21 they all generally agree there's nothing in Kihei
22 besides beaches and hotels. Tourists want to shop
23 here but they're unable to because we don't have
24 decent places to shop. You can't count the Shops at
25 Waialea. You can't count Ka'ahumanu. Not all

1 tourists are rich and don't want to blow all their
2 spending money on one item.

3 As for the people who live here, what do we
4 do when we visit the mainland or even O'ahu? Shop.
5 Why? Because there isn't any places to shop. If we
6 had a mall to shop, spend time at --

7 MR. ORODENKER: 10 seconds.

8 THE WITNESS: -- we wouldn't have to
9 outsource our hard earned money to other places in
10 Maui. Lastly, people who visit Maui come here to
11 spend money whether it's retail, recreationally or
12 both. Please tell me what small businesses in Kihei
13 would be forced out of business due to this mall being
14 built? It's an economic boost. Thank you.

15 CHAIRMAN CHOCK: Thank you for your
16 testimony. Parties, questions? Commissioners?

17 MR. ORODENKER: Eric Yoshizawa followed by
18 Mike Moran.

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

22 THE WITNESS: I do.

23 CHAIRMAN CHOCK: Proceed.

24 THE WITNESS: Good morning, Chair and
25 Commissioners. I'm Eric Yoshizawa. I reside at 192

1 West Lana'i Street in Kahului. I'm appearing before
2 you as a resident, as a parent, as a business manager.
3 These deliberations are important to me, to all of us.
4 And we've been tracking this Project with interest.
5 I'll try and just stick to the points that have not
6 been brought up earlier. So I'll and try cut my
7 testimony shorter.

8 But it's infrequent that projects of this
9 size and magnitude appear before us. And I just see
10 it as a project with broad significance and impact to
11 the island at a time of need. And further,
12 application before this body that occurred at an
13 earlier time, much has evolved since then, and more so
14 than ever.

15 The mentioned benefits to the community, it
16 relieves the county of an obligation to take care of
17 some of the immediate needs in the Kihei area that the
18 Project provides. But beyond that I see a broad range
19 of stimulus that is provided by this Project that will
20 trigger related projects, related activity.

21 Certainly some preliminary activity on the
22 Upcountry Highway has been initiated, I think largely
23 as a result of this Project and these discussions.

24 These are needed pieces of the
25 infrastructure for the island. I think what this

1 Project brings much of that dimension to it.

2 As a business we have a transportation
3 component in our business. We have a fleet, trucking.
4 Movement, the efficient movement along roadways is
5 important to us. I see the overall activity and plan
6 being handled responsibly. There's a great benefit to
7 having regional centers here. We operate a regional
8 business location at this end so that we try to
9 relieve trucking and movement.

10 But even beyond that as a Kahului resident
11 I see the influx of so many people from outlying areas
12 having to come. And Maui has a hub-and-spoke type of
13 transportation system. So there is great sensitivity
14 not just in the Kihei residents, but those in Central
15 Maui over how we relieve this, how we move forward.

16 MR. ORODENKER: Ten seconds.

17 THE WITNESS: And certainly as a parent,
18 certainly as a parent we do look at the economic
19 opportunities for our children. So I thank you for
20 your kind consideration in favor of this Project.

21 CHAIRMAN CHOCK: Thank you. Parties,
22 questions? Commissioners? Thank you for your
23 testimony.

24 MR. ORODENKER: Mike Moran followed by
25 Esther Juan.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MIKE MORAN

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

THE WITNESS: I do.

CHAIRMAN CHOCK: Welcome back. Name and address.

THE WITNESS: Mahalo for your indulgence. My names is Mike Moran, 167 A'ha'aina Way Kihei, Hawai'i.

CHAIRMAN CHOCK: Proceed.

THE WITNESS: I am the vice president of the Kihei Community Association. I would like to offer a statement from the association this morning in testimony. We view this proposed development of two large commercial shopping centers as well as the workforce housing project as not in compliance with the 1998 Kihei-Makena Community Plan, also known as the KMCP.

This current plan calls for corralling sprawl in three district areas of Kihei, makai of the Piilani Highway with no sprawl proposed mauka of the highway such as the sprawl proposed by these shopping centers.

Further, maps included in the KMCP clearly show that subject property is labeled L1 for light

1 industrial, where light industrial is defined in the
2 KMCP as warehousing, light assembly, service and craft
3 type industrial operations, not commercial retail.

4 A recent decision by the Hawaii State
5 Supreme Court has ruled that Community Plan has the
6 force and effect of law. Therefore a Community Plan
7 must be followed or amended if the developer's
8 proposed action differ from the plan as they do in
9 this proposed Project.

10 In addition, the Kihei Community
11 Association is dismayed that this commercial Project
12 has never openly been presented to our association
13 without numerous restrictions in spite of numerous
14 requests to the developer. KCA is also dismayed that
15 no public meeting has ever been announced by the
16 developer. Mahalo.

17 CHAIRMAN CHOCK: Thank you for your
18 testimony. Parties, questions? Commissioners?
19 Thank you.

20 MR. ORODENKER: Esther Juan followed by
21 Elden Liu.

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

25 THE WITNESS: I do.

1 CHAIRMAN CHOCK: Your name and address.

2 THE WITNESS: Esther Juan. I live 321 Oe
3 Street, Kihei, one minute from the proposed site mega
4 mall.

5 CHAIRMAN CHOCK: Very good. Two minutes.

6 THE WITNESS: Okay. Mega mall will create
7 jobs here in Kihei without driving to Lahaina and
8 Ka'ahumanu especially now that gas is so expensive.
9 The land is being wasted if it's not used to its
10 potential esthetically. It's too dry. There's
11 nothing we can grow there. A nice mall would be great
12 kids stroll and just hang out, even for retirees.

13 I will be retiring in five years. Where
14 would be a good place? What other place can I go
15 besides the beach? So thank you for your
16 consideration to see this Project go through.

17 CHAIRMAN CHOCK: Thank you. Parties,
18 questions? Commissioners?

19 MR. ORODENKER: Elden Liu followed by
20 Robert Martin.

21 THE WITNESS: I do.

22 CHAIRMAN CHOCK: Your name and address
23 please.

24 THE WITNESS: My name is Elden Liu. And I
25 reside at Kualani, 75 Ululani Street.

1 CHAIRMAN CHOCK: Proceed.

2 THE WITNESS: I'm here today to give you
3 this here, sir. (holding up document) It's from the
4 office of the Sovereign, the Ali'i Nui Aleka
5 Aipoalani. Proclamation of Law, Notice to Comply to
6 Compliance Desecration, a Cease and Desist Order of
7 the ahupua'a known as Kaonoulu Kala, Maui that was
8 awarded to 'Ewa, 'Ewa Royal Patent 7447 LCA 3237.

9 I thank Governor Neal Abercrombie, Lt.
10 Governor Brian Schatz, Attorney General David M.
11 Louie. Comes now Atooi, the light of God, the
12 sovereign Ali'i Nui aleka Aipoalani aliii's Customary
13 Chiefs and people are the lawful heirs, hereditary
14 owners abd successors of the Hawaiian Islands
15 archipelago, which is located in the Polynesian
16 triangle, Te Moana Nui Akiva,, kingdom of Atooi
17 Hawaiian kingdom.

18 Notice is hereby given: All the islands of
19 the Hawaiian archipelago, water, air, land, ocean,
20 water, stream, minerals, iwi's, cemeteries, sacred,
21 historical and cultural sites, all agriculture and
22 environmental issues in the Polynesian triangle of Te
23 Moana Nui Akiva Tmak nations Royal Union of the
24 Pacific, be transferred back to the rightful
25 hereditary heirs and successors by blood, koko, of

1 their royal lineages of the Polynesian Kingdom Atooi/
2 Hawaiian Kingdom. All contracting rights in the
3 Hawaiian archipelago is to be done with the Supreme
4 Authority of the Sovereign Ali'i. No corporate
5 entity, government of the United States of America or
6 any foreign nation can modify, ignore, alter or
7 abolish this document. Further --

8 MR. ORODENKER: Ten seconds.

9 THE WITNESS: Further I'd like to say the
10 Warranty Deed cannot stand against the land patent in
11 Hawai'i, a royal patent. A grant of land patent
12 public law standing on the statute books of the state
13 or nation and is noticed through every subsequent
14 purchaser under any conflicting sales made afterwards.
15 *Wineman never Gastrell.*

16 Fraudulent sales, transfers and receipts
17 are void. Land patent is permanent, cannot be changed
18 by the government after its issuance where the United
19 States is parted with the title by patent legally
20 issued and upon surveys made by itself approved to the
21 proper department, the title so granted cannot be
22 impaired by any subsequent survey made by the
23 government for its own purposes.

24 CHAIRMAN CHOCK: Please summarize. Pau?

25 THE WITNESS: And I do like to leave this

1 Cease and Desist Order and the United Nations
2 Declaration of the Rights of the Indigenous People.

3 CHAIRMAN CHOCK: Parties, any questions?
4 Commissioners? Mahalo.

5 THE WITNESS: One more issue. I have the
6 United States Court docket here, United States Supreme
7 Court 1904 Damien vs. The Territory of Hawai'i. With
8 regard to the CZM the ali'i was also granted a mile
9 out in the ocean from the shorelines. And that's in
10 this case here.

11 CHAIRMAN CHOCK: Okay. Very good. If you
12 can just give that to our clerk.

13 THE WITNESS: Thank you very much.

14 CHAIRMAN CHOCK: Thank you.

15 MR. ORODENKER: Robert Martin followed by
16 Linda Martin.

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

20 THE WITNESS: I do.

21 CHAIRMAN CHOCK: Name and address.

22 THE WITNESS: My name is Robert Martin. I
23 live at 355 Kailmalu Place in Wailea. And Linda
24 Martin is my wife and will not be testifying because
25 she cannot be here.

1 CHAIRMAN CHOCK: Proceed.

2 THE WITNESS: Thank you very much for this
3 opportunity to say a few words. In introducing myself
4 I should say that my wife is a retired school teacher
5 receiving pension. And I am semi-retired receiving
6 Social Security.

7 We moved here approximately a year ago
8 because we love Maui, having visited here every year
9 for 10 consecutive years. We chose to live here. We
10 want to live here. We like Maui. We like what we
11 see. We did not choose to live in a place where
12 there's a big mega-mall. There's lots of places like
13 that available.

14 Also I should point out that our residence
15 is at the extreme southern end of Piilani Highway
16 meaning -- and I truly believe the experts who have
17 testified in the past about this -- that the traffic
18 on Piilani Highway would be an unpleasant experience
19 for my wife and me to have to deal with on a daily
20 basis.

21 I believe that it's important for this
22 Commission to look at long-term views as to what's
23 going to happen here. Yes, this will temporarily for
24 a few years create some jobs in construction and
25 perhaps even create some additional retail jobs for a

1 while. Who knows what retail jobs are going to be
2 lost, however.

3 I disagree with the testimony that what's
4 there is an eyesore. I love it. I think it's
5 beautiful Maui. It is Maui. It's been here forever.
6 That's why I'm here.

7 And, finally, my concern and my wife's
8 concern about what's fair. It's, in our opinion, not
9 fair to have a developer come and change things
10 without having the proper opportunity for people such
11 as ourselves to express our opinions and to listen to
12 the experts who wish to testify. Thank you.

13 CHAIRMAN CHOCK: Thank you. Parties,
14 questions? Commissioners? Thank you for your
15 testimony.

16 MR. ORODENKER: Abel Kaho'ohanohano, Jr.
17 followed by M. Vicens.

18 ABEL KAHO'OHANO HANO, JR.
19 being first duly sworn to tell the truth, was examined
20 and testified as follows:

21 THE WITNESS: I do.

22 CHAIRMAN CHOCK: Name and address.

23 THE WITNESS: Abel Kaho'ohanohano, Jr., 16
24 Mokuahi Street, Makawao.

25 CHAIRMAN CHOCK: Thank you. Proceed.

1 THE WITNESS: Thank you for giving me a
2 change to speak today. I don't normally come down to
3 this kind of stuff because I get kinda emotional about
4 the whole thing, this fight about the construction
5 that goes on on this island.

6 I was born in 1951. I lived here all my
7 life, born in Wailuku. I seen Wailea go from a cattle
8 yard on a dirt road to what it is now. I seen
9 construction all over this island.

10 But you know what? We're workers. That's
11 what we're here for. That's how we make our living.
12 I started off with HC&S. I moved over to Ameron. Now
13 I'm a business agent for the ILWU.

14 I get people calling me at least once every
15 two months trying to access their retirement that they
16 have. It's pathetic. It's destroying the fabric of
17 the workforce on Maui. It's -- we've been like this
18 for too long.

19 2008 I started to see a decline after Aloha
20 Airlines went down, and Moloka'i Ranch went down too.
21 After that it's been a constant decline. Our workers
22 are working at Ameron 32 hours a week. This is crazy.
23 This is a project we need to get going. This was a
24 God send that we needed to get to our people so that
25 they could get some work done.

1 Hopefully, if this Project is done, then we
2 can get that road done from Upcountry. 'Cause, you
3 know, it'll take some of the traffic off of Piilani
4 Highway. Asking the people over here that you guys
5 do, you know, try -- this Project needs to go through.
6 Enough of this stuff already. We had it. Okay. We
7 get it. We know why people are speaking against it.

8 And we'll always get people like me
9 speaking for it. But we need it. People are
10 suffering too long. Thank you for your time.

11 CHAIRMAN CHOCK: Parties, questions?
12 Commissioners? Thank you for your testimony.

13 MR. ORODENKER: I believe this is Chubby
14 Vicens. I'm sorry if I butchered that. (Pause. Not
15 present) Robert Offerman followed by Marlin Chapman.
16 I would ask everyone if they're signing up to please
17 print. It makes it very difficult for me to call
18 witnesses. Thank you.

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

22 THE WITNESS: I do.

23 CHAIRMAN CHOCK: Name and address.

24 THE WITNESS: Robert Offerman, 3354 Kehau
25 Drive, Kihei.

1 CHAIRMAN CHOCK: Proceed.

2 THE WITNESS: As I understand it the
3 purpose of this proceeding is not to decide or debate
4 the merits of the proposed development, but rather to
5 decide if this development is in compliance with the
6 restrictions that were placed on it by this Commission
7 when the property designation was originally changed.

8 And I suspect this is really a legal
9 matter. And I'm not trained legally. But as a lay
10 person, to me it seems obvious that this is not -- oh,
11 as I understand also, one of the requirements,
12 probably the foremost one: Is the development
13 substantially in compliance -- substantially the same
14 as the original proposal.

15 And as a lay person it seems obvious that
16 it is *not* substantially the same; that these proposed
17 retail malls are not the same as the original
18 industrial -- light industrial complex both in terms
19 of things like traffic impact, or in terms of
20 drainage, in terms of many things.

21 And the fact that it's permitted under the
22 county of Maui zoning is irrelevant to this body. To
23 me that mainly indicates a flaw in error -- glaring
24 error or flaw in the county zoning ordinances which
25 hopefully can be corrected.

1 But I think that bodies such as this, all
2 public bodies, one of their main responsibilities is
3 to defend and protect the long-term public interests.
4 The developers rightfully and appropriately want to
5 maximize the profits of the landowners.

6 But public bodies like this are
7 established, among other reasons, to safeguard the
8 long-term public interest, make sure it is not
9 sacrificed to the short-term economic interests of the
10 developers or anybody else.

11 I think one of the main reasons that the
12 earlier Commission, when the designation was changed,
13 put the restriction that it had to be -- the future
14 development had to be substantially the same -- was
15 because they reviewed the original proposal and
16 determined, yes, it was in the long-term public
17 benefit. But they wanted to make sure that should
18 that change that a future body would have --

19 MR. ORODENKER: 10 seconds.

20 THE WITNESS: -- would have the opportunity
21 to re-evaluate and make sure that the new proposals
22 also would benefit the public. So I encourage you to
23 do whatever you can to be able to exercise your
24 kuleana to protect the public interest. Thank you.

25 CHAIRMAN CHOCK: Thank you for your

1 testimony. Parties, questions? Commissioners? Thank
2 you.

3 MR. ORODENKER: Marilyn Chapman followed by
4 Tom Blackburn Rodrigues.

5 MARILYN CHAPMAN

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

8 THE WITNESS: I do.

9 CHAIRMAN CHOCK: Name and address.

10 THE WITNESS: Marilyn Chapman, 535
11 Kaiolohia Street in Kihei, Hawai'i. I'm a resident of
12 Maui and I live about 1.5 miles from the proposed
13 Promenade site. I am a homeowner and I've lived here
14 about 17 years, in Hawai'i about 26 years.

15 I came today to testify in support of this
16 Project because of the importance of the Project to
17 Maui on so many different levels. Commercial
18 construction projects are the only construction
19 projects that are currently occurring on Maui. Not
20 only will it provide many construction jobs but the
21 trickle down effect will be felt by a myriad of other
22 companies during construction.

23 After construction there will be many jobs
24 available from clerks to manager positions. And again
25 the trickle down effect will be felt from companies

1 such as waste and recycle haulers, advertising
2 companies, landscapers, janitorial, on and on and on.

3 It will add to the improvement of Kihei's
4 infrastructure at no added expense to taxpayers by
5 building the first leg of the Kihei-Upcountry Road and
6 1 million-gallon water tank that will help Kihei's
7 water issues as well as the Kihei High School.

8 In addition, all of Maui's residents will
9 benefit from increased tax revenues, required
10 infrastructure improvements, Department of Education
11 fees and Department of Transportation fees.

12 Then as a wonderful high note for families
13 such as mine: The availability of stores in Kihei to
14 shop for clothes without having to shop online and pay
15 shipping costs, home repair without wasting fuel
16 driving to Kahului, and adding to the traffic
17 congestion on Dairy Road there.

18 There isn't anything wrong with having a
19 beautiful shopping center above Piilani Highway.
20 Consider how greatly appreciated the Piilani Shopping
21 Village has been. It's become a gathering place. And
22 the stores and the parking lots are full with Kihei
23 residents and visitors alike.

24 Please uphold the approval of this Project
25 and let it move forward. Kihei doesn't need a bunch

1 of warehouses. What we do need is gathering places --

2 MR. ORODENKER: Ten seconds.

3 THE WITNESS: -- and shopping outlets.

4 Thank you very much.

5 CHAIRMAN CHOCK: Thank you. Parties,
6 Commissioners, any questions? Thank you for your
7 testimony.

8 MR. ORODENKER: Tom Blackburn Rodrigues
9 followed by Mary Phillips.

10 TOM BLACKBURN RODRIGUES
11 being first duly sworn to tell the truth, was examined
12 and testified as follows:

13 THE WITNESS: I do.

14 CHAIRMAN CHOCK: Name and address.

15 THE WITNESS: Tom Blackburn Rodrigues.

16 85 Manino Circle, #202, Kihei. I do have one
17 procedural question before my testimony begins. I
18 noticed several folks have come in on both sides of
19 the issue, arrived later. How can they sign up to
20 testify?

21 CHAIRMAN CHOCK: Then can come forward and
22 see Riley. Riley, can you raise your hand. Please
23 come and see Riley, sign up if you haven't already
24 done so. We'll accommodate everybody on both sides of
25 the issue.

1 THE WITNESS: Thank you very much.

2 CHAIRMAN CHOCK: Proceed.

3 THE WITNESS: First of all, I would like to
4 say that I'm very proud of the fact that my family has
5 been in Hawai'i since 1870. I always say that I must
6 have been the runt in the bunch because I didn't get
7 here until 1998. But we're very proud to have been
8 here since 1870.

9 And I would like to just make mention there
10 have been public hearings or meetings. Groups have
11 met. The developers, Cliff Development, have met with
12 the KCA board of directors. They did meet with the
13 KCA planning committee. They have met with the Native
14 Hawaiian Chamber of Commerce. They have met with the
15 Maui Contractors Association. They have met with Maui
16 Retailers.

17 In addition, the zoning and the designation
18 was addressed by the Maui Planning Commission, by the
19 Maui County Council. There were two public hearings
20 held in Kihei and also stories have been running in
21 the Maui Weekly, which is a very well read local
22 newspaper, since 2010. So I think that should be part
23 of the record.

24 I'm here representing the Piilani Promenade
25 Project. And I have with me, in the interest of

1 expediting testimony, a list of 750 individuals who
2 could not be here today either because they're locking
3 for work or they are fortunate to have one, two, or
4 three jobs so they can put food on the table.

5 I'd like to enter these 750 names of
6 individuals who individually signed cards of support
7 saying "I support jobs. I support Piilani Promenade."
8 And I might say we did this the old fashion way. It
9 was not point and click in a direct mail campaign.
10 This was actually talking to real people getting real
11 signatures. And I can --

12 MR. ORODENKER: Ten seconds.

13 THE WITNESS: -- give you the actual cards
14 later on. But I would like to have these entered into
15 the record. 750 local folks who think that this is an
16 important Project, and has met all of its legal
17 requirements. Thank you very much.

18 CHAIRMAN CHOCK: Parties, questions?
19 Commissioners? Thank you, sir, for your testimony.

20 THE WITNESS: Shall I leave these with the
21 clerk? Thank you, sir.

22 MR. ORODENKER: Mary Phillips followed by
23 Patricia Nichols.

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

1 and testified as follows:

2 THE WITNESS: I swear to tell the truth.

3 CHAIRMAN CHOCK: Name and address.

4 THE WITNESS: My name is Mary Jo K.

5 Phillips. I live at 715 South Kihei Road, #204. I
6 live directly across from the Humpback Whale Sanctuary
7 and Kalepolepo Beach Park.

8 In approximately 2009 we had water that
9 flooded our roads. Some of you may or may not know
10 about this. It came from Upcountry. We had no rain
11 in Kihei, yet our road was flooded. We had to close
12 South Kihei Road. There were roads down by the Maui
13 Lu that were closed. Then again the tsunami hit.
14 Now, we've had a tsunami that did devastating damage
15 to Kalepolepo Beach Park as well as the National
16 Humpback Whale Sanctuary.

17 And South Kihei Road has never been the
18 same. Yet large trucks are still allowed to drive
19 down. So I'm thinking if you're gonna have a new
20 super mall, then you're going to have trucks that are
21 driving down it. If the tsunami that had just
22 happened, happened then that road would be closed
23 again. What are we going to do about that? If the
24 drainage comes from Upcountry what are we going to do
25 about that? Shouldn't South Kihei Road be repaved and

1 fixed before we start doing something?

2 Infrastructure is very important. I live
3 in Kihei. I work in Lahaina. I can't tell you how
4 many times I've actually had to sit in my car because
5 of things happening on the pali.

6 So let's say I go to the super mall from
7 Lahaina over to Kihei to buy stuff and then the road's
8 closed. Where are all these people gonna go? What's
9 going to happen? And again the water to me is also a
10 very important issue. We have had local family
11 businesses that have closed. Tsuda Store is one that
12 has closed. Azeka's actual rib place closed.

13 There are local businesses that were family
14 owned that were and will be affected. Even smaller
15 little restaurants will be affected when you get large
16 companies coming in: Chili's and I don't know, Red
17 Lobster, whatever. It's not the same as local family
18 businesses. And I think that should be considered.

19 MR. ORODENKER: 10 seconds.

20 THE WITNESS: Okay. There is actual work
21 being done. You have the Maui Lani project being done
22 which still doesn't have enough stores opening there.
23 And you have the Pu'unene Industrial also being worked
24 on. So there is construction work on the island. And
25 it doesn't necessarily need to be a mega mall in Kihei

1 because the traffic, the high school, the police
2 department and then the trucks down the roads a
3 serious accident will happen. Thank you so much for
4 your time. Aloha.

5 CHAIRMAN CHOCK: Parties, questions?
6 Commissioners?

7 THE WITNESS: (coming back to witness
8 stand) Oh, sorry. Anybody?

9 CHAIRMAN CHOCK: No problem. Thank you for
10 your testimony.

11 MR. ORODENKER: Patricia Nuckolls followed
12 by Richard Emeryy.

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

16 THE WITNESS: I do.

17 CHAIRMAN CHOCK: Your name and address.

18 THE WITNESS: Patricia Nuckolls, 303 Moi
19 Place, Kihei. I live right by the proposed mall. And
20 I am pro union, I'm pro construction. There's a new
21 police station going up, hopefully a new high school.
22 I understand about building. We need a police
23 station. They were living in a closet before. We
24 have a new softball field next to Lokelani Elementary
25 that I play at every Sunday.

1 And I'm sorry if I get emotional but this
2 mall is a temporary thing for jobs. We have so many
3 empty spaces of retail in Kihei up and down the coast
4 that it's making everything depressing and
5 ghetto-like. What is popping up are pawn shops.

6 And if the building needs to be done the
7 construction workers it's great. And they're talking
8 about, "Well, I'm not going to be able to take my kid
9 to the doctor. And we're going to evacuate this road
10 Upcountry." It's my understanding that --

11 CHAIRMAN CHOCK: I'm sorry, could you
12 please slow down just a little bit. (audience
13 laughter) We have a court reporter trying to report
14 everything that you say. So we want to give you as
15 much time. But if you can just slow down just a bit.

16 THE WITNESS: They talk about the mall that
17 this Upcountry road so that we can evacuate in case of
18 tsunami. It's my understanding they're only going to
19 take care of what -- and make a very dangerous corner
20 what they're going to do at just in front of their
21 mall.

22 They talk about oh, they met with retail
23 people here. No. These small mom and pop places are
24 going to out because -- and then talk about
25 unemployment. This is where jobs come in. Little

1 tiny places that has been their dream. And now these
2 big box people, what makes you think they're going to
3 hire the managers from over there? These are chain
4 stores.

5 Also I have -- I know from my psychology
6 degree that -- from U of H -- that open spaces are
7 very important to the psyche. What we don't need are
8 more food courts for the children. How about a nice
9 cultural center like a paddling, surfing museum,
10 something healthy and good for our community like the
11 baseball field, like the police station?

12 Also shopping. I'm an expert, I believe.
13 (audience laughing) I'll tell you that we have
14 everything from thrift stores to Louis Vuitton and
15 Chanel in Wailea. Even just in Kihei there's so much
16 shopping and it's exactly 7.5 miles to get to Wal-Mart
17 if you have to.

18 And we're talkin' big box companies and
19 retail jobs that are the lowest paying jobs. And that
20 they're going to hand you a job application and a food
21 stamp application at the same time.

22 And if you're worried about your kids, what
23 will happen in their future, because you can't feed
24 them today to build this mall, do you think that is
25 the answer to the unemployment crisis which is 5.4 in

1 Hawai'i? And I understand that people are suffering.
2 I understand that people are suffering. I have kids
3 too. But we cannot ignore the fact that they're gonna
4 have to live with this for generations.

5 Eclipse Development did not respond to me.
6 And they did not come to our KCA meetings. And in the
7 words of Bruddah Iz, "Our people are in great, great
8 danger now."

9 CHAIRMAN CHOCK: Parties, any questions?
10 Commissioners, questions? Thank you. Next witness.

11 MR. ORODENKER: Richard Emery followed by
12 Pamela Tumpap.

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

16 THE WITNESS: Yes.

17 CHAIRMAN CHOCK: Thank you, sir. Name and
18 address.

19 THE WITNESS: My name is Richard Emery.
20 And live at the Villas in Kaialiu which is about a
21 half a mile way from your Project. Also it's 70 Hille
22 Lane which is the corner and overlooking the flood
23 area where all the water came down to flood South
24 Kihei. That was a mistake. And I hope everyone
25 realizes this was a mistake.

1 The reason that water came down there is
2 because they left the trees to dam up the water
3 Upcountry. That's why they called the National Guard
4 in. I just want to straighten that part out first so
5 that we know where we stand on that situation on the
6 water.

7 The environment: Acres above the flood
8 zone, yes. The word is "above the flood zone". Your
9 other thing saying: What is going to make sprawl?
10 Yes, it will. But how much sprawl? How much and what
11 does it do for the country? What does it do for the
12 county? What you're gonna do is you're gonna replace
13 ugly with beautifully decorated area or it doesn't get
14 built. And we know that.

15 Okay. We'll get to the economy thing. The
16 economy means "own businesses". These people that are
17 building these places are risking millions of dollars.
18 This is not something that you're going to have. Once
19 they pay the money it's gone. So a developer puts
20 money in there.

21 That developer has to have the gumption to
22 be able to realize they're gonna make a profit and
23 everybody is. So that to me means go for the mall
24 again.

25 Then you're traffic situation. That is the

1 only thing that I am concerned about or else my vote
2 would be entirely going for the mall.

3 MR. ORODENKER: 10 seconds, please.

4 THE WITNESS: The reason I didn't say
5 anything about is because think of the millions of
6 gallons of gas it will save if that road is cut
7 through to Upcountry. We're talking millions of
8 gallons of gas. Thank you.

9 CHAIRMAN CHOCK: Parties, questions?
10 Commissioners? Thank you for your testimony.

11 MR. ORODENKER: Mr. Chair, our final
12 witness signed up today is Pamela Tumpap.

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

16 THE WITNESS: I do. May I ask a clarifying
17 question?

18 CHAIRMAN CHOCK: Sure.

19 THE WITNESS: Our chairman who wanted to
20 testify IS AN independent business could not be here
21 at the moment. I have written testimony. May I offer
22 that orally as well or just provide it?

23 CHAIRMAN CHOCK: Submit it to the clerk,
24 please.

25 THE WITNESS: I will. Thank you.

1 CHAIRMAN CHOCK: Your name?

2 THE WITNESS: Aloha. My name is Pamela
3 Tumpap and I'm the president of the Maui Chamber of
4 Commerce here to testify in support of the Project.

5 When it comes to development the Chamber
6 supports growth which promotes economic development
7 and the quality of life in Maui County. Our position
8 is that development should be consistent with the
9 General Plan, Community Plans and Implementation Plans
10 with future development contributing to adequate
11 physical and social infrastructure. It is in these
12 veins that I wish to offer testimony today.

13 Many businesses on Maui are still lagging
14 from the long economic recovery. We need and seek
15 opportunities to support both short-term and long-term
16 growth. Currently this Project is the largest
17 singular construction Project on the books in Maui
18 County with a total value of over \$200 million.

19 That kind of investment in our community is
20 essential to our growth and our prosperity. It will
21 generate new tax revenue that will benefit every
22 resident in our community through provision of vital
23 government services and support of non-profits.

24 It will also benefit our No. 1 industry:
25 the visitor industry. We do not have a large military

1 or manufacturing presence here. Therefore much of our
2 job growth will be in areas that relate to the visitor
3 market including activities, restaurant and retail,
4 particularly in South Maui which was planned as a
5 visitor destination. Product diversity is important
6 to the visitor industry. And this Project will create
7 a new as well as ongoing attraction for our guests.

8 However, it will also support a growing
9 population base and benefit many residents and
10 businesses.

11 As it's already been said, as the new
12 businesses move in and become shopping center tenants,
13 they will require a host of other products and
14 services benefiting neighboring businesses in South
15 Maui and across the island.

16 Jobs are also a top priority for us.
17 Maui's island unemployment is currently at
18 5.8 percent. Many are still underemployed.
19 Additionally some have been out of work for a very
20 long time including those in the construction
21 industry.

22 This Project will provide an immediate
23 return to that community with nearly 200 construction
24 jobs. But that's just the beginning. When complete
25 we understand it will also create an estimated --

1 MR. ORODENKER: 10 seconds, please.

2 THE WITNESS: -- 1800 jobs in a variety of
3 areas. I'm going to leave you more detailed
4 testimony. But we understand there are two challenges
5 that have been raised with respect to this Project
6 application. A condition related to a frontage road
7 that we understand the State Department of
8 Transportation feels is no longer needed.

9 And that there's a question on how the
10 Project was represented to the Commission. However,
11 we have heard that the Project was always presented to
12 the Commission as a light industrial commercial
13 project that would respond to market conditions.

14 You know, it took until 1999 to get the
15 zoning in place. Since then we've gone through two
16 economic downturns and major challenges. During this
17 time the marketplace for light industrial has evolved
18 and this Project responds to that evolutionary market
19 demand change.

20 CHAIRMAN CHOCK: Please summarize.

21 THE WITNESS: So in summary we feel that
22 this Project has gotten the necessary approvals; that
23 it is unfair to change this late in the game. They
24 have the entitlements in place. And if there were
25 serious concerns that the Commission was previously

1 worried about, they could have made them a condition
2 for approval and that was not the case.

3 So we urge that this Project move forward
4 for the economic benefits and job creation and
5 benefits to many businesses on this island and to our
6 residents and our infrastructure. Mahalo.

7 CHAIRMAN CHOCK: Thank you. Parties, any
8 questions? Commissioners? Thank you for your
9 testimony.

10 MR. ORODENKER: Mr. Chair, we have an
11 additional testifier Ms. Joan Martin.

12 CHAIRMAN CHOCK: Anyone else from the
13 public wishing to provide public testimony at this
14 time? If not this will be our last witness. Good
15 morning, ma'am. Your name and address.

16 THE WITNESS: Good morning. Joan Martin,
17 85 Manino Circle #202, Kihei.

18 JOAN MARTIN

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

21 THE WITNESS: Yes.

22 CHAIRMAN CHOCK: Thank you. Proceed.

23 THE WITNESS: Good morning, Mr. Chairman,
24 Commissioners. My name is Joan Martin. I'm a
25 resident of Kihei and I'm testifying on my own behalf.

1 I'm here to testify in strong support of the Piilani
2 Promenade Project.

3 This Project is fully entitled and has been
4 in the media for several years. I first became aware
5 of the Project beginning in 2010 with stories in the
6 Maui Weekly, the local newspaper that serves our
7 immediate community.

8 This Project will provide many community
9 benefits including building of the first increment of
10 the long-awaited Kihei Upcountry Highway at no cost to
11 the taxpayers. A 1 million-gallon water tank paid for
12 by the developers at a cost of \$3 million and
13 dedicated to the county of Maui to serve North Kihei,
14 including the Kihei High School.

15 Nearly 200 construction jobs, 1800 plus
16 retail jobs from clerks to district managers,
17 additional shopping choices for retail businesses not
18 now on Maui or local businesses waiting for a second
19 location reducing the need to drive to Central Maui
20 saving time and expensive gasoline.

21 Increased property tax revenues to fund our
22 vital county services and critical non-profit social
23 and human services organizations.

24 In conclusion, the Piilani Promenade
25 includes all elements needed in Kihei: Jobs,

1 affordable rental housing, retail for both residents
2 and the tourism industry. And once again jobs now
3 that are vital in our struggling economy.

4 I respectfully urge you to act in a manner
5 that will allow the Piilani Promenade to move forward
6 quickly. Thank you for the opportunity to testify.

7 CHAIRMAN CHOCK: Thank you. Parties,
8 questions? Commissioners? Thank you for your
9 testimony.

10 MR. ORODENKER: Mr. Chair, one more
11 testifier Perry Artates.

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

15 THE WITNESS: Yes.

16 CHAIRMAN CHOCK: Your name and address,
17 please.

18 THE WITNESS: My name is Perry Artates. I
19 live at 782 Lau'le Drive, Kula, Hawai'i 96790.
20 Anyway, I'll make it a snapshot of what I've listened
21 to and try to digest everybody's testimonies.

22 I'm a remember of the Operating Engineers
23 Local Union #132. We're talking about sustainable
24 work. And our industry, without the Operating
25 Engineers setting the foundation, the rest of our

1 brothers in the construction industry follows after we
2 do infrastructure work. So it's a domino effect.

3 What I've seen that's just has been
4 happening with our industry, our members out of work
5 for three years finally gets back to work. Three
6 years. The long pain and suffering by having our
7 membership come in and say, "Where's the work?" Or,
8 "We're having a separation" or "We're losing our
9 house" is so devastating to our industry.

10 And when I hear about the water coming down
11 from Kula going out to Kihei, there's nothing new
12 'cause common sense economics, the water flow from the
13 mountain to the ocean.

14 We've been going through a lot of
15 commission hearings, whether State Land Use or
16 Planning or Council. To continue to see things happen
17 because it's a snap where it becomes it's us against
18 them. It's us about us in the industry. It's about
19 us that's been living here since 1957, and us that's
20 been living here since 1986. So in a conclusion it's
21 we're not going nowhere in this island. We're going
22 to live here the rest of our lives.

23 MR. ORODENKER: 10 seconds.

24 THE WITNESS: So give us that opportunity
25 to fulfill our dreams, our children's dreams and move

1 the Project forward 'cause we had enough. And we hurt
2 'nough already. Thank you very much, Mr. Chair for
3 allowing me to testify.

4 CHAIRMAN CHOCK: Thank you, Mr. Artates.
5 Parties, any questions? Commissioners? I notice we
6 just had a few last minute individuals from the public
7 coming forward. Anyone else, Riley?

8 MR. ORODENKER: Danny Collier.

9 DANNY COLLIER

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

12 THE WITNESS: Whole truth, nothing but the
13 truth.

14 CHAIRMAN CHOCK: Thank you. Name and
15 address.

16 THE WITNESS: My name is Danny Collier. I
17 live 1723 (cell phone rings) sorry. 1723 Emalo Place,
18 Wailuku.

19 CHAIRMAN CHOCK: Proceed.

20 THE WITNESS: Good evening, or good
21 afternoon or good morning. My name is Danny Collier.
22 I've been on this island of Maui for 45 years. I born
23 and raised in Honolulu. I moved here at a very young
24 stage in life so I seen, I seen Maui in its lower
25 stages. And I worked here for a majority of Maui's

1 growth. (witness cell phone ringing). Doggone it.
2 I'm sorry about that.

3 As we go along in years on Maui -- by the
4 way, Maui people, how you guys doing? We all Maui
5 people. And we all want to see this place prosper.
6 We're looking at this Project as far as opening doors
7 to Upcountry Highway jobs that we need relief from
8 traffic. Everybody talking about traffic. That's the
9 corridor to Upcountry. We've been talking about it
10 for 20 something years already.

11 And this Project heres is a Smart Growth
12 Project. I'm well consumed in that. I been around, I
13 seen a lot of this developments take place.

14 I worked for a prominent contractor for
15 most of my life. We're into our -- we're into our
16 safety, our safe project and safe production as far as
17 the growth for Maui.

18 MR. ORODENKER: Ten seconds, please.

19 THE WITNESS: And I hopefully -- I really
20 down deep in my heart I hope and I'm wishing that you
21 guys see this Project through to the end. That's all
22 I have to say.

23 CHAIRMAN CHOCK: Thank you for your
24 testimony. Parties, questions? Commissioners? Thank
25 you for your testimony.

1 MR. ORODENKER: Mr. Chair, there are no
2 further public witnesses signed up at this time.

3 CHAIRMAN CHOCK: Thank you. Very good.
4 Great job, everybody. We're going to take a short 10
5 minute recess to give our court reporter a break.
6 Then we're going to come back with Intervenors' Motion
7 on Burden to Show Proof. Mr. Pierce, proceed at that
8 time. So short recess. Thank you. (gavel)

9 (Recess was held. 11:20)

10 CHAIRMAN CHOCK: Back up on the record.
11 Our next item is Intervenors' Pre-hearing on Burden
12 of Proof; Request for Hearing.

13 Mr. Pierce, please proceed.

14 MR. PIERCE: Mr. Chair, we've fully briefed
15 this so I'll keep it pretty short. The reason that we
16 have filed this motion is that we're not here today in
17 a standard type of administrative proceeding where a
18 party has initiated the proceeding. That's normally
19 what one looks at in terms of determining the burden
20 of proof.

21 Here what happened was that under a very
22 special rule, the Show Cause Rule, which is in your
23 Administrative Rules 15-15-93, we moved for a request
24 that this Commission issue an Order to Show Cause. So
25 that was the hearing we had in Lahaina. We met our

1 burden of proof at that point in time. And at that
2 point it would -- then became the Commission who then
3 ordered the successor Petitioners who I'll be
4 referring to most of the time as the "landowners" --
5 We're talking about Piilani North and Piilani South
6 and Honuaula Partners, those three landowners -- the
7 burden shifted to them under the rules.

8 And that's very clear from looking at
9 15-15-93. The first part says, "Upon a showing that
10 there's been a failure to perform a condition, this
11 Commission can Order to Show Cause." Once that is
12 issued what you've basically done is you've ordered
13 those landowners to come forward and show why they
14 have not met their burden.

15 So it's the landowners' burden of proof
16 here today to show why they're not in violation. It's
17 as we point out in our pleadings, it's similar to a
18 contempt of court proceeding. And we will rest upon
19 that information there unless you have some further
20 questions.

21 CHAIRMAN CHOCK: Thank you, Mr. Pierce.
22 Mr. Steiner.

23 MR. STEINER: Mr. Kam is going to be
24 addressing the motion.

25 CHAIRMAN CHOCK: Mr. Kam, proceed.

1 MR. KAM: Thank you, Mr. Chair. We
2 disagree that the Land Use Commission's rules
3 explicitly provide that the burden of proof should
4 fall upon the landowners. We think the motion should
5 be denied for basically two reasons.

6 The first reason is that the landowners did
7 not initiate this proceeding. And when I say "this
8 proceeding" I'm referring to this Show Cause hearing,
9 not to the original petition to amend the district
10 boundary. That boundary amendment happened in 1994
11 and 1995. It resulted in an Order from this
12 Commission. That Order terminated that proceeding.

13 Now, we understand that subsequent
14 proceedings relating to the Petition Area are filed
15 under the original docket number. We understand that.
16 But that doesn't mean that every subsequent matter
17 dealing with the Petition Area is a proceeding for
18 purposes of determining the burden of proof. Right?

19 It's not uncommon, for example, in Land
20 Court proceedings when a parcel of property is
21 registered with the Land Court system, an application
22 number is attached to that proceeding. And every
23 subsequent dealing in the Land Court with that parcel
24 of property or area that's subject to registration, is
25 filed under that application number. But that doesn't

1 mean that every subsequent matter is part of the same
2 proceeding.

3 Because Chapter 91 explicitly provides that
4 the party initiating the proceedings has the burden of
5 proof, we believe that that rule controls because the
6 Land Use Commission rules regarding the burden of
7 proof on an Order to Show Cause are silent. That's
8 the first reason why the motion should be denied.

9 The second reason why the motion should be
10 denied is because just because the Order to Show Cause
11 has been issued, that doesn't necessarily mean that
12 the burden should fall upon the landowners.

13 It depends on the standard of proof that
14 the Commission applied when it decided to issue the
15 Order to Show Cause.

16 And the standard that the Commission
17 applied pursuant to its own rules was very minimal.
18 And actually it's not much more than a bare
19 allegation.

20 The cases that the Intervenors have cited
21 in their motion attempting to the shift the burden,
22 are cases where the burden that the body applied in
23 deciding whether to issue the Order to Show Cause was
24 much more rigorous than the burden that applied to the
25 Commission in deciding whether or not to issue the

1 order in this case.

2 Here there's been no determination that
3 there has been a violation. And under those
4 circumstances, and especially when Chapter 91 requires
5 the party initiating the proceeding to bear the
6 burden, it would be grossly unfair for the Commission
7 to the tell the landowners that they have the burden
8 to prove a negative.

9 In fact we believe that it would be a
10 violation of due process if the Commission were to
11 order that.

12 Having said all of that, though, regardless
13 what the Commission decides on the burden of proof, we
14 believe that it does make sense for the landowners to
15 present their case first, because we think it would
16 help the Commission to have the proper context with
17 which to weigh not only the evidence of the landowners
18 but the evidence presented by the other parties.

19 And so regardless who has the burden of
20 proof, the landowners are prepared to present their
21 case first. Thank you very much.

22 CHAIRMAN CHOCK: Thank you, Mr. Kam.
23 County.

24 MS. LOVELL: Thank you, Chair. The County
25 joins in the opposition to the motion.

1 CHAIRMAN CHOCK: Thank you. State?

2 MR. SOUKI: The State agrees with the
3 Intervenor to the extent that the burden is on the
4 Petitioner in cases like this. You know, we don't
5 need to resort to looking up case law to address this
6 question. You look at HAR 15-15-93 this is an
7 enforcement of conditions and representation of
8 commitments proceeding on a D&O.

9 Subpart B, which Intervenor cited, provides
10 the process. We already had a proceeding about
11 whether there was a reason to believe that there has
12 been a failure to perform according to the
13 representations. Under that motion the Movant, which
14 were the Intervenors, had the burden of showing.

15 And when the Commission issued the Order to
16 Show Cause, reading on in that same section it says
17 that, "The party or person bound by the conditions,
18 representations or commitments on an Order to Show
19 Cause why the property should not revert to its former
20 land use classification or be changed to a more
21 appropriate classification."

22 In the State's opinion it's clear based on
23 reading of the text and the rule adopted by the
24 Commission, that the burden in these proceedings now
25 is on the Petitioner.

1 From a policy standpoint this makes sense
2 because when there are violations of an Order to Show
3 Cause and we get to the second part of this OSC
4 hearing process, how would the challenging party know
5 what the Petitioner is proposing? I guess we could
6 have a long discovery like the courts do. But as an
7 administrative process I don't think we want that to
8 happen.

9 We need the Petitioner to show what their
10 proposed Project is and then defend that as being
11 consistent or not with the original D&O.

12 And even in this case we're not very sure
13 what the Project is. We only have to go on what was
14 proposed in the entitlements granted by the County.
15 So today we might have a different explanation about
16 what the Project might be nuanced moving forward.

17 So we need to know and see what the
18 Petitioner is proposing. The burden is on them to
19 show that they're not violating.

20 CHAIRMAN CHOCK: Thank you, Mr. Souki.
21 Mr. Pierce, any rebuttal?

22 MR. PIERCE: Short one. First of all,
23 Honuaula said that we were attempting to shift the
24 burden. We're attempting to enunciate the clear law
25 here and make sure that the Commissioners understand

1 it from the beginning. I can show the problem with
2 Mr. Kam's argument very easily to you.

3 If you will recall after we prevailed on
4 our initial Motion to Show Cause -- and let me just
5 step back to say what Mr. Kam's argument was -- he
6 said it's Intervenors' burden of proof. But what
7 you'll recall is after the Motion to Show Cause
8 occurred and we prevailed on that, there was a
9 subsequent hearing. And the Commissioners had issued
10 the Order to Show Cause.

11 And at that point they then said: Are we
12 going to permit Intervenors to be a party? Now, you
13 had two choices under the discretion that's given to
14 you. One was to deny us intervenor status because you
15 would believe that there was sufficient diversity of
16 the parties to where that was not necessary. Or if
17 you felt that we had something to add, you were able
18 to grant it. And you chose to grant it.

19 But you could have chosen not to grant it.
20 And in that situation Intervenors wouldn't be here
21 today. So what Mr. Kam is arguing is that we would
22 still would have the burden of proof even though we
23 weren't entitled to a proceeding.

24 It's pretty clear under the rules, under
25 5-15-93 which Mr. Souki cited, that the burden shifts

1 back to the successor Petitioners in this kind of a
2 proceeding. Thank you.

3 CHAIRMAN CHOCK: Thank you, Mr. Pierce.
4 Commissioners, any questions for the parties?
5 Commissioners what's your pleasure on this matter?

6 VICE CHAIR HELLER: Mr. Chair?

7 CHAIRMAN CHOCK: Commissioner Heller.

8 VICE CHAIR HELLER: I think the suggestion
9 of the landowners going first in terms of the
10 presentation of evidence makes sense. Because what is
11 currently being planned is a key question here. I
12 think they're in the best position to articulate what
13 is currently being planned. But that's just a
14 question of the order of presentation.

15 As far as the burden of proof I'm not sure
16 that it's going to matter. I mean the burden of proof
17 really only becomes important if the evidence is very,
18 very close and it comes down to which side has the
19 burden.

20 If it's clear that there is a violation or
21 clear that there's not a violation, then who has the
22 burden of proof really doesn't matter. So I'm not
23 sure that we need to make that decision right now.

24 CHAIRMAN CHOCK: Okay. Thank you. Any
25 other comments or questions, Commissioners? Based on

1 the comments by Vice Chair Heller, I think Chair's
2 going to move to defer on this particular motion at
3 this time.

4 Commission will now hear Intervenors'
5 Pre-Hearing Motion in Limine Regarding Scope of
6 Evidence. Mr. Pierce.

7 MR. PIERCE: Mr. Chair, this one was fully
8 briefed as well so I will keep it short. What I will
9 actually do is I will attempt not to get into specific
10 exhibits because I think that would take up a lot of
11 time.

12 What I would like to do instead is just
13 focus on a few areas that we set forth in our brief
14 that we think can be excluded.

15 Of course, the Commission is able to --
16 under the Administrative Rules -- is able to accept a
17 lot of evidence here, is not bound by the court rules.
18 Having said that, as we laid out in our brief, the
19 Commission is interested in only taking evidence on
20 relevant -- evidence on matters that are going to be
21 relevant, materially relevant.

22 And in the process of doing that one of the
23 things that the Commission also should be concerned
24 about is assuring that there's not prejudice to one of
25 the other parties as a result of just a lot of

1 irrelevant testimony. Another part is redundancy. We
2 certainly see from the proposed exhibits that there
3 would be redundancy as well.

4 And what we have are essentially three
5 areas where we think the Commission can narrow this.
6 We must remember that we're here for a very narrow
7 purpose. The Commission has already bifurcated this
8 hearing. There's going to be a remedies phase. So
9 the focus here is whether or not there's a violation.

10 There would be a continuation of this
11 contested case for the remedies phase, a separate
12 hearing. That would be an opportunity for different
13 kinds of evidence. And a lot of the evidence that's
14 been proposed potentially without us waiving our
15 rights to object, might be relevant there but it
16 certainly isn't relevant here on this very narrow
17 issue of whether or not there's been a violation of
18 the 1995 Order.

19 So we think that an Order is a binding
20 document. It has 104 findings of fact. It was
21 conducted contemporaneous or close to
22 contemporaneously with all the testimony that was
23 given back in 1994-95. The whole purpose of having
24 findings of fact in that kind of a complex proceeding
25 is to make sure that later on when questions come up

1 that there's a way for later decision-makers such as
2 yourselves to make a decision about things as you're
3 being asked to do here.

4 What is not necessary is for, as it appears
5 from the proposed evidence being submitted by the
6 landowners, what's not necessary here is to have a
7 re-litigation of that case:

8 A. It's not efficient.

9 B. it's not really relevant because their
10 predecessors, Kaonoulu Ranch, who was the Petitioner
11 in that case -- sometimes to keep things short I'll
12 say "KR" but -- or the "Ranch". The Ranch had an
13 opportunity to object to those findings if they wanted
14 to.

15 In fact if you actually look at the
16 Petition and you look at the findings of fact they're
17 quite consistent with each other. So it's pretty
18 clear that Kaonoulu Ranch was involved in the drafting
19 of those. They didn't have objections. They didn't
20 appeal it. They became final.

21 So the first part of our argument on the
22 Motion in Limine is we're asking that all of the
23 evidence taken, the testimony taken, all of those
24 kinds of things, the Commission could make this a much
25 shorter and simpler hearing by choosing to prohibit

1 the introduction of those kind of evidence and we
2 focus only on the findings of fact, conclusions of law
3 and the conditions that were set forth in that 1995
4 Order. So that's the first section of evidence that
5 we think that should be excluded.

6 The second one is evidence and testimony
7 related to Petitioners' or the successor Petitioners'
8 entitlement process at the county level. And the
9 question of whether the county's -- there's some
10 evidence here that's being proposed about the
11 consistency being submitted by the county of Maui,
12 consistency with light industrial M-1 zoning under the
13 County Code.

14 But if you look at the Order, once again
15 the Order stands on its own. It does not require you
16 today, because you're not here acting on behalf of the
17 County, we're not here to determine whether or not the
18 proposed new uses: Retail and 250 houses or units,
19 housing units, we're not here today to figure out
20 whether those are consistent with M-1 zoning.

21 In fact Intervenors submit that the whole
22 purpose of the Petitioners and the county of Maui
23 bringing that kind of motion forward is for the
24 purpose of really confusing this proceeding. We think
25 you can focus only on those parts that relate to the

1 1995 Order.

2 The third part. I'm sorry, I think I have
3 four parts here. The third part is evidence and
4 testimony related to the state agency's opinions
5 regarding feasibility of conditions within the 1995
6 Order. We'll rest on our brief on that part.

7 If the Commission has questions we'll come
8 back on that. But that really relates to exchanges of
9 correspondence between the landowners and the
10 Department of Transportation.

11 What I'll just point out on that is that
12 Condition 5, which is one of the issues that we'll be
13 talking about today, the Condition 5 of the 1995
14 Order, it's very clear what it says. And it really
15 isn't relevant what the Department of Transportation
16 thinks is appropriate or not. That's not the place
17 for that kind of proceeding. The place for that would
18 be some later proceeding. It certainly isn't the case
19 here in determining whether or not there's been a
20 violation.

21 That is the kind of thing that's saying:
22 Well, "even though we're not" -- the argument's going
23 to be, you'll hear it today -- "even though we're not
24 abiding by Condition 55 it's okay because DOT says
25 it's okay." But that is not the purpose of this

1 hearing at all.

2 The fourth part is evidence and testimony
3 related to other developments, other community plans
4 and related arguments by analogy. There's been a
5 bunch of proposed exhibits about West Maui, other
6 projects.

7 That kind of information is not only
8 irrelevant but it's highly prejudicial. The idea is
9 to overwhelm the Commission with all sorts of other
10 projects that the Petitioners or the county of Maui
11 would like for you to believe, make this look like a
12 benign issue.

13 So those are the four areas we're asking
14 for exclusion in. In terms of how we get there, we've
15 identified some exhibits. We were attempting to get
16 this motion filed quickly so it could be identified on
17 the agenda. And in the process of that there were
18 additional exhibits that we would want to add that
19 were not -- I did not have an opportunity to add here.

20 One possible way that I would request the
21 Commission consider this is to talk about these broad
22 areas and reach a decision on one or more of them now.
23 And then as the evidence is proposed, Intervenors can
24 make an objection, say, "We think this falls within
25 one of those four exclusion areas." Thank you.

1 CHAIRMAN CHOCK: Thank you, Mr. Pierce.
2 Mr. Steiner.

3 MR. STEINER: Thank you, Chair. Both
4 myself for Piilani and Mr. Kam for Honuaula will be
5 briefly addressing these issues. First of all, I'm
6 just going to go straight to the four areas and
7 attempt to demonstrate why these are all extremely
8 relevant to this proceeding.

9 First of all, the matters that were
10 submitted to the Commission back in 1994, the
11 Petition, the testimony that was given, the exhibits
12 and so forth, those all relate to the representations
13 that were made to the Commission back in 1994. Those
14 are, in fact, the representations made to the
15 Commission.

16 In the Decision and Order there's no
17 section that says "The following was represented to
18 the Commission." Sure, there are findings of fact
19 that the Commission chose to put in that Order, but
20 there is no list of representations made. Those are
21 directly relevant to *the* precise issue in this case
22 which is: Is what's being developed consistent with
23 the representations made to the Commission back then?

24 So we will be putting on evidence as to
25 what was actually represented to the Commission back

1 in 1994. It's perhaps *the* most relevant evidence that
2 you're going to hear in this proceeding. We think the
3 motion should be denied as to that.

4 We're not attempting to relitigate that
5 case. That case is done. We recognize we have to
6 abide by the Decision and Order. But we have an
7 evidentiary hearing here today because we need to show
8 that what we're doing is, in fact, in compliance with
9 what was represented to the Commission, and the
10 Commission knew that the type of development that
11 we're putting in was a possibility. We believe the
12 evidence is going to show that.

13 Regarding evidence regarding entitlement
14 process at the county level, well, that also goes to
15 the representations made to the Commission. Because
16 at the time the Maui Department of Planning made
17 representations as far as the amount of retail use
18 that was going to be allowed at the Project. And they
19 made representations that that issue would be dealt
20 with at the county level.

21 So we've got evidence that shows what
22 actually happened at the county level before -- in the
23 zoning regarding whether or not to limit retail. So
24 that's also directly relevant to the issues of what
25 was represented to the Commission.

1 We're not presenting that evidence to show
2 that we're in compliance with zoning. We are in
3 compliance with zoning. If that's -- whether we --
4 and if there is an argument that we're not in
5 compliance with zoning that's not for this Commission
6 to decide. That's a county issue. But it is
7 relevant.

8 Regarding what was he's characterized as
9 state agency opinions regarding various compliance and
10 the mention of Condition 5 in particular, Mr. Pierce
11 says, "It's clear what that condition says and that
12 what State DOT thinks is appropriate is irrelevant."

13 But we agree it is clear. It's clear that
14 a frontage road has to be put in if deemed appropriate
15 by the State Department of Transportation. That's
16 what it says in the condition. That evidence is
17 directly relevant to that proposition.

18 Finally, regarding the documents related to
19 other projects, those have been submitted in our
20 section as rebuttal exhibits. Whether they're
21 relevant to rebuttal is going to depend upon what is
22 testified by the various witnesses here today.

23 And for the Commission to decide ahead of
24 time that this stuff is not relevant, they may not
25 even come up depending on what different witnesses

1 say, I think it would be prejudicial for the
2 Commission to prejudge that now and make a ruling on
3 that.

4 I think that Mr. Pierce's suggestion that
5 we rule on these piece by piece is not usually the
6 typical procedure that's followed in this Commission.
7 I think usually in order to move these proceedings
8 along the exhibits are submitted at the beginning and
9 then they will come up at the trial. I think that's
10 the why we should go.

11 As far as whether this stuff is relevant or
12 not, I think that the proper way would be for that to
13 go as to the weight that the Commission places on
14 these different exhibits and how much they pay
15 attention to the various exhibits as opposed to
16 excluding certain exhibits and preventing a party from
17 fully presenting its case. Thank you.

18 CHAIRMAN CHOCK: Thank you. Mr. Kam.

19 MR. KAM: Thank you, Mr. Chair. Honuaula
20 Partners joins in opposition to the motion and the
21 reasons for opposing the motion expressed by my
22 colleague Mr. Steiner.

23 I do want to emphasize one point, however.
24 As Mr. Steiner said, what was represented to the LUC
25 in '94 and '95 is at the crux of this proceeding. And

1 the representations that were made to the Commission
2 are not just what is set forth in the Order. I'm
3 going to call a spade a spade. Okay?

4 The reason why the Intervenors want to
5 exclude evidence, everything except for the Order, is
6 because they know that representations were made to
7 the Commission in '94 and '95 about commercial and
8 apartment use. And that is why they want to exclude
9 that evidence and limit everything just to the Order.

10 This Commission should have the opportunity
11 to review all of the evidence and all of the
12 representations that were made to the Commission in
13 '94 and '95. So that you can decide for yourselves
14 whether the current projects are in compliance with
15 the representations that were made.

16 For those reasons Honuaula Partners urges
17 the Commission to deny the motion. Thank you.

18 CHAIRMAN CHOCK: Thank you, Mr. Kam.
19 County?

20 MR. HOPPER: Thank you, Mr. Chair. The
21 County's going to focus primarily on the county
22 exhibits that are being requested to be excluded. Of
23 course the County is in opposition to excluding its
24 exhibits. Primarily the County's written testimony in
25 its entirety is being requested to be stricken as well

1 as the attached, the request for official notice.

2 The county is an automatic party to this
3 proceeding presumably because the Land Use Commission
4 wants to know the County's position on this. The
5 written testimony in this case was county written
6 testimony. It also sets forth the position of the
7 county. Striking it in its entirety would be, in the
8 county's understanding, unprecedented with respect to
9 a party that's automatically admitted to the
10 proceeding.

11 In fact, in addition, the written testimony
12 of the county directly addresses whether there has
13 been a breach of any condition. That is of course
14 relevant to this proceeding because that is the issue
15 presented at this proceeding.

16 The Department has reviewed the record in
17 this case and provided citations to the record
18 throughout its written testimony. I believe this will
19 assist the Commission because the Decision and Order
20 in 1995 does not have any citations to the record as
21 is the practice now which requires such citations.

22 So the County also believes that the
23 written testimony as submitted and the request for
24 official notice also will assist the Commission in
25 making its determinations in this case.

1 In addition, the zoning background is
2 relevant to this case. Finding of fact 34 in the
3 Decision and Order references a use limitation
4 condition that the county planning director
5 represented he would propose to the County Council.
6 That is the only express use limitation condition that
7 is referenced in the Decision and Order.

8 And therefore the county discussion of how
9 that condition progressed and the council's ultimate
10 decision *is* relevant because that was something that
11 was addressed in the representations to the
12 Commission.

13 We also want to address something in a
14 footnote, was in footnote 3, challenging Director
15 Spence's testimony, the department's expert testimony,
16 basically stating without any citation to the record
17 that Director Spence is not an expert on Land Use
18 Commission procedural matters.

19 That is not a requirement to be admitted as
20 an expert before the Commission. The requirements are
21 that he be qualified in the area of expertise that he
22 has set forth which in this case is planning and land
23 use.

24 We believe the attached resumé and Director
25 Spence's work qualifications certainly does qualify

1 him as an expert witness in this proceeding, and would
2 believe that the objection to him being added as an
3 expert witness has no merit.

4 In addition, the request for official
5 notice, county's Exhibit 2, is allowed by Commission
6 Rule HAR 15-15-63K. That allows the Commission to
7 take official notice of certain facts. It includes --
8 it reads as follows: "The Commission may take official
9 notice of matters as may be judicially noticed by the
10 courts of the state of Hawai'i. Official notice may
11 also be taken of generally recognized technical or
12 scientific facts within the Commission's specialized
13 knowledge. When parties are given notice either
14 before our during the hearing of the material so
15 noticed and afforded the opportunity to contest the
16 facts so noted."

17 All of the documents in the county's
18 request are official notice qualify under this rule.
19 Many of them have been filed with the Commission and
20 are a matter of record before the Commission.

21 Another document is on file with the
22 Planning Commission. And another document is the Maui
23 County's zoning ordinance which is a matter of record.
24 The county also notes that four of the six documents
25 in the Request for Official Notice, which is being

1 requested to be excluded, also appear on the
2 Intervenor's own Witness List.

3 And then finally on that note the county
4 would note that granting the Intervenor's motion would
5 require the exclusion of virtually all of the
6 Intervenor's own exhibits because they're not only in
7 some cases the exact same exhibits that are being
8 requested to be excluded, but they would all into the
9 general exclusionary categories that the Intervenor's
10 state that they should be excluded. Thank you.

11 CHAIRMAN CHOCK: State.

12 MR. SOUKI: State did not file a written
13 response but we'd like to reply orally. We object to
14 Intervenor's motion to the extent that it would
15 exclude Office of Planning's exhibits. The Commission
16 should be able to review all relevant evidence in this
17 matter.

18 And Exhibit 6, the 1994 Traffic Impact
19 Analysis Report prepared by Kaonoulu Ranch is
20 relevant. This case is about whether the proposed
21 Project is consistent with the D&O issued on
22 February 10, 1995. And the state's showing will be
23 limited to this question.

24 State will show that if the Petitioners
25 were to proceed with the proposed Piilani Promenade

1 and housing developments as indicated for the first
2 time an approval is drawn from the county, they would
3 not be acting in accordance with the representations
4 they made to the Commission in '94-'95.

5 At that time the Project was primarily
6 Light Industrial subdivided into 123 lots, had no
7 residential uses, and had specific traffic
8 improvements. And this is where the testimony from
9 our Department of Transportation and Exhibit 6 is
10 relevant. Because it shows that what is being
11 proposed back then and the impacts from the proposed
12 Project back then are different from the proposed
13 Project today and that the impacts from that proposed
14 Project today.

15 CHAIRMAN CHOCK: Rebuttal?

16 MR. PIERCE: With respect to
17 representations -- once again to make sure we're
18 clear, the reason that representations is a quote
19 "issue" here is because Condition 15 of the 1995
20 Orders requires the Petitioner to construct the
21 Project or the successor Petitioners in this case, to
22 construct the Project in substantial compliance with
23 the representations that were made at the time of the
24 Petition here in 1994.

25 Now, if Kaonoulu Ranch was interested in

1 making sure that their representations -- they
2 understood that condition. It's been in probably
3 their, that requirement on representations has been
4 there for a long time, maybe since the Land Use Law
5 was enacted in 1961.

6 They certainly were savvy enough if they
7 thought they wanted to do 250 units of housing or any
8 kind of housing, or if they knew that they wanted to
9 do a majority of the Project as retail, that they
10 would have fought really hard to get those in the
11 findings of fact.

12 But to the extent that the Petitioners are
13 permitted to go back and rummage through the
14 transcripts and try to find little nuggets of
15 argument, what they're essentially doing is -- even
16 though they say they're not -- they're trying to
17 relitigate the case because the Commission at that
18 time -- and you can see it in the Order, one of the
19 last things says "We're deciding these are the
20 findings of fact."

21 I'll save you -- I can show you that
22 particular section I think we cited in our brief.
23 These are -- the Commission finds that "these are the
24 findings of fact." It wasn't any of the other things
25 that came before the Commission at that point in time.

1 So we're calling a spade a spade. We're
2 afraid to go back and go through that. But what the
3 Petitioners are asking the Commission to do is a very
4 inefficient process that's absolutely not necessary
5 from a legal perspective.

6 The final thing I would just say is that
7 going to Condition 5, Mr. Steiner said that this
8 information was needed to bring in information about,
9 for example, the Department of Transportation, their
10 correspondence, the traffic studies, those kinds of
11 things. He said that needed to come up because we
12 needed to understand how to interpret Condition 5.

13 Now, it's clear already that the parties
14 disagree how to interpret Condition 5. But no amount
15 of findings of fact over the next two days will be
16 relevant to interpreting that. That interpretation is
17 a legal interpretation. It's one that you will be
18 making as a Conclusion of Law, not as a findings of
19 fact.

20 It goes to rules of statutory construction
21 or construction of encumbrances. And it's the kind of
22 thing that all of these able bodied attorneys here
23 today are able to give to you in closing written
24 arguments and keep this efficient.

25 The final thing I would say is obviously we

1 do have overlapping exhibits. If the Commission
2 decides to let this evidence in we want to be in a
3 position where we're not prejudiced. And we, of
4 course, would want those exhibits in.

5 But if in any case the Commission is
6 inclined to grant our motion or portions of our motion
7 we understand that that will encompass some of our
8 exhibits. Thank you.

9 CHAIRMAN CHOCK: Thank you, Mr. Pierce.
10 Commissioners, any questions for any of the parties?
11 Comments? Commissioner Inouye.

12 COMMISSIONER INOUYE: Aside from all the
13 legal arguments well stated by everybody, I want to
14 hear the facts of this case. My take on the relevance
15 issue should be as the proceedings go on and we can
16 deal with these exhibits one at a time to determine
17 whether they're relevant or not.

18 Chair, you have control over that too to
19 make sure the proceedings go. So I guess I hear all
20 the legal arguments, but the fact of the matter is I
21 don't want to make decisions in a vacuum and with
22 pre-determining what is relevant and not relevant at
23 this point.

24 CHAIRMAN CHOCK: Thank you, Commissioner
25 Inouye.

1 COMMISSIONER McDONALD: Chair.

2 CHAIRMAN CHOCK: Commissioner McDonald.

3 COMMISSIONER McDONALD: Thank you, Chair.

4 I echo Commissioner Inouye's concern. The proceeding
5 before us regarding the Order to Show Cause is a
6 significant decision that this body will need to make.

7 For me personally this hearing, this
8 original hearing took place back in 1994, 1995. Those
9 representations and commitments made at that time I'd
10 want to be able to hear, I'd want to be able to take
11 in the evidence.

12 The Chair has the discretion as far as what
13 is relevant as well as the Commissioners here. They
14 can weigh that evidence according to the hearing
15 before us. So I do echo Commissioner Inouye's
16 concerns and would like to deny that motion.

17 CHAIRMAN CHOCK: Is there a second?

18 COMMISSIONER CONTRADES: Second.

19 CHAIRMAN CHOCK: Any discussion further?

20 Dan, would you please --

21 VICE CHAIR HELLER: Excuse me, Mr. Chair,
22 just a clarification. The proposal is to deny the
23 motion without prejudice as far as any specific
24 objections. In other words, as evidence comes up and
25 as things are offered, if any of the parties has an

1 objection they're still free to raise that.

2 COMMISSIONER McDONALD: I would agree with
3 that, Commissioner Heller.

4 CHAIRMAN CHOCK: So the motion is to deny
5 without prejudice. Dan, would you please poll the
6 Commission.

7 MR. ORODENKER: Thank you, Mr. Chair.
8 Commissioner McDonald?

9 COMMISSIONER McDONALD: Yes.

10 MR. ORODENKER: Commissioner Contrades?

11 COMMISSIONER CONTRADES: Yes.

12 MR. ORODENKER: Commissioner Matsumura?

13 COMMISSIONER MATSUMURA: Yes.

14 MR. ORODENKER: Commissioner Heller?

15 VICE CHAIR HELLER: Yes.

16 MR. ORODENKER: Commissioner Inouye?

17 COMMISSIONER INOUYE: Yes.

18 MR. ORODENKER: Chair Chock?

19 CHAIRMAN CHOCK: Yes.

20 MR. ORODENKER: Thank you, Mr. Chair. The
21 motion carries unanimously.

22 CHAIRMAN CHOCK: Next item on the agenda is
23 County of Maui's Motion to Exclude Evidence related to
24 the 1998 Kihei-Makena Community Plan determination
25 Scope of Review. It's almost 12:30. I'd like to get

1 through most of these remaining pre-hearing motions
2 and then take a break for lunch. So just an FYI to
3 the parties. Maui County, proceed.

4 MR. HOPPER: Thank you, Mr. Chair. The
5 County's filed this motion to exclude evidence and
6 testimony related to the 1998 Kihei-Makena Community
7 Plan. The sole issue at this stage is whether or not
8 the conditions of the 1995 Decision and Order have
9 been breached.

10 The Intervenors have submitted expert
11 testimony and exhibits related to the Project's
12 compliance with the 1998 Kihei-Makena Community Plan.
13 However, this plan was not adopted until three years
14 after the Decision and Order was issued. And
15 therefore could not have any bearing on whether or not
16 the Decision and Order has been breached.

17 Simply put it was not in existence in 1995
18 when the Decision and Order was issued. The only
19 expressed condition related to the Community Plan is
20 Condition 1 which the county believes is a standard
21 condition, that requires the Petitioner to obtain a
22 Community Plan Amendment and change in zoning. And in
23 fact a Community Plan Amendment was obtained.

24 However, this condition cannot be read to
25 grant the Commission blanket authority to oversee

1 compliance with the community plan that was not
2 adopted until three years after the Decision and Order
3 itself was issued.

4 The Intervenors argue for an expanded
5 reading of Condition 1 based on its quote "implicit
6 characteristics." However, the Hawai'i Supreme Court
7 in the Lana'i Company Case prohibits such a reading of
8 a condition. Conditions must be stated with
9 ascertainable certainty.

10 Clearly Condition 1 requiring a community
11 plan amendment does not say that the language that
12 comes up in the 1998 community plan is something that
13 the Commission's Order concerned because, frankly, it
14 wasn't in existence in 1995.

15 Further, based on the Intermediate Court of
16 Appeals decision in Kuleana Kuikahi the Commission
17 does not possess the authority to oversee compliance
18 with county ordinances, including the community plan
19 which has been adopted by ordinance.

20 The Court in that case could find, quote,
21 "no authority that would give the Land Use Commission
22 the power to oversee county zoning and regulations.
23 The LUC simply does not have the authority to approve
24 or condemn county actions."

25 The county also notes that the Community

1 Plan and General Plan as part of the district boundary
2 amendment criteria for the Commission to consider, was
3 not added until 2008. So the county Community and
4 General Plans in 1995 were not part of the required
5 review criteria that the Commission has.

6 The State Plan was, for example. But the
7 Community Plan was not one of the listed criteria in
8 HRS at the time. The county notes the current
9 proceeding is obviously not a new district boundary
10 amendment proceeding.

11 Therefore, the LUC is not authorized to
12 consider the 1998 community plan in the county's
13 opinion based on the case law in this current
14 proceeding because it is, again, not a new district
15 boundary amendment proceeding.

16 In conclusion, the county believes that if
17 the Commission bases its decision on whether or not
18 the owners are in compliance or not with the 1998
19 Community Plan, it would be acting inconsistently with
20 the case law and would go beyond the scope of the
21 Commission's Decision and Order issued in 1995 which
22 was, again, three years prior to the existence of the
23 1998 Community Plan.

24 CHAIRMAN CHOCK: Thank you, County.
25 Mr. Steiner.

1 MR. STEINER: Thank you, Chair. Piilani
2 and Honuaula have joined in the County's motion for
3 the reasons set forth in our brief. We agree with the
4 arguments made by Mr. Hopper that this evidence would
5 be irrelevant and particularly for the Commission to
6 base its decision upon whether or not legally there's
7 compliance with the Community Plan. We believe there
8 is, but that's not an issue that's before the
9 Commission.

10 The Commission has another important issue
11 to decide and it shouldn't be confused by other
12 issues. The decision -- the scope of the decision
13 should not be based upon whether or not there's been
14 compliance with the Community Plan.

15 MR. HOPPER: Mr. Chair.

16 CHAIRMAN CHOCK: Yes, sir.

17 MR. HOPPER: Briefly. Just wanted to
18 clarify, the county did identify in its motion several
19 pages of the expert testimony that deals specifically
20 with the 1998 Community Plan that it's requesting it's
21 excluding. I should have mentioned that.

22 CHAIRMAN CHOCK: Thank you. Mr. Kam.

23 MR. KAM: Thank you, Chair. I have nothing
24 to add.

25 CHAIRMAN CHOCK: State?

1 MR. SOUKI: State doesn't take a position
2 on this motion.

3 CHAIRMAN CHOCK: Intervenor?

4 MR. PIERCE: Mr. Chair, first of all, the
5 county is asking you first, in our last motion saying
6 that it's relevant, what the underlying entitlement
7 process is in their case with respect to the change in
8 zoning. Then they say it's not relevant with respect
9 to the Community Plan process.

10 Now, hopefully any one of the county
11 attorneys would submit or acknowledge that, in fact,
12 any of the county code requirements -- and I can pull
13 the rule, I have the County Code here -- but hopefully
14 they'll acknowledge this -- requires consistency with
15 the Maui County General Plan and with the Community
16 Plans. In this case we're dealing with the
17 Kihei-Makena Community Plan.

18 So what the county is seeking to do is to
19 eliminate -- they've argued that you need to
20 deliberate on M-1 zoning, but then they're seeking to
21 exclude one of the parts of dealing with M-1 zoning
22 and whether something is permitted, or it may actually
23 be built in this case, and that has to go to the
24 Community Plan. It's still there. So that's the
25 first part on this. Is that county is taking

1 inconsistent positions here.

2 And as Mr. Kam said, "Let's call a spade a
3 spade." At least the parties on this side know that
4 the Community Plan -- you heard in some of the public
5 testimony today -- the Community Plan in addition to
6 the overwhelming evidence that will be presented with
7 respect to violations of the 1995 Order, the Community
8 Plan is the other white elephant in this room.
9 There's a clear violation there. And Intervenor will
10 be putting that evidence on.

11 Let's go to the most important thing for
12 the Commission to deliberate on this particular motion
13 which is: Is it relevant because that's the test as we
14 put forth in our Motion in Limine and still remains
15 the one?

16 And the county has overlooked or failed to
17 identify to you a surprising number of findings of
18 fact that were placed into the 1995 Order. It was
19 very clear that that Commission was very concerned
20 about that Kihei-Makena Community Plan and what was
21 going to be happening with respect to consistency.

22 And I hate to belabor the point but I think
23 it's very important because it's such an important
24 point to point out these Findings of Fact. It
25 starts -- I'll try to make it quick, the Finding of

1 Fact No. 28 is where this starts.

2 And, by the way, I would point out that is
3 almost verbatim what was in the Petitioner's Kaonoulu
4 Ranch's original petition. In other words, Kaonoulu
5 Ranch understood consistency was an issue. At that
6 point in time they were doing their best to make sure
7 they had a project that was consistent.

8 We have no problems with Kaonoulu Ranch and
9 what they were seeking to do in terms of light
10 industrial, true light industrial.

11 Finding of Fact 28 says, "The property's
12 located within the Kihei-Makena Community Plan." It
13 goes on to say, "The property is designated Project
14 District 3 by the existing Kihei-Makena Community
15 land use map. Then it goes on to have a description.
16 And it identifies adjacent areas.

17 Finding of Fact 29 says, "The county is
18 currently in the process" -- if you recall the
19 County's argument is this is not relevant because the
20 Community Plan wasn't amended until 1998. But this is
21 where the findings of fact are actually acknowledging
22 the fact that it was in the process. And the
23 Petitioner was making representations that it was
24 going to assure consistency.

25 So paragraph 29 says, "The county of Maui

1 is currently in the process of comprehensively
2 updating each Community Plan." Then I'm going to try
3 to paraphrase the next two. What happened is that
4 initially the community said that they wanted a mix of
5 uses in the Project District 3. And quote
6 "envisioning a mix of industrial," comma "residential"
7 comma, "recreational and public amenities." period.

8 Finding of Fact 30 goes on to say "The
9 director" -- and here they're referring to the
10 planning director, so this is Mr. Spence's predecessor
11 -- "in fact" and I'm going to summarize this -- "asked
12 that it be restricted to more confined uses." He
13 says, "It was concluded that there was a need for
14 additional employment centers particularly for light
15 industrial use. The director proposed amending the
16 property's existing Community Plan designation from
17 project district 3 to light industrial."

18 Then paragraph 31 goes on to discuss the
19 Planning Commission. And I'm paraphrasing. I'm
20 giving you one paragraph that's in here. "The
21 Planning Commission agreed with the Director's
22 recommendation."

23 So in other words, you have the county
24 Planning Commission who -- the planning director made
25 the recommendation to the Planning Commission. "The

1 Planning Commission agreed with the director's
2 recommendation of a Light Industrial designation for
3 the Petition Area."

4 Paragraph 32 says, "The Project would
5 conform with the proposed light industrial designation
6 for the property." And it says next quote "Light
7 industrial uses include warehousing, light assembly,"
8 comma, "and service and craft type industrial
9 operations." Period. End of quote.

10 The importance of that is that that
11 language which was submitted by Kaonoulu Ranch and
12 which was found to be a findings of fact by that
13 Commission back in 1995, is exactly the language
14 that's in the Kihei Community Plan today.

15 The findings of fact findings of fact don't
16 end there. They go on in paragraphs 33, 34 to make it
17 clear that this -- "the application will be scheduled
18 for Planning Commission review." They're anticipating
19 the process that the Community Plan has to go through.

20 "And *if* the light industrial designation is
21 granted for the property by Maui County Council,"
22 they're basically identifying that this is a
23 prospective issue.

24 There's two other parts to this that I
25 wanted to bring quickly to your attention. One is

1 Finding of Fact 98. That one says, "The Project is
2 consistent with the current urban designation of the
3 property in the Kihei-Makena Community Plan. And the
4 planning directors and Maui Planning Commission's
5 Light Industrial Urban designation and the recommended
6 update of the Kihei-Makena Community Plan."

7 Finally, the first condition of this 1995
8 Order is No. 1. "The Petitioner shall obtain a
9 Community Plan amendment and change in zoning from the
10 county of Maui." now clearly that Community Plan has
11 relevance here. Thank you.

12 CHAIRMAN CHOCK: County, rebuttal?

13 MR. HOPPER: Thank you, Mr. Chair. Several
14 points. One, the zoning in this case was in place.
15 The M-1 light industrial zoning ordinance was in place
16 and in existence. And the specific uses allowed by
17 that zoning was discussed, and representations were
18 made to the Commission regarding that zoning as
19 opposed to the 1998 Community Plan which, again, was
20 *not* in place at the time. There was a different
21 Community Plan in place at the time.

22 So while the Commission *could* consider the
23 Community Plan, the 1998 plan did not exist at that
24 time. There's language in that plan that is different
25 than the plan in 19-- it was in existence in 1995.

1 In addition, it's true that the findings of
2 fact talk about the Community Plan but it does so in a
3 perspective manner. The only condition that deals
4 with this, with the Community Plan, is that
5 specifically they get a Community Plan amendment.

6 If an amendment was obtained -- and there's
7 an ordinance showing that the Community Plan was
8 changed to light industrial, that would end the
9 inquiry. Because it is a perspective updating
10 process, however, the evidence as to whether or not
11 with the new language in the plan is or compliance or
12 non-compliance with that plan, again is irrelevant to
13 these proceedings because in 1998 that plan -- or
14 1995 -- that plan did not exist.

15 The Commission could not retain
16 jurisdiction to oversee compliance with future adopted
17 Community Plans through a condition that simply stated
18 "obtain a Community Plan amendment". That's certainly
19 not broad enough to, in the County's view, allow the
20 Commission to going forward to consider new Community
21 Plans.

22 Again, this is not a district boundary
23 amendment proceeding where we're talking about
24 additional discretionary decision-making. We're
25 looking at the original Decision and Order in '95

1 which, again, the Plan's language was not in existence
2 at that time. Thank you.

3 CHAIRMAN CHOCK: Thank you, Maui County.
4 Commissioners, any questions for the parties?
5 Comments? (pause) Commissioners, what is your
6 pleasure on this matter? Commissioner Inouye.

7 COMMISSIONER INOUE: I guess similar to
8 the previous motion, many of the issues that may come
9 out in this hearing is going to come out as we present
10 evidence. I would hate to predetermine and to exclude
11 ahead of time any testimony at this time especially
12 condition 15 is a very broad condition about
13 substantial compliance with the representations.

14 So we need to hear some of the evidence
15 before we can make a ruling, in my opinion. Again,
16 great legal arguments, all that, matter of fact I just
17 want to hear the evidence and rule on the relevance as
18 they come out. Thank you.

19 CHAIRMAN CHOCK: Thank you, Commissioner
20 Inouye. Is there a motion?

21 COMMISSIONER INOUE: I guess the same
22 motion as the previous one as far as denying the
23 motion without prejudice to objecting as the evidence
24 comes through.

25 CHAIRMAN CHOCK: Is there a second?

1 COMMISSIONER McDONALD: Second.

2 CHAIRMAN CHOCK: Been seconded. Any
3 discussion or further commentary? Commissioner
4 Heller.

5 VICE CHAIR HELLER: Just a brief comment.
6 I don't know if we've formalized a decision yet on the
7 order of presentation, but it seems to me that after
8 we've heard particularly the landowners' case, we
9 might be in a better position to evaluate what the
10 Intervenors want to offer.

11 So I would agree with the motion that, you
12 know, let's not decide something right now that we
13 don't necessarily have to decide right now.

14 CHAIRMAN CHOCK: Okay. Dan.

15 MR. ORODENKER: The motion is to deny. The
16 motion on the floor is to deny the motion without
17 prejudice 'til later on.

18 Commissioner Inouye?

19 COMMISSIONER INOUYE: Yes.

20 MR. ORODENKER: Commissioner Chock? Excuse
21 me. Commissioner McDonald?

22 COMMISSIONER McDONALD: Yes.

23 MR. ORODENKER: Commissioner Matsumura?

24 COMMISSIONER MATSUMURA: Yes.

25 MR. ORODENKER: Commissioner Contrades?

1 COMMISSIONER CONTRADES: Yes.

2 MR. ORODENKER: Commissioner Heller?

3 VICE CHAIR HELLER: Yes.

4 MR. ORODENKER: Chair Chock?

5 CHAIRMAN CHOCK: Yes.

6 MR. ORODENKER: Mr. Chair, the motion
7 carries unanimously.

8 CHAIRMAN CHOCK: Thank you, Dan. We have
9 one final motion then we're going to break for lunch.
10 Commission will now hear Intervenors' Motion to Take
11 Testimony of Carla Flood via telephone. Mr. Pierce.

12 MR. PIERCE: Mr. Chair, first of all, we
13 don't need to go to the relevance of her testimony
14 right now. Really what we're dealing with is the
15 technicality of whether the Commission will permit
16 Ms. Flood, who's 82 years old, and although our
17 declaration has minimized what the issues are, you'll
18 see that she signed a declaration. She said that
19 she's of fit mind but she physically is not in a
20 position to come forward.

21 And the county wanted -- is obviously
22 against that. They've said that we didn't give,
23 enunciate a greater reason, medical conditions; they
24 were asking for doctors' reports. We think under the
25 relaxed standards here that a telephone -- we're

1 proposing this be a telephone examination. We are
2 prepared to deal with the technical parts. We think
3 we have those covered. We prepared for that. We can
4 have it where everyone in the room can hear.

5 So the real issue here is will the
6 Commission permit this to occur. We think that
7 there's no need for there to be a passage of a lot of
8 evidence back and forth. So that's not really a
9 technicality. But if to the extent it was, we think
10 we can even deal with that issue by taking a short
11 break or taking her out of order in terms of the
12 cross. And we can e-mail her exhibits that the other
13 parties might want to have her questioned.

14 But my guess is based upon the fact it's a
15 very narrow line of questioning it shouldn't take more
16 than 15, 20 minutes to half an hour max on the
17 direct -- in fact it would be 15 minutes on the
18 direct -- that there's going to be a desire for the
19 other parties to provide her with exhibits for their
20 cross.

21 So in summary we're not here on the
22 relevance of the issue. We would ask that that be
23 stayed and deferred until later. The question just
24 is: Will the Commission be able to sufficiently
25 evaluate the testimony?

1 And here, of course, the Commission has a
2 great ability to decide what weight it will give
3 testimony. We're just asking for that opportunity to
4 put Ms. Flood on. She was the KCA president back in
5 the '90s.

6 But we would ask you not to go to the issue
7 of relevance right now because this is really a
8 technical question. Thank you.

9 CHAIRMAN CHOCK: Mr. Steiner.

10 MR. STEINER: Your Honor, I understand the
11 Commission wants to hear all the evidence and decide
12 the relevance later. I think, though, that because
13 Mr. Pierce is asking for an extraordinary procedure
14 and he's made some representations we can worry about
15 getting exhibits back and forth, I think at the very
16 least there ought to be some sort of offer of proof as
17 to what Ms. Flood is going to testify about. Other
18 than that we'll rest on our brief.

19 CHAIRMAN CHOCK: Mr. Kam.

20 MR. KAM: Thank you, Chair. We'll rest on
21 our briefs.

22 CHAIRMAN CHOCK: County?

23 MS. LOVELL: Thank you, Chair. The county
24 opposes this motion because the Commission's own rules
25 do not provide for telephone testimony. And in other

1 similar situations -- and we've cited to Social
2 Security hearings which are also administrative
3 hearings -- there has been very strong opposition to
4 the introduction of telephone hearings by the
5 administrative law judges who hear those proceedings.

6 And one of the reasons is that when you
7 have a party who has the Constitutional right to
8 cross-examine witnesses, as is the case here,
9 particularly with the landowners who stand to lose
10 very important rights in this proceeding, they must be
11 able to not only cross-examine but cross-examine
12 effectively.

13 Not only that but the Commissioners have
14 both the right and the duty to carefully evaluate the
15 testimony of the prospective witnesses. And that
16 cannot be done over the telephone.

17 If we had better technology in place -- it
18 certainly exists -- where we what had video links or
19 something of that nature, I think we might have a
20 different take on this proceeding. But as it stands
21 there is nothing in the rules that allows for
22 telephone testimony.

23 Furthermore, although the Intervenors say
24 that this particular witness was active in the Kihei
25 Community Association in the 1990s, the only proposed

1 exhibit that we have seen that implicates Ms. Flood is
2 dated 1998. Again, a date after the 1995 Decision and
3 Order.

4 We would hate to see an elderly witness
5 inconvenienced only to have her testimony stricken
6 later. So we certainly agree that the Intervenor, who
7 proposes to call this witness in such an extraordinary
8 way not allowed in the rules, should at the very least
9 make an offer of proof as to what she is to testify to
10 and to be very specific as to the relevant timeframe.

11 The 1990's covers 10 years, but the only
12 exhibit that has been offered so far that we have seen
13 is dated 1998. Therefore, we urge you to deny the
14 motion.

15 CHAIRMAN CHOCK: State?

16 MR. SOUKI: State doesn't take a position
17 on this motion.

18 CHAIRMAN CHOCK: Any rebuttal, Mr. Pierce?

19 MR. PIERCE: Very short. First, the Social
20 Security cases that Ms. Lovell refers to, of course in
21 a situation like that you have a Social Security
22 claimant before you claiming a disability. Of course
23 you want to see the person.

24 We're talking about a person who's a
25 material witness here but not one who's a key witness.

1 So we think that there's an opportunity here for a
2 relaxed standard with respect to that.

3 Ms. Lovell's asked for an offer of proof.
4 We're happy to give that, although I asked for us to
5 just deal with the technical side of this first. To
6 me the offer of proof is meaningless right now.
7 That's a relevance issues. And we can get to that
8 closer to the time she would be testifying if granted.

9 The final thing I would just point out is
10 that Mr. Yee, Office of Planning's attorney, at an
11 earlier stage, proposed to have one of the state
12 expert witnesses, is my recollection, testify by
13 telephone. We didn't have a problem with it. My
14 recollection is the county of Maui did not object to
15 that. So the county is taking an inconsistent
16 position here. Thank you.

17 CHAIRMAN CHOCK: Commissioners, any
18 questions for the parties? Commissioners, what is
19 your pleasure on this matter? Commissioner Heller.

20 VICE CHAIR HELLER: Yes. I think the
21 concern about effective cross-examinatin is an
22 important concern. And in particular the issue of
23 what if somebody wants to question the witness about
24 exhibits. If the exhibits haven't been sent to her in
25 advance, I'm not sure exactly how it's going to work.

1 But at the same time I recognize the
2 situation of an elderly person who may have
3 substantial difficulty just getting here. So I'd like
4 to suggest as a sort of a compromise position, and
5 make a motion that we grant this motion allowing
6 telephonic testimony subject to the condition that
7 written testimony must be obtained from the witness
8 and served on all parties at least seven days in
9 advance of whenever she's going to testify by
10 telephone.

11 And that way the other parties have an
12 opportunity to know what she's going to say and to
13 plan an effective cross-examination.

14 And if it depends on getting any exhibits
15 to where the witness is, there will be a chance to do
16 that ahead of time. So that's my motion: To grant
17 and allow telephonic testimony subject to the
18 submission of written testimony at least seven days
19 before the telephonic examination.

20 And then the testimony would be limited to
21 the subject matter of the written testimony plus
22 whatever cross-examination is appropriate.

23 COMMISSIONER MATSUMURA: Second.

24 CHAIRMAN CHOCK: Any discussion?

25 Commissioner Contrades.

1 COMMISSIONER CONTRADES: I can't support
2 that. Because I really think it's unfair to everyone
3 not to have the person here. It's unfair to us also.
4 I like to see people when they're testifying. I want
5 to watch what they're saying. I think everything is
6 really important especially in the situation that
7 we're in right now.

8 While I compliment Ron, Commissioner
9 Heller, for trying to come up with a situation he
10 thought was going to be okay for everyone, I can tell
11 you after seven and-a-half years of doing this, that
12 all that he just said is not ever going to happen.
13 Something is going to happen and we're going to be
14 going through this over and over again. It just
15 doesn't work. And I can't support it. Thank you.

16 CHAIRMAN CHOCK: Commissioners, any other
17 comments? Is there a second to that motion?

18 COMMISSIONER MATSUMURA: Yes.

19 CHAIRMAN CHOCK: Dan, please poll the
20 Commission. Commissioner Inouye.

21 COMMISSIONER INOUE: I hear what
22 Commissioner Contrades is saying and I'm very
23 sensitive to that. I think a lot of this evidence
24 stuff will go to the weight of the evidence. If there
25 is a problem with ineffective cross or inability to

1 cross-examine effectively, that's going to be in our
2 minds when we make decisions.

3 So basically I'm just stating why I'm
4 supporting this position, but I too, I'm very
5 sensitive to what Mr. Contrades -- Commissioner
6 Contrades is saying.

7 CHAIRMAN CHOCK: Any other comments,
8 Commissioners? Okay, Dan.

9 MR. ORODENKER: Mr. Chair, the motion is to
10 grant the motion subject to the condition that written
11 testimony be submitted and served on the other parties
12 seven days before the testimony is to be given. And
13 testimony is to be limited to the matters contained in
14 the written testimony. Commissioner Heller?

15 VICE CHAIR HELLER: Yes.

16 MR. ORODENKER: Commissioner Matsumura?

17 COMMISSIONER MATSUMURA: Yes.

18 MR. ORODENKER: Commissioner McDonald?

19 COMMISSIONER McDONALD: No.

20 MR. ORODENKER: Commissioner Contrades?

21 COMMISSIONER CONTRADES: No.

22 MR. ORODENKER: Commissioner Inouye?

23 COMMISSIONER INOUYE: Yes.

24 MR. ORODENKER: Chair Chock?

25 CHAIRMAN CHOCK: No.

1 MR. ORODENKER: Mr. Chair, the motion is
2 divided evenly three and three. Motion fails.

3 CHAIRMAN CHOCK: I think the Chair has the
4 discretion to rule on this motion. Given the fact
5 that the previous motion was denied based on the
6 compromise motion brought forward by Vice Chair
7 Heller, I do think it's somewhat of a bad precedent to
8 have telephonic testimony. And I'm going to rule to
9 not include that as part of this proceeding today.
10 Okay.

11 So I believe that concludes all of the
12 pre-hearing motions. We are going to take a break for
13 approximately an hour, and then come back with the
14 evidentiary proceedings on Docket A94-706. Questions,
15 Parties?

16 MR. PIERCE: Quick question. Will we -- we
17 had talked in one of the pre-hearing conferences about
18 an opportunity for brief opening statements.

19 CHAIRMAN CHOCK: Mm-hmm. (nodding head.)

20 MR. PIERCE: And then another -- now that
21 we've settled some of the matters with respect to the
22 evidence I think the parties can kind of see where
23 there's consensus. I was going to propose one
24 housekeeping measure when we come back which is simply
25 to see if we can quickly figure out what can be taken

1 official notice of, and just clean up a lot of the
2 exhibits early on. That's the proposal. I'll defer
3 to the Commission. But if that's something that would
4 help we're happy to do it because I know the parties
5 probably know a lot of places where there's no dispute
6 whatsoever.

7 CHAIRMAN CHOCK: Okay. Any other
8 questions? Okay. So we're going to break for lunch
9 and be back in an hour.

10 MR. SOUKI: Sorry, did you ask for
11 comments?

12 CHAIRMAN CHOCK: Yes. It's been a long
13 morning.

14 MR. SOUKI: Sorry. I'm just not clear
15 about what he's proposing. What are you proposing?

16 MR. PIERCE: What I was going to propose is
17 that we, hopefully, in 15 minutes go through each
18 party's exhibits and just say: Can we accept these by
19 either official notice or by stipulation? And not
20 present any of the contentious ones, of course.

21 Essentially, if there's an objection, we
22 just move on. But I thought we might be able to get a
23 lot of those in evidence. What it would mean from an
24 efficiency perspective is that from Intervenors'
25 perspective we would not be as concerned about

1 authenticating documents as we went through the
2 record? That would, of course, possibly streamline
3 the case quite a bit.

4 CHAIRMAN CHOCK: That's normally our
5 proceeding and process that we follow. Mr. Souki,
6 any other commentary or questions? You're okay?
7 Okay. Anybody else? Okay. Recess for lunch.

8 (Lunch recess was held.)

9 CHAIRMAN CHOCK: (2:05) We're back up on
10 the record. Parties, do you have any exhibits you'd
11 like to offer at this time? Maybe starting with you,
12 Mr. Steiner.

13 MR. STEINER: Yes. We would like to offer
14 into evidence Petitioner Piilani Promenade's
15 Exhibits 1 through 11 and 13 through 46.

16 CHAIRMAN CHOCK: Parties, any objections?
17 County?

18 MS. LOVELL: No.

19 CHAIRMAN CHOCK: County? 13-46?

20 MS. LOVELL: No objection.

21 CHAIRMAN CHOCK: State?

22 MR. PIERCE: That was 1 through 11 and what
23 was the other set?

24 CHAIRMAN CHOCK: 13 through 46.

25 MS. LOVELL: No objections.

1 CHAIRMAN CHOCK: State?

2 MR. SOUKI: No objections.

3 CHAIRMAN CHOCK: Intervenor?

4 MR. PIERCE: (off mic) Stand by one moment,
5 please. We have no objection to 1 through 11. I
6 think it would be easiest if I go through the other
7 ones. We have no objection to 13 -- I'm sorry. No
8 objection to 14. No objection to 15. (on mic) At
9 this time we'd object to 16 and ask that it be
10 deferred. No objection to 17, 18. No objection to
11 18, no objection to 19. No objection to 20 or 21 or
12 22 or 23 or 24.

13 I guess I should have done this the other
14 way around and said which ones I was objecting to. I
15 apologize.

16 CHAIRMAN CHOCK: No worries.

17 MR. PIERCE: No objection to 25, 26 or 27,
18 28, 29, 30, 31, 32, 33, 34, 35 -- I'm sorry, 35 we
19 would be objecting to. We're asking that that be
20 deferred until it's actually introduced. The same
21 with 36.

22 No objection to 37 or 38 -- I'm sorry, with
23 the remainder of the exhibits with the exception of
24 the expert testimony which we would like to defer on
25 that. So we would be objecting to the remainder of

1 the exhibits until they're introduced.

2 CHAIRMAN CHOCK: That's 38 through 46?

3 MR. PIERCE: Correct.

4 CHAIRMAN CHOCK: So to clarify, you're
5 objecting to Exhibit 16, 35, 36, and 37 through 46.

6 MR. PIERCE: Correct. It's 38 through 46.

7 CHAIRMAN CHOCK: And what is the basis for
8 your objection?

9 MR. PIERCE: Well, what I'd ask -- that's
10 why I suggested we defer on those and just have them
11 wait until they're actually being proposed in evidence
12 instead of going through the objections individually
13 right now, if we could.

14 CHAIRMAN CHOCK: Are you asking the
15 landowner for an offer of proof?

16 MR. PIERCE: At the appropriate time I
17 would be.

18 CHAIRMAN CHOCK: Okay. Chair's going to
19 admit 1 through 11 and 13 through 46 at this time and
20 hold on 16, 35, 36 and 38 through 46, is that correct?
21 Or did I make more, did I make hamburger out of that?
22 (Laughter). Was that clear, Parties?

23 MS. LOVELL: Actually I think that you both
24 admitted and deferred on certain exhibits. You
25 indicated you were admitting 13 through 46. But I

1 think you meant to admit 13 through 15, 17 through 34
2 and 37 while deferring on the remainder.

3 CHAIRMAN CHOCK: Right. So we're going to
4 defer on 16, 35, 36 and 38 through 46.

5 MR. STEINER: And so the record's clear
6 Exhibit 12 was withdrawn.

7 CHAIRMAN CHOCK: Mr. Kam.

8 MR. KAM: Thank you, Chair. Honuaula
9 offers into evidence Honuaula Exhibits 1 through 3, 5
10 through 10, and 12.

11 CHAIRMAN CHOCK: Parties, any objections?
12 County?

13 MS. LOVELL: No objections from the county.

14 CHAIRMAN CHOCK: State?

15 MR. SOUKI: No objections from the state.

16 CHAIRMAN CHOCK: Intervenor?

17 MR. PIERCE: Please hold with me for one
18 moment. Sorry, I'm a little bit slower. No objection
19 to 1 through 3, no objections to 5 through 10. And no
20 objection to 12.

21 CHAIRMAN CHOCK: Okay. Very good. OP?
22 I'm sorry. So we'll admit those Exhibits 1 through 3;
23 5 through 10 and 12. Okay, County?

24 MS. LOVELL: Thank you, Chair. The county
25 of Maui offers Exhibits 1 through 7.

1 CHAIRMAN CHOCK: Mr. Steiner?

2 MR. STEINER: No objection.

3 CHAIRMAN CHOCK: Mr. Kam?

4 MR. KAM: No objection.

5 CHAIRMAN CHOCK: State?

6 MR. SOUKI: No objection.

7 CHAIRMAN CHOCK: And Intervenor?

8 MR. PIERCE: We object to 1, 4 and 7.

9 CHAIRMAN CHOCK: And on the same basis as
10 the previous objection?

11 MR. PIERCE: If it would please the
12 Commissioners, yes.

13 CHAIRMAN CHOCK: Okay. So we'll defer on
14 1, 4, 7, and admit 2, 3, 5 and 6.

15 MS. LOVELL: Chair, if I could just have a
16 clarification. Since Exhibit 1 is the testimony of
17 the Maui Planning Department how will we present our
18 case? (pause)

19 CHAIRMAN CHOCK: I guess when you put on
20 your case you can bring forward, I guess, the offer of
21 proof and we can discuss the admissibility of the
22 exhibit at that time.

23 MS. LOVELL: Okay. I could make the offer
24 of proof now.

25 MR. PIERCE: I'll just explain we have --

1 some of Mr. Spence's testimony involves legal
2 conclusions. He's not an expert. He's not a lawyer.
3 So some of his testimony is overbroad. So at that
4 point in time we would get into a detailed
5 identification of what we find to be objectionable.

6 CHAIRMAN CHOCK: I believe this Commission
7 has admitted Mr. Spence as an expert in planning many
8 times.

9 MR. PIERCE: It's not that we are
10 questioning his qualifications as a planner. We're
11 questioning some of the opinions he's rendering within
12 his written testimony.

13 So the difference is not that we're -- I
14 mean, by the way, that was a footnote in our other
15 part and it related to, for example, just referencing
16 back to the motions earlier.

17 To the extent that Mr. Spence is giving
18 opinions about whether or not there has been a
19 violation of the 1995 Order, it will be our position
20 that that is outside the scope of his expertise.

21 To the extent that he is making opinions
22 with respect to legal conclusions that's outside his
23 expertise, and we would ask at the time that his
24 written testimony is offered, we would ask for an
25 opportunity to identify those and ask for the

1 Commission to rule on those.

2 MS. LOVELL: Well, in response I would say
3 the reason that the county is even here is to resolve
4 precisely those issues and questions. And I might
5 also point out that a former planning director of the
6 county is offering expert testimony for the
7 Intervenor.

8 We certainly don't question Mr. Foley's
9 expertise, but he, in his written opinions, in his
10 written testimony also has opinions with respect to
11 the ultimate issue before this Commission.

12 So to the extent that the County's, the
13 County Department of Planning's testimony is stricken
14 here, you will not be hearing a full and fair record.

15 CHAIRMAN CHOCK: We're going to defer and
16 argue on the merits of this exhibit when you put on
17 your case, County. But I'm inclined to, Intervenor,
18 let you know that Mr. Spence has in many, many
19 instances been admitted as an expert on planning to
20 this Commission.

21 The Commission can give our own weight
22 given his own legal representations that he may offer
23 at that time. So let's move on.

24 MR. PIERCE: Thank you.

25 CHAIRMAN CHOCK: Mr. Souki.

1 MR. SOUKI: The State moves to admit
2 Exhibits 1 through 13.

3 CHAIRMAN CHOCK: Any objections,
4 Mr. Steiner?

5 MR. STEINER: No objection.

6 CHAIRMAN CHOCK: Mr. Kam?

7 MR. KAM: No objection.

8 CHAIRMAN CHOCK: County?

9 MS. LOVELL: No objections.

10 CHAIRMAN CHOCK: Mr. Pierce?

11 MR. PIERCE: No objections.

12 CHAIRMAN CHOCK: Intervenor, any exhibits?

13 MR. PIERCE: Yes, please.

14 CHAIRMAN CHOCK: Oh, I'm sorry. I didn't
15 admit -- Mr. Souki's Exhibits 1 through 13 are
16 admitted.

17 MR. PIERCE: We would ask for admission of
18 Exhibits 1 through 37. Let me say that yesterday we
19 submitted to the clerk and to the parties and we gave
20 a hard copy today, a Revised Exhibit List just
21 numbering our expert witnesses who have already been
22 provided. We've numbered them. In your own packets
23 they are not numbered.

24 So the testimony of Michael Foley -- expert
25 testimony of Michael Foley is Exhibit I-35. I-36 is

1 the written testimony of expert Victoria Huffman. And
2 I-37 is the written testimony of Richard Mayer. And
3 as I said before these were timely presented. We just
4 didn't number them at the time.

5 CHAIRMAN CHOCK: Objections? Mr. Steiner.

6 MR. STEINER: Thank you, Mr. Chair. We
7 would object and similarly ask for deferral on
8 Exhibits I-6, I-7, I-8, I-11, I-21, I-24, and I-30 as
9 well as the expert testimonies I-35 through 37.

10 CHAIRMAN CHOCK: Okay. Mr. Kam.

11 MR. KAM: Honuaula joins in Piilani's
12 objections.

13 CHAIRMAN CHOCK: County of Maui.

14 MS. LOVELL: County objects to I-9 which is
15 the Kihei-Makena Community Plan of 1998. Parts of it
16 may be relevant, but at this time we object in order
17 to preserve our objection for the record.

18 We object to I-11 on the ground that it is
19 irrelevant and contains hearsay within hearsay. I-27
20 and I-30 we object to as irrelevant. And I-34 we
21 object to as cumulative to what we believe will be
22 Mr. Hyde's testimony.

23 CHAIRMAN CHOCK: Thank you. Office of
24 Planning.

25 MR. HOPPER: Sorry, Mr. Chair, just

1 continuing with our motion for exclusion of the 1998
2 Community Plan testimony. We'd also object to I-35.
3 This was identified in our motion. And again we're
4 stating the objection again for the record.

5 I-35, which is Director Foley's expert
6 testimony to the extent that it discusses compliance
7 with the 1998 Kihei-Makena Community Plan pages 11 and
8 12 and 14, the expert testimony of Mr. Mayer I-37 to
9 the same extent there are entries on pages 4 and 5 and
10 6 and 7 dealing with the 1998 Kihei-Makena Community
11 Plan.

12 MR. STEINER: I'm sorry. My objections to
13 35 and 37 are along the same lines as the county. I
14 would withdraw my objection to Exhibit 36.

15 CHAIRMAN CHOCK: County, if you don't mind
16 could you have one person speaking on your behalf.
17 Okay. State?

18 MR. SOUKI: No objection.

19 CHAIRMAN CHOCK: We have noted your
20 objections for the record. We will deal with it when
21 the Intervenor puts on its respective case.

22 The ones that we're admitting without
23 objection: 1 through 5, 12 through 20, 22, 23, 25,
24 26, 28, 29, 31 through 33, 36. Is that clear as mud?

25 THE REPORTER: Chair, did you say Exhibit 9

1 also?

2 CHAIRMAN CHOCK: No. So let me recap. 1
3 through 5, 10, 12 through 20, 22 through 23, 25
4 through 26, 28 through 29, 31 through 33 and 36.

5 Okay. So we're going to go ahead and start
6 with opening statements. We're going to go in order
7 of Landowner to County to State and then Intervenor.
8 Mr. Steiner -- and let's try to limit these opening
9 statements to 10 minutes. Mr. Steiner.

10 MR. STEINER: Thank you, Mr. Chair.
11 Mr. Chair, Commissioners we're here to determine
12 whether Piilani Promenade North and Piilani Promenade
13 South, which I'm going to refer to through the rest of
14 this proceeding as just "Piilani" collectively. We're
15 here to determine whether Piilani is in violation of
16 any of the conditions in the Commission's 1995
17 Decision and Order. And there's two that have been
18 cited by the Intervenor and other parties that we are
19 alleged to have violated, the first being Condition 5
20 which relates to traffic and a frontage road.

21 Secondly, Condition 15 which is related --
22 which is that the development of the Project be in
23 substantial compliance with the representations made
24 to the Commission.

25 Petitioner is going to provide evidence

1 regarding what representations were made to this
2 Commission. That evidence will show that it was
3 specifically represented to the Commission that the
4 Project could contain a significant retail component.
5 And that what is ultimately developed would be
6 determined by the market conditions existing at the
7 time of development.

8 Petitioner will also present evidence
9 regarding what ultimately Piilani is planning to
10 develop and demonstrate that it substantially complies
11 with the representations that were made to the
12 Commission back in 1995.

13 Petitioners will also provide evidence that
14 the development complies with Condition 5 regarding
15 the traffic conditions. Because even though the
16 Petitioner does not intend to install a frontage road,
17 in fact the condition provides that a frontage road
18 only has to be put in if required by the DOT. And a
19 frontage road, in fact, is not required. It's not
20 feasible. And has been determined by the State
21 Department of Transportation to be inappropriate.

22 This Project is going to provide
23 significant and permanent benefits to the Kihei-Makena
24 community in the form of construction jobs and money
25 spent on much needed infrastructure, and the provision

1 of installation of the long awaited Kihei Upcountry
2 Highway.

3 I urge the Commission to find, as the
4 evidence will demonstrate, that there's been no
5 violation of these conditions. That's all I have.
6 Thank you.

7 CHAIRMAN CHOCK: Mr. Kam.

8 MR. KAM: Thank you, Chair. Honuaula's not
9 in violation of the Order because it hasn't done
10 anything. At this point there's only a desire to use
11 the property for the affordable housing use. But
12 there's been no overt act in furtherance of that
13 desire.

14 And, in fact, it's still somewhat uncertain
15 due to circumstances that are beyond this Commission's
16 jurisdiction, when or if the affordable housing will
17 proceed. The Commission cannot find a violation based
18 on a mere desire to do something. The issue is simply
19 not ripe for decision.

20 Honuaula also will show that the
21 possibility of apartment use was known to the
22 Commission in 1994 and 1995. Yet no specific
23 condition restricting apartment use of the property
24 was imposed. That is significant because the Hawai'i
25 Supreme Court has held that the Commission cannot find

1 a violation based on a requirement or condition that
2 is not expressed in the Order. The conditions that
3 are enforceable must be reasonably ascertainable.

4 How can a condition that is not expressed
5 in the Order be reasonably ascertainable to a
6 subsequent landowner? For these reasons Honuaua
7 urges the Commission to find that there's been no
8 violation. Thank you.

9 CHAIRMAN CHOCK: Thank you, Mr. Kam.
10 County of Maui.

11 MR. HOPPER: Thank you, Mr. Chair. In 1995
12 the Land Use Commission granted Urban designation for
13 the subject property for a, quote, "commercial and
14 light industrial project." The county intends to show
15 that based on the review of the Project's history
16 including the Decision and Order, documents filed with
17 the Commission, hearing minutes and other documents,
18 that the developer represented and the Commission
19 understood that the uses and the County's M-1 light
20 industrial zoning district would be permitted for this
21 Project.

22 Both commercial and apartment uses are
23 allowed in this district. In fact the vast majority
24 of Maui County's malls and many apartment projects are
25 located in light and heavy industrial-zoned areas.

1 The Intervenors and Office of Planning
2 contend that Condition 15 of the Decision and Order
3 limits the commercial and apartment use of the
4 Project. For a condition to limit the permitted land
5 uses of a project it must be clear and unambiguous.

6 In the Lanai Company Case, the Supreme
7 Court has stated, quote, "Parties subject to an
8 administrative decision must have fair warning of the
9 conduct the government prohibits or requires, to
10 ensure that the parties are entitled to fair notice in
11 dealing with the government and its agencies."

12 "An administrative agency such as the Land
13 Use Commission has the responsibility of stating with
14 ascertainable certainty what is meant by the
15 conditions it has imposed."

16 The county will show that the Project
17 conditions do not provide any use limitations or
18 mention anything about the permitted land uses within
19 the Project.

20 While the phrase "commercial and light
21 industrial" is mentioned in the findings of fact,
22 there's no express condition related to permitted land
23 uses. In fact, based on the record the Project's
24 permitted uses are discussed in the context of the
25 anticipated M-1 Light Industrial zoning.

1 Throughout the record the Project is
2 described generally as, quote, "Commercial light
3 industrial". The Intervenors and the Office of
4 Planning argue this means the Project is restricted to
5 light industrial only or light industrial with
6 accessory commercial uses only.

7 This is simply not a legally supportable or
8 reasonable reading of Condition 15. That condition, a
9 standard LUC condition, requires the property to be
10 developed consistent with the representations made to
11 the Commission.

12 The county will show that the developer
13 proposed a commercial light industrial Project and
14 represented the Project would be developed as allowed
15 by the M-1 light industrial zoning of the property.

16 The Commission discussed the uses allowed
17 in that district during a hearing on the Project
18 including the fact that commercial and apartment uses
19 are permitted.

20 The evidence will show that the planning
21 director represented that he would recommend an
22 express condition to the Maui County Council to limit
23 the commercial use of the Project at the zoning level.
24 The Commission itself did not impose such a specific
25 commercial use limitation despite the fact that the

1 Commission *has* imposed such use limitations in other
2 dockets.

3 The Maui County Council similarly did not
4 impose a specific use limitation and has, in fact,
5 done so in other dockets as well. The county will
6 show that in the absence of a condition stating
7 specific limitations on permitted land uses, neither
8 the developer nor the county can ascertain which quote
9 "commercial and light industrial uses" are restricted
10 and to what degree.

11 To read the "representations made"
12 condition as limiting the commercial and apartment
13 uses of the Project where no such representations were
14 made, but go beyond the language of that condition.

15 Based on the record in this case the county
16 does not find a failure to perform in accordance with
17 the Project conditions. The county would also note at
18 the outset it's been discussed the nature of this
19 proceeding is obviously this is not a district
20 boundary amendment or discretionary decision-making
21 process.

22 We're here to determine whether or not
23 there's been a breach of the Order. The Commission
24 is, as stated earlier, essentially sitting as a judge
25 and a jury in this case. Thank you.

1 CHAIRMAN CHOCK: Thank you, County. State.

2 MR. SOUKI: Thank you, Chair and
3 Commissioners. This case is about the integrity of
4 the land use law and the decisions that this
5 Commission makes. The parties are here for an Order
6 to Show Cause hearing under HAR 15-15-93 regarding
7 enforcement of conditions, representations or
8 comments, commitments by the Petitioner.

9 Consequently the issue before this
10 Commission is not whether the Petitioner's proposed
11 project today is consistent with county zoning and
12 county entitlements. It *is* about whether the proposed
13 Project is substantially compliant with the Findings
14 of Fact, Conclusions of Law and Decisions and Order
15 issued over 17 years ago on February 10, 1995. The
16 state's showing will be limited to this question.

17 The state will show that if Petitioners
18 were to proceed with their proposed Piilani Promenade
19 and housing developments as indicated for the first
20 time an approval's drawn from the county, they would
21 be acting -- they would *not* be acting in accordance
22 with the representations they made to the LUC in 1994
23 and '95.

24 That Project in '95 was primarily a light
25 industrial Project subdivided into 123 lots with no

1 residential uses and specific traffic improvements
2 noted therein. None of these factors are true for the
3 current proposed Project as the evidence and witnesses
4 for the state will show.

5 This is not a proceeding under HAR section
6 15-15-94 regarding modification or deletion of
7 conditions wherein a petitioner finds herself with an
8 outdated D&O that no longer reflects the project or
9 the development that she can build based on market
10 reality or changed circumstances.

11 As with the subject D&O here, this is
12 especially true for older projects that are unbuilt.
13 Consequently, the question for the Commission is not
14 whether a shopping mall is a good idea for the region,
15 or whether affordable housing is needed in the region.

16 The county will argue that they issued
17 entitlements for the Project. But the county is not
18 above the requirements of HAR Chapter 205 Hawai'i's
19 land use law. Their decisions must be consistent with
20 the D&O issued by this Commission.

21 The crux of the matter is that the
22 Commission, the parties and the community were never
23 presented with the Project the Petitioners are
24 proposing today in 1995.

25 We shouldn't be trying to avoid the process

1 because the process is there so that we can address
2 the criteria for district boundary amendments. At its
3 core Hawai'i's land use law ensures that the need for
4 growth is balanced with the economic, social and
5 environmental impacts on the communities affected and
6 the impacts to taxpayers who pay for infrastructure,
7 services and maintenance that supports growth.

8 We should follow that process with district
9 boundary amendments and amendments thereto. Thank
10 you.

11 CHAIRMAN CHOCK: Thank you, Mr. Souki.
12 Intervenor.

13 MR. PIERCE: Mr. Chair, I would like to
14 request an opportunity to show an enlargement of two
15 exhibits that have been presented into evidence. The
16 first one is the original proposal and the other one
17 is the schematic that has been provided or the sketch
18 has been provided for the new proposal for the
19 commercial retail, if I may.

20 CHAIRMAN CHOCK: Proceed.

21 MR. PIERCE: I'll go ahead and start while
22 the easel's being prepared. This is not a case about
23 providing jobs or a loss of jobs. We heard public
24 testimony today about a lot of folks that are
25 concerned that this is a black and white issue or a

1 win or lose issue; that either jobs will be provided
2 by the current proposal or none at all. It is not
3 about that at all.

4 What it is about is about whether the
5 landowners want to provide jobs that would have been
6 created by the original proposal. The original
7 proposal could have been built already or it could be
8 in the process of being built already. So this is not
9 about jobs being misplaced in this instance.

10 What this case is about is an attempt by
11 the developers to push a project through that will
12 have significant impacts for South Maui for decades to
13 come without there having been an opportunity for
14 county or state review of any of the Project
15 proposals, and certainly no opportunity for this Land
16 Use Commission to review it.

17 There's obviously also been no opportunity
18 for the people of Maui to have a say or a review of
19 these proposals.

20 Now, even though we know that the
21 developers have been working on the new plans for
22 years, they failed to alert the public and they also
23 failed to alert the LUC about this. This Show Cause
24 hearing resulted after the Intervenors learned six
25 months ago that the developers had obtained grading

1 permits, the final permit required for them to proceed
2 and break ground.

3 The new uses are over 700,000 square feet
4 of retail shopping space and 250 residential units on
5 four lots. So we have nothing but retail shopping in
6 the new proposal and 250 units. And you can see a
7 portion of that in the top of the easel there for the
8 top board.

9 On the right-hand side you can see one of
10 their retail shopping parts. Most of what you see is
11 parking lots. On the left-bottom side you see more
12 parking lots and another part of the retail shopping.
13 And on the top blank part is where the 250 units are
14 proposed.

15 MS. LOVELL: Excuse me. Just for the
16 record could we have the exhibits that are being
17 referred to identified.

18 MR. PIERCE: I believe it's Piilani's 33 or
19 34, somewhere along in there. I'm sorry. It's
20 Piilani's Exhibit 30. It's not an exact example of
21 it. I think there is another example of it somewhere
22 else but it would be similar to Exhibit 30. We would
23 offer that it substantially represents for the
24 purposes right now.

25 MS. LOVELL: Well, I object to documents

1 that have not been admitted into evidence being
2 referred to or displayed. The parties all had an
3 opportunity to look at the exhibits and to decide
4 which ones were admissible --

5 MR. PIERCE: I'm sorry, excuse me for
6 interrupting. But Piilani 31. It's an exact replica
7 of Piilani 31.

8 MR. STEINER: And the other exhibit?

9 MR. PIERCE: The other one is Piilani 1.

10 MR. STEINER: I believe that -- I would
11 object. I don't believe the first one is Piilani 1
12 because Piilani 1 simply says on it that it's a
13 conceptual development plan of the Kaonoulu Industrial
14 Park. I don't see that on that exhibit.

15 MR. PIERCE: What I do see is exactly 123
16 lots, Mr. Chair.

17 CHAIRMAN CHOCK: Mr. Steiner, do you know
18 which exhibit it is that he's referring to so we can
19 move through this opening statement and get on with
20 the case?

21 MS. LOVELL: Actually, Chair, the problem
22 with the exhibit as displayed, I believe it's also
23 OP's Exhibit 1. But the problem is it's been doctored
24 so that key language on that document has been
25 deleted. That's the issue.

1 MR. PIERCE: Mr. Chair, it's not being
2 offered for any language that was on the document.
3 It's being offered to show a representation of 123
4 lots and what the design was. And the Commissioners
5 are entitled to see that and understand it at the
6 beginning of the hearing.

7 MS. LOVELL: Right. And we would have no
8 objection whatsoever if it were the complete exhibit.
9 But without the key language and particularly the
10 words "conceptual plan" the document you see before
11 you is misleading.

12 MR. PIERCE: We'll stipulate that it says
13 "conceptual plan".

14 MR. STEINER: With that stipulation that it
15 says "conceptual development plan" on it we'd be
16 willing to let Mr. Pierce continue.

17 CHAIRMAN CHOCK: Proceed.

18 MR. PIERCE: Thank you. So what we have in
19 the top picture is you can see the commercial
20 development but not the 13 acres of the 250 units
21 which would be the upper left-hand corner. In
22 comparison what we see below is the proposal or the
23 conceptual drawing, if you will, made by Kaonoulu
24 Ranch back in 1994.

25 What we see there is more of an industrial

1 complex that was supposed to have a residential or
2 subdivision type feel.

3 You'll actually be hearing evidence
4 explaining that in fact the Commission as well as
5 Kaonoulu Ranch were interested in trying to have this
6 have a residential feel with trees, that kind of
7 thing. And to obviously provide very different
8 opportunities.

9 The differences in uses between these two
10 is profound. It's undisputed that the traffic will
11 increase five fold from what was originally proposed
12 for the light industrial of 5,000 trips per day to
13 over 30,000 trips per day now.

14 The 1995 Order is a final Order that has
15 and continues to encumber the 88 acres. The
16 landowners are obligated to abide by its terms. Now,
17 the Order required the developers to keep the Land Use
18 Commission apprized of new or different uses.

19 We have just recently received -- let me
20 just continue, I'm sorry -- even when the developers
21 obtained the county grading permit to build the new
22 uses, the Land Use Commission records show the
23 developers maintain they were pursuing the same
24 project that they proposed in 1995.

25 It wasn't 'til October 10 of this month --

1 I'm sorry -- of the last month, as of yesterday,
2 October 10th of 2012 that the developers finally
3 provided the Land Use Commission with an annual report
4 reflecting the new uses.

5 Piilani's attorney earlier today passed
6 around some enlargements themselves that were not
7 objected to by us, showing what the current Project
8 looks like. These are meant to show you what an
9 attractive Project it potentially could be. We will
10 be looking into that.

11 But the point is if this was such a good
12 Project why is it that the developers felt they had to
13 avoid going through the process that all other types
14 of similar projects have to go through?

15 If it's a good Project they should be going
16 through the right process instead of trying to ramrod
17 it through under the old permits.

18 The Land Use Commission's bifurcated the
19 case into two parts as we talked about before. The
20 first part that we're dealing with today is only
21 whether there has been a violation of the 1995 Order.
22 The key issues for this part are whether there has
23 been a violation of the conditions.

24 And the ones the Intervenors will be
25 focusing on the most are Conditions 1, which relates

1 to consistency with the Community Plan; Condition 5
2 which relates to traffic improvements that were
3 required; Condition 15 with respect to the
4 representations of the Petitioners; and Condition 17
5 with respect to whether there's been a violation of
6 the annual report requirement.

7 One of the things that we've already talked
8 about earlier in the motions part is that
9 interpretation of those conditions is not something
10 that we need to be involved with in terms of findings
11 of fact. To determining whether there has been --
12 what those conditions mean, what the 1995 Order means
13 within its four corners, that is a conclusion of law.
14 It's something that the attorneys can argue in their
15 briefs, their closing briefs and that the Commission
16 can take under advisement and review.

17 Now, the parties dispute the
18 interpretations of the conditions. But as a matter of
19 law that's something that does not require fact
20 finding. None of the experts that are being presented
21 here today should be opining on whether, how you
22 interpret those particular provisions. That's
23 something that the parties can submit argument on.

24 So what facts do we need to ascertain to
25 determine whether there's a violation? What was the

1 Project before and what was the Project after? That
2 tells us what we need to find out right there. The
3 1995 Order gives us all of the before-facts that we
4 need. It includes 104 findings of fact summarizing
5 what the Land Use Commission deemed pertinent to the
6 evidence and what was accepted at the conclusion of
7 that hearing.

8 These should not be open to dispute by
9 going back and rummaging through the transcripts to
10 look for opportunities to make out a post dock
11 argument which is the Petitioner's attempt here today.

12 Condition -- the after fact is also not in
13 dispute so let's just go back. No one is disputing
14 that in 1995 Kaonoulu Ranch proposed 123 lots that
15 look something like that. That was the proposal. No
16 dispute on that by any of the parties, I believe.

17 Likewise, no one's disputing the top
18 representation is what we're looking at today. The
19 only question that's before us is is that something
20 that violates the Order? So Condition 15 goes to
21 substantial compliance, substantial compliance with
22 representations of the Petitioner.

23 What did Ka'ono'ula represent as its
24 proposed Project? Is Honuaula in substantial
25 compliance? We believe that the evidence will show

1 that no they're not in substantial compliance. As
2 Honuaula during their opening argument said there's
3 been no overt acts.

4 But you will hear evidence that in fact the
5 infrastructure development will be going forward in
6 the very near term if they are permitted to do so.

7 In other words, Honuaula will be doing its
8 first effort, which is to build the infrastructure
9 necessary to build the buildings. That certainly is
10 an overt act.

11 The next question is: Are the two Piilani
12 landowners in substantial compliance? And the answer
13 again is no. In fact for both of these we need to
14 look no further than the new annual reports that they
15 have felt finally necessary to provide appprizing you
16 of this.

17 Intervenors' experts will show that the
18 current Project has no resemblance to the original
19 Project. We'll do that by going through it from a
20 planning perspective as well as from a market and
21 economic analysis perspective.

22 Condition 1 requires Community Planning
23 consistency. Is the 123-lot light industrial park
24 with some supporting uses such as restaurants and
25 banks for employees, consistent with the Kihei-Makena

1 Community Plan?

2 *Some* supporting commercial uses that are
3 consistent with the other parts, sure. But are 250
4 housing units consistent? No. Is a retail shopping
5 mall and an outlet mall consistent with the Community
6 Plan? No.

7 And the reason is that now we've gone from
8 a small amount of ancillary subsidiary kind of retail
9 uses to something that will be a majority of the uses.

10 With respect to Condition 5, there's a
11 question of interpretation but we find that language
12 to be mandatory and we'll be presenting evidence on
13 that part.

14 The county said that the Land Use
15 Commission is required to give a fair warning. We
16 believe that the 104 findings of fact and the detailed
17 conditions gave the Petitioners fair warning. They
18 decided to go forward with this without seeking any
19 kind of declaratory ruling or anything that they might
20 have been able to do at an earlier stage.

21 Finally, we would just note that the county
22 has argued that the Community Plan is not relevant.
23 But one of the county attorneys earlier mentioned the
24 fact that the new rules actually require the
25 Commission to consider consistency. So we think

1 that's very much an issue. Thank you.

2 CHAIRMAN CHOCK: Thank you, Mr. Pierce.
3 Commissioners, before we begin, any questions of the
4 parties? Mr. Steiner, are you prepared to begin?

5 MR. STEINER: I am. Can we have the...

6 CHAIRMAN CHOCK: The conceptual exhibit
7 removed?

8 MR. STEINER: Removed. May I approach the
9 witness?

10 CHAIRMAN CHOCK: Please. Sir, I'll need to
11 swear your witness in before we begin.

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

15 THE WITNESS: I do.

16 CHAIRMAN CHOCK: Your name and address.

17 THE WITNESS: Martin Luna, 275 Ekoa Place
18 Wailuku.

19 MR. PIERCE: Intervenors are going to
20 object to the testimony of this witness. We'd ask for
21 an offer of proof. Mr. Luna was the attorney of
22 record in 1994-95. While he certainly was a
23 percipient witness, he was there as an advocate. He
24 was not there as an actual party to the proceeding.

25 MR. STEINER: Commission, our offer of

1 proof is that Mr. Luna was a percipient witness as to
2 what was represented to the Commission in the original
3 petition. And he'll be presenting evidence regarding
4 what was represented and presented to the Commission
5 at the time, which is precisely the issue in this
6 case.

7 MR. PIERCE: We would also add to our
8 objection that this is not the best evidence; that the
9 transcript speaks for itself. The transcript has been
10 admitted.

11 CHAIRMAN CHOCK: Your objection is noted.
12 Chair's going to admit this witness. Proceed.

13 MR. STEINER: Thank you. Are you able to
14 hear the witness? Okay.

15 DIRECT EXAMINATION

16 BY MR. STEINER:

17 Q Mr. Luna, what is your current occupation?

18 A Lawyer.

19 Q Where do you practice law?

20 A Wailuku, Maui.

21 Q How long have you been practicing law in
22 Wailuku?

23 A Forty-three years, maybe 44.

24 Q And have you appeared before the State Land
25 Use Commission on Maui before?

1 A Yes, I have.

2 Q Approximately how many occasions?

3 A At least 10 I would say.

4 Q Based on your practice of law and appearing
5 before the Commission, do you also have some
6 familiarity with the land use regulations and
7 conditions here on the island of Maui?

8 A Yes, I do.

9 Q Were you involved in the Petition for Land
10 Use District Boundary Amendment of Kaonoulu Ranch
11 Docket No. A94-706 back in 1994?

12 A Yes, I was.

13 Q And what was your involvement?

14 A I was the attorney for Kaonoulu Ranch in
15 the proceeding.

16 Q Okay. And as the attorney what was your
17 job to do vis-a-vis the Land Use Commission at that
18 time?

19 A Well, we prepared the Petition and worked
20 with the consultants and the client, the Ranch, in
21 preparing for the presentation to the Land Use
22 Commission.

23 Q Could you take a look at what's been marked
24 and admitted as Exhibit 2. It's in the binder which
25 is in front of you.

1 A Okay.

2 Q Do you recognize this document?

3 A Yes, I do.

4 Q Could you describe what this is?

5 A Petition for Land Use District Boundary
6 Amendment for the Ranch.

7 Q And this is a document that the Ranch
8 submitted to the Commission, is that correct?

9 A Yes, we prepared the Petition.

10 Q And submitted it to the Commission.

11 A Yes.

12 Q Does this Petition contain representations
13 which the landowner made to the Commission regarding
14 what was it was proposing to develop?

15 A Yes.

16 Q What was it that the landowner was
17 proposing to develop if the Petition was granted?

18 A The landowner was advised that what he was
19 seeking for for the light industrial district would
20 involve not only light industrial but commercial uses.
21 So what we did was we also included the exhibit, in an
22 exhibit the uses that would be permitted under the M-1
23 light industrial use for Maui County.

24 Q Could you take a look at Page 4 of the
25 Petition. Under the description of the surrounding

1 areas does it say anything about what the Project is
2 intended to do?

3 A Yes, it does. It's for future commercial
4 and light industrial development.

5 Q And specifically since we want to know what
6 was represented to the Commission, could you read what
7 was represented there to the Commission.

8 A "The Project is intended to satisfy the
9 existing needs of South Maui and anticipated future
10 growth of the area. The property presents a
11 convenient location for future commercial and light
12 industrial development."

13 Q Okay. And then could you take a look at
14 Page 6 of the Petition under the market assessment
15 condition -- or section. Does that talk further about
16 what the Petitioner was representing he was going to
17 build or develop?

18 A Yes, it does.

19 Q Could you read into the record what it was
20 that the Petitioner represented it was gonna build in
21 that section?

22 A "In general the proposed Project will
23 provide new employment opportunities for Maui
24 residents. Moreover, currently there's a shortage of
25 commercial and light industrial space for businesses

1 servicing the Kihei-Makena region. Given the growth
2 anticipated for the Kihei region, businesses will
3 increasingly prefer to locate in Kihei rather than in
4 Maui's urban core. The proposed Project within the
5 property provides commercial and light industrial
6 business and employment opportunities to better serve
7 the existing population."

8 Q So the Petitioner's representing it's going
9 to be provide both commercial and light industrial.

10 A Yes.

11 Q What about -- if you could take a look at
12 Page 10 of the Petition. It talks about conforming
13 with the objectives and policies of the economy in
14 general. And there's a comment there. Could you read
15 what that comment says about what the Petitioner is
16 proposing to develop.

17 A "The Project is proposed as a commercial
18 and light industrial park which will provide needed
19 business services in the region. The Project will
20 provide additional job choice in an area with
21 predominantly resort and service-oriented employment
22 opportunities.

23 "In the long term Kihei will serve as a
24 commercial and industrial hub for development along
25 the south western coast from Ma'alaea to Makena."

1 Q In preparation for this hearing you read
2 through the Petition, right?

3 A Yes, I did.

4 Q Does the Petition ever state or represent
5 that the purpose of the development would be to
6 provide a hundred percent light industrial?

7 A No.

8 Q Does it ever place any limits in there, any
9 representations that they were gonna limit the amount
10 of retail that they were gonna develop?

11 A It doesn't limit it, but there was some
12 discussion, I think, by one of the Commissioners.
13 Commissioner Kajioka had asked that question of
14 Mr. Lloyd Sodetani who did the market study.

15 Q But specifically with regards to the
16 Petition is there any --

17 A No.

18 Q -- any place where the landowner
19 represented that it would limit the amount of retail?

20 A No, not in the Petition itself.

21 MR. PIERCE: Objection. Document speaks
22 for itself.

23 CHAIRMAN CHOCK: So noted.

24 Q (By Mr. Steiner): Was there a map provided
25 to the Commission along with the Petition?

1 A Yes, there was.

2 Q Could you take a look at Exhibit 1 please.
3 Do you recognize Exhibit 1?

4 A Yes.

5 Q Is this a part of what was submitted along
6 with the Petition back in 1994?

7 A Yes.

8 Q Could you describe what this is?

9 A This was done by, I believe, Kunimuri
10 Engineering. But it's a subdivision and it's a
11 conceptual development plan of about 123 lots I
12 believe.

13 Q What's the significance of the word
14 "conceptual"?

15 A Well, as Mr. Rice pointed out when he was
16 questioning, Honuaula Ranch isn't a developer. So
17 what they had in mind they consulted with consultants
18 that they had. And one of the ways that could be
19 developed was a subdivision of this type that was
20 shown here. But because it wasn't certain as to what
21 was to be developed they had it as "conceptual
22 development plan".

23 Q Was that to give flexibility regarding what
24 could be developed?

25 A Yes.

1 Q Was a market feasibility study also
2 submitted --

3 A Yes.

4 Q -- with regard to this Petition?

5 A Mm-hmm.

6 Q Could you take a look at what's been marked
7 as Exhibit 3 and admitted as Exhibit 3?

8 A Exhibit...? I'm sorry?

9 Q Three please.

10 A Thank you.

11 Q It's a little confusing because Exhibit 3
12 was Exhibit 5 to the Petition. Do you recognize this
13 document?

14 A Yes.

15 Q And I'll represent to you that it's --
16 well, actually this one has the entirety of Exhibit 5.
17 Could you describe what this is?

18 A It's a study that goes to support the
19 feasibility of having a light industrial/commercial
20 project for the 88 acres that were being proposed for
21 a district boundary amendment.

22 Q And would this market feasibility study
23 contain representations to the Commission regarding
24 what the developer was going to do?

25 A Yes, it would.

1 Q What types of uses were discussed in the
2 market feasibility study?

3 A I believe both commercial and light
4 industrial.

5 Q Could you turn to Page 3 of the report?

6 A Yeah.

7 Q There's a section at the bottom of Page 3
8 that it's a "permitted uses". What does it say there
9 that are the permitted uses that was represented to
10 the Commission?

11 A "The permitted uses of M-1 light industrial
12 zoning provided by the existing county of Maui codes
13 allow for services or supplying communities producing
14 or manufacturing goods as provided under B-1, B-2, B-3
15 and M-1 zoning."

16 And here's what -- Exhibit A was what I was
17 referring to earlier with the Maui County Code
18 ordinances. "Current codes also provide for minimum
19 lot sizes, height limitations of improvements and yard
20 requirements.

21 Q Are you familiar with what is permitted
22 within the M-1 light industrial zoning based on your
23 knowledge?

24 A Yeah, in general.

25 Q Does that provide retail?

1 A Well, it provides for M-1 -- I'm sorry B-1,
2 B-2, B-3 uses which are all retail.

3 Q Okay. And this was represented to the
4 council that these were permitted uses that were going
5 to be permitted on this parcel?

6 A On this study it specifically does that.

7 Q And the study also attaches a list of all
8 those uses, right?

9 A Yes, it does.

10 Q If you could turn to Page 9 of the report.

11 A Exhibit A is 9 which is the -- which is the
12 listing of B-1 neighborhood business district uses,
13 B-2 community business district uses, B-3 as well.
14 And I think at the end has the M-1.

15 Q I'm just going to pick some examples. One
16 of them is that there could be drug stores, right,
17 under B-1?

18 A Yep, right.

19 Q And there could be barbershops or beauty
20 shops, right?

21 A Yes.

22 Q Books and stationery shops?

23 A Yes.

24 Q There's a whole, whole list of them. I
25 won't go through all of those. Did anywhere in the

1 Petition, or the exhibits submitted to the Petition,
2 did the landowner ever say that, "We're not going to
3 do some of these uses within this M-1, B-1, B-2, B-3
4 zoning?"

5 A Not that I recall.

6 Q Does the market feasibility study ever
7 discuss any use sort of similar to that being proposed
8 by Piilani for the current Project?

9 A I'm not familiar with what Piilani's
10 proposing except for the term "commercial".

11 Q Could you take a look at -- there's a
12 section called "Project absorption" in the report that
13 starts on Page 5. It goes on to Page 6. What's the
14 purpose of the section on Project absorption in this
15 report generally?

16 A It goes -- it's supposed to at least give
17 an idea as to how the feasibility of the Project would
18 be as to what, within a certain time period.

19 Q Okay. And in this report, going on to
20 Page 6, Mr. Sodemani talks about different categories
21 of occupants you might expect, is that correct?

22 A Yes.

23 Q Could you read what he, what Mr. Sodemani
24 wrote about the third category of occupants at the
25 bottom of Page 6?

1 A "The third category of occupants are
2 generally long-term lessees. These occupants require
3 the best possible visibility and advantage from
4 highways and streets. The expectation is that other
5 investors will purchase the land, develop the
6 improvements for multi-tenant use and have long-term
7 lease for the occupants.

8 "Examples of these occupants are discount
9 retailers, auto part sales, furniture and appliance
10 sales, sportswear and equipment, wholesale food
11 distributors, fast food outlets and so on.
12 Approximately 1/5th of the development should be
13 programmed for these larger lots."

14 Q That list includes some retail, right?

15 A Yes, it does.

16 Q Could you look at Page 7 of the market
17 feasibility study. Mr. Sodetani makes some reference
18 to the marketing of parcels and what would drive the
19 success. Could you tell the, read for the Commission
20 what Mr. Sodetani represented for the developer in
21 that section?

22 A "The success of marketing these parcels
23 would be dependent on the success of obtaining popular
24 and internationally recognized outlets to occupy the
25 larger parcels. The timeliness of the installation of

1 the infrastructure, that is highways, schools and so
2 on, and the prosperity of the tourist-related
3 businesses in South Maui.

4 "Many businesses located in Wailuku and
5 Kahului will create branches of satellite locations in
6 Kaonoulu Industrial Park for convenience and cost
7 effectiveness."

8 Q Based on your experience would popular and
9 internationally recognized outlets be the same as a
10 typical light industrial use?

11 A No.

12 Q Okay. That sounds more like retail?

13 A Yes.

14 Q Did the market feasibility study ever
15 discuss the fact that what's ultimately developed on
16 the property would depend upon what the market that
17 was existing at the time?

18 A I'm sorry. Say that again.

19 Q The market feasibility study, did it ever
20 discuss the fact that what ultimately would be
21 developed on the property at the time would depend on
22 the market at the time it was developed?

23 A Oh, yeah. Yes, it does.

24 Q Do you recall what it said about that or
25 can I refresh your recollection?

1 A Yeah, if you don't mind.

2 Q If you take a look at Page 8.

3 A Oh, yeah.

4 Q What did Mr. Sodetani say about that in his
5 market study?

6 A "The estimates of lot sizes, quantity and
7 values are provided for planning purposes only. It is
8 only one conceptual alternative which meets current
9 market conditions with considerations for economic,
10 social and physical variables.

11 "These estimates require reassessments from
12 time to time and may need to be adjusted accordingly.
13 Any major variable," that is location of new highway
14 -- "or such as location of highway may require an
15 alteration of the subdivision's configuration.
16 However, the current requirement for additional light
17 industrial land use in South Maui should not change."

18 Q So Mr. Sodetani told the Commission that
19 what was ultimately going to develop could change,
20 right?

21 A Yes.

22 Q And it would depend on what?

23 A The market at the time.

24 Q Okay. Does the market feasibility study
25 ever represent that the type of development being

1 planned by Piilani would be inappropriate for that
2 area?

3 A As I said earlier I don't know what exactly
4 Piilani is proposing, but if it's commercial it's
5 not -- it's not inconsistent with what was stated.

6 Q Okay.

7 MR. PIERCE: Objection. Sorry. Never
8 mind. I'll withdraw that.

9 MR. STEINER: Thank you.

10 Q Did you also submit -- I assume usually
11 when you do one of these district boundary amendments
12 you submit a project assessment report as well?

13 A Yes.

14 Q You submitted one in this case, right?

15 A Yes.

16 Q Could you take a look at what's been marked
17 as Exhibit 4? And I will represent to the council and
18 to the witness that these are -- this is not the
19 entire Project. It's in the report which is a
20 voluminous document. These are excerpts.

21 A As I recall this was prepared by Munekiyo
22 and Arakawa at the time.

23 Q Was this an exhibit submitted as part of
24 the Petition?

25 A Yes, it was.

1 Q Does it contain representations by the
2 landowner regarding what they're going to do, what
3 they're going to develop on the land?

4 A Yes.

5 Q And could you flip to Page 31 of the report
6 please. Under the 'air quality and noise' section --
7 I'm not sure why it's here, but there's a
8 representation regarding what's going to go on.
9 Could you read what that -- starts at the bottom of
10 Page 31.

11 A "The proposed Project is anticipated to
12 contain commercial and light industrial uses. These
13 could include commercial, retail and service
14 establishments as well as warehousing and distribution
15 types of activity."

16 Q So therein it was represented that there
17 could be commercial, retail establishments, correct?

18 A Yes.

19 Q If you could take a look now at Page 33
20 where it talks about the success of marketing these
21 parcels in the Project assessment report. Could you
22 tell the Commission what the landowner represented in
23 that section.

24 A "The success of marketing these parcels
25 will be dependent on the success of obtaining popular

1 and internationally recognized outlets to occupy the
2 larger parcels, the timeliness of the installation of
3 the infrastructure, that is highways, schools and so
4 on, and the prosperity of the tourist-related
5 businesses in South Maui.

6 "Many businesses located in Wailuku and
7 Kahului will create branches or satellite locations in
8 Kaonoulu Industrial Park for convenience and cost
9 effectiveness."

10 Q So, again, the landowner's representing
11 that it's looking for popular and internationally
12 recognized outlets.

13 A Yes.

14 Q Could you take a look at what's been marked
15 as Exhibit 5 please. Before we turn to Exhibit 5, was
16 it ever represented in the Project Assessment Report
17 that the landowner would be limiting the amount of
18 retail that it was going to put on the Project?

19 A No.

20 Q Petitioner's Exhibit 5 is what's labeled
21 as Petitioner's Exhibit 7. That's Exhibit 7 to the
22 Petition, right?

23 A Right.

24 Q Did you cause this to be prepared?

25 A I'm sorry?

1 Q Did you cause this to be prepared as part
2 of the Petition?

3 A Yes.

4 Q And could you just briefly describe what
5 this is?

6 A It's a preliminary landscape Master Plan
7 perspective sketches and site section.

8 Q "Preliminary". Does that denote anything?

9 A Just similar to conceptual in that it's,
10 it's being suggested but not -- it's not finalized.

11 Q Now, after this Petition was submitted
12 along with the various documents thist eventually came
13 to a hearing before Land Commission, right?

14 A Yes.

15 Q And did you present the case for the
16 landowner Kaonoulu Ranch --

17 A Yes, I did.

18 Q -- to the Commission? Okay. And so you
19 were there at the hearing before the Commission when
20 this was presented.

21 A Yes.

22 Q Was there any discussion at that hearing
23 regarding the possibility of retail uses at the
24 Project such as what was in the B-1, B-2, B-3 zoning
25 that we talked about?

1 A Yes.

2 Q Could you elaborate on what you recall what
3 was brought up at that hearing?

4 A Well, as I mentioned earlier, Commissioner
5 Kajioka was questioning Mr. Sodetani on what would be
6 placed on the property. He had looked at the, I guess
7 Exhibit A with all the different uses for B-1, B-2,
8 and B-3 as well. So he was questioning Mr. Sodetani
9 on that.

10 Q Do you recall what he asked?

11 A I went through the record. I read it. Do
12 you have the record on here?

13 Q I do have the record. Before we go to the
14 record, though, just generally -- we'll go through it
15 specifically -- generally why don't you tell us in
16 your own words what you recall about that exchange.

17 A Mr. Sodetani said: Yes, under the light
18 industrial, all these uses were permitted. And
19 Mr. Kajioka said, "Well, there's no limit as to what
20 can be put on there based on these -- on the many uses
21 that were permitted." And Mr. Sodetani agreed with
22 him that there was no limit.

23 MR. PIERCE: Objection. That misstates
24 the transcript.

25 Q (By Mr. Steiner) Why don't we take a look

1 on page, I think it's Exhibit 6.

2 A Six?

3 Q Do you have 6 in front of you which is
4 excerpts from the transcript of November 1st, 1994?

5 A Yep.

6 Q Before the Commission. Now, what's said to
7 the Commission at this hearing, those are
8 representations that were made to the Commission,
9 right?

10 A Sorry?

11 Q What's said at those hearings, those are
12 representations that are being made to the Commission,
13 right?

14 A Yes.

15 Q When Mr. Sodetani was speaking, he was
16 speaking as a witness presenting the Project to the
17 Commission, right?

18 A Yes.

19 Q On behalf of the owner?

20 A Yes.

21 Q If you could turn to Page 105 of the -- why
22 don't you read what Commissioner Kajioka asked. Who
23 is Commission Kajioka? Do you recall?

24 A I think he was vice chair at the time. I
25 don't really know what his occupation is.

1 Q What does Mr. Kajioka ask at the bottom of
2 105 of the transcript?

3 A This is Commissioner Kajioka speaking.
4 Said, "Lloyd, it appears in terms of permitted uses
5 within the light industrial it appears to be pretty
6 broad. B-1, B-2, B-3 districts permitted uses.

7 "I'm also kind of surprised how it seems to
8 contradict one other aspect of the ordinances. Even
9 apartment houses are permitted use in light
10 industrial." And Lloyd says, "Right."

11 Then Commissioner Kajioka goes on, "In
12 other words, we could have a predominance of retail
13 and service type establishments in this."

14 And Lloyd answers, "That's a possibility.
15 But I would say that the light industrial entities
16 would probably be more likely to be located in a
17 Project like this rather than the commercial entities
18 that as described.

19 "COMMISSIONER KAJIOKA: But there's no way
20 you can stop them." And Lloyd says, "That's true."

21 Q Did Lloyd ever later say, "But the
22 landowner agrees that he's not gonna put in retail"?

23 A No.

24 Q But he said "likely the market would drive
25 light industrial," right?

1 A Yes.

2 Q But never agreed not to -- that the
3 landowner wasn't going to put in retail, is that
4 correct?

5 A That's correct.

6 CHAIRMAN CHOCK: Excuse me. Mr. Steiner,
7 about how many more minutes do you need for direct of
8 this witness?

9 MR. STEINER: Getting pretty close. I
10 would say another 15, 20 minutes?

11 CHAIRMAN CHOCK: Okay. Would you mind if
12 we took a break for our court reporter. She's
13 signalling she's getting a little tight in the
14 knuckles. Maybe if you don't mind. I apologize < Mr.
15 Luna, for interrupting but we'll take a 5 to 10 break
16 and be back. Thank you.

17 (Recess was held. 3:25)

18 CHAIRMAN CHOCK: Okay. We're back on the
19 record. Just for the parties' information we're going
20 to go until 4:30 today so that's another 45 minutes.
21 Mr. Steiner, your witness.

22 MR. STEINER: Are we ready to proceed?

23 CHAIRMAN CHOCK: Yes, sir.

24 Q (By Mr. Steiner) Mr. Luna, are you ready to
25 proceed?

1 A Yes.

2 Q Now, when we broke off we had just talked
3 about some questions that Commissioner Kajioka has
4 asked of Mr. Sodetani at the hearing on the original
5 petition. That was presented not just to Commissioner
6 Kajioka but to all the Commissioners, right?

7 A Yes.

8 Q Do you recall at that same hearing
9 testimony being given by the planning director for the
10 county of Maui?

11 A Yes.

12 Q And who was that?

13 A Brian Miskae.

14 Q Do you recall any discussion regarding
15 possible retail use of the Project between the
16 Commission and Mr. Miskae?

17 A Yes.

18 Q Could you describe what you recall?

19 MR. PIERCE: (off mic) We'll just continue
20 the objection, (on mic) we'll continue the objection,
21 Intervenors will, that the transcript is the best
22 evidence here.

23 CHAIRMAN CHOCK: So noted.

24 THE WITNESS: I believe, I think
25 Commissioner Kajioka was asking Mr. Miskae about what

1 kind of -- following up on what he had asked Lloyd, I
2 guess, if there were any limits as to what the
3 commercial would be. And Mr. Miskae responded that
4 they would try to do the limiting during the county
5 entitlement phase and left it at that.

6 Q So did Mr. Miskae acknowledge that during
7 that discussion that it was anticipated that part of
8 the Project would include at least some retail?

9 A Yes.

10 Q They were going to address at the zoning
11 phase whether there would be a restriction on retail?

12 A Yes.

13 Q Ultimately did the Commission put any
14 restriction on the amount of retail?

15 A No, it didn't.

16 MR. PIERCE: Objection.

17 THE WITNESS: Are you talking about the
18 Planning Commission or the Land Use Commission?

19 Q (By Mr. Steiner) The Land Use Commission.

20 MR. PIERCE: Objection. That's a legal
21 conclusion.

22 THE WITNESS: Not in -- not in -- not in
23 the Decision and Order.

24 Q (By Mr. Steiner) Based on your attendance
25 at the hearing did the Commission recognize that with

1 the reclassification land from agricultural to urban
2 and the proposed M-1 zoning, that retail, even the
3 possibility of predominance of retail was a
4 possibility?

5 A Well, at least that's what Commissioner
6 Kajioka was trying to, trying to determine, yeah.

7 Q And despite that they didn't put any
8 restrictions on the amount of retail.

9 A That's correct.

10 Q Did the landowner ever make any
11 representations throughout the whole proceeding
12 through any of its witnesses that it would agree to
13 limit the amount of retail to be built on the
14 property?

15 A No, it did not.

16 Q In your experience in the field of -- as an
17 attorney for various landowners and land use, the term
18 "light industrial use" is used throughout the
19 Petition. Does that have a meaning within the
20 community?

21 MR. PIERCE: Mr. Chair, I'm going to
22 object. There was an opportunity, I withdrew it the
23 last time. This is the second time where Mr. Steiner
24 is asking the witness expert opinions. His offer of
25 proof was he was a percipient witness; he had an

1 opportunity to prepare written testimony if he was
2 going to be giving expert testimony. So I would just
3 ask that, Mr. Chair, if you would instruct him to keep
4 to percipient types of discussions.

5 MR. STEINER: If I might?

6 CHAIRMAN CHOCK: Go ahead, Mr. Steiner.

7 MR. STEINER: The question's being offered
8 regarding his experience and what he's observed in his
9 practice, not regarding any expert opinion as to what
10 is what.

11 CHAIRMAN CHOCK: I'm going to note your
12 continued objection. Please proceed.

13 THE WITNESS: Would you like to repeat the
14 question.

15 Q (By Mr. Steiner) The term "light
16 industrial" when it's used in the planning community
17 in your experience, what does that include?

18 A Mostly like warehousing, maybe an
19 automotive type of business where they do repairs,
20 things like that.

21 Q What about within the zoning code, the
22 light industrial zone?

23 A That Exhibit A specifically states,
24 enumerates what it involves.

25 Q Would it be all the uses within B-1, B-2,

1 B-3?

2 A Well, those are permitted uses under that
3 umbrella. But if you're just speaking about what is
4 permitted specifically for light industrial, then they
5 have specific uses also in that M-1 that lists the
6 light industrial uses.

7 Q So there's an M-1 industrial use but then
8 M-1 also includes these other B-1, B-2... Okay.

9 A The way the code reads is it permits B-1,
10 B-2, B-3 uses. Then it lists specific light
11 industrial uses.

12 Q Generally in Maui are you aware of
13 properties which are zoned light industrial that
14 contain a predominance of retail?

15 A Well, the ones that have been spoken of
16 many times would be like the Maui Marketplace, the
17 Lahaina Gateway, several projects like those.

18 Q Those projects are...?

19 A Are commercial.

20 Q They're commercial but they're zoned light
21 industrial?

22 A As far as I know, yes.

23 Q What about areas that are zoned light
24 industrial, are you aware of any that contain
25 apartment use?

1 A Not offhand, but I'm sure that if I looked
2 I'd find some, yeah.

3 MR. STEINER: I don't have any further
4 questions. Thank you, Mr. Luna.

5 CHAIRMAN CHOCK: Mr. Kam.

6 MR. KAM: Thank you, Chair.

7 CROSS-EXAMINATION

8 BY MR. KAM:

9 Q Mr. Luna, under questioning from
10 Mr. Steiner you testified that Commissioner Kajioka
11 asked Mr. Sodetani a question about uses that were
12 permitted within the light industrial District; is
13 that correct?

14 A Yes.

15 Q And did you say that Commissioner Kajioka
16 noted that even apartment houses are permitted uses in
17 that district?

18 A Yes.

19 Q Based on your participation in the hearings
20 before the Commission in 1994, was it your perception
21 that the Commission understood that apartment use was
22 a possibility for the Petition Area?

23 A I thought Commissioner Kajioka made a very
24 clear statement. Plus we had that Exhibit A which
25 showed the apartment use under M-1 light industrial.

1 Q Do you recall whether Kaonoulu Ranch ever
2 represented that the Petition Area would not be used
3 for apartments?

4 A No.

5 MR. KAM: Thank you. Nothing further.

6 CHAIRMAN CHOCK: Maui County?

7 MS. LOVELL: No cross of this witness thank
8 you.

9 CHAIRMAN CHOCK: Mr. Souki?

10 MR. SOUKI: Just a few questions.

11 CROSS-EXAMINATION

12 BY MR. SOUKI:

13 Q Hello, Mr. Luna. I just want to go over
14 some of the exhibits that Petitioner had gone over.
15 But first the context of these proceedings were as
16 Maui was in 1994 and '95, correct?

17 A As far as I know, yes.

18 Q And so what the Commission was looking at
19 at the time, what they had known and what the
20 Petitioner was presenting at the time and what they
21 had known when they made these comparisons between
22 different projects on the island, were in the context
23 of that time, right?

24 A Yeah.

25 Q In Exhibit 2...

1 A Petitioner's Exhibit 2.

2 Q Petitioner's Exhibit 2 page 4 Roman numeral
3 VIII, "reclassification sought of proposed use of
4 property." There's a statement there the "Petitioner
5 proposes to develop the Kaonoulu Industrial Park as a
6 123-lot commercial light industrial subdivision," is
7 that correct?

8 A Yeah. Yes, it does.

9 Q Are you familiar with the current proposal?

10 A No, I'm not.

11 Q We'll get that from somebody else then. On
12 Page 10 of that same document -- this is the Petition
13 that was filed so a representation of what the
14 Petitioner was proposing, correct?

15 A I'm sorry?

16 Q This is a Petition that was submitted to
17 the Commission, right? So this is a proposal of what
18 the Petitioner is proposing to develop?

19 A Yes.

20 Q So Page 10, this section is about
21 compliance with the objectives of the State Land Use
22 policy. Can you read that section that begins
23 "Comment" at the bottom of the page? Starts with "The
24 Project is proposed as a ..."

25 A "The Project is proposed as a commercial

1 and light industrial park which will provide needed
2 business services in the region. The Project will
3 provide additional job choice in an area with
4 predominantly resort and service oriented employment
5 opportunities.

6 "In the long term Kihei will serve as a
7 commercial and industrial hub for development along
8 the South Western coast from Ma'alaea to Makena."

9 Q And the last sentence.

10 A "The Honuaula Industrial Park site will
11 emerge as a regional focal point for distribution
12 activity as well as light industrial activities."

13 Q What is a distribution activity?

14 A I'm not sure what his -- what specifically
15 it would be but distribution activity sounds to me
16 more like a sales.

17 Q What is that?

18 A Sales like commercial activities.

19 Q Commercial activities. So distribution of
20 what kinda --

21 A Goods.

22 Q Goods and services.

23 A Yeah, right.

24 Q Going to Exhibit 3 which he also had looked
25 at. What is this document?

1 A The market feasibility study and economic
2 report.

3 Q This was submitted as part of the
4 submissions in 1994 and '5?

5 A That's correct.

6 Q On page, let's see, Page 6. At the bottom
7 of the Page 6 it says "Approximately one-fifth of the
8 development should be programmed for these large
9 lots." What does that mean?

10 A On the bottom of Page 6?

11 Q Yeah.

12 A Well, it's referring to I guess the comment
13 previous to that sentence. "And the example of these
14 occupants are discount retailers, auto parts sales,
15 furniture and appliance sales, sports equipment,
16 wholesale food distributors, et cetera."

17 Q So in essence that's limiting the Project
18 site to one fifth of the development for that type of
19 uses as a recommendation in the market study?

20 MS. LOVELL: I object to the form of the
21 question as misstating what is in the exhibit.

22 MR. SOUKI: I'm asking for his opinion.

23 THE WITNESS: I would say just the
24 opposite. It would be like at least one fifth of the
25 development should be programmed for these larger

1 lots.

2 Q (By Mr. Souki): On Page 8 of that same
3 report, second paragraph to the bottom it states that,
4 "As stated previously by comparison with West Maui
5 there already is a shortage of light industrial uses
6 in South Maui causing imbalances and stress to find
7 alternatives to meet the community needs.

8 Reclassification of Kaonoulu land should alleviate the
9 stress and have a positive impact on he community."

10 Is that correct? That's what it says, right?

11 A Yes.

12 Q When the market study talks about "by
13 comparison with West Maui" it's comparing the Project
14 they're proposing with what's happening in West Maui
15 at the time, correct?

16 A Yeah, right.

17 Q Were there outlet malls in West Maui in '95
18 and '94?

19 A I don't quite recall. But I thought, I
20 thought there was already -- I thought the Gateway had
21 been approved for development but it hadn't been
22 developed yet.

23 Q Turning to Piilani Exhibit 4, on Page 1 of
24 that document. You look at the second paragraph under
25 subpart A "proposed request". I just wanted to

1 confirm with you again that the conceptual plan
2 includes 123-lots, is that correct?

3 A Yes, it's correct.

4 Q The last exhibit I wanted to go over with
5 you was the Exhibit 6, Piilani Exhibit 6. That was
6 the transcript. On Page 81 that's Sodetani talking,
7 right?

8 A Yes.

9 Q So the question from the Commissioner was,
10 "Did you make any determination as to what type of
11 services would be provided out of this light
12 industrial park?" And lines 9 through 15, can you
13 read that for us?

14 A Sure. "Specifically we have not made any
15 kind of determination. However, there's a great need
16 for various types of services and products that South
17 Maui can use. Much of it deals with small independent
18 businesses such as automotive repairs like I said,
19 wholesalers, wholesale distributors for, let's see,
20 contractors, subcontractors."

21 Q Then on that same page line 19 they're
22 talking about commercial activities besides light
23 industrial. The question was "Did you research that
24 also?" Can you read for us lines 20 to 23 the answer
25 from Sodetani?

1 A The answer was, to that question, "Yes,
2 typically in any light industrial subdivision it's
3 expected to have some commercial activities. Normally
4 these activities are provided to support the primary
5 occupants there which would be the light industrial
6 services."

7 Q So in the language that was used there by
8 Sodemani where he says "some commercial activities are
9 expected" in your opinion does that position represent
10 a majority of commercial activity in the light
11 industrial Project?

12 A No. I think when he says "normally these
13 activities" that doesn't mean that there wouldn't be
14 any other activities, commercial activities.

15 Q But you would agree that in that
16 conversation and response there the representation was
17 that it wouldn't primarily be commercial, is that
18 correct? Based on the statement?

19 A Yeah.

20 MS. LOVELL: I believe the question
21 misstates the transcript. The transcript is talking
22 about typically in any light industrial. It
23 doesn't -- it isn't specific to this particular one.

24 MR. SOUKI: I believe that here the
25 Commissioner was trying to get an assessment about

1 what kinds of commercial activity would be allowed and
2 that the concern was, by reading the transcript which
3 is open to reading and interpretation because the
4 Petitioner opened the door, is that the concern was
5 that there would be out-of-control commercial
6 development.

7 So the Commissioners are wanting to know
8 how much. And the statement is "some".

9 CHAIRMAN CHOCK: I think it's a fair
10 question. I'd like the witness to answer. We have
11 the transcript in front of us. Mr. Souki, proceed.

12 MR. SOUKI: I think it was answered.

13 THE WITNESS: I said "yes" before because
14 it says "typically in the light industrial
15 subdivision."

16 CHAIRMAN CHOCK: Thank you, Mr. Luna.

17 Q (By Mr. Souki): (off mic) On Page 82 --

18 A I'm sorry?

19 Q On page 82, I'm sorry. This was a question
20 and discussion between Sodetani still and the
21 Commissioner. The Commissioner was asking, "So in
22 your research were there any other factors that you
23 looked at before reaching any kind of conclusion with
24 respect to the need for this Project in Kihei in the
25 South Maui area?"

1 Can you read the response starting on
2 the -- well, let's see, starting on line 23?

3 A "For Wailuku/Kahului this is where we
4 obtained the data that I submitted in my report. The
5 sales have been increasing gradually from 1988 time
6 period up to the present. Many malls and shopping
7 centers will probably remain -- will probably remain
8 where they're located. If not, if they're forced to
9 move" -- I'm sorry. "If they're forced to move they
10 will probably move to other businesses, other business
11 owned locations within a greater visibility."

12 Q And could you just finish that last
13 paragraph?

14 A I'm sorry?

15 Q Could you just finish that last paragraph?

16 A "There might be a few, like a hair dresser
17 might move into this development, a restaurant to
18 serve the employees, as I mentioned earlier, who are
19 working in that would be employed in that project. If
20 there's any move it would not be anything major or
21 anything excessive."

22 Q So "not major, not excessive" will move to
23 other business owned locations with greater
24 visibility. To you does that suggest that commercial
25 will be a primary use in this light industrial

1 Project?

2 MS. LOVELL: Excuse me. I object to this
3 whole line of questioning because in this particular
4 exhibit the transcript skips from Page 82 to 105.

5 MR. SOUKI: Well, isn't that --

6 MS. LOVELL: So I think we're missing,
7 we're missing whatever occurred in between those
8 pages.

9 MR. SOUKI: Well, isn't that wonderful.
10 This is not Office of Planning's exhibit. This is
11 the Petitioner's exhibit. We're using their own
12 exhibit.

13 MR. STEINER: We submitted as provided in
14 the Rules excerpts of the transcripts. The other
15 parties had the opportunity to put in as rebuttal the
16 rest of the transcript.

17 MR. SOUKI: And we're relying on your
18 exhibit that you submitted in response to your line of
19 questioning. I don't need any more unless you want to
20 find more to rebut.

21 MR. STEINER: I think the problem is is you
22 can't read from page 82 and then go on to Page 105.
23 They don't go together.

24 MR. SOUKI: Well, that's all you gave us.

25 MS. LOVELL: But surely the Office of

1 Planning has the entire transcript and they didn't put
2 anything else in.

3 MR. SOUKI: I don't have to. It's here.

4 CHAIRMAN CHOCK: County, why didn't you
5 object to the exhibit?

6 MS. LOVELL: I don't have an objection to
7 the exhibit, but I have an objection to the question
8 about starting on page 82 and then suddenly jumping
9 over to 105 as if it were one continuous answer to the
10 questions on Page 82.

11 CHAIRMAN CHOCK: I think the Commission has
12 the transcript right in front of us. We're reading
13 the same thing that he's reading back into the record.

14 MR. STEINER: The problem is that it
15 goes -- there's a question asked that he's not
16 responding to on 82. And then there's got to be
17 probably a hundred questions between 82 and 105.

18 MR. SOUKI: That's fine. I'll move on.

19 MR. STEINER: Thank you.

20 Q (By Mr. Souki): On Page 139 of that same
21 transcript there's a discussion and response here by
22 Mr. Misaki. It's Mr. Misaki, right? "Miskae". I'm
23 sorry. Miskae. Can't see my own writing. And he was
24 the planner for the county at the time, is that right?

25 A Hmm-hmm, planning director.

1 Q Can you read lines 2 to 22 about his
2 response to the Commissioner?

3 A Two to 22?

4 Q Yeah.

5 A "I think what's important here is to maybe
6 address Commissioner Kajioka's question with respect
7 to the large number of uses that are permitted in the
8 light industrial. The Community Plans have provided
9 for an additional land use district called business
10 industrial.

11 This would be an all-encompassing land use
12 district that would allow a full range of businesses
13 and industrial land uses. We intend to amend our
14 light industrial district ordinance that would then
15 restrict the use of light industrial.

16 "Pending those changes we have asked the
17 county council to include as a zoning condition to an
18 A and B industrial project and a certain percentage of
19 their Project be dedicated strictly to light
20 industrial and a small portion be allowed for multiple
21 use both industrial and commercial.

22 "We would intend to ask the county council
23 to do the same thing with this Project if, in fact,
24 the Commission grants the Urban District designation.

25 "We're not sure of the ratio yet but we

1 would intend a portion of the Project would
2 accommodate retail and industrial, probably a larger
3 portion of the Project, maybe the back portion away
4 from the highway may, in fact, provide simply for
5 light industrial."

6 Q Thank you. That's a lot to read. Thank
7 you. So the ultimate decision in this D&O -- you're
8 familiar with the Decision and Order from '95 --

9 A Yes.

10 Q -- in this matter. It didn't include a
11 limitation, right?

12 A Yes.

13 Q But shouldn't the Commission be able to
14 rely on this testimony from the Petitioner's expert at
15 the time?

16 MR. STEINER: Objection. The testimony was
17 not from the Petitioner's expert. It was from the
18 planning department --

19 MR. SOUKI: Oh, I'm sorry. I correct
20 myself. Strike that.

21 Q Shouldn't the Commission be able to rely on
22 the representation of the planning department --

23 MR. STEINER: I object. It calls for a
24 legal conclusion.

25 MS. LOVELL: Actually the Planning

1 Department isn't on trial here. What's relevant are
2 the representations of the developer.

3 MR. SOUKI: It is relevant because we're
4 trying to ascertain what the Commission was being
5 presented with in 1995 and whether or not they can
6 rely on those representations. It is very important
7 to understand the context of how the information was
8 received and how the record is interpreted.

9 CHAIRMAN CHOCK: Carry on, Mr. Souki. I
10 agree. Go ahead.

11 Q (By Mr. Souki) So shouldn't the Commission
12 in '95 -- weren't they -- shouldn't they have been
13 able to rely on the planning director's opinion here?

14 A Yeah. Because the planning director was
15 just saying that they will try to do the limitation
16 during the county council phase of the entitlement.

17 Q And the last thing I've got for this
18 exhibit on Page 140, on line 11 Commission Kajioka, he
19 says, "I notice you have apartment permitted use with
20 light industrial." Can you read what the reply was
21 from the planning director line 13 to 18.

22 A "We have an ordinance that is perhaps
23 probably 30 years old. We have land uses that
24 probably people don't even know what they are anymore
25 in our ordinance. That's one of the major projects I

1 have to try and get cleaned up. In all likelihood we
2 would remove apartments from the industrial district."

3 Q So does that sound like a resounding
4 support from the planning director for residential
5 apartment uses?

6 A No, it doesn't.

7 MR. SOUKI: Thank you.

8 CHAIRMAN CHOCK: Mr. Pierce.

9 MR. PIERCE: Mr. Chair, in light of the
10 fact that there's been heavy reliance upon the
11 transcript and we have an incomplete part of the
12 transcript here, Intervenors would request that during
13 any of the written closing arguments, conclusions of
14 law, findings of fact, when we're preparing those
15 things, that the parties be permitted to rely upon the
16 entire transcript and it be incorporated into the
17 record.

18 I just wanted to make sure that was
19 clear -- I don't think it was clear from our earlier
20 case. So we're asking for the Commission to take
21 official notice of the entire transcript and permit it
22 to be referred to by all of the parties.

23 CHAIRMAN CHOCK: We'll take notice of that.

24 MR. PIERCE: Thank you.

25 CHAIRMAN CHOCK: Proceed.

CROSS-EXAMINATION

1
2 BY MR. PIERCE:

3 Q Mr. Luna, I want to see if I understand one
4 of the points that Mr. Steiner was questioning you
5 about. And you can correct me if I have it wrong.
6 But is it your position as to what happened back in
7 1995 that because of the fact that the Petitioners
8 Kaonoulu Ranch did not limit themselves and because
9 they identified M-1 zoning that they are permitted to
10 do any activities within the M-1 zoning?

11 A I caught your last part. What was your
12 first part of the question?

13 Q Okay. Was it your testimony earlier that
14 the Petitioners never stated that they would limit
15 themselves only to what was presented in Exhibit 1?
16 Let's start with Exhibit 1 of the Piilani exhibits.

17 A There was little -- right.

18 Q That was the 123-lot conceptual plan,
19 right? So did they -- your point was that they did
20 not limit themselves only to this 123-lots?

21 A That's correct.

22 Q And your point also was that they, in fact,
23 identified M-1 zoning when they were making their
24 presentations to the Land Use Commission as the county
25 zoning that they would be seeking, is that right?

1 A That they would be...?

2 Q They would be seeking M-1 zoning.

3 A That's correct.

4 Q And is it your -- is it your position that
5 once your clients, your client Kaonoulu Ranch,
6 obtained M-1 zoning, that they were permitted to do
7 any use within M-1 zoning?

8 A Yes.

9 Q And it's your position -- the reason that
10 you reached that conclusion is because you're saying
11 that the 1995 Decision and Order did not limit it in
12 any express way. That's your position, right?

13 A Not necessarily just that. The reason for
14 Exhibit A is to show what's allowed in M-1 zoning. So
15 if there's no limit to what's on Exhibit A, that they
16 would be permitted to do that by the Commission as
17 well as by the council.

18 Q I think maybe we just said the same thing.
19 Let me just make sure we're correct on this so I can
20 understand it. So the Decision and Order, you're
21 saying it didn't limit any of the M-1 uses, is that
22 right?

23 A Right.

24 Q So your point is, your position is that
25 your clients or Kaonoulu Ranch at the time, was

1 permitted to do, once they obtained a change in zoning
2 to M-1 they were permitted to do any use in M-1?

3 A Yes.

4 Q I'd like to turn your attention to
5 Piilani's Exhibit 3. This was the market feasibility
6 study that you were asked about earlier. Let's go to
7 what's identified within that market feasibility study
8 as Exhibit A. It starts on Page 9. Please let me
9 know when you're there.

10 A Yeah, I'm there.

11 Q On Page 9 are identified B-1 -- uses that
12 are permitted within B-1 business district, is that
13 correct?

14 A Yes.

15 Q Also on the same page it is the beginning
16 of a list of permitted uses within B-2?

17 A Right.

18 Q Then if you go over to Page 12 it
19 identifies uses permitted within B-3?

20 A Yes.

21 Q And then finally we have M-1 industrial
22 which is the uses that are permitted there are
23 identified starting on Page 12 through 13 and 14, is
24 that right?

25 A Yes.

1 Q Is it your position that any use that's
2 permitted within M-1 zoning -- I'm sorry. Strike
3 that.

4 Is it your position that any use permitted
5 in B-1 or B-2 or B-3 zoning is also, is a permitted
6 use within the M-1 zoning?

7 A Yes.

8 Q In other words, it incorporates B-1, B-2
9 and B-3 zoning.

10 A Right.

11 Q Okay. Kaonoulu Ranch was the Petitioner
12 for a district boundary amendment back in 1994, is
13 that right?

14 A Yes.

15 Q When they decided to Petition the Land Use
16 Commission they had a choice as to what kind of plans
17 they would put before the Commission. Is that a fair
18 statement?

19 A Sure.

20 Q So in this case they didn't choose to put
21 before them a significant retail shopping center use,
22 did they?

23 A No.

24 Q They didn't choose to put before them an
25 apartment housing complex proposal, right?

1 A Right.

2 Q But what they did put before them is what
3 we see represented in that Exhibit 1, 123-lot light
4 industrial -- commercial and light industrial use,
5 correct?

6 A Correct.

7 Q Once they did that and started that
8 Petition process, the impacts that they presented --
9 let me step back for a second.

10 As part of the process of petitioning the
11 Land Use Commission would you agree that it's a
12 requirement of the Petitioner to identify the impacts
13 that would be related to the proposed use?

14 A Yes.

15 Q So in this case what the Kaonoulu Ranch did
16 was once they represented that they were going to do a
17 123-lot commercial and light industrial park, they
18 presented evidence to the Commission related only to
19 that 123-lot commercial and light industrial park,
20 correct?

21 A Yes.

22 Q So, for example, there was a traffic study
23 that was submitted into evidence in 1994, is that
24 right?

25 A Yes.

1 Q And that traffic study has the impacts
2 related to the 123-lot commercial and light industrial
3 park, right?

4 A Right.

5 Q It doesn't discuss impacts for residential
6 uses at all, does it?

7 A No.

8 Q And it doesn't discuss retail shopping uses
9 except those that might be permitted within the market
10 assessment report, right?

11 A That's correct, yeah.

12 Q It certainly didn't assess a 700,000 square
13 foot retail shopping center, right? That wasn't a
14 proposal that was before the Commission.

15 A That wasn't before the Commission.

16 Q Okay. Thank you. Were you very
17 involved in -- well, let me strike that. You were
18 very involved in assisting your client through the
19 Petition process in 1994-1995, is that right?

20 A Yes.

21 Q And did your work include assisting
22 Ka'ono'ula Ranch at the conclusion of the evidentiary
23 hearing in the following proceedings? Did your work
24 for the client include assisting them in preparing the
25 Findings of Fact and Conclusions of Law and Decision

1 and Order?

2 A Yes.

3 Q We you engaged in that? Were you actually
4 yourself personally involved in the drafting of that
5 document?

6 A Probably Gilbert did the drafting. He was
7 also listed as the other attorney in the Petition.

8 Q And that's a colleague of yours at your
9 firm?

10 A I'm sorry?

11 Q That's a colleague of yours at your firm?

12 A Right. Gilbert Coloma-Agaran.

13 Q Okay. I'm sorry, yes. So he was there
14 co-counseling with you for Ka'ono'ula Ranch.

15 A Right.

16 Q So either you or Mr. Agaran might have been
17 involved in the drafting or were involved in the
18 drafting of the findings of fact?

19 A That's correct.

20 Q And during that period of time you have the
21 opportunity, at least, to present what you consider to
22 be the most important findings of fact for your
23 client. Would you agree with that?

24 A It would be -- the findings of fact that we
25 presented would have been what we presented at the

1 hearing.

2 Q Okay.

3 A We couldn't vary from that.

4 Q All right. So, and those were finalized
5 and signed by the Land Use Commission, correct?

6 A Yes.

7 Q And Kaonoulu Ranch never objected or
8 appealed those findings did they?

9 A No.

10 Q There's a requirement in the Chapter 205
11 that once a Decision and Order is final that it be
12 recorded against the land. Are you familiar with that
13 provision?

14 A No.

15 Q Do you recall if on behalf of your client
16 you recorded the Decision and Order?

17 A Oh, yeah. That's one of the conditions.

18 Q Okay. So one of the conditions of the
19 Decision and Order was that it be recorded.

20 A Right.

21 Q And that occurred.

22 A Yes.

23 Q Would you agree that that puts every
24 landowner thereafter on notice of what is within that
25 Order?

1 A Yes.

2 MR. PIERCE: Thank you.

3 CHAIRMAN CHOCK: Rebuttal?

4 REBUTTAL EXAMINATION

5 BY MR. STEINER:

6 Q Mr. Souki asked you some questions
7 regarding some statements that were made by Mr.
8 Miskae. Who did Mr. Miskae -- who is he speaking for?

9 A The Planning Department.

10 Q So statements that were made by Mr. Miskae,
11 were those representations that the landowner was
12 making?

13 A No.

14 Q In your experience if the Land Use
15 Commission is concerned about a particular issue,
16 would they include that issue as a condition to
17 regulate that issue in their Decision and Order?

18 A Usually they do, yeah.

19 Q In this case Mr. Miskae presented the issue
20 of limiting the amount of retail, correct?

21 A Yes.

22 Q And it was also brought up by Kajioka,
23 Commissioner Kajioka.

24 A Yes.

25 Q So they were directly presented with the

1 idea of imposing a limitation on the amount of retail
2 use, right?

3 A Yes.

4 Q But despite knowing that, they didn't
5 impose any condition. They left whether or not there
6 should be a condition up to the county, correct?

7 A Yes. They left it for the county to make
8 that determination.

9 MR. STEINER: Nothing further.

10 CHAIRMAN CHOCK: Commissioners, any
11 questions for this witness? Commissioner Heller.

12 VICE CHAIR HELLER: I wanted to go back for
13 a minute to the permitted uses under M-1 light
14 industrial. Did you say that under M-1 light
15 industrial apartments were a permitted use?

16 THE WITNESS: Yes.

17 VICE CHAIR HELLER: That was because it
18 referred back to the B-2 permitted uses?

19 THE WITNESS: Oh, no. No. It's listed
20 specifically as a permitted use under M-1.

21 VICE CHAIR HELLER: Do you still have
22 Piilani Exhibit 3?

23 THE WITNESS: Yes.

24 VICE CHAIR HELLER: If you turn to page, I
25 think it's 12, talks about the permitted uses in M-1

1 light industrial District.

2 THE WITNESS: Hmm-hmm.

3 VICE CHAIR HELLER: See that at the bottom
4 of Page 12?

5 THE WITNESS: Yep.

6 VICE CHAIR HELLER: Item 1 is "any use
7 permitted in B-1, B-2 or B-3." Then it goes on to say
8 "Provided, however, that no building, structure or
9 portion thereof shall be hereafter erected, converted
10 or moved onto any lot in an M-1 district for dwelling
11 purposes, including hotels and motels except living
12 quarters used by watchmen or custodians of industrial
13 use property." Do you see that part?

14 MR. LUNA: Yes.

15 VICE CHAIR HELLER: Maybe I just
16 misunderstand how this fits together. How is that
17 consistent with apartments being permitted?

18 THE WITNESS: Little inconsistent but if
19 you look at No. 32 it's apartment houses.

20 VICE CHAIR HELLER: So the definition of
21 M-1 light industrial District says "no dwelling
22 purposes" but it includes apartment houses?

23 THE WITNESS: Yeah, that's why it's out of
24 order. If you look alphabetically it's not in order.
25 Apartment houses at the end it's 32 instead of the

1 beginning like animal kennels is No. 2 under M-1 after
2 B-1, B-2.

3 VICE CHAIR HELLER: Right. So if it says
4 "no dwelling purposes" and it says "apartment houses"
5 which one is right?

6 THE WITNESS: Apartment houses.

7 VICE CHAIR HELLER: And what causes you to
8 reach that conclusion?

9 THE WITNESS: That's how they interpreted
10 it.

11 VICE CHAIR HELLER: How who interpreted it?

12 THE WITNESS: Planning department and the
13 county.

14 VICE CHAIR HELLER: Okay. Let me
15 switchgears and ask about the Petition. I think you
16 answered some questions about Piilani Exhibit 2 which
17 is the Petition. Now, there was an original Petition
18 filed and then there was an amendment to the Petition
19 and a second amendment to the Petition, right?

20 THE WITNESS: Yes.

21 VICE CHAIR HELLER: When the amendment was
22 filed was it just a specific, narrow amendment? Or
23 did it basically restate the Petition so the first
24 amendment replaced the original Petition?

25 THE WITNESS: I've forgotten what we did

1 with the amendment.

2 VICE CHAIR HELLER: Typically when you do
3 an amended petition the amended one just replaces the
4 original one, right?

5 THE WITNESS: That's why you say
6 "restated", right?

7 VICE CHAIR HELLER: Okay. And that's what
8 I'm asking. Did the amended Petition replace the
9 original Petition?

10 THE WITNESS: Sometimes it doesn't because
11 what we do on an amendment to a Petition is just a
12 specific provision or...

13 VICE CHAIR HELLER: Okay. And you don't
14 recall this one.

15 THE WITNESS: I don't recall whether we
16 restated the whole...

17 VICE CHAIR HELLER: Do you recall with
18 regard to the second amendment if it restated?

19 THE WITNESS: I recall there were two
20 amendments because when I was reading the Decision and
21 Order where it stated the procedural aspect, it showed
22 what had happened. But I don't recall specifically
23 why it was amended.

24 VICE CHAIR HELLER: Okay. But right now
25 just looking at the Petition we don't know if it was

1 replaced by either the first amendment or second
2 amendment.

3 THE WITNESS: That's correct, yes.

4 VICE CHAIR HELLER: Okay. That answers my
5 question. Thank you.

6 CHAIRMAN CHOCK: Thank you, Vice Chair
7 Heller. Commissioners, any other questions?
8 Commissioner Inouye.

9 COMMISSIONER INOUE: Thank you, Mr. Luna.
10 I'm trying to grapple with the Commissioners'
11 responsibilities and the Petitioner's
12 responsibilities. But is it your understanding that
13 when a Petitioner applies to the Commission for a
14 boundary amendment like this one, for example -- and
15 I'll just use a hypothetical under B -- shoots. I
16 think it's B -- I lost it.

17 I think it's B-2 which is permitted under
18 M-1, if the Petitioner presented a proposal that had
19 simply item No. 51 "private schools and business
20 colleges" and presented the whole case including
21 traffic impacts, water and everything else we have to
22 look at, and it's approved under that, that then they
23 can come back and get approval from the county
24 commission -- county planning to do a predominantly
25 big box retailer, that that's okay?

1 I'm just trying to grapple with what we
2 have to look at. Do you follow the question? Maybe
3 it's too long a question.

4 THE WITNESS: Sorry. Yeah, I missed -- I
5 missed part of it. They what?

6 COMMISSIONER INOUE: Okay. I'm just using
7 a hypothetical because this one proposed 123-lot light
8 industrial with all of its impacts, the traffic, water
9 and everything we look at. And the Commission looked
10 at that and I guess, decided that it was proper and
11 good for all.

12 Now I'm using a hypothetical where you have
13 a, something that's in the B-2, which I just picked
14 the private schools and the business colleges, and you
15 had a subdivision that predominantly was that. And it
16 was presented to the Commission with, again, all of
17 its traffic impacts and archaeological surveys, the
18 whole bit. That once we approved that they can still
19 go ahead do a big box retail?

20 THE WITNESS: I think if the
21 representations have been -- or ordered there would be
22 commercial uses, I would think that might be a,
23 certainly a possibility for the Applicant to do that
24 and still not -- and still not be undermining the
25 integrity of the system, of the process. As long as

1 they're upfront in showing what's allowed under what
2 they were seeking to have approved.

3 COMMISSIONER INOUYE: I see. So your
4 position, if I'm understanding, is that if that were
5 to occur, if it was considered important for the
6 Commission that it not be a big box retailer, or
7 something, that should be placed in the Decision and
8 Order?

9 THE WITNESS: You mean if it's not
10 important for the Commission?

11 COMMISSIONER INOUYE: If it's important for
12 the Commission that it not vary from a school, private
13 school that I mentioned.

14 THE WITNESS: I guess it comes down to how
15 detailed your plans will have to be when you come to
16 the Commission. Because conceptually when you come to
17 the Commission it's to get the district boundary
18 amendment, which is a change in Ag, Rural or Urban.
19 So you come in with a conceptual plan. And really the
20 specific proposal goes before the Planning Commission
21 and the county.

22 So if the Commission now is going to -- I
23 mean the Land Use Commission now is going to require
24 that the Applicant comes in with more specific
25 plans -- or the other way they can do it is put in

1 some conditions in the Decision and Order, that that
2 might be one way that the Commission can make it more
3 specific or require the Applicant to be more specific.

4 But I think usually -- occasionally, I
5 don't sat it's the usual thing, occasionally the
6 Applicant will come in and then have a conceptual
7 plan. But then if it doesn't work out, but it's still
8 within the industrial or commercial and they're
9 prepared to proceed along that line.

10 COMMISSIONER INOUE: Would you think it
11 would be appropriate if it is -- I'm just using that
12 really wild example just to show you what I'm trying
13 to grapple with. Would it be appropriate if it did
14 make such a great change to ask for boundary --
15 amendment to the conditions?

16 THE WITNESS: Well, that's what the
17 decision that you're going to have to make.

18 COMMISSIONER INOUE: Okay. I think you've
19 answered my question. Appreciate it.

20 CHAIRMAN CHOCK: Commissioners, any other
21 questions for this witness? Thank you, Mr. Luna. I
22 think before we adjourn for the day our schedule for
23 tomorrow, parties, is we are scheduled to start at 9
24 A.M -- we intend to go -- eat a big breakfast because
25 we intend to go all the way until we conclude at 1:30

1 tomorrow afternoon.

2 Commissioners I believe have flights to
3 take at around 2:45, 2:30 so we need to get back to
4 the airport. So we're going to start at 9 o'clock,
5 take breaks throughout the morning but not take a
6 recess for lunch. Mr. Souki.

7 MR. SOUKI: I ran this by the parties and I
8 don't think they object. But I'd like two witnesses
9 out of order, if possible. They're flying in from
10 Honolulu, DOT Ken Tatsuguchi and DOE Heidi Meeker.

11 CHAIRMAN CHOCK: Parties?

12 MR. STEINER: Do you know about how long
13 the testimony is expected? The only reason I'm asking
14 at all is we've also got a witness who's flown in from
15 Honolulu actually here today and going to be here
16 tomorrow. We have another one that's coming tomorrow.
17 If the other one doesn't need to come we probably
18 shouldn't have him fly over.

19 MR. SOUKI: We have 20 minutes now, but I
20 don't think we're going to take long. The scope of
21 our analysis, again, is limited to the difference
22 between what was proposed then and what was proposed
23 now. So they'll be limited to that. The questions
24 that the other parties ask I don't know.

25 MR. STEINER: We understand budgetary

1 constraints and spending taxpayer dollars, so we do
2 not object to having them being taken out of order.

3 MR. KAM: No objection.

4 MS. LOVELL: No objection.

5 MR. PIERCE: No objections.

6 CHAIRMAN CHOCK: Let's try to get all of
7 our neighbor island guys in tomorrow since they're
8 already committed to be here. So let's work on trying
9 to get that going right on time at 9 o'clock tomorrow.
10 Commissioners, any questions before we break for the
11 day? Anybody else? Okay. Motion to adjourn?

12 COMMISSIONER INOUYE: So moved.

13 VICE CHAIR HELLER: Second.

14 (The proceedings were adjourned at 4:39 p.m.)

15

16 --oo00oo--

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, HOLLY HACKETT, CSR, RPR, in and for the State of Hawai'i, do hereby certify;

That I was acting as court reporter in the foregoing LUC matter on the 1st day of November 2012;

That the proceedings were taken down in computerized machine shorthand by me and were thereafter reduced to print by me;

That the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

DATED: This ____ of _____ 2012

HOLLY M. HACKETT, HI CSR #130, RPR
Certified Shorthand Reporter