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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 9:00 a.m. on November 2, 2012, pursuant to Notice.

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

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

16 For the Movants: Maui Tomorrow Foundation, Inc.,
17 South Maui Citizens for Responsible Growth
18 Daniel Kanahale: TOM PIERCE, JR., ESQ.

19 For the County: MICHAEL HOPPER, ESQ.
20 Deputy Corporation Counsel
21 JANE LOVELL, ESQ.
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Respondents: JOEL KAM, ESQ.
Honuauia Partners, LLC
JONATHAN STEINER, ESQ.
Piilani Promenade South, LLC
Piilani Promenade North, LLC

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1 CHAIRMAN CHOCK: (Gavel) Good morning,
2 everybody.

3 MR. PIERCE: Morning.

4 CHAIRMAN CHOCK: This is a continued
5 hearing on Docket No. A94-706. Would the parties
6 please identify themselves.

7 MR. STEINER: Good morning. Jonathan
8 Steiner for Piilani and Honuaula.

9 MR. KAM: Good morning, Chair and
10 Commission. Joel Kam for Piilani and Honuaula.

11 MR. HOPPER: Good morning, Mr. Chair,
12 Michael Hopper, deputy corporation counsel
13 representing the county of Maui Department of
14 Planning. With me is Jane Lovell and Planning
15 Director Will Spence.

16 MR. SOUKI: Good morning, Chair and
17 Commissioners. Jesse Souki for the state of Hawai'i.
18 And with me is Rodney Funakoshi from the Office of
19 Planning.

20 MR. PIERCE: Good morning, Mr. Chair. Tom
21 Pierce here on behalf of Intervenors. To my left is
22 Mark Hyde. And behind me Irene Bowie, executive
23 director of Maui Tomorrow. Excuse me. Mark Hyde with
24 South Maui Citizens for Responsible Growth. Irene
25 Bowie, executive director of Maui Tomorrow and Daniel

1 Kanahale, my clients.

2 CHAIRMAN CHOCK: Good morning, everyone.

3 Mr. Souki, I believe you guys agreed yesterday to take
4 a few witnesses out of order. Are your witnesses here
5 and are you prepared to begin?

6 MR. SOUKI: Yes. Both of our witnesses are
7 here. Ken Tatsuguchi from DOT and Heidi Meeker from
8 the Department of Education. And we'd like to start
9 with Mr. Tatsuguchi.

10 CHAIRMAN CHOCK: Go ahead.

11 KEN TATSUGUCHI

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

14 THE WITNESS: Yes.

15 CHAIRMAN CHOCK: Would you state your name
16 and address for the record, please.

17 THE WITNESS: Ken Tatsuguchi, 869 Punchbowl
18 Street, Honolulu, Hawai'i 96813.

19 DIRECT EXAMINATION

20 BY MR. SOUKI:

21 Q Good morning, Mr. Tatsuguchi. Let me refer
22 you to Exhibit 9, Office of Planning Exhibit 9. Do
23 you have a copy of that?

24 A Not with me.

25 Q Oh, you don't.

1 A Sorry.

2 Q Can you tell me what that one is?

3 A This is a document on my work experience.

4 Q Can you summarize your work experience for
5 the Commission.

6 A Okay. I've been with the Department of
7 Transportation from 1988. I worked as a highway
8 design engineer until 2001. In 2001 to 2006 I worked
9 with our administrative planning office. From 2006
10 'til today I'm with the Highway's Division planning
11 branch.

12 Q And during that time you reviewed
13 engineering plans and planning for transportation?

14 A Yes.

15 Q Can you let us know what your degrees are
16 in?

17 A I'm sorry?

18 Q Your degrees.

19 A My degree is in the civil engineering. And
20 I also have an -- I'm a licensed engineer.

21 Q Are you familiar with the Land Use
22 Commission process?

23 A Ah, a little bit.

24 Q Okay. Can you tell us about what your
25 office does when you review transportation plans?

1 A The function of the planning branch is to
2 ensure compliance with the state and federal
3 transportation planning requirements. The duties
4 include the development of a long range surface
5 transportation plans for the department and the
6 federal budget known as the Statewide Transportation
7 Improvement Program.

8 Other functions related to federal
9 transportation planning requirements include the
10 management of the federal aid and the state highway
11 systems map, the transportation urban boundary map and
12 the collection reporting and mapping of transportation
13 data and information.

14 Another function of the planning branch
15 includes the division of coordination of land use
16 reviews with other agencies. The type of land use
17 reviews includes state land use boundary amendments
18 and county zoning applications.

19 An effort done for land use reviews is to
20 coordinate divisional review of Traffic Impact
21 Analysis Reports, also known as TIARs, for proposed
22 developments as it relates to the state highway
23 system.

24 Our branch and our function is responsible
25 for the review of vehicle trip generation and trip

1 distribution for proposed developments. Additionally
2 we coordinate with our other branches such as traffic
3 engineering, our roadway design and our right-of-way
4 access offices to provide a coordinated recommendation
5 for our administration.

6 MR. SOUKI: Mr. Chair, we'd like the
7 Commission to recognize Mr. Tatsuguchi as an expert in
8 transportation planning and engineering.

9 CHAIRMAN CHOCK: He's recognized as an
10 expert.

11 Q (By Mr. Souki): Mr. Tatsuguchi, for your
12 testimony you're going to be using that blown up map
13 of Office of Planning's Exhibit 2 demonstrative
14 evidence. Do you have a copy of Exhibit 2 in front of
15 you?

16 A Yes, I do.

17 Q Is the blown up map similar or a
18 replication of that exhibit that you have?

19 A Yes, it is.

20 Q Are you familiar with the current Project
21 that is before the Commission today?

22 A Yes, I'm familiar with it.

23 Q And you reviewed Exhibits 6 and 7 which
24 were the TIAR reports?

25 A Yes, we did.

1 Q In looking at Exhibit 7 what is that
2 document?

3 A I'm sorry I don't have it in front of me.

4 Q Oh. I've got it for you. (Document handed
5 to witness). Okay. We're good.

6 A Got it in front of me.

7 Q Okay. So can you tell us what Exhibit 6
8 is?

9 A Exhibit 6 reads here Traffic Impact
10 Analysis Report for Kaonoulu Industrial Park.

11 Q What's the date on that?

12 A March 1994.

13 Q You had an opportunity to take a look at
14 that document?

15 A I did a cursory review.

16 Q Do you have Exhibit 7 in front of you as
17 well?

18 A Yes.

19 Q What is that document?

20 A It's a TIAR for Piilani.

21 Q And what is the date on that document?

22 A It's dated January 30, 2012 revised May 7,
23 2012.

24 Q And you had an opportunity to review that
25 document as well?

1 A Yes, also did look at it.

2 Q Office of Planning's Exhibit 10 you have
3 that one, right? Testimony, written testimony.

4 A Yes.

5 Q Did you prepare that written testimony?

6 A Yes.

7 Q Can you summarize the testimony for the
8 Commission.

9 A Yes. The proposed Project is on the
10 eastern side of Piilani Highway which is also state
11 route No. 31. On June 7th -- we received a June 7th,
12 2011 TIAR report from the successors and the developer
13 for the proposed Piilani Promenade. We've also
14 received Exhibit No. 7 okay. And it analyzes the
15 transportation impacts proposed for the Piilani
16 Promenade development.

17 As of this writing of this testimony the
18 current version of the -- the current version of this
19 TIAR has not been accepted by DOT. DOT has been in
20 coordination and is having ongoing discussions with
21 the developer and the developer's traffic consultant
22 on our transportation concerns.

23 The next item in the testimony refers to
24 the trip generation differences for the Kaonoulu
25 Industrial Park and the Piilani Promenade.

1 Q So the Kaonoulu Industrial Park, that's the
2 1995.

3 A Yes.

4 Q And the promenade is recent --

5 A Correct.

6 Q -- 2012.

7 A Yes. Both TIARs identify the vehicle trip
8 generation for each development. They both utilized
9 the institute of Transportation Engineers reference.
10 This reference is used to estimate the vehicle trips
11 generated by that land use.

12 For Kaonoulu Industrial Park they utilized
13 industrial park land use code from the Institute of
14 Transportation Engineers also known as ITE. For the
15 AM and PM peak hours for the industrial park it was
16 estimated at about 700 vehicle trips to be generated
17 by the industrial park.

18 For the Piilani Promenade the land use code
19 used from ITE for shopping centers was the AM peak
20 hour was similar to Kahoma Industrial Park which
21 estimated 700 vehicle trips in the PM -- I mean, I'm
22 sorry, in the AM peak hour.

23 And for the PM peak hour there was
24 estimated vehicle trips of 2,900. The PM peak hour
25 comparison showed a substantial increase over the

1 industrial park. It's about four times. Additional
2 differences between the transportation impacts for the
3 developments, another item that we look at are the
4 vehicle types.

5 For example an industrial park will usually
6 have higher heavier truck activity than vehicle
7 type -- vehicles activity at an industrial park.

8 Another difference between an industrial
9 park and a commercial area shopping center there would
10 mostly be more bicycle and pedestrian activity at a
11 commercial shopping center.

12 It should also be noted the vehicle trip
13 generation plan for the 250-unit workforce affordable
14 housing is not reflected in the Piilani TIAR.

15 The next item in the testimony talks about
16 frontage roads. This pertains to Condition No. 5.
17 DOT understands that this condition for a frontage
18 road was a decision made by the Land Use Commission
19 and was not provided by or coordinated with our
20 department.

21 A frontage road has a specific name for
22 DOT. It is not simply a local road parallel to a
23 regional road. It more correctly refers to an
24 adjacent parallel road to a regional road. We
25 understand the term "frontage road" has been used to

1 describe the parallel road makai of Queen Ka'ahumanu
2 Highway in Kona. That roadway is not considered
3 frontage road to us since it is not an adjacent
4 parallel road.

5 Piilani Highway has been widened from 2 to
6 4 lanes. This widening significantly increases the
7 north to south vehicle capacity. To ensure the
8 efficient carrying vehicle capacity of Piilani
9 Highway, an efficient local road network that supports
10 good circulation and good access to Piilani would in
11 prudent, like a parallel road but not a frontage road.

12 A frontage road next to Piilani would
13 result in the Piilani Highway and the Ka'ono'ula
14 intersection being close in proximity to the frontage
15 road intersection. This may result in traffic
16 operation and safety issues. And I can point it out
17 on the exhibit

18 Q Please do. And try to verbalize if you can
19 what you're pointing at.

20 A Okay. This is Exhibit 2. Okay. And it
21 shows -- Exhibit 2 represents over here is Piilani
22 Highway and the proposed --

23 Q The Piilani Highway is south on that map?

24 A I'm sorry. The Piilani Highway is east of
25 the development. And this is the development here.

1 Okay. Earlier I spoke about a frontage road that
2 would be adjacent and parallel to Piilani Highway. If
3 the road was adjacent it would be right around here.
4 In the testimony I mentioned if a frontage road was
5 here there would be another intersection here. Okay.

6 There could be safety and operational
7 issues of having two intersections close to each
8 other. So it would make sense to -- instead -- not to
9 have a frontage road here. And provide good
10 connection through a local network system, possibly
11 roads, I guess, west of Piilani Highway with a network
12 system.

13 So the access to Piilani Highway and
14 traffic going in and out of this intersection would
15 not inhibit good capacity flow along the state highway
16 here. So DOT does not see the feasibility of a
17 frontage road as it relates to Piilani Highway. Thank
18 you.

19 Q Based on your review of the old TIAR that
20 was prepared in '94, '95 timeframe for that Decision
21 and Order and the current TIAR in 2012 for that
22 proposed Project, would you say that the impacts are
23 different based on the proposal?

24 A Yes. The transportation impacts to the
25 state highway system would be different based on the

1 trip generation. And most likely also the modes of
2 transportation would be different.

3 Q Just to clarify. The condition that was
4 proposed in the 1995 D&O for the frontage road that no
5 longer applies.

6 A Yes.

7 MR. SOUKI: Thank you. He's available for
8 cross.

9 CHAIRMAN CHOCK: Petitioner?

10 MR. STEINER: Thank you.

11 CROSS-EXAMINATION

12 BY MR. STEINER:

13 Q Thank you. Good morning.

14 A Good morning.

15 Q You testified that the TIAR which is
16 Exhibit 7, the current TIAR, has not been accepted by
17 the State Department of Transportation. It hasn't
18 been rejected though, right?

19 A Yes, it hasn't been rejected.

20 Q Is it correct that the Department of
21 Transportation is continuing to work with the
22 developer on issues back and forth regarding to come
23 to an agreement on this?

24 A Yes.

25 Q Is the Petitioner, that is Piilani, in the

1 process of complying by working with the DOT?

2 A Yes. They're working with us.

3 Q Okay. Would that be Mr. Phillip Rowell
4 that you'd be working with?

5 A Phillip Rowell is the traffic consultant
6 for the development.

7 Q Have you worked with Mr. Rowell before?

8 A Yes.

9 Q Would you consider Mr. Phillip Rowell to be
10 qualified in traffic engineering and traffic study
11 issues?

12 MR. PIERCE: Objection. This is -- first
13 we're now getting into irrelevant testimony with
14 respect to this witness. And also this witness is not
15 qualified to qualify another expert.

16 MR. STEINER: I'm not asking to qualify.
17 I'm asking whether he believes he's competent based on
18 his experience.

19 MR. PIERCE: It's irrelevant testimony.
20 It's prejudicial to the other parties.

21 CHAIRMAN CHOCK: Sustained. Why don't you
22 move on.

23 Q (By Mr. Steiner): Back when Exhibit 6,
24 which was the previous TIAR, when that was done how
25 many lanes was Piilani Highway, if you know?

1 A Piilani Highway was 2 lanes.

2 Q How many lanes is it today?

3 A Four.

4 Q Would the fact that it's 4 lanes now as
5 opposed to 2 lanes then would that mitigate to a
6 certain extent the increased traffic that's going to
7 be generated by the current Project?

8 A I'm not a traffic engineer. I'm a
9 transportation engineer. Based on my experience in
10 coordinating the reviews of these TIAR's I would say
11 yes.

12 MR. STEINER: Nothing further.

13 CHAIRMAN CHOCK: Mr. Kam.

14 MR. KAM: No questions.

15 CHAIRMAN CHOCK: County?

16 CROSS-EXAMINATION

17 BY MS. LOVELL:

18 Q Just a couple of questions. Based on your
19 general practice when you're reviewing a project for
20 TIARs. Does the Department of Transportation
21 generally make its decisions with respect to things
22 such as traffic signals and other mitigation measures
23 before or after the Land Use Commission issues its
24 district boundary amendment decision?

25 A Can you repeat that?

1 Q I'll try. Generally does the Department of
2 Transportation reach its conclusions about things such
3 as traffic signals, intersections and other mitigation
4 measures before or after the Land Use Commission
5 issues its Decision and Order in a district boundary
6 amendment proceeding?

7 A Based on my experience mitigation measures
8 are usually not identified in the land use, at the
9 land use phase. Usually what is requested at that
10 time is a Traffic Impact Analysis. And also that they
11 take care of their regional and local mitigation
12 measures.

13 Q And then the details are worked out to the
14 satisfaction of the Department of Transportation as
15 the Project progresses through other entitlements.

16 A In general, yes.

17 Q In the actual Decision and Order in this
18 case, in Condition 5 it called for the Petitioner to
19 coordinate the traffic issues with the DOT. Is
20 that --

21 MR. PIERCE: I object. That misstates
22 Condition 5. Condition 5 speaks for itself. That's a
23 gross misrepresentation of Condition 5.

24 CHAIRMAN CHOCK: Can you rephrase.

25 MS. LOVELL: I will rephrase my question.

1 Q Condition 5 calls for --

2 MR. PIERCE: Objection. If she wants -- if
3 the county would like to question the witness about
4 this, the proper thing to do would be to put Condition
5 5 in front of the witness.

6 Q (By Ms. Lovell) Do you have that in front
7 of you, the Decision and Order?

8 A No, I don't.

9 MR. STEINER: It's just our copy of the
10 Decision and Order. I think it's Intervenors 2.

11 MR. PIERCE: Mr. Chair, may I ask a
12 question? Do we have a master, a clerk copy of all of
13 the exhibits that is used by the witnesses?
14 Ordinarily there would be one copy that all the
15 parties could have comfort knowing was going to be the
16 one that goes into the record, that kind of thing.

17 VICE CHAIR CHOCK: I'm not sure we brought
18 an official hard copy. It's on our website.

19 MR. PIERCE: Okay. Thank you. (document
20 handed to witness.)

21 Q (By Ms. Lovell) So do you have Condition
22 No. 5 in front of you?

23 A Condition No. 5 is in front of me.

24 Q Okay. Do you see where it says in about
25 the middle of that paragraph, and it's understood I

1 think that they're talking about the Petitioner. "The
2 Petitioner shall submit a warrant study in
3 coordination with the Department of Transportation"?

4 A It reads here "Petitioner shall provide
5 traffic signals at the intersection of Piilani Highway
6 and Ka'ono'ula Street and shall submit a warrant study
7 in coordination with the Department of
8 Transportation."

9 Q Has the Petitioner engaged in that
10 coordination with the Department of Transportation?

11 A I am not familiar with whether or not that
12 coordination has occurred.

13 Q Has the Petitioner engaged in any
14 coordination with the Department of Transportation
15 with respect to the traffic mitigation measures?

16 A The traffic -- the Petitioner has submitted
17 a Traffic Impact Analysis Report.

18 Q And you consider that to be in part
19 coordination with the Department of Transportation?

20 MR. PIERCE: Objection. Misstates the
21 witness's testimony.

22 CHAIRMAN CHOCK: Overruled. Continue.

23 THE WITNESS: Can you repeat the question.

24 Q (By Ms. Lovell): And do you consider that
25 to be coordination with the Department of

1 Transportation?

2 A Yes.

3 MS. LOVELL: No further questions.

4 CHAIRMAN CHOCK: Intervenors.

5 CROSS-EXAMINATION

6 BY MR. PIERCE:

7 Q Mr. Tatsuguchi, my name's Tom Pierce. Just
8 so you're aware I represent the Intervenors which are
9 Maui Tomorrow, South Maui Citizens for Responsible
10 Growth and Daniel Kanahale. The Intervenors were the
11 ones that first brought the motion questioning whether
12 this project was in violation of the 1995 Land Use
13 Commission Order.

14 Are you familiar with that 1995 Order?
15 That's actually the Condition 5 that you just read
16 from.

17 A I'm familiar with Condition No. 5.

18 Q Okay. But the rest of the Order you're not
19 familiar with it.

20 A No.

21 Q Okay. But you are aware that that was an
22 Order that was issued by the Land Use Commission back
23 in 1995?

24 A Yes.

25 Q Okay. Generally, just so you know, the

1 Intervenor and Office of Planning share the same
2 concerns with respect to this Project.

3 MR. STEINER: Objection.

4 MR. KAM: Objection.

5 CHAIRMAN CHOCK: Can you ask a question,
6 Mr. Pierce?

7 Q (By Mr. Pierce): So, Mr. Tatsuguchi, I
8 wanted -- the reason I presented it this way is what I
9 want to make sure you understand is I want to ask a
10 few questions so we can understand the process more
11 and so the Commissioners can understand it more. My
12 purpose is not to ask you any trick questions.

13 So one of the things that would be helpful
14 to understand is can you explain the difference
15 between a traffic engineer and a transportation
16 engineer just so we can understand the difference?
17 Because you mentioned before that you conditioned one
18 of your responses on that. So I just want to
19 understand the difference between the two.

20 A Okay. A traffic engineer will specifically
21 look at the -- they would look at the distributions,
22 the type of vehicle movements and look at the,
23 basically the operations of the development at a
24 detailed level.

25 A transportation engineer is more general.

1 It is someone with technical experience who and
2 knowledge of work working the transportation field.
3 It could be in various areas like I mentioned. It
4 could be maybe in design or rights-of-way or planning
5 like where I am.

6 Q Thank you. Can you -- in your testimony
7 you said that there are ongoing discussions with the
8 developers. And by the "developers" I mean Honuaula
9 and Piilani Promenade North in Piilani Promenade South
10 but I'll just call them the "developers" for right
11 now. Isn't that right? You said that there were
12 still ongoing discussions between DOT and them?

13 A Yes.

14 Q Can you tell us what kind of discussions
15 are still going on?

16 A In the past we have had meetings on the
17 Traffic Impact Analysis Report and the development.
18 And we are going, we are waiting response for our
19 comments and our concerns.

20 Q Can you tell us what some of your concerns
21 were?

22 MR. STEINER: I'm going to object as to
23 relevance. This goes beyond the scope of the
24 witness's testimony an to any of the issues before the
25 Commissioner.

1 CHAIRMAN CHOCK: Sustained. Please move on
2 to the next question, Mr. Pierce.

3 MR. PIERCE: Mr. Chair, if I may offer.

4 CHAIRMAN CHOCK: Please move on to the next
5 question Mr. Pierce.

6 Q (By Mr. Pierce) You also testified, at the
7 bottom of Page 2 and the top of Page 3, you say "for
8 example an industrial park will usually have higher
9 heavy truck activity than passenger vehicle activity
10 and less bicycle and pedestrian activity than a
11 commercial shopping center."

12 Could you explain how you reached that
13 conclusion?

14 A Based on my experience in reviewing TIARs
15 for developments of this type, the mode types I
16 identified is based on my experience.

17 Q Do you have any idea of knowing with
18 respect to this particular Project how much of a
19 difference there would be?

20 A No. It's only an estimate.

21 Q Is that something that you've asked the
22 Mr. Rowell and the developers to provide to the state,
23 that kind of information?

24 A I don't recall if we asked that
25 specifically.

1 Q Okay. Would you agree that since you put
2 it in your testimony you consider to be an important
3 part of understanding the difference in the impacts?

4 A As part of our general review process we do
5 look at all modes of transportation.

6 Q Would you say it's something that DOT
7 should look into and ask the developers to respond to?

8 MR. STEINER: I object. This also goes
9 beyond the scope.

10 CHAIRMAN CHOCK: Overruled. Please answer
11 the question.

12 THE WITNESS: Like I said earlier it's our
13 general practice to look at all modes of
14 transportation when a development comes up.

15 Q (By Mr. Pierce) Now, on Page 2 you talk
16 about the difference in the impacts from the original
17 proposal back in 1995 and the current proposal. Do
18 you recall that testimony that you gave?

19 A Yes.

20 Q Do I have it right that you said that it's
21 approximately four times as much traffic will result
22 from the new, from the new Project?

23 MR. STEINER: I'm going to object. That
24 misstates the witness' testimony. It was four times
25 the number of peak trips, not traffic.

1 MS. LOVELL: I join the objection in that
2 it misstates the testimony.

3 CHAIRMAN CHOCK: Maybe you can rephrase the
4 question.

5 Q (By Mr. Pierce): Mr. Tatsuguchi, on
6 Page 2, your written testimony says, and I'm reading
7 from the last sentence in the first paragraph, "The
8 trip generation analysis of this TIAR resulted in
9 similar projections of vehicle trips." Then you have
10 in parentheses "approximately" -- is that what that
11 little symbol means "approximately"?

12 A Yes.

13 Q -- "(approximately 700 in total vehicle
14 trips)" end of parentheses, for both the AM and PM
15 peak hours?

16 A Yes.

17 Q Is that for the original Project you're
18 talking about there?

19 A Yes.

20 Q And then the last sentence of the second
21 paragraph -- and I'm going to start in the middle of
22 it -- it says, "However, the trip generation
23 calculation for the PM peak hour of the shopping
24 center land use" parens (approximately 2900 total
25 vehicle trips) parens shows a substantial increase

1 over the original industrial park numbers." Did I
2 read that correctly?

3 A Correct.

4 Q Are you referring to the uses referring to
5 Office of Planning's Exhibit 2? If you would take a
6 look at the map that has been enlarged there. Are we
7 talking about the uses that are generated on the three
8 parcels of land that are in the -- all of the ones
9 except for the top what is in that exhibit the top
10 left-hand corner parcel?

11 A To clarify the area that you're talking
12 about, you're taking about here (indicating)?

13 Q Okay. Essentially the property is broken
14 into four main large parcels, right?

15 A Correct.

16 Q And they're almost set up in the form of a
17 quadrant, right?

18 A Yes.

19 Q Okay. So I'm going to just use for the
20 expedience of all of us I'm going to use up and down,
21 left and right because we're looking at the exhibit.
22 So there are retail shopping uses proposed for the
23 right hand two parcels correct?

24 A That is my understanding.

25 Q And for the bottom left-hand parcel,

1 correct?

2 A Correct.

3 Q The upper parcel, are you familiar with
4 what that is related to?

5 A My -- yes.

6 Q What is your understanding with respect
7 to that --

8 A My understanding that this is the
9 affordable housing.

10 Q Okay.

11 A The workforce affordable housing.

12 Q When you said there would be 2900 total
13 vehicle trips -- and I'm reading again from the bottom
14 of that second paragraph -- for PM peak hour of the
15 shopping center land use, you're talking about the
16 trips that you estimate would be generated from those
17 three parcels all of them except for the one proposed
18 for the residential?

19 A Yes.

20 Q Thank you for interpreting my long-winded
21 question. So did I hear you say that have not -- you
22 do not have calculations for the residential use, is
23 that right?

24 A Yes. That's in the testimony.

25 Q And that's not part of the TIAR.

1 A Not in the TIAR that was submitted, yes.

2 Q You said a substantial increase over the
3 original excluding -- strike that. With respect to
4 just the commercial shopping center because that was
5 the focus of your testimony, you're saying it was a
6 substantial increase over what was proposed before?

7 A There's a substantial increase in the trip
8 generation for the PM peak hour.

9 Q Thank you. Could you explain the
10 difference between -- let me start this way -- traffic
11 engineers have different ways of evaluating traffic
12 impacts or quantifying traffic impacts. Do I have
13 that right?

14 MR. STEINER: Objection. Calls for
15 speculation. He's not a traffic engineer.

16 CHAIRMAN CHOCK: That's pretty speculative.

17 MR. PIERCE: Let me ask it a different way.

18 Q You used a process of evaluating peak
19 hours, is that right?

20 MR. STEINER: I'm going to object. I
21 believe his testimony is that he looked at what the
22 TIAR calculated as far as peak hours.

23 Q (By Mr. Pierce) In your testimony -- I'll
24 withdraw that. In your testimony you're focused on
25 what the TIAR provided which was the peak hours

1 review, is that right?

2 A Yes.

3 Q Is there another way of calculating traffic
4 counts such as -- and the one I've heard of is
5 "average daily trips"?

6 A Can you repeat the question.

7 Q Are there other ways that traffic engineers
8 can evaluate traffic counts such as --

9 A Traffic?

10 Q Correct. Or the amount of traffic that's
11 being generated from a project other than peak hours.

12 A There are different measures.

13 Q One of them is average daily trips?

14 A Yes.

15 Q On Page 3 you testified that the
16 residential uses are not part of the TIAR, right?

17 A Can you repeat that?

18 Q Sure. At the top of page 3 the first full
19 paragraph. I'm just going to read a portion of the
20 last sentence. It says, paraphrasing, "The Honuaula
21 Partners parcel is quote "is not reflected in the
22 foregoing trip generation calculations for the
23 proposed retail and commercial uses." period, quote.
24 Do you see that?

25 A Which paragraph again? I'm sorry.

1 Q Right. We're on page 3 of your written
2 testimony.

3 A Correct.

4 Q It's the first full paragraph.

5 A The one that starts off "it should"?

6 Q Correct. I'm just looking at the very last
7 phrase of that sentence.

8 A And the question again?

9 Q The question was -- I just wanted to make
10 sure I understood. Your testimony is that the TIAR
11 does not include the trip counts or the traffic
12 impacts from the residential uses.

13 A It doesn't -- it does not consider the trip
14 generation for the planned 250-unit work affordable
15 housing development.

16 Q Okay. Is that something that DOT has asked
17 Honuaula for?

18 A I don't recall.

19 Q The last part of your written testimony is
20 with respect to frontage roads?

21 A Correct.

22 Q Let me see if I can summarize what I
23 understand is your office's position on that. First,
24 do I have it right that you're not saying that --
25 you're not making an opinion with respect to whether

1 or not Condition 5 requires a frontage road. That's
2 not part of your opinion, is it?

3 A Can you rephrase that?

4 Q I'll try. You read portions of Condition 5
5 before, right?

6 A Yes.

7 Q You're not here today to decide or to give
8 us an opinion on whether or not the Land Use
9 Commission required the frontage road, right? Your
10 point is that your department believes that a frontage
11 road does not make sense. Is that -- do I have that
12 right?

13 A Based on the testimony a frontage road does
14 not seem prudent for this Piilani shopping center that
15 abuts our highway.

16 Q If you look at your last paragraph on
17 page 3 the first sentence, I'm just going to read it
18 here. "Since the imposition of Condition No. 5 as it
19 pertains to the frontage road, Piilani Highway has
20 been widened from 2 to 4 lanes significantly
21 increasing north-south traffic capacity." Period.
22 What did you mean by that sentence, just to make sure
23 we understand that?

24 A The widening from 2 to 4 lanes on Piilani
25 will allow for more vehicle capacity on, at state

1 highways -- at the state highway road.

2 Q Was part of your reason for stating that
3 that times have changed since 1995? That a frontage
4 road might have made sense in '95 but doesn't make
5 sense now?

6 A Can you say that again?

7 Q Sure. Were you saying that a frontage road
8 made sense in 1995, but it does not make sense now?

9 A Frontage road based on the existing laneage
10 of Piilani four lanes and this proposed development of
11 the shopping center, we're saying the frontage road
12 does not seem prudent.

13 MR. PIERCE: Thank you.

14 CHAIRMAN CHOCK: Are you done, Mr. Pierce?

15 MR. PIERCE: Yes.

16 CHAIRMAN CHOCK: OP rebuttal?

17 MR. SOUKI: Just a couple questions on
18 redirect.

19 RE-DIRECT EXAMINATION

20 BY MR. SOUKI:

21 Q You were asked about the four-lane existing
22 Piilani Highway and whether that would mitigate
23 traffic to the 2012 Piilani proposal, correct?

24 A I'm sorry, I asked?

25 Q Yeah, you asked about that. Do you want me

1 to rephrase?

2 A Ah, yeah.

3 Q You were asked about the four-lane Piilani
4 Highway, right, as it exists today?

5 A Right.

6 Q You were also asked: Does that mitigate
7 traffic for the proposed development that is proposed
8 today?

9 A Yes.

10 Q Correct?

11 A (Witness nodding)

12 Q But coordination is ongoing.

13 A Yes.

14 Q So this is not your final position for the
15 Department of Transportation?

16 A No, it is not.

17 Q You were asked about when does DOT start to
18 coordinate with developers? Before the Land Use
19 Commission decision or after, correct?

20 A Yes.

21 Q When you usually hear about a Petition at
22 the Land Use Commission it's because it's circulated
23 by the Office of Planning, is that correct?

24 A Correct.

25 Q That's an opportunity for DOT to look at

1 the proposal and make general recommendations, is that
2 correct?

3 A Yes.

4 Q So the recommendations you make for an LUC
5 proposal is based on the Petition, is that correct?

6 A Correct.

7 MR. SOUKI: That's all. Thank you.

8 CHAIRMAN CHOCK: Commissioners, any
9 questions for this witness?

10 MR. STEINER: Chair, I have some follow up
11 questions if the Chair would permit.

12 CHAIRMAN CHOCK: I don't think we normally
13 allow follow up questions. We're not going to allow
14 that at this time, Mr. Steiner. Thank you.
15 Commissioners, any questions for this witness?

16 COMMISSIONER McDONALD: Chair, if I may.

17 CHAIRMAN CHOCK: Commissioner McDonald.

18 COMMISSIONER McDONALD: Mr. Tatsuguchi,
19 thank you for your testimony. I've asked this
20 question in the past and OP has brought it up again.
21 You know, when the TIARs come before the Commission
22 it's generally, or more times than not, have not been
23 accepted by the DOT.

24 So my question is: During your folks'
25 review and coordination with the Petitioner, what are

1 the concerns you folks currently have with the
2 proposed development?

3 THE WITNESS: In regards to our concerns
4 for -- I don't recall, you know, exactly what they
5 are. Sorry.

6 COMMISSIONER McDONALD: Would OP know?

7 MR. SOUKI: Your question is what are the
8 concerns?

9 COMMISSIONER McDONALD: What are the major
10 concerns that the DOT or the Office of Planning have
11 with regards to transportation with the proposed
12 development?

13 MR. SOUKI: My response to that question
14 would be, and it's not directly answering, I
15 apologize, our focus for the Order to Show Cause
16 hearing was focused only on the questioned of what was
17 proposed in 1995 in that D&O different from what is
18 proposed today. If it's significantly different then
19 there's a violation.

20 So whether or not the traffic could be
21 mitigated for the current proposal, maybe it could. I
22 don't see why it couldn't be. It's the usual type of
23 process that DOT engages in with developers. But
24 that's really not the question. So we're not prepared
25 to answer that.

1 COMMISSIONER McDONALD: Okay. Well, based
2 on the widening from two to four lanes and the
3 Condition 5, I mean Condition 5 keeps coming up about
4 the frontage road. And based on the proposal that's
5 before us, I would tend to agree that the frontage
6 road doesn't make sense in this case. So I'm just
7 trying to get a handle on what issues the DOT
8 currently has with the Petition.

9 MR. SOUKI: Right. So in the usual process
10 what a petitioner would do --

11 COMMISSIONER McDONALD: Would amend.

12 MR. SOUKI: Would amend, yeah.

13 COMMISSIONER McDONALD: Right.

14 MR. SOUKI: When the condition is not
15 relevant. So we're not saying that we would. But
16 that's not the question though. If we were in that
17 amendment hearing on the 15-15, what is it?

18 COMMISSIONER McDONALD: Right. I do
19 understand what you're saying. It's just for my
20 benefit what my concerns are. I understand this is an
21 Order to Show Cause. But I'm just curious as far as
22 what the State DOT's concerns are. I do understand
23 where you're coming from.

24 MR. SOUKI: I guess to answer some of that,
25 Mr. Tatsuguchi did talk about the different kinds of

1 vehicles from the previous Project, the heavier --
2 different considerations -- well, not as heavy so
3 more traffic, different kinds of considerations.
4 There might be more pedestrian bike traffic so that
5 changes the analysis.

6 And think Mr. Tatsuguchi should respond but
7 I don't think that means you could never get to a
8 point of an agreement about mitigation, right? It's
9 an ongoing process.

10 THE WITNESS: It is an ongoing process.

11 COMMISSIONER McDONALD: Well, yeah, I know
12 my question is a little beyond the scope so I'll just
13 leave it at that. Thank you.

14 CHAIRMAN CHOCK: Commissioners, any other
15 questions for this witness? Vice Chair Heller.

16 VICE CHAIR HELLER: Do you still have OP
17 Exhibit 6? That's the 1994 TIAR.

18 THE WITNESS: Yes.

19 VICE CHAIR HELLER: If you turn to page 4
20 just below the middle of the page on the left side it
21 says, "Improvements to both Piilani Highway and Kihei
22 Road were assumed in the long range study." Do you
23 see that part?

24 THE WITNESS: Yes.

25 VICE CHAIR HELLER: So at the time this was

1 written in 1994 it was already planned that Piilani
2 Highway was going to be improved, widened from two
3 lanes to four?

4 THE WITNESS: It was in the long-range
5 plan, yes.

6 VICE CHAIR HELLER: And if you turn to
7 page 12. At the top it says even more specifically
8 "Without the proposed Project the growth of traffic on
9 Piilani Highway indicates the highway would need
10 widening from, to four lanes before the year 2000,
11 correct?

12 THE WITNESS: That's what it says, yes.

13 VICE CHAIR HELLER: So even before anything
14 was planned on this property it was part of the long
15 range plan to widen Piilani Highway from two lanes to
16 four, correct?

17 THE WITNESS: Yes, it was planned.

18 VICE CHAIR HELLER: So in terms of
19 mitigating the impact from this particular Project
20 whether we're talking about the first version or the
21 Project or the current version of the Project,
22 widening Piilani Highway is something that was going
23 to happen anyway and not part of the specific
24 mitigation plan for the Project, am I right?

25 THE WITNESS: Right. It's not part of the

1 mitigation for the Project.

2 VICE CHAIR HELLER: Now, in general when
3 you look at mitigation there are different options.
4 One might be road widening. Others might be traffic
5 signals or putting in turn lanes. There are various
6 different things you could do, correct?

7 THE WITNESS: Yes.

8 VICE CHAIR HELLER: Okay. Have you made
9 any assessment of whether the specific mitigations
10 that are appropriate would be different for the
11 proposed industrial park Project versus the proposed
12 shopping mall Project?

13 THE WITNESS: I can't clearly say what the
14 mitigation was for either/or. I'm not real familiar
15 with the TIAR done in '94 for that industrial park.
16 And we are in ongoing discussions. Based on the trip
17 generations that I identified and the types of modes
18 for transportation, if there are transportation
19 impacts related to that, to those differences, I would
20 assume the mitigation would be different.

21 VICE CHAIR HELLER: But right now you can't
22 identify how they would be different.

23 THE WITNESS: No. We would have to
24 continue our assessment.

25 VICE CHAIR HELLER: Just turning back to

1 the frontage road for a minute. I think if I heard
2 correctly, you said that the original recommendation
3 of a frontage road did not come from the Department of
4 Transportation?

5 THE WITNESS: Yes.

6 VICE CHAIR HELLER: Do you know how that
7 became a recommendation or a condition?

8 THE WITNESS: I'm not real sure.

9 VICE CHAIR HELLER: Okay. Thank you.

10 CHAIRMAN CHOCK: Commissioners, any other
11 questions for this witness? Thank you for your
12 testimony. Next witness, Mr. Souki.

13 MR. SOUKI: We'd like to call Heidi Meeker
14 from the Department of Transportation.

15 THE WITNESS: Thank you.

16 CHAIRMAN CHOCK: Holly, how're you doing?

17 THE REPORTER: Good.

18 HEIDI MEEKER

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

21 THE WITNESS: Yes.

22 CHAIRMAN CHOCK: Your name and address,
23 please.

24 THE WITNESS: I'm Heidi Meeker. And I work
25 with the Department of Education offices's at

1 Kalaniana'ole High School at Kalaniana'ole Highway.

2 DIRECT EXAMINATION

3 BY MR. SOUKI:

4 Q Good morning, Ms. Meeker. Could I ask you
5 to take a look at Office of Planning's Exhibit 12.

6 A Yes.

7 Q Could you tell us what that is?

8 A That's my resumé.

9 Q And you prepared that?

10 A Yes.

11 Q Can you tell us a little bit of your
12 background?

13 A I've now worked for the state of Hawai'i as
14 a planner for 20 years but in three different
15 agencies. I've been working for over 10 years as a
16 planner for the Department of Education.

17 Q What does your current work entail?

18 A Studying enrollment, studying development
19 and the odd phone calls that come in about boundary
20 issues with schools.

21 Q So you've been involved in Land Use
22 Commission proceedings previously?

23 A Yes.

24 Q And you've testified on issues related to
25 project developments and impacts to schools?

1 A Yes.

2 Q And you make recommendations about impact
3 fees, correct?

4 A My office prepares analysis for the
5 creation of impact fee districts. And we're also
6 involved in written educational agreements with
7 developers for many different plans all over the
8 islands.

9 MR. SOUKI: I'd like to have Ms. Meeker
10 entered as an expert on education facilities and
11 planning.

12 CHAIRMAN CHOCK: She's admitted as an
13 expert.

14 MR. SOUKI: Thank you.

15 Q When you make those recommendations that
16 you talked about, what do you base them on for these
17 kind of proceedings?

18 A The most important variable with any
19 development project that comes before the Department
20 of Education for study is the unit county because
21 everything for enrollment is driven by how many units,
22 residential units would be in the Project.

23 Q An your office receives a copy of the
24 Petition when it's filed with the Commission boundary
25 amendments?

1 A It does, but we tend before that to get
2 early -- requests for early consultation. We get prep
3 notices, Draft EIS's, Final EIS's.

4 Q You coordinate with the Office of Planning
5 in that work?

6 A Yes.

7 Q Can I have you take a look at Office of
8 Planning's Exhibit 13. Could you tell us what that
9 is?

10 A This is testimony I prepared last month.

11 Q For these proceedings?

12 A Yes.

13 Q Could you summarize the testimony for the
14 Commission?

15 A Yes. The most important part of my
16 testimony is that we have no written records of any
17 correspondence about this particular Petition in our
18 office. However, we have some involvement very
19 tangentially because of negotiations we've had with
20 the Honuaula Project. That's our link.

21 We were in discussions off and on for a
22 number of years with the Honuaula Project but no
23 agreement was ever executed. During that time of our
24 negotiations the Legislature passed an impact fee bill
25 which would enable us to then collect school impact

1 fees under our own authority for the department. So
2 it sort of changed our position. We were no longer
3 entirely dependent on the decision and orders of the
4 Land Use Commission or agreements or requirements that
5 would be placed by counties in zoning for projects.
6 We could stand on our own.

7 So we believe this Project would fall under
8 impact fee law. We knew that Maui was one of the
9 first places we would have to impose impact fees and
10 began then in January 2011. The state Impact Fee Law
11 as of right now currently reads, requires that
12 developers come to us for an agreement particularly if
13 they have 50 or more units. And that we have a
14 written agreement very early in the planning process
15 for development.

16 Q So in your 20 years of experience working
17 in your position at DOE, did the Land Use Commission
18 documents, before the law was passed about impact
19 fees, did they include a condition about coordinating
20 with DOE if there was going to be residential?

21 A First of all, I only worked for the
22 Department of Education for only 10 years. But, yes,
23 prior to impact fee law and its implementation we were
24 completely dependent on decisions of the State Land
25 Use Commission or the counties, if they approved

1 zoning if they put in a condition. That was the only
2 we really had to be able to ask for land or
3 construction contributions.

4 Q The 1995 Decision and Order which is the
5 Order for before this Commission, does that have a
6 condition about education coordination?

7 A Not from what I reviewed recently.

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

10 CHAIRMAN CHOCK: Mr. Steiner.

11 MR. STEINER: Mr. Kam is going to address
12 this witness.

13 CHAIRMAN CHOCK: Mr. Kam, proceed.

14 CROSS-EXAMINATION

15 BY MR. KAM:

16 Q Good morning, Ms. Meeker. My name is Joel
17 Kam. I represent the landowners in this matter. I
18 want to ask you a few questions. First of all, thank
19 you for coming down. We appreciate your time. I
20 noticed that in your written testimony and also what
21 you described just now, you said that the DOE was
22 given the authority to collect impact fees in 2007 by
23 the Legislature, is that right?

24 A That was when the law passed.

25 Q That was Act 245.

1 A Hmm-hmm.

2 Q I just want to sort of make sure I
3 understand how this impact fee requirement authority
4 sort of evolved. So prior to the passage of Act 245
5 is it correct that the DOE did not have its own
6 statutory authority to impose impact fees, is that
7 what you said?

8 A Yes.

9 Q So I think you also said that the DOE had
10 to rely upon conditions imposed, for example, by the
11 Land Use Commission or other approving bodies perhaps
12 in order to collect impact fees. Is that right? Did
13 I understand you correctly?

14 A Prior to the passage of the law for impact
15 fees what we referred to as fair-share contributions,
16 yes.

17 Q So in 1994 and '95 the only way that the
18 DOE could have collected impact fees or fair-share
19 contributions would have been if the LUC, for example,
20 had imposed the condition, is that right?

21 A Or the county.

22 Q Or the county. And am I understanding
23 correctly it seems like what you're saying is so
24 because of that with respect to the Ka'ono'ula
25 Project, because the DOE never reviewed it and the LUC

1 never imposed it, you know, that essential the DOE
2 never had an opportunity to assess whether there
3 should be a fair-share contribution or impact fee
4 associated with the Ka'ono'ula Project in 1994-95, is
5 that right?

6 A No. I wasn't in that office in '94.

7 Q Okay.

8 A But I could tell you they probably did
9 review it. But unless there was a residential unit
10 count there probably wouldn't have been a request to
11 the Land Use Commission to place a condition for
12 school --

13 Q I see?

14 A -- impact.

15 Q I see. Okay. So because perhaps their
16 conceptual plan for the Project at that time did not
17 include, did not expressly include the affordable
18 housing piece that is being proposed now there was no
19 impact fee or fair-share contribution that was
20 recommended by the DOE to the Land Use Commission at
21 that time in '94, '95, is that right?

22 A If there had been a residential component
23 of some kind it probably would have been made note of
24 and would have been a file created and would have had
25 correspondence to the Land Use Commission asking for a

1 fair-share condition.

2 Q Do you have an idea what the fair-share
3 contribution or the impact fee would have been in
4 '94-'95 if the DOE, you know, had anticipated or had
5 been advised that there were affordable units being
6 planned?

7 MR. SOUKI: I need to object because there
8 isn't any count in the '95 Order about how many
9 residential. I would think that it's not relevant,
10 I'm sorry.

11 MR. KAM: I can rephrase the question.

12 CHAIRMAN CHOCK: Thank you, Mr. Kam.

13 Q (By Mr. Kam): Ms. Meeker, in your written
14 testimony, in paragraph 3 of your written testimony
15 you say that the "LUC had set a detailed condition in
16 1994 as to how much must be contributed per unit and
17 when the contribution must be paid." And I think that
18 statement was in reference to the Honuaula project at
19 Makawao, correct?

20 A (Witness nodding head.)

21 Q Which I think we've been calling the Wailea
22 670 Project, is that right?

23 A (Witness nodding head.)

24 Q Do you remember or your do you know what
25 that fair-share or impact fee amount was from that

1 condition?

2 A Yes. I think it was \$850 per unit.

3 Q Okay. So this was about 1994. This was
4 about the same time that Ka'ono'ula Project came
5 before the Land Use Commission, right?

6 A (Witness nodding head.)

7 Q So is it -- is it fair to say that if the
8 250 affordable units that are being proposed now for
9 the Project had been -- if the Department of Education
10 and the Land Use Commission had known that that was
11 going to be the number of units back in 1994-95 that
12 the fair-share contribution or the impact fee would
13 have been in the same order of magnitude as what was
14 imposed against Honuaula, the Makawao project?

15 MR. SOUKI: I'll object again. This calls
16 for speculation of facts that are not in evidence.

17 MR. KAM: The witness has been offered as
18 an expert, offered and accepted as an expert, in the
19 planning of educational facilities and the impact fees
20 associated with projects on those facilities.

21 So I think the witness is well qualified
22 and the Commission should hear what the witness's
23 speculation might be.

24 CHAIRMAN CHOCK: Mr. Souki, your objection
25 is so noted for the record. Overruled. I'd like to

1 hear what the witness has to say with respect to your
2 question, Mr. Kam.

3 MR. KAM: Thank you, Chair.

4 THE WITNESS: The Wailea 670 condition is
5 unusual in that it was rather detailed and actually
6 set the amount. What we asked for and had generally
7 gotten in the past, was very general language that
8 said "the developer must satisfy the Department of
9 Education." And sometimes would go on to say that
10 they must have a written agreement. But the Honuauula
11 one seems to stand out being rather unique. So it's
12 not really a good example. It also specified when it
13 was to be paid, which was also kind of unusual.

14 Q And what did it say with respect to when it
15 should be paid?

16 A I believe there were two stages. One was
17 going to be paid very -- some amount of money was to
18 be paid very early. Other money was to be paid as
19 units were completed.

20 Q Is the amount of the impact fee that's
21 required today by Act 245, is it more or less than --
22 let's talk about the Project that's before us --
23 what's being proposed is 250 affordable housing units.

24 What is -- what is the impact fee that
25 would be required for the 250 affordable housing units

1 today?

2 A These, from my understanding, would be
3 multi-family units. Our total impact fee, which
4 involves a construction component in the fee in lieu
5 of land contribution in the Makawao cost area in the
6 Central Maui impact district \$2,451 a unit.

7 The total amount then for that project
8 would be roughly, 600,000. (tape)

9 Q \$2,451 per unit. That's more than the \$850
10 per unit that was imposed on the Honuaula, the Makawao
11 projected, right?

12 A It was only imposed on Honuaula yeah.

13 Q The \$2,451 impact fee that would ply to the
14 this Project, assuming 250 multi-family units, that
15 would apply no matter who decided to do the affordable
16 housing project, correct? That would apply to
17 Honuaula or if Honuaula sold the property to someone
18 else and they decided to do the affordable housing
19 that requirement would apply, correct?

20 A The amount would apply. What we would have
21 hoped is we would have had an agreement that would set
22 that in writing early.

23 Q Are you familiar with the project district
24 zoning ordinance that was passed by Maui County for
25 the Wailea 670 project?

1 A Very slightly. At the time that it was
2 going on we were asked some questions by somebody.
3 Actually I think it was a councilperson we had to
4 respond. We were very concerned about whether there
5 would be a school condition in that language. So at
6 the time we were watching what was going on.

7 Q To your knowledge is there a school impact
8 fee or educational impact fee in the Wailea 670
9 project district ordinance?

10 A No, I can't remember.

11 Q I'd like to -- if you wouldn't mind looking
12 at that binder that's in front of you, and if you
13 would turn to Honuaua, it's labeled Exhibit 5. Do
14 you see that?

15 A Mm-hmm.

16 Q I'll represent to you that that's the
17 Honuaua Waialea 670 project district ordinance. If
18 you would turn to Exhibit B, which is, it's tabbed
19 with a green tab, that first green tab. It's about 9
20 or 10, maybe 20 pages in. It says Exhibit B
21 Conditions of Zoning. These are the conditions that
22 were imposed by the county of Maui in connection with
23 the Wailea 670 project district ordinance.

24 And if you would turn, flip a few more
25 pages, Ms. Meeker and turn to Condition No. 22.

1 There's another green tab that's there. Do you see
2 that condition? Maybe you could read that condition
3 for us, just to save time.

4 A "Condition 22's that Honuaula Partners, LLC
5 its successors and permitted assigns shall pay the
6 Department of Education \$3,000 per dwelling unit upon
7 issuance of each building permit to be used to the
8 extent possible for schools serving the Kihei-Makena
9 Community Plan area provided that should the state
10 pass legislation imposing school impact fees and apply
11 to the Kihei-Makena project district 9 Honuaula
12 Partners, LLC, its successors and permitted assigns
13 shall from that point forward comply with the state
14 requirements or contribute \$3,000 per dwelling unit,
15 whichever is greater."

16 Q So would you agree that seems to require
17 Honuaula Partners to pay the greater of what is
18 required by the impact fee statute or \$3,000 per
19 dwelling unit; is that right? Would you agree with
20 that characterization?

21 A Yes.

22 Q So maybe I just want to -- we went through
23 a lot. I just want to kind of summarize where I think
24 we started and where I think we ended up. In 1994 the
25 DOE and the LUC, I guess, did not -- wasn't aware of

1 the number of units that are might occur at the
2 Ka'ono'ula Project and so did not assess it for
3 educational impact. Is that right?

4 A Somebody, probably my predecessor, would
5 have reviewed a description of the project. And
6 probably when they saw there was no dwelling units
7 being proposed did not request a school fair-share
8 condition.

9 Q But we know from the Wailea 670 LUC D&O
10 that around the same time the LUC imposed an
11 educational impact fee of \$850 per unit. That was in
12 1992, right?

13 A (Witness nods head.)

14 Q Since then, in 2007, the Legislature passed
15 Act 245, correct?

16 A (Witness nods head.)

17 Q And that statute allows the DOE to impose
18 or to collect its own impact fees, correct?

19 A (inaudible)

20 THE REPORTER: Excuse me, Ms. Meeker.
21 Would you speak into the mic.

22 A That's correct.

23 Q And the amount of the impact fee that would
24 apply to this, to the Piilani Project now under Act
25 245, would be \$2,451 per unit, right?

1 A If they came to us for a written agreement.

2 Q Okay. Under the Wailea 670 Project
3 district zoning ordinance, do you agree that Honuaula
4 actually is required to pay more than what is required
5 under Act 245 for multi-family units within the
6 Kihei-Makena area?

7 A We're talking about Wailea 670?

8 Q Right. Units, units that are described in
9 the Wailea 670 Project district ordinance.

10 MR. SOUKI: I'm going to object. The
11 Commission should be lenient in relevance. But I
12 haven't heard any tie-in about how Waialae 670 relates
13 to the 1995 D&O for the Kaonoulu Project.

14 CHAIRMAN CHOCK: Mr. Kam, where are you
15 going with this testimony?

16 MR. KAM: What I'm trying to do is follow
17 up on the reference in her written testimony about the
18 LUC setting a condition in 1994 with respect to the
19 Honuaula Project in Makawao. And there's a
20 description of sort of back and forth between the DOE
21 and Honuaula with respect to Makawao Project.

22 So I think it's fair, you know, it's a fair
23 topic for cross-examination because it's in her
24 written testimony.

25 CHAIRMAN CHOCK: I'm going to give you a

1 little latitude but let's try to stay on topic. This
2 is starting to get a little redundant.

3 Q (By Mr. Kam): Do you -- does the
4 Department of Education expect to enter into an
5 agreement with Honuaula in regards to the impact fees
6 for the Piilani area Project?

7 A For the 670 project?

8 Q No. For the Project, Piilani Promenade.

9 A We expect somebody to approach us about the
10 need for an agreement. If they don't then at the time
11 they went to get a building permit they would be told
12 they have to contact us.

13 MR. KAM: Okay. Thank you very much.
14 That's all, Chair.

15 CHAIRMAN CHOCK: Thank you, Mr. Kam.
16 County?

17 MS. LOVELL: County has no
18 cross-examination for this witness. Thank you.

19 CHAIRMAN CHOCK: Mr. Pierce, Intervenors?

20 MR. PIERCE: No questions, thank you.

21 CHAIRMAN CHOCK: Redirect?

22 MR. SOUKI: Just a couple of clarification.

23 REDIRECT EXAMINATION

24 BY MR. SOUKI:

25 Q Ms. Meeker, so you reviewed the 1995 D&O,

1 you're familiar with that?

2 A For the Piilani project.

3 Q For the Piilani Project, yeah. Was there
4 any mention in there of residential units?

5 A I found only the one reference that when
6 they asked about numbers of workers that they
7 couldn't come up with that number. And that that
8 would be -- so therefore educational resources would
9 be addressed when specific residential projects
10 submitted applications.

11 Q Did it say that the residential projects
12 would be built on this current site?

13 A No.

14 Q So it could be built anywhere in the
15 district.

16 A I think that the assumption, DOE's likely
17 assumption at the time, was that there would be other
18 residential projects that would come at different
19 times, different applications.

20 Q Like Waialea 670, which is a separate
21 project?

22 A Yes.

23 MR. SOUKI: Thank you.

24 CHAIRMAN CHOCK: Commissioners, any
25 questions for this witness? Thank you for your

1 testimony. Why don't we take a 5 to 10 minute break
2 for our court reporter and then come back with your
3 witnesses, Mr. Steiner.

4 (Recess was held. 10:20-10:39)

5 CHAIRMAN CHOCK: Call the meeting back to
6 order please. Mr. Steiner, ready to proceed?

7 MR. STEINER: Yes, Chair. Thank you. Our
8 next witness is Mr. Phillip Rowell.

9 PHILLIP ROWELL

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

12 THE WITNESS: Yes.

13 CHAIRMAN CHOCK: Your name and address.

14 THE WITNESS: My name is Phillip Rowell. I
15 live at 27-273 B Huiawa Street in Kaneohe.

16 CHAIRMAN CHOCK: Proceed.

17 DIRECT EXAMINATION

18 BY MR. STEINER:

19 Q Good morning, Mr. Rowell. Mr. Rowell,
20 what's your current employment?

21 A I'm a principal and sole employee of
22 Phillip Rowell & Associates.

23 Q Could you briefly describe your educational
24 background?

25 A I have a bachelor's in civil engineering

1 and master's specializing in transportation and
2 traffic engineering both of them (tape) university
3 kapa master's in 1972.

4 Q How long have you been practicing in the
5 area of traffic engineering and transportation?

6 A Since 1972 which would be 40 years.

7 Q What different, I guess, jurisdictions have
8 you ever practiced in?

9 A I have been based in Hawai'i, obviously.
10 But prior to that Los Angeles; Lexington, Kentucky;
11 South Carolina and I've worked in Hong Kong, Kuala
12 Lumpur and Guam.

13 Q How long have you been practicing in
14 Hawai'i?

15 A Since 1989.

16 Q And your traffic in the area of traffic
17 engineering and transportation have you worked both in
18 the public and private sector?

19 A Yes, I have.

20 Q Just briefly what you've done in the public
21 sector.

22 A I was the city traffic engineer for Beverly
23 Hills from 1982 to '84.

24 Q So you were working for the county or the
25 state?

1 A The city.

2 Q City of Beverly Hills?

3 A California, yes.

4 Q And in Hawai'i has your practice been all
5 in the private sector?

6 A I would say 90 percent of it has been. The
7 remainder has been as a sub for various state and
8 county projects.

9 Q Who did you first work for in Hawai'i?

10 A I was transferred from Los Angeles to
11 Hawai'i by Barton Ashman and Associates to open up an
12 office in conjunction with Parsons Engineering.

13 Q What is Barton Ashman?

14 A Barton Ashman is a national/international
15 consulting firm based in Evanston, Illinois. And I
16 was based in their Pasadena office.

17 Q After you -- at some point you left Barton
18 Ashman, right?

19 A Correct. 1995.

20 Q What did you do next?

21 A I started by own business.

22 Q Have you been doing that ever since then?

23 A Yes.

24 Q In the past 10 years how many different
25 traffic studies have you worked on?

1 A I estimated about 240, 250, something like
2 that.

3 Q Do you have any official certifications
4 licenses in the field of traffic engineering or
5 transportation?

6 A I have a Professional Engineering License
7 in California and in Hawai'i. Hawai'i doesn't have a
8 Traffic Engineering License.

9 Q Have you ever been offered and qualified as
10 expert in testimony before the Land Use Commission?

11 A Yes.

12 Q On how many occasions?

13 A Two off the top of my mind.

14 Q Has any court or agency ever refused or
15 declined to qualify you as an expert on the matter you
16 worked on your you were proffered and an expert?

17 A No.

18 MR. STEINER: Chair, I would ask that Mr.
19 Rowell be qualified and accepted as an expert in
20 traffic engineering and transportation.

21 CHAIRMAN CHOCK: Parties, any objections to
22 this witness being admitted as an expert?

23 MS. LOVELL: No objection from the county.

24 CHAIRMAN CHOCK: Commissioners? (no
25 response) So admitted.

1 Q (By Mr. Steiner): Mr. Rowell -- am I
2 pronouncing that right?

3 A Correct.

4 Q Mr. Rowell, did you have any involvement in
5 the traffic studies for Eclipse Development for the
6 Piilani Promenade?

7 A I prepared the Traffic Impact Analysis
8 Report.

9 Q Could you turn to what's been marked as
10 Piilani Exhibit No. 24 please in the booklet in front
11 of you.

12 A Okay.

13 Q Do you recognize this document?

14 A That is the latest version of the Traffic
15 Impact Study submitted.

16 Q Okay. And this is a document you prepared,
17 correct?

18 A Correct.

19 Q Have you been asked by Piilani to give
20 expert testimony in this matter regarding traffic
21 impacts of the proposed development and Condition 5 of
22 the Decision and Order by the Commission in 1995?

23 A Yes, I have.

24 Q I'd like to -- if you could turn to Exhibit
25 46 in the binder in front of you, please. Do you

1 recognize this document?

2 A Yes. This is my written testimony.

3 Q Does this contain the expert testimony
4 which you prepared at the request of Piilani?

5 A Yes.

6 Q Does it also contain a copy of your resumé
7 or your CV?

8 A Yes, it does.

9 Q Do you confirm and adopt the testimony and
10 opinions contained therein?

11 A Yes.

12 Q As part of your work as an expert on behalf
13 of Piilani, did you review Condition 5 of the Decision
14 and Order entered by the Commission hearing?

15 A Yes.

16 Q And Condition 5 mentions a warrant study to
17 be provided to the Department of Transportation. How
18 did Piilani comply with that condition?

19 A Well, the current TIAR, which is submitted,
20 gave a traffic signal warrant analysis for existing
21 conditions, identify any existing deficiencies. It
22 concluded that a traffic signal was not warranted
23 under existing conditions. But prior to this report
24 the previous study done as part of the Maui Lu Project
25 that had concluded a signal was warranted as a result

1 of the Maui Lu Project. And so since the Maui Lu
2 Project was part of our background forecast it was s
3 assumed that Maui Lu signal would be in place when the
4 Maui Lu Project was completed. That was estimated
5 2010 at the time.

6 Q Does your TIAR that you come up with
7 include signalization?

8 A We didn't necessarily do a warrant analysis
9 but we couldn't make the intersection function without
10 signals.

11 Q So the TIAR that's before the Department of
12 Transportation does include signalization.

13 A Correct.

14 Q Your Condition 5 also addresses the issues
15 of a possible frontage road. Do you have an opinion
16 on that issue?

17 A My first opinion is that it would be
18 inconsistent with any of the plans, projects, comments
19 that we received from DOT or the county over the last
20 10 years. I've also gone back and tried to find some
21 reference to a frontage road in some of the Kihei
22 master traffic studies, there's been two versions, and
23 I can't find it. So that was the first I heard.

24 The second point is where would it go? I
25 realized the project was 10, 20 years ago. But since

1 then Kihei Gateway has built up to the highway
2 right-of-way so there's no way to go north and there's
3 only a short distance that you can go south. And the
4 property owner doesn't control that property.

5 So the frontage road would only be able to
6 serve the length of the property. So it would not go
7 anywhere.

8 And my third point was that a new
9 intersection that close would certainly back up
10 traffic on the Piilani Highway. When they said
11 frontage road, I visualized something like you would
12 see at Honolulu Airport next to Nimitz: very short
13 distance, short roadway, capacity for only one or two
14 cars between the frontage road and the main road.
15 We're talking about much larger volumes here.

16 And then the last point as the frontage
17 road would create a greater barrier to pedestrians
18 trying to cross the highway. I've been to numerous
19 meetings where everybody said, "We don't want any
20 barriers splitting the community." And that's why
21 north/south collector through this area has been
22 limited only to, two lanes. So we're adding another
23 two lanes to Piilani Highway which is certainly going
24 to block any pedestrians crossings. Again, the
25 meetings I've been to say, "What about pedestrian

1 activity? Pedestrian circulation?" So it'd be
2 creating a major blockage.

3 Q You mentioned that this problem with the
4 distance between Piilani Highway and the frontage road
5 that that's when Piilani Highway would, for cars
6 turning onto what's going to be the future Kihei
7 Upcountry highway, correct?

8 A Right.

9 Q With the future -- the problem with the
10 frontage road would that be specific to this Project
11 or would that be a problem with any connection up to
12 this future highway that's going to go Upcountry?

13 A Can you repeat that? I didn't quite
14 understand.

15 Q There's been testimony by the Department of
16 Transportation. They said with the current Project
17 it's inconsistent to have a frontage road. My
18 question is a little broader. I guess with respect to
19 any project if you're building the start of the
20 Piilani Upcountry highway, which is going to be a
21 major arterial for traffic on Maui, correct, once it's
22 done.

23 A Right.

24 Q Wouldn't it similarly be a problem to
25 create a frontage road even if there wasn't going to

1 be this development right there? Wouldn't the same
2 cars back up as they headed up onto the highway?

3 A Are you saying if the Upcountry highway was
4 built there was no project, no development would be a
5 problem?

6 Q Yeah.

7 A I don't think it would be a problem because
8 there be nobody using the frontage road. There's no
9 way anybody can get up there. They would be (tape)

10 Q So there'd be no purpose in a frontage
11 road.

12 A No purpose.

13 Q Condition 5 mentions connector roads within
14 the property. Do you have an opinion regarding how
15 the Project addresses this issue?

16 A Well, the '94-'95 TIAR was based on a
17 preliminary plan or concept plan that showed
18 individual lots. And the purpose of that circulation
19 or internal circulation road made sense because you
20 had to provide access to lots that didn't access
21 directly onto the Ka'ono'ula Street.

22 This Project doesn't have individual lots,
23 but it does have four access points along Ka'ono'ula,
24 East Ka'ono'ula Street. So it doesn't make sense to
25 have an internal circulation road.

1 Q So with the current configuration of the
2 Project is there a need for an internal connector
3 road?

4 A No.

5 Q In your work in coordination with the State
6 Department of Transportation, have they ever indicated
7 any desire or need for a frontage road on the
8 property?

9 A No.

10 Q I'd like to show you a couple of maps of
11 the Project which I believe is Exhibit 28.
12 Commissioners, for your benefit because these are
13 small maps we did provide a booklet. Exhibits 28 and
14 29 I believe are at the back of the booklets, slight
15 blowups. We've also got a demonstrative here.

16 CHAIRMAN CHOCK: Were these booklets shared
17 with the other parties, Mr. Steiner?

18 MR. STEINER: Yes. We gave each party a
19 copy. And these are replicas of exhibits in this
20 case.

21 CHAIRMAN CHOCK: Okay. Thank you.

22 Q (By Mr. Steiner): Mr. Rowell, could you
23 describe what Exhibit 28 is please.

24 A It's a drawing indicating the proposed land
25 configurations of East Ka'ono'ula Street between

1 Piilani and the east end of the Promenade Project.
2 And the intersection of the lower part indicates the
3 recommended improvements to the intersection of
4 Piilani Highway and East Ka'ono'ula Street.

5 Q Could you briefly just describe what the
6 improvements are going to be at that intersection of
7 Piilani Highway and the Ka'ono'ula Street, which is
8 going to be the future of Maui Upcounty Highway?

9 A Southbound we were adding two double
10 left-turn lanes into East Ka'ono'ula Street. We were
11 proposing widening of I guess West Ka'ono'ula Street
12 as the intersection approaches. We had acceleration
13 and deceleration lanes. And we made provision for
14 future driveway access points along Piilani Highway.

15 Q What do you mean by those "future access
16 points"?

17 A We have proposed an interim assessment and
18 65 percent occupancy of the Project because we may not
19 need those access ramps or access driveways off of
20 Piilani Highway, because it's very, very unlikely that
21 the projections that we were basing this design on
22 will actually be realized. That's for a number of
23 reasons.

24 So we're proposing an interim assessment to
25 verify the trip generation, the distribution and also

1 verify the amount of pedestrian activity we expect
2 from the Project.

3 Q When you say it's very unlikely that the
4 trip generation analysis would be realized, you mean
5 that you expect, based on your experience, that
6 there'll be less than what the trip generation
7 analysis came out with, is that right?

8 A Well, generation is not -- design is not
9 based on the trip generation of the project. The
10 design is based on the projections that include the
11 project or trips generated by this Project. But it
12 includes several other development projects in the
13 area: The school, for instance, the Maui
14 redevelopment, the Kihei residential development
15 several small developments in the area that we're
16 assuming are going to be built by the time this
17 Project comes on line. That they'll be a hundred
18 percent occupied and that the peak hours of all these
19 projects coincide. Very, very unlikely that all
20 that's gonna happen.

21 Q In other words, it's very unlikely all
22 these other developments be done before this
23 development's done.

24 A It's very unlikely that the peak hours are
25 even going to coincide or that they're all going to be

1 a hundred percent developed as planned.

2 Q Is that because this traffic analysis, it's
3 a bit of on inexact science, right?

4 A I wish you wouldn't say that. (Laughter).
5 It's as exact as anything I guess related to traffic
6 engineering.

7 Q On this Exhibit 28, how do cars get into
8 and out of these retail areas that they are going to
9 come and be customers for the development?

10 A Well, initially all the traffic will come
11 via the intersection of Ka'ono'ula and Piilani. Along
12 Ka'ono'ula we have one major signalized intersection
13 that's going to be the primary access.

14 Q Twenty-eight I think is what -- I'm sorry.
15 I apologize.

16 A (off mic) This is the intersection of
17 Piilani --

18 Q Could you speak into the microphone,
19 please.

20 A This is the intersection of Piilani and
21 Ka'ono'ula. Those are the improvements I just talked
22 about. This is what we referred to as drive A. It's
23 a full access signalized intersection, protected left
24 turns, et cetera. This is drive B. They were
25 originally lined up. But at the request of DOT we

1 offset them to provide some more storage lane for the
2 intersection.

3 This is drive C. That also provides access
4 to Piilani Promenade South, but in the future will
5 provide access to the affordable housing project.
6 This is drive D which is primarily a service access,
7 access to employ parking and some overflow parking
8 capacity.

9 Q So you would expect trucks and stuff to be
10 going out of last one you described?

11 A Yes.

12 Q The drive B that you talked about that are
13 offset --

14 A Right.

15 Q -- are these full intersections, left/right
16 turns or signalized...

17 A Initially they're going to be right turns
18 in only. We had originally proposed that they be
19 one-way in, one-way out. It's going to be right-in,
20 right-out. At the request of DOT about some concerns,
21 we changed them to a right turn in only.

22 Q So you've been in ongoing discussions with
23 DOT. And as they make suggestions you've been
24 adjusting your plans, right?

25 A Correct.

1 Q If you know, these improvements to the
2 Piilani Highway, the signalization and the widening
3 who's going to pay for that? Do you know?

4 A I'm sorry who?

5 Q Who's going to pay for that? Do you know?

6 A If I can back up a minute. One of the
7 tasks here in this traffic study was to assess what
8 improvements are required as part of this Project and
9 what future -- additional improvements would be
10 required to accommodate the upcountry highway and
11 other developments in the area.

12 So there will be initially the improvements
13 that we're showing at a hundred percent occupancy in
14 this Project are related to the Piilani Promenade.
15 The additional improvements we're showing and the
16 report as required for design purposes, will be -- my
17 understanding will be shared by the other developers
18 and DOT.

19 Q Okay. Let's take a look at Exhibit 29. Do
20 you recognize this exhibit?

21 A Yes.

22 Q Could you describe what this is.

23 A This is -- the upper part is a detail of
24 East Ka'ono'ula Street up through by between Piilani
25 and end of the property --

1 THE REPORTER: Mr. Rowell, microphone.

2 THE WITNESS: Sorry. The upper part is a
3 detail of east Ka'ono'ula Street between Piilani and
4 the end of the property, Piilani and Ka'ono'ula
5 Street. And the bottom part, the lower part is
6 enlargement of the intersection improvements of
7 Piilani and Ka'ono'ula.

8 Q And focusing on the bottom portion of
9 Exhibit 29, the intersection of Piilani Highway and
10 Ka'ono'ula, for traffic traveling south along Piilani
11 Highway that might want to come into the Project,
12 what's been provided to mitigate the possibility of a
13 backup onto the highway?

14 A What's been done to mitigate back up -- oh,
15 the length of the left turn. You're talking about
16 southbound left turns, right?

17 Q Yes.

18 A We have provide a double left-turn lane
19 protected. We've determined the length of this
20 left-turn storage lane based on what would be required
21 to accommodate this Project as well as the upcountry
22 highway.

23 CHAIRMAN CHOCK: Excuse me. Can you orient
24 the Commission to north/south, mauka/makai.

25 THE WITNESS: This is north. This is the

1 double left turn that I mentioned. We've also
2 provided northbound, southbound, deceleration lanes,
3 acceleration lane. We've also spaced this so that we
4 should minimize the probability of a queue. But in
5 addition to that we pushed the next stop sign way into
6 the Project about 200 feet. So that there should not
7 be a chance of backup onto the Piilani Highway which
8 was a major concern.

9 We also lengthened this internal so that we
10 can have a double left into the Project so that we'll
11 have enough capacity that *this* doesn't back up onto
12 the Piilani Highway in fact in either left turns or
13 right turns in.

14 Q The double left-turn lane that you spoke
15 of, how many cars would that accommodate?

16 A About 55 cars.

17 Q So for each time the light is red going
18 left up to 55 cars could be waiting in there to go
19 without backing up onto Piilani Highway.

20 A Correct. And that's based on the ASHTO
21 design standard for about a 95 percent (inaudible)

22 Q Mr. Rowell, have you reviewed the testimony
23 of Ken Tatsuguchi?

24 A Yes.

25 Q And you also were here when he testified

1 today, right?

2 A Correct.

3 Q In his testimony Mr. Tatsuguchi comments at
4 page 1 about the status of the TIAR and the ongoing
5 discussion between the developer's traffic consultant
6 and the DOT. Are you that traffic consultant which
7 Mr. Tatsuguchi was referring to?

8 A Yes.

9 Q Do you agree with Mr. Tatsuguchi's
10 testimony regarding the status of those discussions?

11 A Yes.

12 Q And do you agree with Mr. Tatsuguchi's
13 analysis on page 2 of his report regarding the trip
14 generation analysis for the current Project as
15 compared to the proposed Project back in 1994?

16 A Yes.

17 Q So you agree that the current Project the
18 trip generation analysis is there's going to be more
19 cars.

20 A Yes.

21 Q Mr. Tatsuguchi at page 3 of his report
22 states that the vehicular trip generation for the
23 planned 250 unit workforce affordable housing
24 development is not reflected in the trip generation
25 analysis. Are those 250 workforce housing units

1 addressed anywhere in your TIAR?

2 A Yes. They are addressed in the following
3 chapter that's set forth the design requirements for
4 the Project. It was our understanding when we did
5 this traffic impact study that the affordable housing
6 would come in after the promenade was constructed and
7 would be holding. We had no idea when. We also had
8 no idea when the South Maui projects which my
9 reference to Honuaula, Waialea and Makena would come
10 on line. And we had no idea when the upcountry
11 highway would come on line, but we had to consider it
12 in our design requirements.

13 So in the chapter following the impact
14 analysis for this Project the forecast for the
15 upcountry highway added in the, the forecast for the
16 South Maui projects, in my opinion affordable housing
17 was part of Honuaula Project. But I had to do a
18 separate generation analysis and factor that in
19 because the projections for Honuaula did not make any
20 assignments out to that upcountry highway because I
21 don't think they knew where that affordable housing
22 was going to be. So when I made my forecast to set up
23 the design requirements I included that.

24 Q In case the Commission wants to take a look
25 at where, what pages of your TIAR Exhibit 24 is this

1 addressed?

2 A Pages 69 through 73. I'll refer you to the
3 figures in the report that shows the forecast on drive
4 C.

5 Q Does it specifically day 250 affordable
6 housing units?

7 A No. I consider that part of Honuaula like
8 a traffic engineer should.

9 Q So a lay person wouldn't be able to read
10 this and go, "Oh, there's where it's addressed," is
11 that correct?

12 A No.

13 Q But isn't it true that in one of the
14 diagrams it shows the traffic going in and out, it is
15 in fact, shown?

16 A Yes. Exhibit 31 shows the traffic going in
17 and out of drive C. Which services the affordable
18 housing exclusively.

19 Q Before you said you had to break out the
20 affordable housing from the Honuaula Project. Is that
21 because you had already factored in traffic from the
22 Honuaula Project in your overall TIAR?

23 A Yeah, yes. That was in the forecast for
24 the intersection itself because the traffic study for
25 Honuaula and the Master Plan that are shows the

1 forecast for the Upcounty highway did not assign any
2 of the affordable housing project to the upcountry
3 highway.

4 Q Just to back up though and make it clear
5 for nonexperts like myself. When you did your
6 original TIAR and you were counting traffic, one of
7 the things you -- I don't even know if it goes into
8 traffic counts, but in your TIAR one of the things you
9 have to consider are other future projects, right?

10 A Correct.

11 Q An one of the other future projects that *is*
12 considered in your report is the Honuaula or the
13 what's called the Wailea 670 Project, correct?

14 A Correct.

15 Q And sort of incorporated in that you then
16 later also factored in or sort of pulled out and
17 factored into your analysis, in the second part of
18 your analysis turns in and out of this affordable
19 housing unit which is going to be onsite in the
20 property we're talking about.

21 A Otherwise we would underestimate the lane
22 requirements.

23 Q So while it's correct that Mr. Tatsuguchi
24 says that the traffic counts that he was referring to
25 in his expert report don't include the Honuaula, this

1 affordable housing, the TIAR on the whole does address
2 it, is that correct?

3 A Correct.

4 Q Thank you. Mr. Tatsuguchi also opines --
5 his opinion also mentions that the frontage road in
6 the Condition 5 of the Decision and Order. Do you
7 agree with Mr. Tatsuguchi's testimony regarding the
8 need for a frontage road?

9 A Yes.

10 Q And do you agree with his testimony that a
11 frontage road adjacent to Piilani Highway would result
12 in the Piilani Highway and Ka'ono'ula intersection
13 being at close proximity to the frontage road which
14 could result in traffic operations and safety issues?

15 A Yes.

16 Q Do you agree with the DOT's conclusion that
17 it does not see the feasibility of a frontage road
18 and that appropriate local accesses from the
19 development of the state highway system are being
20 addressed through other means other than the frontage
21 road?

22 A Yes. Frontage road.

23 Q You also reviewed the testimony of
24 Intervenors' purported expert Victoria Huffman?

25 A Yes.

1 MR. STEINER: I'm sorry. Mr. Pierce what
2 exhibit number is that?

3 MR. PIERCE: Objection. First I need to
4 place an objection. The Commission has already
5 accepted Ms. Huffman's expert testimony into evidence.
6 The only way that could occur is by an understanding
7 that she was qualified to be an expert. That's
8 Exhibit 36. And it's my understanding that was
9 accepted in evidence yesterday.

10 MR. STEINER: I believe the testimony was
11 accepted. Don't believe she's been qualified yet as
12 an expert.

13 CHAIRMAN CHOCK: Not yet.

14 MR. PIERCE: I'm sorry, but I don't
15 understand how one can accept -- there's obviously a
16 stipulation by the parties. There were no objections.
17 Her testimony was entered. It cannot now be taken out
18 based upon some kind of voir dire that apparently the
19 developers think that they're going to do at that
20 time.

21 MR. STEINER: I'm not objection to her
22 testimony being admissible in evidence. I'm just
23 simply pointing out that I don't necessarily concede
24 that she's an expert at this time. That's all.

25 MR. PIERCE: We'd ask for --

1 it's argumentative for the attorney to be using the
2 word "purported expert".

3 MR. STEINER: With the caveat that I don't
4 necessarily agree or stipulate that she's an expert
5 I'll withdraw the word "purported".

6 CHAIRMAN CHOCK: Mr. Steiner, maybe we can
7 save this witness to provide rebuttal testimony at a
8 later date in time in which -- after which, assuming
9 she becomes admitted as an expert.

10 MR. STEINER: I think the problem is he's
11 an expert. He's on hire. He's flown over here from
12 O'ahu. We'd like to present his testimony regarding
13 whether she's qualified as an expert or just gives
14 testimony, I'd like her testimony to be rebutted while
15 he's here. He's here at great expense to the owners.
16 We're ready to go with him today. We'd preserve to
17 just proceed.

18 MR. PIERCE: Mr. Chair, we would, of
19 course, object to that just because there's no
20 context. Essentially there would be an attack on
21 Intervenors expert before she's had an opportunity to
22 present herself to the Commission for the Commission
23 to assess her qualification as well as her testimony.
24 It would certainly be way out of line. We'd ask that
25 the developers, we understand that there may be a cost

1 associated with Mr. Rowell being back here, but that
2 is just a necessary thing. If, in fact, the
3 developers had anticipated they wanted to put
4 Mr. Rowell in as a rebuttal witness they could have
5 asked us to take Ms. Huffman out of order, but they
6 did not do that.

7 CHAIRMAN CHOCK: Can you provide an offer
8 of proof as to why this is relevant at this time?

9 MR. STEINER: It's relevant because the
10 Commission has admitted Ms. Huffman's testimony into
11 evidence. It's in evidence. We're ready to rebut
12 what she's submitted in writing now. She'll have the
13 opportunity to comment on what he says about her
14 testimony. So I think if anything it's more than fair
15 to the Intervenors because they'll get a shot about
16 what he says about her testimony which *she* testifies.

17 CHAIRMAN CHOCK: We're going to allow it at
18 this time. And the same opportunity will be afforded
19 to you, Mr. Pierce. Go ahead.

20 MR. STEINER: Thank you. I wanted to point
21 out for the Commission in case they wanted to follow
22 along which exhibit Ms. Huffman's testimony was. I
23 believe it was Exhibit 36, Intervenors Exhibit 36 if
24 I'm not mistaken.

25 Q Continuing on. So you have reviewed the

1 testimony of Intervenors expert Victoria Huffman,
2 correct?

3 A Correct.

4 Q On page 2 of her testimony she states that
5 the traffic engineering standards and analytical tools
6 used in Hawai'i relating to proposed developments are
7 similar to those she would have used in California as
8 a traffic engineer for the city of San Diego.

9 Do you have any experience regarding the
10 standards used in California?

11 A Yes. I practiced there from '72 to '78.
12 And from '82 till '88.

13 Q You worked both in the public and private
14 sector or just public?

15 A Both.

16 Q In your experience are the standards in
17 California the same as those used in Hawai'i?

18 A Not in the Los Angeles area.

19 Q Could you describe how they differ?

20 A I think primarily that the analysis
21 procedure in the LA area is more of a critical
22 movement analysis rather than operations analysis.
23 Hawai'i uses a detailed operations analysis that looks
24 into every lane, every movement. You input the
25 traffic signal phasing, you put in assumptions about

1 vehicle type.

2 The planning method that they use in LA
3 does not go into that much detail. You look at the
4 overall intersection. And there are set standards for
5 what an impact is that needs to be mitigated based on
6 a final Level of Service. And I would add that type
7 of similar procedure is used in every city I worked in
8 in the LA area which is Thousand Oaks all the way down
9 to Carlsbad and all the way to the east LA county.

10 Q On page 3 of her report Ms. Huffman
11 references to documents related to the property which
12 she reviewed. She makes a reference to two technical
13 manuals she reviewed. Do you use those same two
14 technical manuals in your work?

15 A Yes.

16 Q An you used those same manuals in your work
17 for Piilani, right?

18 A Correct.

19 Q Are there any other technical manuals or
20 sources which you used that she apparently did not
21 review for this opinion?

22 A Primarily the Highway Capacity Manual, the
23 Manual of Uniform traffic Control Devices, which was
24 used for the signal warrant analysis, and what we
25 referred to as the ASHTO green book which is a

1 national policy of design of streets and highways.

2 Q Okay. So there are -- I guess we don't
3 know whether she reviewed these other ones but other
4 than what she references there's other ones that you
5 used in this analysis.

6 A And I forgot. There's an ITE policy which
7 is our recommended procedural policy on preparing
8 traffic impact analyses for site development.

9 Q You used all of those in your --

10 A Correct.

11 Q -- report. At the bottom of page 3 going
12 on to page 4 of Ms. Huffman's written testimony, she
13 says -- and I will read it -- she says "using formulas
14 from the Trip Generation eighth edition and ITE
15 informational report 2008, and assuming the shopping
16 centers are two separate retail facilities, as is
17 assumed in the Traffic Impact Analysis Report for
18 Piilani Promenade, the proposed retail shopping center
19 projects are estimated to generate approximately
20 30,900 driveway averaged daily trips or ADT." Did I
21 read that correctly?

22 A Yes.

23 Q Have you heard the term ADT or driveway
24 average daily trips before?

25 A Yes. It's the average daily traffic, it's

1 usually referred to highway or something that would
2 occur on an average or typical weekday.

3 Q Are these all the cars for the whole day,
4 24 hour period?

5 A Correct.

6 Q And specific as to this Project, these are
7 trips that go in and out of the Project, is that
8 right?

9 A As I understand here.

10 Q In your TIAR do you do computations of ADT
11 or driveway average daily trips?

12 A No.

13 Q Why not?

14 A They were not relevant to the impact
15 analysis. All of the impact analyses to the Highway
16 Capacity Manual procedures are all based on peak hour
17 volumes. And usually we do separate AM/PM peak hour
18 analyses. That's because the AM/PM can be very
19 different or it can be very similar.

20 Q What does the, in your experience working
21 in Hawai'i, what does the State Department of
22 Transportation expect to see analysis? ADT or the
23 analyses that you use?

24 A You can only to an impact analysis on peak
25 hour traffic.

1 Q They wouldn't accept one that only computed
2 that ADT.

3 A I don't know anyone who would.

4 Q She also says in her report -- and I'm
5 paraphrasing a little bit -- but with the affordable
6 housing property added in the total ADT would be
7 32,500. Do you see that?

8 A Yes.

9 Q In your opinion do you think it's realistic
10 that this Project could generate 32,500 trips in a day
11 where cars would come in and leave the property?

12 A No.

13 Q Would you explain why that doesn't seem
14 realistic to you?

15 A Well, if I had 32,500 trips a day and
16 that's 16,250 vehicles that enter the site and leave.

17 Q Could explain why you cut that in half?

18 A Because the ADT is both in and out.
19 Whatever goes in has to come out within a 24-hour
20 period.

21 Q So you've got 16,250 cars coming in and
22 then leaving, right?

23 A Then I say or I estimate that the vehicle
24 occupancy will be 2.5 persons per vehicle.

25 Q So each of those cars would have an average

1 of 2 and-a-half people in them, right?

2 A Correct. And I think that number is
3 probably low because we expect vans, we expect car
4 pools. Part of our program is to have hotels bring
5 people in. That works out to be 40,600 something
6 people that will visit the site a day.

7 The population of Maui, the de facto
8 population of Maui is only 200,000. So if we used
9 that number we're saying 20 percent of the people of
10 Maui are going to go heading out of the site every day
11 of week? I just don't see how.

12 Q When you say de facto population what do
13 you mean by that?

14 A That includes residents, visitors, people
15 at the airport, military, everything.

16 Q So if Ms. Huffman's analysis is right she's
17 opining that one-fifth of the people on the island of
18 Maui on any given day who on the island are going to
19 come visit this shopping center.

20 A One fifth of the people in the county of
21 Maui.

22 Q County of Maui. What does that include?

23 A Moloka'i, Lana'i. So I just disagree with
24 that that many people are going to visit this site
25 every day. And that's why one of the reasons we

1 recommended a reassessment at 65 percent.

2 Q Is it that she calculated ADT wrong or is
3 it...?

4 A No. No. That's what the equations say. I
5 came up with the same number. But you got to
6 understand the ITE equations and data are based on
7 data collected on the mainland where you have a
8 limitless market area. So it's possible, I guess, on
9 a project on the mainland but I don't think it would
10 happen on Maui.

11 Q So in other words a mall this size in LA
12 might generate that 32,000 people but --

13 A Maybe.

14 Q -- but here on an island where there's only
15 a limited number of people you wouldn't really
16 realistically expect that many average daily trips.

17 A No.

18 Q At the bottom of page 4 of her testimony,
19 getting back to Ms. Huffman's testimony, she opines
20 that the increase in traffic from the Piilani
21 Promenade could compromise public health and safety by
22 increasing the potential for crashes and emergency
23 vehicle response times.

24 Do you agree, based on your work on then
25 TIAR and with the State Department of Transportation,

1 that the traffic from the Piilani Project with all the
2 mitigation factors the developer's going to build in
3 will compromise public health and safety?

4 A No. Because DOT will hold us to their
5 standards. Everything we design has to meet their
6 standards and has to be approved. And part of that
7 design is that we've put in all these additional
8 lanes. We've been put in accel/decel lanes with
9 storage capacity. Signals are going to be designed
10 with emergency preemption devices. So I would
11 disagree.

12 Q How does signalization of the intersection
13 affect safety?

14 A In this particular case I think it would
15 improve the safety. There would be more capacity. We
16 expect pedestrians so we're providing pedestrian
17 signals. Typical with any signal you will increase
18 certain types of accidents such as rear ends but
19 they're all set by sign crashes. So accident-wise
20 there's advantages and disadvantages. But I've always
21 felt that rear end crashes are at low speeds and
22 therefore not as severe as night crashes.

23 Q Ms. Huffman also opines that the lack of
24 provision of a frontage road may compromise public
25 safety by providing no pedestrian access. Do you

1 agree?

2 A I think a frontage road increases the
3 likelihood of backups on the Piilani Highway. And as
4 I mentioned earlier will create a barrier to
5 pedestrians. Because one of the things we want to do
6 is get pedestrians out of this because it reduces the
7 amount of traffic.

8 So I would think that creating a frontage
9 road would probably create more of a hazard, more of a
10 problem than providing the decel right-turn lanes we
11 provided.

12 Q What about her comments that a frontage
13 road would provide access for students from the
14 proposed Kihei High School? Do you agree with that
15 as a viable solution?

16 A I don't know what you mean by a "viable
17 solution". I could see the connection between the
18 school and shopping center having some advantages, but
19 I also think there would be a lot of disadvantages.
20 For instance, school students parking in the Piilani
21 Promenade rather than going to the high school, which
22 would increase the traffic.

23 I could very easily see it becoming a
24 drop-off and pick-up road for the students which would
25 increase, put more traffic into the Project.

1 Q If there was going to be a connection for
2 pedestrians to go from the high school to the
3 Promenade, where would it -- where would it ideally be
4 located?

5 A I would prefer it to be on the east end of
6 the Project.

7 Q The mauka end?

8 A Yeah.

9 Q Based on your experience would a frontage
10 road solve problems in this area or create more
11 problems?

12 A Create more problems.

13 Q Generally when a property's subdivided, for
14 subdivision approval they generally require a TIAR,
15 right?

16 A Typically, yes.

17 Q Typically. If the Honuauia parcel has to
18 be further subdivided before they can build these
19 affordable housing units, typically then would you
20 expect a further TIAR as to that Project?

21 A Yes.

22 MR. STEINER: I have no further questions.
23 Thank you.

24 CHAIRMAN CHOCK: Mr. Kam.

25 MR. KAM: No questions thank you, Chair.

1 CHAIRMAN CHOCK: County?

2 MS. LOVELL: No questions, thank you.

3 CHAIRMAN CHOCK: State?

4 MR. SOUKI: Yes. We have a couple.

5 CROSS-EXAMINATION

6 BY MR. SOUKI:

7 Q Mr. Rowell, are you familiar with the 1994
8 TIAR that was prepared?

9 A Yes.

10 Q Why not just use that 1994 TIAR for this
11 Project?

12 A First of all, we're talking about a
13 different project. It obviously was based on the
14 industrial use with no specification how much the
15 split between industrial, retail and any other uses.
16 Things have changed in, was it 15 years since '89.
17 Primarily Piilani Highway has been widened. The
18 intersection of Mokulele-Piilani has been reconfigured
19 in such a way it diverts more traffic on the Honuaula
20 Highway.

21 Number of -- the '94 impact study did not
22 know where the upcountry highway was going to be
23 coming in. It was coming in. It had to do two
24 scenarios. One on the Ka'ono'ula one south. The
25 related projects that this Project used only used the

1 Ka'ono'ula Estates project as background. Where I
2 don't remember how many I used but it was like five or
3 six large projects.

4 Q That's good.

5 A So there's been a lot of changes but I
6 think also the methodology used to do the capacity
7 analysis is very different. Used what we call the
8 planning method which basically says they're either
9 under, over or near capacity. And it looks at the
10 overall intersection.

11 Where now DOT requires us to look at what
12 we call the operations analysis which looks at each
13 movement and factors in a single timing phasing and
14 the peak hour factors and other facts. So a lot more
15 detailed analysis than this report looks at.

16 Q In your testimony you said that for
17 individual lots, quote, "circulation makes sense,"
18 unquote. Then you said quote, This Project doesn't
19 have individual lots," unquote. What does that mean?

20 A The '94 project had all these little lots
21 spread around. And a lot of those lots did not have
22 access directly onto the Ka'ono'ula Street.

23 The only way to provide that access is to
24 provide that internal or loop circulation like is
25 shown in this plan.

1 Q Do you know about how many lots with there?

2 A No, I don't. I didn't count them.

3 Q More than four?

4 A More than four.

5 Q A lot more than four?

6 A I don't remember.

7 Q Fifty?

8 A Probably.

9 Q Hundred?

10 A I don't even think it's in the report.

11 Q That's fine. Does the proposed mitigation
12 for the current Project include housing even though
13 the Project completion date is 2015?

14 A I'm sorry. Say that again.

15 Q Does the proposed mitigation for the
16 current Project include housing even --

17 A The long-range for the design mitigation,
18 yes.

19 Q And that's in the 2012 TIAR, right?

20 A Correct.

21 Q But not in the '94?

22 A No. No, I'm sorry.

23 MR. SOUKI: Thank you.

24 CHAIRMAN CHOCK: Intervenor?

25 XX

CROSS-EXAMINATION

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BY MR. PIERCE:

Q Mr. Rowell, have you been engaged by Honuauula Partners?

A Before, to do a previous iteration of this Project several years ago.

Q What previous iteration?

A I think it was part of the large lot subdivision.

Q I'm sorry?

A I think it was part of the large lot subdivision process that we did a traffic study for.

Q The large lot subdivision process for the 88-acre property that we're talking about today?

A I think so. The one done about five or six years ago. I don't remember the date.

Q We're talking about the subdivision process that created the four lots that are now --

A Yes.

Q -- what consist of the 88-acre parcel?

A Yeah. That's correct. But I didn't know exactly what it was going to be used for at the time. It was strictly a traffic impact study.

Q And you did that for the county or for the state?

1 A For Ka'ono'ula.

2 Q You did it for the Kaonoulu Ranch.

3 A Partners.

4 Q Partners. Okay. But you said you were
5 also hired by Honuauula Partners?

6 A Yes.

7 Q Do you currently have an engagement with
8 Honuauula Partners?

9 A No.

10 Q Your traffic study you were tasked with
11 evaluating the three lots consisting of the 88 acres,
12 correct?

13 A Correct.

14 Q And on those three lots you were asked to
15 assume an approximately 700,000 square foot shopping
16 center with ancillary things like parking lots, that
17 kind of thing, is that right?

18 A Correct.

19 Q You were not asked to assess the impacts of
20 123-lot commercial and light industrial park, were
21 you?

22 A No.

23 Q Would you turn to Exhibit -- do you have
24 the Office of Planning exhibits with you?

25 A I'm sorry, what?

1 Q Do you have the Office of Planning exhibits
2 with you?

3 A No.

4 Q Are you aware that the Office of Planning
5 Exhibit 6, which is the Traffic Impact Analysis Report
6 prepared back in 1994. You mentioned that you had
7 reviewed that, correct?

8 A The one done by Julian Ng?

9 Q Correct.

10 A Yeah.

11 Q Julian Ng. used ADT or average daily trip
12 counts, didn't he?

13 A Not for the analysis. He made forecasts of
14 ADT. But the analysis procedure used does not use
15 ADT. It uses peak hour.

16 Q The Traffic Study Analysis you've been
17 asked to prepare, that was asked of you by Department
18 of Transportation, correct?

19 A No. Eclipse.

20 Q Eclipse. But they have a requirement to
21 meet the DOT requirements, right?

22 A Correct.

23 Q And so Eclipse is answering and needs to
24 respond to DOT as part of that process? That's the
25 way the traffic study process works?

1 A Usually. Not necessarily in this case.
2 The initial request was to provide supporting
3 documentation for the design of East Ka'ono'ula Street
4 and the intersection of Piilani and Ka'ono'ula.

5 The objective of DOT initially was to
6 establish what the lane requirements were or design
7 requirements for that section of roadway. And as we
8 scoped it out or I scoped it out with the developer,
9 the upcountry highway and a lot of these other related
10 projects we had no idea when they were going to come
11 online. So it made sense to develop to separate our
12 forecasts into what we expect to happen in the near
13 term and establish the design requirements for, to
14 accommodate Piilani Promenade.

15 And then to do a second level of forecast
16 that would include the upcountry highway, the South
17 Maui projects and establish the design requirements
18 with everything. That way we would be able to
19 determine what improvements for which of our projects
20 and therefore have a mechanism to allocate the costs
21 to the intersection and the roadway.

22 Q But that's a relationship. And how you've
23 been asked to do that is something at the request of
24 DOT.

25 A Yes. Because they needed to know all these

1 improvements are going to cost so much. What is their
2 share? What is the developer's share?

3 Q You're familiar with the traffic study
4 process in terms of the procedures, right?

5 A Yeah.

6 Q There's no opportunity for public comment
7 on that, is there? On your traffic study I mean.

8 A Usually, usually -- no two cases are
9 exactly the same -- but usually the traffic study is
10 part of the Environmental Assessment of a project. And
11 that is circulated for comments. And most of the time
12 I will have to draft a response. And a lot of times
13 we'll revise the report in response to that comments.
14 But those commends can come from agencies or the
15 public.

16 This is not the case here. We're not doing
17 an EA. What we are doing was providing a document to
18 support the design of the intersection and roadway.

19 Q There's not an -- thank you for that
20 answer -- there's not an opportunity for the Land Use
21 Commission to review this, is there, at least from a
22 jurisdictional or authority perspective, is there?

23 A I think it depends on -- I don't know. I
24 really don't know. I've been here for Land Use
25 Commission where we have a specific traffic study and

1 I do get questioned on why am I doing this. Why am I
2 not going this. That just hasn't happened on this
3 Project.

4 MR. PIERCE: Thank you. No further
5 questions.

6 CHAIRMAN CHOCK: Redirect?

7 REDIRECT EXAMINATION

8 BY MR. STEINER:

9 Q Just to make sure it was clear for the
10 record. You continue to work with the State
11 Department of Transportation regarding the TIAR which
12 in part response to Condition 5 of the Decision and
13 Order, correct?

14 A Yes. This is the seventh version of this
15 traffic report that we've submitted in response to
16 various comments and changes they've asked us to look
17 at.

18 MR. STEINER: Nothing further.

19 CHAIRMAN CHOCK: Commissioners, any
20 questions for this witness?

21 COMMISSIONER McDONALD: A couple questions.

22 CHAIRMAN CHOCK: Commissioner McDonald
23 followed by Vice Chair Heller.

24 COMMISSIONER McDONALD: Mr. Rowell, thank
25 you for your testimony. Just a couple questions. I'm

1 referring to Piilani Exhibit No. 28. I noticed
2 that --

3 THE WITNESS: Can I ask what exhibit?

4 CHAIRMAN CHOCK: Can you repeat that.

5 COMMISSIONER McDONALD: 28. And I noticed
6 there's -- I'm not sure if it's an existing permitted
7 access or proposed access off of Piilani. Is that
8 part of the current plan?

9 THE WITNESS: I'm sorry. Could you repeat
10 that.

11 COMMISSIONER McDONALD: Along Piilani
12 Highway both north-south of the proposed intersection.

13 THE WITNESS: Right.

14 COMMISSIONER McDONALD: It appears to be
15 either an existing permitted access or a proposed
16 permitted access off Piilani. Which one is it?

17 THE WITNESS: They are provisions for
18 future connection or future driveway.

19 COMMISSIONER McDONALD: Provisions for
20 future driveway directly off of Piilani.

21 THE WITNESS: Actually they're off of the
22 deceleration lane, at the end of the deceleration
23 lane. The distance between the driveway and
24 Ka'ono'ula is storage. When we laid this property out
25 for an intersection I asked the civil to make sure we

1 had sufficient deceleration lane before we add the
2 driveway. So that distance, remaining distance
3 between -- the south driveway I refer to is drive E.
4 Between drive E and the roadway is a storage capacity
5 for right turns. Because that right turn is not going
6 to be able to run or red continuously.

7 CHAIRMAN CHOCK: So off of any highway
8 there's going to need to be a permitted access that
9 DOT will need to approve.

10 THE WITNESS: Right.

11 COMMISSIONER McDONALD: Right. So is there
12 an existing permitted access?

13 THE WITNESS: No. And my current thinking,
14 like I said before, I don't think the projections we
15 have here are going to be realized and we may not need
16 those. We thought it would be nice to disclose to DOT
17 that we may be coming back to them in the future and
18 ask for those.

19 COMMISSIONER McDONALD: One more question.
20 I noticed that your -- the south side of the
21 intersection both your accel and decel lanes terminate
22 at Kulaniakoi Gulch. Is that based on coincidence?

23 THE WITNESS: Where are we at?

24 COMMISSIONER McDONALD: The south side of
25 the intersection.

1 THE WITNESS: Okay.

2 COMMISSIONER McDONALD: There appears to be
3 on existing gulch.

4 THE WITNESS: Right.

5 COMMISSIONER McDONALD: So I assume that's
6 a bridge.

7 THE WITNESS: Right. Yeah. Okay.

8 COMMISSIONER McDONALD: It appears the
9 accel and decel lanes are terminating right at that
10 bridge. Is that a coincidence or...?

11 THE WITNESS: You have to ask the civil on
12 that. I don't know.

13 COMMISSIONER McDONALD: So if ASHTO -- a
14 lot off times the engineers design to ASHTO
15 requirements.

16 THE WITNESS: Right.

17 COMMISSIONER McDONALD: So if there's a
18 need to extend those lanes whereas bridge widening
19 would be required.

20 THE WITNESS: Probably, yes.

21 COMMISSIONER McDONALD: Right. Okay. I
22 just wasn't sure if this was just layed out based on
23 coincidence or...

24 THE WITNESS: Again, that's something you
25 have to ask the civil. But again if we determine that

1 we don't need that drive E then we've got that whole
2 lane for deceleration.

3 COMMISSIONER McDONALD: Okay. Great.

4 Thank you.

5 CHAIRMAN CHOCK: Vice Chair Heller.

6 VICE CHAIR HELLER: Thank you. You were
7 testifying about the differences in traffic mitigation
8 that were required or that would have been required
9 back in 1994-95 looking at the proposed commercial
10 light industrial project versus traffic mitigation
11 that might be required today looking at the proposed
12 retail outlet.

13 And I understood your answer in part was:
14 Well, conditions are different. Things have changed
15 since 1992-95, correct?

16 THE WITNESS: Correct.

17 VICE CHAIR HELLER: What I'm wondering is
18 if you can quantify or us or describe for us in any
19 way if we are looking at as of today accepting present
20 conditions as they exist now, and looking at 123-lot
21 commercial light industrial project versus a shopping
22 mall and affordable housing project, given today's
23 conditions how different would the traffic mitigation
24 measures be for those two kinds of projects?

25 THE WITNESS: I couldn't say because I

1 think the key question here is background conditions
2 have changed no matter what kind of Project we've got.
3 The background improvements would trigger a whole set
4 of different mitigation in itself just to accommodate
5 the background traffic.

6 So my guess is if we were able to say,
7 background to say as now versus the 88-lot, excuse me
8 88-acre industrial versus our 710. It would still
9 require some additional mitigation.

10 VICE CHAIR HELLER: Meaning the shopping
11 outlet proposal would require additional mitigation.

12 THE WITNESS: Right. Because, gee, I don't
13 recall it but we provided deceleration lanes,
14 accel/deceleration lanes. Previous study did not.
15 The other really unknown is that we factored in the
16 upcountry highway.

17 And at that particular time when the '94
18 study was done we didn't know where the upcountry
19 highway was gonna be.

20 VICE CHAIR HELLER: But that's part of
21 changing conditions.

22 THE WITNESS: Right.

23 VICE CHAIR HELLER: What I'm trying to get
24 at is is there any way we can isolate the impact of
25 change in conditions versus the impact of a different

1 kind of project?

2 THE WITNESS: The only way to do that is,
3 like I said, go back, assume all the background
4 conditions -- or update the background conditions,
5 then look at two separate projects. One the Piilani
6 Project, one the previous project. It's the only way
7 I know to do that. And I couldn't do that in my head
8 right now off the top of my head.

9 VICE CHAIR HELLER: Would it be fair to say
10 that from a traffic engineer's point a project
11 consisting of 123 lots sold for primarily commercial
12 and light industrial use is substantially different
13 from a project --

14 THE WITNESS: Yes.

15 VICE CHAIR HELLER: -- broken into four
16 lots and used for retail?

17 THE WITNESS: Yes.

18 VICE CHAIR HELLER: Okay. Thank you.

19 CHAIRMAN CHOCK: Commissioners, any other
20 questions for this witness? Thank you for your
21 testimony. Who do you have next, Mr. Steiner?

22 MR. STEINER: Mr. Kam is going to take our
23 next witness.

24 MR. KAM: Our next witness will be Tom
25 Holliday.

1 CHAIRMAN CHOCK: How long for direct?

2 MR. KAM: Fifteen, 20 minutes, maybe.

3 CHAIRMAN CHOCK: Okay. Proceed.

4 TOM HOLLIDAY

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

7 THE WITNESS: Yes.

8 CHAIRMAN CHOCK: Your name and address,
9 please.

10 THE WITNESS: Tom Holliday. I live at 876
11 Curtis Street in Honolulu, Hawai'i 96813.

12 DIRECT EXAMINATION

13 BY MR. KAM:

14 Q Good morning, Mr. Holliday. Please state
15 your occupation and describe your background for the
16 Commission, please.

17 A I am the senior analysis and a project
18 supervisor in the Hallstrom Group, Hawai'i's leading
19 real estate appraisal and consulting firm. I was an
20 original member of the Group. And we celebrate our
21 32nd anniversary tomorrow.

22 Over the years, although my educational
23 background was not in real estate economics, I've
24 taken dozens of courses from the Appraisal Institute,
25 University of Wisconsin, HBS, other seminars and

1 meetings; been subject to apprenticeship and in peer
2 review over the years. Today I would be testifying as
3 a market study, market analysis of which I'm highly
4 familiar with, the corridor we're talking about. And
5 without boring everybody to death, I've completed
6 market studies for the Makena Resort, for the Wailea
7 670 Honuaula Project, for Palawe Bay, for the Grand
8 Wailea, Four Seasons Wailea, Wailea Hotel. Maui
9 Oceanfront Bay's Inn, the Marriott Wailea, the Maui
10 Lu, also for National Fish and Wildlife's purchase of
11 Kealia Pond. I've recently submitted a market study
12 economic impact of the fiscal costs study part of the
13 draft EIS for the Commission; for the new Master Plan
14 of the Maui Tech Park. I've also completed and
15 testified before the Commission on a similar thing
16 for the Maui Business Park and completed others in
17 that area.

18 So we're very familiar with what's going
19 on. We were asked to just comment basically on one
20 question. And that is whether or not the use of the
21 Ka'ono'ula Industrial Subdivision as evolved into
22 Piilani Promenade, is consistent with the original
23 envisions and entitlements from a current market
24 perspective.

25 Q Mr. Holliday, before we get there were you

1 asked to submit written testimony for this proceeding?

2 A Yes, I did, testimony of Tom W. Holliday
3 regarding the proposed Piilani Promenade.

4 Q Do you have that testimony in front of you?

5 A I do have a copy in front of me.

6 Q And attached to your testimony is there a
7 CV?

8 A Yes.

9 Q Or a list of qualifications?

10 A Yes. And I have -- in that regard I have
11 provided written and oral testimony for the State Land
12 Use Commission maybe 15 times or more in the past 25
13 years.

14 MR. KAM: Chair, we would like to offer
15 Mr. Holliday as an expert in the area of market
16 studies.

17 CHAIRMAN CHOCK: Parties, any objections to
18 admitting this witness as a expert?

19 MS. LOVELL: No objection.

20 MR. SOUKI: No objection.

21 MR. PIERCE: Mr. Chair, we have no
22 objection to Mr. Holliday being qualified for what he
23 says he's qualified to. A portion of his written
24 testimony which is not in evidence yet, goes do legal
25 conclusions. He's not qualified for that part. He

1 said that what he did, what he was tasked to do was a
2 market analysis, but in fact it's a -- parts of it are
3 an entitlement analysis. And we'd ask that, for
4 example, all of section 3 be stricken from the written
5 testimony and that the witness and the parties be
6 instructed not to engage in any questioning in that
7 area.

8 CHAIRMAN CHOCK: Would you repeat what
9 section.

10 MR. PIERCE: The section 3 on page 3.

11 MR. SOUKI: What Exhibit No. is that?

12 MR. PIERCE: This is Piilani 45. We'll
13 also add to our objection that a marketing study is
14 not relevant to whether or not there's been a
15 violation of the 1995 Order. And we'd also say more
16 specifically with respect to Condition 15 the witness
17 is essentially getting ready to testify about change
18 in market conditions, but that has nothing to do with
19 the Land Use Commission's Order and whether or not the
20 representations of the original Petitioner remain the
21 same or been substantially complied with.

22 CHAIRMAN CHOCK: Okay. I've noted your
23 objection to certain sections. The Commission and
24 myself will deal with what's relevant or not at the
25 time of his testimony. So I'm going to admit him as

1 an expert. Proceed.

2 MR. KAM: Thank you, Chair. Chair, I just
3 want to confirm that Mr. Holliday's written testimony
4 has been admitted and accepted into evidence by the
5 Commission.

6 CHAIRMAN CHOCK: Yes.

7 MR. KAM: Thank you.

8 Q Mr. Holliday, were you asked to review the
9 Piilani Promenade Project?

10 A Yes. And I was provided with a variety of
11 documents to review in that regard including a market
12 feasibility study, economic report from 1994. The
13 transcript of a SLU hearing in November 1994 and a
14 1998 market study and economic report that was
15 updating the previous materials.

16 And I don't want to speak as an attorney or
17 as someone involved inland use classifications. But I
18 would like to comment from a market perspective. At
19 the time of the original submittal as stated in the
20 July 1994 report, "the proposed reclassification is
21 being sought in order to develop a commercial and
22 light industrial subdivision."

23 And the Petitioner sought approvals to
24 allow the conversion of the largely productive Ag
25 lands into Urban uses identified under the Maui County

1 M1 light industrial zoning regulations which also
2 permits uses allowed under B1, B2 and B3
3 classifications. The Project --

4 CHAIRMAN CHOCK: Mr. Holliday --

5 THE WITNESS: Slow down.

6 CHAIRMAN CHOCK: Yes, thank you.

7 A Sorry. I know the typist hates that. The
8 Project was admit (tape) to address some of the
9 forecast demand for commercial/industrial floor space
10 in South Maui to provide a pallet that could be used
11 for variety of business development in a growing
12 community of the time. And it was hoped that this
13 particular subdivision would promote goods and
14 services in the area, employment and increased
15 economic activity and tax revenues.

16 As part of the submittal a plan was shown
17 with 123-lot subdivision. Parcels ranging from about
18 a third of an acre to 1.2 acres. However, as was
19 noted in the market feasibility study, these estimates
20 of lot size, quantity and values are provided for
21 planning purposes only. It is only one conceptual
22 alternative which meets then current market
23 conditions.

24 So after doing a brief analysis, and I
25 would like to point out that our firm has no previous

1 history that I'm aware of with this proposed
2 subdivision, nor have we completed studies in the past
3 regarding it. It is the conclusion of myself and
4 those members of our firms that reviewed this, that
5 the use of a portion of the Ka'ono'ula industrial
6 subdivision for the Piilani Promenade Project remains
7 consistent with the original intent of the development
8 and general planning and currently market trends for
9 several reasons.

10 1. Master Plans are invariably revised
11 over time to reflect changes in the marketplace. In
12 the years between when a project is conceptualized and
13 goes through the entitlement process to when it's
14 finally built out there are inexorable transformations
15 that take place in the real estate market. And this
16 happens due to changing business models, consumer
17 preferences, construction designs and techniques,
18 developer investor perspectives and efficiencies that
19 emerge within the market.

20 A successful and sustainable Master Plan
21 has to be sufficiently malleable to accommodate
22 generally conforming evolutions over time in order to
23 achieve maximum efficiency. If a project is not
24 allowed to revise itself as the market changes, it
25 will result in stagnation and devolve into a lesser

1 order of use, often failing to actualize the
2 entitlement effort objectives.

3 There are many examples throughout the
4 state of Master Plans approved by the State Land Use
5 Commission that have been revised in response to
6 market evolution over time. I'll just give an example
7 here on Maui.

8 The Ka'anapali Beach Resort, north beach
9 makai section, was always intended to be hotels. When
10 it went through the entitlement process it was going
11 to be hotels. And there was going jobs created, the
12 tax created. It was the way that the planning was
13 moving forward. However, following the burst of
14 Japanese bubble in the early '90's hotels became
15 uneconomic to develop in Hawai'i.

16 And as a result those hotel-designated
17 sites were put into a different use. Similar, and
18 allowed under the entitlements, but a different use,
19 of timeshare. Timeshare has different ownership,
20 different construction techniques, different unit
21 results, different buyers, different ways it's
22 marketed. It is a different use than a hotel.

23 But the planning process permitted to
24 change in those uses --

25 Q Mr. Holliday, could you slow blown just a

1 little bit.

2 A Sorry. Permits a change in those uses to
3 allow the Master Plan to evolve with the marketplace
4 and meet the market needs.

5 And in similar ways resorts moved away from
6 big, huge condominium developments into what was
7 previously not thought of very much, single-family
8 developments. The Master Plan is changing while still
9 staying under the same entitlement umbrella that was
10 provided by the State Land Use Commission on a going
11 forward basis.

12 For instance the Master Plans of the
13 project districts on Maui like Honuaula and Kapalua
14 Mauka have also been revised several times as it's
15 gone through the planning process over the years.

16 In order to be effective a Master Plan must
17 be allowed to be revised as the market evolves.

18 Q Mr. Holliday, so Master Plans evolve and
19 get revised over time. Has there been an evolution in
20 the light industrial sector over that same period of
21 time?

22 A Definitely. If you look at the history of
23 light industrial development on Maui, historically
24 when it was and agrarian economy and had a small town
25 environment and had smaller businesses, industrial

1 parks were developed with small lots generally owned
2 in fee simple by an owner-occupant who would build a
3 building for his business and it would be a single
4 tenant. However, times have changed. And nowadays
5 we're seeing a more service-based economy emerge on
6 Maui. And we are seeing that it is now not a small
7 town feel but a moderate-sized community. And as a
8 result we're seeing an flux of mainland companies and
9 franchises adapting business models, changing consumer
10 preferences and different economic realities on the
11 island. And as a result we're seeing larger projects
12 and structures, more multi-tenant buildings, greater
13 ownership by investors, more emphasis on exposure and
14 appearance, larger parking areas, ease of access and
15 more efforts to improve the customer experience.

16 That's the way the market changes. Whether
17 or not it's the very best for all aspects of the
18 community, it is the inexorable evolution of the light
19 industrial and retail markets moving forward together.

20 Q Mr. Holliday, are you aware of any examples
21 of areas on Maui that would demonstrate this evolution
22 in the light industrial sector.

23 A Sure. Drive down Dairy Road. And on the
24 north side of the road you'll see the older industrial
25 subdivisions of Kahului and moving into Wailuku. They

1 represent this old school concept of smaller, single
2 tenant buildings on smaller lots with a hodgepodge of
3 uses and developments next to each other, and no real
4 sense of place or integration.

5 If you look on the south side of the road
6 you see the more modern Maui Business Park where it's
7 a combination of retail, industrial and mixed retail
8 and industrial uses in a modern environment, larger
9 multi-tenant buildings that are more design to provide
10 a better experience for the customer.

11 Q Mr. Holliday, do you have an opinion
12 whether the old school light industrial model remains
13 feasible in today's current market?

14 A It does not. It is -- those times have
15 gone. Greater efficiency and therefore greater
16 profits for the developers and operators and greater
17 savings and better products for the consumers are a
18 result of the current model moving forward.

19 If a client came into our firm today and
20 said, "I want to buy an expensive piece of Maui, dump
21 in \$25 million of infrastructure in order to create
22 one third acre lots for industrial use," we would
23 *definitely* counsel him against it and say, "The time
24 is not ripe for that and may never be ripe again.
25 That if you build such a project and insisted on

1 single lots, 123 lots, you're children and
2 grandchildren may be still selling them off because
3 that's not the model of the marketplace today."

4 If this Project was forced to be in that
5 type of frame that the planning was before, it is not
6 likely it would be successful in the market for a
7 period of years. The demand for industrial
8 development and space on Maui right now is still in a
9 downward trend.

10 In the third quarter, according to CB
11 Richard Ellis Analytics, in the third quarter on Maui
12 there was negative absorption meaning space was
13 vacated 120,000 square feet more than was absorbed.
14 Our analysis says that this is the fallout at the end
15 from the recessionary cycle. And that the market
16 should start moving forward and gaining steam over the
17 next several years. But for a project as was
18 originally proposed, it would need two, three, four,
19 five years before the market would pick up and another
20 few years for it to be subdivided and another few
21 years to sell out the lots. And another few years to
22 be developed.

23 And so the reality is that under the old
24 plan it would be a decade or more before it would
25 bring jobs, economic activity, tax revenues of a

1 meaningful amount to the county of Maui and the state
2 of Hawai'i.

3 Conversely right now there is a demand for
4 its proposed use and it *will* start to create
5 construction and within a couple of years long-term
6 employment economic activity and jobs and tax
7 revenues. And so the plan as was proposed is just not
8 a viable alternative in the current marketplace. And
9 there needs to be adjustments to move forward.

10 I mean in fact if you had built that other
11 subdivision, the first guys in the sales office would
12 be asking, "How much of a discount would you give me
13 if I bought 20 lots or 30 lots?" Because the demand
14 for a third of a acre or half acre in small industrial
15 lots, it just doesn't exist anymore on a meaningful
16 basis.

17 Q Mr. Holliday, were you asked to review the
18 written testimony of Dick Mayer which has been offered
19 into evidence before this Commission?

20 A Yes. I was asked to look at Professor
21 Mayer's submitted testimony. And I do have a copy
22 here.

23 MR. PIERCE: Mr. Chair, we'd just like to
24 at least have on the record the same objection that
25 the rebuttal, this is not the appropriate time for

1 rebuttal witnesses. And that the Intervenors are
2 being prejudiced by it. Thank you.

3 CHAIRMAN CHOCK: So noted. And for the
4 same reasons in terms of time and expense we are going
5 to hear it now. I'll afford you the same opportunity
6 when you call your witnesses.

7 THE WITNESS: For the most part I find it
8 compelling and reasonable. Some of the conclusions I
9 agree with wholeheartedly. In large scale industrial
10 development does generate generally better jobs and
11 higher pay, more fulltime opportunities than similar
12 scale retail development.

13 However, many of the jobs are very similar
14 to one or the other, a stock boy in a warehouse that's
15 industrial would make the same as a stock boy in a
16 warehouse that's retail. Clerks make similar, the guy
17 driving the forklift, the delivery guys.

18 THE REPORTER: Mr. Holliday, slow down.

19 THE WITNESS: Okay. Similar type jobs
20 exist in both whether somethings industrial or retail.
21 But definitely the industrial uses do typically
22 provide what would be considered better jobs.

23 Some of the conclusions I think are kind of
24 mixed. I think that if one looks at the -- and I'm
25 holding up in front of me the Hawai'i State

1 Input/Output Study. And it's from the Research and
2 Economics Analysis Division of the Department of
3 Business, Economic Development and Tourism, state of
4 Hawai'i. It was approved and published in July 2011.

5 If you go back to the back where they set
6 forth all of the different multipliers associated
7 with economic business activity in Hawai'i and you
8 look at retail trade, how it compares to the other,
9 retail trade's highly favorable in many regards on
10 these multipliers. It's not as favorable as others in
11 some regards and it's similar.

12 So it's tough to make a blanket statement
13 that if you look at the economic impacts of retail
14 trade that it's inferior to light industrial impacts,
15 just on a blanket scale, it's not. There are
16 benefits. And there are inferior areas and superior
17 areas.

18 And then some of his conclusions I would
19 just disagree with just from the standpoint of market
20 analysis.

21 Q Could you elaborate a little about why you
22 would disagree?

23 A Well, turning to a chart that he has
24 prepared chart on table 4 -- on page 4 of his
25 testimony. For the second one it says, "Higher income

1 job multiplies, more dollars circulated in Maui and
2 Hawai'i economy for light industrial uses; low income
3 job multipliers, less money circulated on Maui under
4 retail housing uses."

5 Again, the study I just -- from the state
6 if you use their figures that wouldn't support that
7 type of blanket conclusion. I'm not exactly sure how
8 a piece of property, the exact same piece of property
9 under one use is "sprawl" and another use is "planned
10 development". I've never heard the term "sense of
11 place" which I don't like to use, applied to a light
12 industrial park. By definition it's the exact
13 opposite of that. T's a hodgepodge of different uses
14 with no community benefits. Meanwhile the retail and
15 housing units *would* provide those.

16 So in regards to his other things I am not
17 an expert on community plans, land use orders or
18 traffic so I would have no comment.

19 Q Mr. Holliday, you started to talk a little
20 bit about why the old school light industrial model is
21 not feasible anymore. Do you have an opinion of about
22 whether Mr. Mayer in his testimony assumes a market
23 for light industrial?

24 A Yeah. Well, particularly when, again, he
25 makes the comment on the chart on table 4 that "light

1 industrial uses can supply construction jobs now." I
2 don't think that's true. Light industrial
3 construction isn't happening right now on Maui.

4 And as I discussed the market is still
5 trying to recover and use the space that's already out
6 there. There's, like, 17 to 20 lots, industrial lots
7 available on the market on Maui. And there's hundreds
8 of thousands of square feet of available industrial
9 space that are currently available. There's just not
10 a market demand for a developer to build right now.

11 Conversely there is an expressed desire and
12 demand to build the proposed retail use. And going a
13 little further and because Mr. Mayer also --

14 CHAIRMAN CHOCK: Excuse me. Mr. Kam, this
15 is starting to draft off into the realm of
16 irrelevance.

17 MR. KAM: I'll wrap up, Chair.

18 CHAIRMAN CHOCK: Thank you.

19 Q (By Mr. Kam) Mr. Holliday, in Mr. Mayer's
20 written testimony he discusses a Home Depot type
21 retailer. Do you have an opinion whether a Home Depot
22 type retailer is a light industrial use?

23 A An without taking too long. Home Depot is
24 a great example being an 800-pound gorilla in the
25 marketplace of how the terms retail and industrial

1 have kind of coalesced over time and don't really mean
2 as distinctive things as they once did.

3 You look at Home Depot and what it does.
4 Take a faucet. In the old days a manufacturer would
5 make a faucet. It's consign it to a shipper who would
6 consign it to a consolidator who would ship it ot
7 Maui, put it in a warehouse where it'd go a wholesaler
8 and it would go to a plumbing supply store.

9 Then it would go to the customer or the
10 contractor to put in the house in a kitchen sink in
11 Kihei. We call that pipeline "industrial". And all
12 of those uses that we described are industrial uses.

13 Today Home Depot goes right to the
14 manufacturer, grabs that faucet, ships it to Maui,
15 puts on the store and it goes into the kitchen sink.
16 Same pipeline, taking the same faucet to the same end.
17 But for some reason we call that "retail".

18 But the reality is they're highly similar.
19 It's just different methods to move the same product
20 the same place. Under the old school method with all
21 the layers, you had excess overhead, you had excess
22 labor, excess taxes, you had too many moving parts and
23 it wasn't as dependable.

24 Home Depot does the same thing. It's
25 called "retail" and they're much more efficient at it.

1 Similarly, I know most people walk into a Home Depot
2 store and go, "What a great store" meaning what a
3 great retail store. I walk into a Home Depot store
4 and I go, "Wow, a whole industrial park under one
5 roof." Because if you took out the constituent pieces
6 from Home Depot, the lumbar yard, and you moved it
7 over into the industrial subdivision, it's an M1
8 identified conforming use. Same with the plumbing
9 departments. Same with gardening and farm implements
10 department. Same with the small equipment machines
11 department. Each of those independently is an
12 industrial park.

13 Q Mr. Holliday, in your understanding of the
14 light industrial market and Home Depot type use, do
15 you understand that contractors and other construction
16 professionals also obtain supplies from that type of
17 retail outlet?

18 A Sure. I mean, again, it is a retail
19 outlet. And it appeals to customers, whoever needs a
20 product, whether developers, contractors or home
21 builders.

22 MR. KAM: Thank you, Chair. Nothing
23 further.

24 CHAIRMAN CHOCK: Why don't we take a 10
25 minute recess for our court reporter break.

1 (Recess was held. 12:15)

2 CHAIRMAN CHOCK: (gavel) We're back on the
3 record. I'd just like to note it is 12:30 in the
4 afternoon. We will be adjourning at 1:30. So we have
5 an hour to go. Parties doing a great job. Where are
6 we at? County?

7 MS. LOVELL: No cross-exam.

8 CHAIRMAN CHOCK: State?

9 MR. SOUKI: Yes, a few questions.

10 CROSS-EXAMINATION

11 BY MR. SOUKI:

12 Q Hi, Mr. Holliday. So you've testified
13 before the LUC before, right?

14 A Yes, sir.

15 Q I notice in your exhibit that has your CV
16 resumé you seem to have quite experience with Land Use
17 Commission.

18 A I guess, yes.

19 Q So you talked about how land use decisions
20 in Hawai'i are, should be flexible to accommodate for
21 market realities? Is that a correct statement?

22 A The Master Plans as they're approved should
23 be flexible, correct. I don't know about State Land
24 Use decisions but the Master Plans that they approve.

25 Q So you mentioned the Ka'anapali Beach

1 Resort as an example. Do you know if that was subject
2 to a Land Use Commission decision?

3 A Actually I do not know.

4 Q You mentioned that the uses had changed
5 over time. What's that based on?

6 A Well, the original Master Plans -- and I
7 worked with Amfac and Amfac J&B on that project for
8 decades. It was always calling for hotel uses on the
9 area.

10 Q What date was that?

11 A Starting about 1982-83. So it had approved
12 in the late '60s.

13 Q Do you know if that went through the Land
14 Use Commission process?

15 A No. It was already zoned for those uses.
16 In the hotel use zoning code it would provides for a
17 variety of uses.

18 Q So you understand that the Land Use
19 Commission, they issue a Decision and Order about
20 certain uses within a property, right?

21 A Well, correct.

22 Q And then zoning comes after that, correct?

23 A Correct.

24 Q You mentioned also as an example that
25 different uses going on at the Ka'anapali Beach

1 Resort. Now instead of hotels it's timeshares, right?

2 A Correct.

3 Q Isn't a "hotel" quote, unquote, 'cause it's
4 defined in different ways and "timeshare" quote,
5 unquote, aren't those -- don't they both -- don't they
6 both relate to short-term accommodations?

7 A Generally correct.

8 Q So they're not all that different, right?

9 A Well --

10 Q Resort and timeshare?

11 A -- they are, in fact, from a real estate
12 appraisal perspective and real estate economic
13 perspective.

14 Q Right but as far as the use?

15 A They're different.

16 Q Yeah.

17 A And relating that to the subject property,
18 under the zoning code both commercial and industrial
19 are allowed uses.

20 Q So in the county of Maui where there's a
21 resort district are timeshares allowed, do you know?

22 A Yes.

23 Q Okay. Would you say in 1994-95 you're
24 familiar with the Decision and Order in this matter?

25 A To a limited degree, yes. I've just

1 glanced through them.

2 Q So in '94 and '95 the Commission was
3 looking at the world in the context of what was going
4 on at that time. You concede that?

5 A Correct.

6 Q So the representations made were based on
7 that context of what was going on at the time,
8 correct?

9 A I did not make them so I really don't know.
10 I would assume so.

11 Q Right. That's a reasonable assumption?

12 A Yeah. But I did not do the market study.

13 Q Do you know if there were any outlet malls
14 on Maui in '94 and '95?

15 A No. Outlet malls are, were just starting
16 to appear in the marketplace across the mainland
17 about that time.

18 Q Were there any combined outlet mall
19 residential projects on Maui at that time?

20 A Not they I know of, no.

21 Q So you say times have changed. It
22 certainly has. You said that in the old school we had
23 smaller style tenant units, is that correct?

24 A Correct. Owner occupants, very often
25 single tenants type buildings on smaller lots.

1 Q Do you know how many units were -- let's
2 see, do you know how many subdivided lots were
3 proposed in the 1994-95 D&O?

4 A No. I'm afraid I do not.

5 Q Do you know how many subdivided lots we're
6 looking at today?

7 A You mean the entire marketplace or --

8 Q For this Project.

9 A Oh, you mean specific to this Project. I
10 thought that you were talking about the general market
11 place.

12 Q Okay. So specific.

13 A Specific to this Project, I believe, that
14 the entire Project was to have about 123 lots of which
15 the area that we looked at, the Piilani Promenade, was
16 something like 80 or 90 of those lots or 78,
17 something like that of the total lots.

18 Q Okay. So fast forwarding to today 2012, do
19 you know how many lots?

20 A I think they're looking at 4 total and 3
21 that involved the Piilani Promenade.

22 Q So, you know, for these 4 lots what how
23 much of these lots is Piilani Promenade occupying for
24 it's outlet mall?

25 A The 4 that exist now I believe 3 of the 4.

1 Q Three of 'em, right? You know, someone
2 asked the question about Home Depot, right?

3 A Mm-hmm.

4 Q And "is Home Depot an industrial use?" Is
5 that correct, somebody asked about that?

6 A That was asked. It was in part of the
7 testimony provided by...

8 Q So the combined 4 lots is about 88 acres,
9 right?

10 A I'm not certain. I didn't look at all 4
11 lots. I was only looking at the three --

12 Q But based on the lot configuration it's
13 about a third of the whole property is going to be for
14 Piilani Promenade, right?

15 A I believe it takes up more than that. I
16 think it takes up 3 of the 4 lots.

17 Q I'm sorry. That would be -- I'm an
18 attorney. Not a mathematician. (audience laughter)
19 That's why you're here. It's about three-fourths,
20 right?

21 A I assume so. In looking at the spatial
22 differences I couldn't give you an exact.

23 Q So about three-fourths of the property.
24 Okay. We can agree to that. How many units or
25 leased spaces are going to be leased out within that

1 proposal?

2 A I don't know. But I do know that the total
3 square footage that they're talking about is about
4 700,000 square feet.

5 Q And how much will Home Depot occupy?

6 A I didn't --

7 MS. LOVELL: Chair, excuse me. Before we
8 go on I know that Mr. Souki is anxious to get us all
9 out of here, but if he could perhaps allow the witness
10 to complete his answer before asking the next question
11 I think we would get a better record.

12 MR. SOUKI: It is a cross-examination but
13 I'll slow down.

14 MS. LOVELL: It's not even just the speed.
15 It's that we're not getting the full answer from the
16 witness you're interrupting.

17 CHAIRMAN CHOCK: I think for the benefit of
18 our court reporter answer the questions that's been
19 asked.

20 THE WITNESS: And I do apologize to the
21 court for speaking too fast here. Restate the same
22 question?

23 Q Let me restate the question. My question
24 to you was: You said that there's about
25 700,000 square feet for the Project.

1 A Right.

2 Q How much of that Project will be for this
3 Home Depot?

4 MR. KAM: I'm going to object to the
5 question. There's no evidence -- we haven't offered
6 any evidence that there will a Home Depot store in the
7 Project.

8 CHAIRMAN CHOCK: Sustained.

9 MR. SOUKI: Could I just make a showing on
10 that? Because they had admitted into evidence that
11 they're considering a Home Depot. Ostensibly to
12 satisfy the industrial use which they had said in the
13 testimony. We just want to know how much of the
14 Project is proposed. We're not saying that it's
15 guaranteed? We just want to know --

16 CHAIRMAN CHOCK: Is that in your testimony,
17 Mr. Kam?

18 MR. KAM: To my knowledge it is not. The
19 reference to the Home Depot was in Dick Mayer's
20 testimony. And the witness was commenting on some
21 reference to the Home Depot store in Mr. Mayer's
22 written testimony.

23 MR. SOUKI: I'll start again.

24 MR. STEINER: Chair, just to be fair and
25 not to mislead the Commission, there will be some

1 testimony regarding some commitment to a light
2 industrial use that may fit the pattern of something
3 like a Home Depot. So I don't want to mislead the
4 Commission. There's nothing in the record now and
5 this witness didn't testify about a Home Depot coming
6 in. So I just want to make sure that's clear.

7 CHAIRMAN CHOCK: You want to start over?

8 MR. SOUKI: Thank you. That's helpful,
9 actually.

10 Q So assuming -- or maybe not assuming, but
11 if there were to be a Home Depot proposed for this
12 site, what is the average size for a Home Depot in
13 this kind of market?

14 A About 150,000 square feet.

15 Q So that's of the 700,000 square feet --

16 A That would be like 22 percent maybe if my
17 math is correct, 23 percent of the total Project.
18 Just to finish my answer that I was going to, if you
19 don't mind.

20 Q Sure. Yes, sir.

21 A Under the existing Piilani Promenade we're
22 talking about 700,000 square feet gross leasable area
23 in general at this time.

24 Under the old plan with the smaller lots
25 the same portion of the Project would have supported

1 about 700 to 800,000 square feet of gross leasable
2 space. So the amount of space being developed on the
3 lots and the resulting employment count would be
4 similar under the Piilani Promenade proposed uses as
5 it would have been under the previous 123-lot
6 subdivision.

7 Q It's a different Project, right?

8 A Yeah.

9 Q You know, getting into my last sort of line
10 of questioning here, have you had a chance to review
11 the market study that was submitted with the 1994-95
12 (inaudible)?

13 A Yes, I have.

14 Q Why don't we just use that market study?

15 A First of all, that would be a question for
16 the client not me. And not to denigrate somebody
17 who's not here, but that market study would not have
18 been produced by our firm. It would not have passed
19 the review process. We do ours entirely different.

20 Q Did it look at the outlet mall in that
21 study?

22 A I believe -- no. In fact what all it
23 really looked at was the sales of lots.

24 Q Did it look at residential uses?

25 A No, it did not.

1 MR. SOUKI: That's all. Thank you.

2 CHAIRMAN CHOCK: Intervenor?

3 CROSS-EXAMINATION

4 BY MR. PIERCE:

5 Q Good afternoon, Mr. Holliday. You said
6 that you only glanced at the Order, correct?

7 A Correct.

8 Q If I heard the initial documents that you
9 said you reviewed, one of them was not the
10 Kihei-Makena Community Plan, was it?

11 A No, I did not review that specifically for
12 this assignment but I am familiar.

13 Q But you also testified earlier that you're
14 not an expert in community plans. Do you recall that
15 testimony?

16 A Yes. I am not an expert in Community
17 Plans.

18 Q You mentioned that because of the market
19 changes if a client came to you today and suggested a
20 conceptual plan similar to the one that Kaonoulu Ranch
21 presented, 123 lots, fee simple lots, you said that
22 that would not fly from a feasibility perspective?
23 Was that your testimony?

24 A Correct. I believe it would not. Although
25 I have not completed the analysis, that would just be

1 my preliminary indication.

2 Q Are you aware that there is another
3 commercial an light industrial project, quite a large
4 one, going on in Central Maui right now?

5 A Correct. There's several proposed and
6 under development, yes.

7 Q One would assume that because they're going
8 forward someone thinks that they're going to be
9 financially feasible?

10 A Correct.

11 Q But reasonable minds may differ.

12 A Correct.

13 Q So let's take for a moment your assumption
14 that they don't make sense in that you would want
15 counsel your client?

16 A I, I --

17 Q You've answered the question I needed.
18 Thank you.

19 MS. LOVELL: Wait, wait, wait.

20 MR. PIERCE: There's not need for
21 explanation.

22 THE WITNESS: You're misinterpreting my
23 answer.

24 MS. LOVELL: Wait. I object to the
25 questioner not allowing the witness to complete his

1 answer. Could we please have an orderly
2 question/answer procedure where the questioner gets to
3 ask his questions and the answer gets to answer fully?

4 CHAIRMAN CHOCK: I know everyone's real
5 passionate about the issue regardless of your point of
6 view. But please let's act with aloha.

7 Q (By Mr. Pierce) Mr. Holliday, with absolute
8 aloha you had finished your original statement I
9 believe --

10 A No, I didn't --

11 Q And you wanted to volunteer some
12 additional -- go ahead.

13 A -- because the other industrial
14 developments that are taking place are not one-third
15 lot subdivisions. They have a variety of uses
16 including retail type uses on larger lots. So, no,
17 they are not building a type of subdivision that was
18 shown in the original plan in the marketplace.

19 Q So you've reviewed the plans on each one of
20 those in Central Maui?

21 A Pretty much. I've worked on a lot of them.

22 Q Okay. Now, where I was going, which let's
23 go head and assume that in fact in today's date and
24 time 123-lot subdivision for light industrial doesn't
25 work and you said in your earlier testimony that you

1 would counsel your clients not to do that but to try
2 to shift to a highest and best use something else. Do
3 you remember that testimony?

4 A Correct.

5 Q And in fact the profits could be so much
6 different -- well, let me first say the profit
7 difference -- you're testimony suggested the profit
8 difference could be substantial between the two; is
9 that a fair assumption?

10 A I don't want to speak to the profits not
11 having done extensive analysis of it. However, just
12 from a highest and best use perspective which
13 generally results in a higher return to the underlying
14 site, the proposed use is a better highest and best
15 use than a 123-lot, small lot industrial subdivision.

16 Q Okay. The definition of highest and best
17 use....and I'm going to give you the definition from
18 the Appraisal of Real Estate, the book called the
19 Appraisal of Real Estate which is from the American
20 Institute of Real Estate Appraisers.

21 A I'm familiar with it.

22 Q Okay. It says, "Highest and best use. The
23 reasonably probable an *legal* use of vacant land or an
24 improved property which is physically possible,
25 appropriately supported, financially feasible, and

1 that results in the highest value." Would you agree
2 with that definition?

3 A Correct. We use it all the time in
4 appraisal work.

5 Q So in some cases when you're advising
6 clients and you say there's a better, highest and best
7 use you should consider, it might make it worth them
8 going through the entitlement process in order to
9 achieve highest and best use?

10 A Not necessarily. One of those items in the
11 criteria was legal use.

12 Q That's right.

13 A So when you're determining the highest an
14 best use of a piece of land it would be under the
15 legal entitlements that exist on that piece of land at
16 that time.

17 Now, you could counsel that there are
18 hypothetical other highest an best uses that could be
19 pursued through an entitlement process. But when it's
20 applied in an appraisal setting, it's a specific date,
21 point in time relative to the entitlements that exist
22 on that property then.

23 Q Okay. But your testimony before wasn't
24 going to the issue of an appraisal as I understood it.

25 A Are you --

1 Q It was to highest an best use or what would
2 be -- in fact it wasn't highest and best use. You
3 said what would be the best market opportunity for
4 that particular landowner, right?

5 A Correct.

6 Q An din that situation depending upon how
7 much better the highest and best could be it might be
8 worth going through the entitlement process, correct?

9 A Perhaps.

10 Q Okay. But in this case you opined on
11 page 3 of your testimony, section 3, it has -- it's
12 titled "The proposed Project is a conforming use under
13 the entitlement structure that was sought and
14 approved." Do you recall that written testimony?

15 A Yes. Interesting, I thought I wasn't
16 supposed to talk about that section.

17 MR. STEINER: Nobody's stipulated you
18 couldn't take about that.

19 MR. PIERCE: My understanding is that it
20 was accepted as an exhibit, is that correct? If not
21 I'll withdraw the question.

22 CHAIRMAN CHOCK: Go ahead and ask your
23 question.

24 THE WITNESS: Can you repeat the question,
25 please.

1 Q (By Mr. Pierce): My question is is it your
2 testimony, your written testimony on page 3, "the
3 proposed Project is a conforming use under the
4 entitlement structure that was sought and approved"?

5 A Correct. as far as I know.

6 Q How well do you know the Maui County Code?

7 A Not fantastically well but I've dealt with
8 it over the years and read the variety of zoning
9 ordinances that relate to properties I've appraised
10 and analyzed.

11 Q Okay. Are you aware of the fact that the
12 County Code has a definition for non-conforming uses?

13 A I'm sure it does.

14 Q And it has a definition for permitted uses?

15 A Yes.

16 Q And for unpermitted -- well, then the
17 obvious is what is not permitted is not permitted,
18 right?

19 A Correct.

20 Q Okay. But are you aware that there's no
21 definition for confirming use in the Maui County Code?

22 A I was not aware of that.

23 Q Are you aware that there's no definition in
24 the Land Use Act. Are you familiar with what I mean
25 when I say the Hawai'i Land Use Act?

1 A Yes.

2 Q Okay. Are aware that there's no definition
3 for conforming use?

4 A I was not aware.

5 Q Okay. But you did mention that this went
6 through several stages of review within your firm, is
7 that correct?

8 A Yes.

9 Q And you actually stated that you all work
10 hard to have a clarity in your documents and do the
11 best that you can, is that correct?

12 A Correct.

13 Q Would you agree that conforming use is not
14 an appropriate legal term of art here?

15 A Oh, perhaps. I'm not a lawyer. I would
16 just say within the marketplace we deal with is how we
17 use it.

18 Q So -- and you also -- when you said -- so
19 reading it again: The proposed Project is a
20 conforming use under the entitlement structure that
21 was sought and approved. The entitlement structure
22 we're talking about is the 1995 Order, correct?

23 A Correct.

24 Q But you said you only glanced at it,
25 correct?

1 A Correct. But I'm speaking from the
2 standpoint of the State Land Use converting it to
3 urban. That is with regard to state land use, the
4 entitlement structure to which I speak.

5 Q So you are *not* making an opinion today as
6 to whether or not it has, quote, in your terms
7 "conforms" To the 1005 Order, is that correct?

8 A And all of the conditions thereof. No, I'm
9 not making an opinion regarding that.

10 MR. PIERCE: Thank you.

11 CHAIRMAN CHOCK: Redirect?

12 MR. KAM: Thank you, Chair. Briefly.

13 REDIRECT EXAMINATION

14 BY MR. KAM:

15 Q Mr. Holliday, in section 3 of your report
16 when you used the term "conforming use", did you also
17 mean by the term "conforming use" compliance with
18 existing zoning?

19 A Correct.

20 Q What is the existing zoning for the Piilani
21 Promenade Project?

22 A As far as I understand it's zoned M1 and M1
23 is a light industrial use that allows for 32
24 identified specific uses. And the number 1 thing it
25 identifies is all the uses in B1, B2, B3 districts

1 with and exception or two.

2 Q Thank you. And when you -- to your
3 knowledge are the specific uses and proposed and
4 anticipated for the Piilani Project allowable under
5 those zoning designations?

6 A Again, I'm not an expert in land use. But
7 yes it would appear that under the B1, B2 and B3
8 provisions of the M1 zoning ordinance it would be
9 allowed or permitted.

10 Q And when you used the term "highest and
11 best use" in your testimony would one of the
12 considerations for a highest and best use be
13 compliance with county zoning?

14 A Correct.

15 Q Someone asked you a question about the
16 conceptual plan that was proposed in 1994 and, '95. I
17 think in your written testimony you mentioned that
18 you -- well, you discussed the conceptual plan at the
19 bottom --

20 A Correct.

21 Q -- of page 1 of your written testimony.
22 Was it your understanding that the conceptual plan
23 would be subject to modification based on changes in
24 the market over time?

25 A Based on looking back at it, yes. Just in

1 general, based on my experience in the marketplace
2 that is a common element of any Master Planning is the
3 ability to revise that plan as the market changes over
4 time, to maximize both the land and the economic
5 activity and the resultant taxes and profits.

6 Q You mentioned that one of the documents you
7 reviewed was the market feasibility study that was
8 submitted with the previous proceedings.

9 A Correct.

10 Q Do you recall whether the market
11 feasibility study said that the plan would be subject
12 to evolution of the market?

13 A Yes. Again quoting from Exhibit A page 8
14 of the market feasibility studies "regarding the 123
15 lot subdivision these estimates of lot size, quantity,
16 values are provided for planning purposes only.
17 There's only one conceptual alternative which meets
18 current market condition with consideration for
19 economic, social and physical variables. These
20 estimates require reassessments from time to time and
21 may need to be adjusted accordingly," end quote.

22 MR. KAM: Thank you, Chair. No more
23 questions.

24 CHAIRMAN CHOCK: Commissioners, any
25 questions for this witness? Thank you, Mr. Holliday.

1 Next?

2 MR. STEINER: Mr. Chair, I wanted to point
3 something out. Our next witness is going to be
4 Mr. Charley Jencks. His testimony is sort of critical
5 to our case. An it's expected to be lengthy. It
6 would be our preference not to -- our concern is that
7 with about a half our left of time to start
8 Mr. Jencks' testimony and then stop and then pick it
9 up again in two weeks wouldn't be particularly
10 productive. It would be our preference not to do that
11 and to instead begin Mr. Jencks' testimony fresh when
12 we reconvene.

13 CHAIRMAN CHOCK: Do you have another
14 witness that you can offer?

15 MR. STEINER: Mr. Jencks would be our final
16 witness.

17 CHAIRMAN CHOCK: Final. How about you,
18 Mr. Kam?

19 MR. KAM: No. No further witnesses besides
20 Mr. Jencks.

21 CHAIRMAN CHOCK: County, do you have
22 anybody today?

23 MS. LOVELL: I do have Mr. Spence here, but
24 I believe that we can get through his testimony, even
25 his direct testimony, by 1:30.

1 CHAIRMAN CHOCK: You know, since we're all
2 here we're going to go ahead and proceed with
3 Mr. Jencks today.

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

7 THE WITNESS: Yes, I do.

8 CHAIRMAN CHOCK: Name and address.

9 THE WITNESS: My name is Charles Jencks. I
10 live at 675 Kau Drive, Kula, Maui 96790.

11 CHAIRMAN CHOCK: Aloha.

12 THE WITNESS: Aloha.

13 DIRECT EXAMINATION

14 BY MR. STEINER:

15 Q Good afternoon, Mr. Jencks.

16 A Good afternoon, Mr. Steiner.

17 Q Mr. Jencks, what's your current profession?

18 A My current profession I'm an urban planner
19 working as a consultant for various partnerships.

20 Q When did you first move to reside in
21 Hawai'i?

22 A I came to Hawai'i in 1986.

23 Q And was that to the island of Maui?

24 A Yes, it was.

25 Q Have you resided here ever since?

1 A Yes, I have.

2 Q Prior to coming to Hawai'i what did you do
3 professionally?

4 A I worked -- I started my career as an urban
5 planner in the public sector working for the city of
6 Rancho Palos Verdes. I then went to environmental
7 consultant working for EDA, Incorporated. And then
8 when to work for the Irvine Company in Southern
9 California which is a large private land holding and
10 then came to Maui to work in land development.

11 Q What's your degree in?

12 A I have a degree in Urban Environmental
13 Management with a studies in urban planning and design
14 and graduate study in urban planning and design.

15 Q Your professional experience prior to
16 coming to Hawai'i, did that involve land use
17 experience?

18 A Yes, it did.

19 Q Could you describe that briefly?

20 A Well, in the public sector working on
21 General Plan's and specific plans for the city of
22 Rancho Palos Verdes, having those adopted with
23 compliance with the California Environmental Quality
24 Act. Also working within an environmental consulting
25 firm doing public planning for various agencies in

1 California, General Planning type of projects.

2 Then with the Irvine Company looking at
3 their land holdings providing input into the business
4 plan. The Irvine Company was building approximately
5 2500 apartment units a year. I participated in the
6 Master Planning and development of two major projects
7 involving golf courses and commercial and residential
8 development.

9 Q So you had extensive experience in the
10 private sector land planning before coming to Hawai'i.

11 A Yes.

12 Q Any public sector experience before you
13 came to Hawai'i?

14 A Yes. With the city of Rancho Palos Verdes.

15 Q What did you do for them?

16 A I was a planner. I was responsible for, as
17 I said previously, the specific plans for the coastal
18 area and the General Plan.

19 Q When you first came to the county -- or to
20 Maui, what did you do?

21 A When I came to Hawai'i in 1986 I came over
22 working for my then father-in-law Carl Berkhair as the
23 president of Berkhair Hawaii, Incorporated. Our
24 intention was to -- he had purchased a piece of land
25 at Waialea Resort and we were going to -- actually

1 he'd purchased three pieces of land in Waialea and
2 adjacent areas for development. My job was owners
3 representative and executive vice president of
4 Berkhair Hawai'i Construction Company.

5 Q How long did you do that?

6 A We built our one and only project. The
7 rest were land sales. The Project was built and
8 closed. I think the last sale was conducted in 1990,
9 June of 1990.

10 Q What did you do next?

11 A I went to work for the county of Maui. I
12 was hired in 1991 by then Mayor Linda Lingle as a
13 deputy director for Public Works and serving under
14 Mr. George Kaya who was then the director of Public
15 Works.

16 Q How long were you deputy director under
17 director Kaya?

18 A I was the deputy director for four years
19 through Linda's first time as mayor.

20 Q And what did you do next?

21 A Linda was re-elected. Mr. Kaya moved to
22 executive assistant. I was then made the director of
23 the Public Works through her second term.

24 Q As going back to deputy director. As
25 deputy director what was your duties and functions for

1 the county of Maui?

2 A Basically to be the day-to-day operations
3 man in the Department of Public Works. The department
4 had five divisions. It had a land use and codes
5 division, it had a highways division. It had a solid
6 waste division, a wastewater reclamation division and
7 an engineering division.

8 So my job was basically to run those basic
9 divisions in the county, act as the primary interface
10 between the public and the departments especially in
11 the permitting section, field the day-to-day calls.
12 Also I was ex-officio to the Maui Planning Commission,
13 the Board of Water Supply, attended those meetings and
14 also basically handled the budget for the director
15 with regard to the Maui County Council.

16 Q When you became director how did those
17 duties change? What were your duties and
18 responsibility at that time?

19 A I gave all those duties to my deputy
20 director. (audience laughter)

21 Q Who was that?

22 A That was Mr. David Goodwin who's currently
23 the director of the department.

24 Q What was your duties as director, if you
25 describe those for the Commission?

1 A Basically the head of the department. I
2 would attend the -- I had -- David and I split the
3 duties. He would attend the Planning Commission, the
4 Molokai Planning Commission hearings. And I would
5 attend all of the council hearings whether they were
6 at various committees that we sat in on or the full
7 council.

8 Also I took responsibility for specific
9 divisions that I had an interest in. For example, I
10 took responsibilities for land use and codes and also
11 the engineering division because I was very interested
12 in the capital improvement process. Because that was
13 a heavy financial component. We handled about \$48
14 million a year in capital improvement work in Maui
15 County at the time. So I took responsibility for
16 those two areas and David took the balance.

17 Q In your duties as deputy director or as
18 director for the county of Maui did you have any
19 interaction or function with regards to the State Land
20 Use Commission?

21 A Yes, I did as a deputy. I don't recall any
22 direct interaction as a director but as a deputy I
23 did.

24 Q Could you describe what that was?

25 A I would attend meetings as requested by

1 the Commission or the mayor.

2 Q Would you, for instance, testify before the
3 Land Use Commission on occasions?

4 A That's correct.

5 Q When did you leave the Department of Public
6 Works?

7 A I left of the Department of Public Works.
8 I served 8 years under Linda and 2 years I was asked
9 to stay as a director as well as David Good under
10 Mayor Kimo Apana. I stayed for 2 years and decided to
11 go back to the private sector. I left in 2000. I
12 went to work York Maui Land & Pineapple for about four
13 months. And then I went to work for another
14 partnership.

15 Q What did you do for Maui Land & Pineapple
16 for those four months?

17 A I was senior vice president in charge of
18 community planning for the company.

19 Q You said you went to work for other
20 partners after that.

21 A Yes.

22 Q Who did you represent?

23 A I went to work -- my good friend Steven
24 Goodfellow, asked me if I, if I would come to work for
25 a partnership that had purchased the Wailea 670

1 Honuaula parcel in South Maui. I'd like to clarify.
2 I mentioned that we had purchased properties on Maui
3 when I came over here in 1986. That was one of the
4 piece that the family acquired in 1986 in addition to
5 the Maluhia Estates parcel and Wailea Resorts. We
6 had three pieces. The 670 parcel was one of those
7 pieces. He asked me if I would go to work and
8 represent the partnership as the owner's
9 representative for that project through the
10 entitlement process in Maui County.

11 Q Now, when you went to work for them did
12 your family own that piece of property?

13 A We had since sold it to Van Camp, Morse and
14 Stone out of Chicago. Then they in turn sold it to
15 series of Japanese ownerships that changed hands maybe
16 four or five times.

17 Q When you were working on the -- when you
18 said you started work on the Waialea 670 who owned it
19 at that time?

20 A The Project was owned by a firm that was
21 WCPT Land Associates, LLC. That was a partnership
22 that was involved with Cargo Corporation and a series
23 of other partners on the mainland.

24 Q Did that sort of evolve over time? Or do
25 they still own that parcel?

1 A In 2007 those partners were capitalized
2 out. One of those partners was unfortunately Lehman
3 Brothers. They were capitalized out in 2007 and the
4 new partnership took over?

5 Q And who was that new partnership?

6 A The partnership -- Honuaula Partners is a
7 new partnership that's comprised of D.E. Shaw which is
8 hedge fund located in New York City and Waialea
9 Associates which is two private members.

10 Q That Honuaula Partners that owns the
11 Waialea 670 parcel we've been talking about, they are
12 the same entity that is the current owner of the 250
13 affordable housing unit parcel that's before the Land
14 Commission today, is that correct?

15 A That's correct.

16 Q Going back to your experience. Have you
17 ever served on the Land Use Commission?

18 A Yes. I served as an interim Commissioner.

19 Q During what period of time?

20 A As best as I can recall I think it was
21 roughly around July or August of 2010 through June of
22 2011 is what I recall.

23 Q Did you have my experience with Orders to
24 Show Cause hearings at the Land Use Commission while
25 you were there?

1 A Yes I did.

2 Q One? More than one?

3 A One. It was at Bridge Aina Le'a case.

4 Q The properties that are at issue before the
5 Commission today, did those ever come before the Land
6 Use Commission for anything that had been heard while
7 you were on the Land Use Commission?

8 A No, it did not.

9 Q You're here today as the owner's
10 representative of Piilani Promenade North and South
11 and also as the owner's representative of Honuaula
12 Partners, correct?

13 A Correct.

14 Q And we talked a little bit about who
15 Honuaula Partners is. Who are Piilani Promenade North
16 and South? I'll just call them Piilani.

17 A Well, as best I could tell I don't get too
18 far into the ownership issues or breakdown but it's a
19 partnership that was put together. The property that
20 the Promenade controls, Piilani Promenade North and
21 South, was originally acquired by Eclipse Development
22 with some other partners. Then they broke that
23 partnership down for Piilani North and South.

24 Q And how is it that you came to represent
25 Piilani as to this particular property at issue? To

1 be the owner's representative?

2 A In approximately 2005 a partnership, Maui
3 Industrial Partners, purchased the entire 88 acres
4 from Kaonoulu Ranch. And my job at the time was to
5 pick this piece of property up and start working on
6 the subdivision. Because the idea would be to buy it
7 and then sell it, not to necessarily develop it. So I
8 picked up the property and became the owner's
9 representative for Maui Industrial Partners. And when
10 it was sold to Eclipse Development I segued into
11 helping Eclipse, Piilani Promenade, because I knew the
12 most about the property and I had the greatest amount
13 of knowledge with regard to its history.

14 Q So they asked you to stay on and help out.

15 A That's correct.

16 Q Do Honuauula and Piilani or for that matter
17 Eclipse Development, do they share any common
18 ownership, members or any other ownership connections?

19 A No, they do not.

20 Q These are completely different entities,
21 both of home you just happen to represent.

22 A That's correct.

23 Q In 1994 when the original petition in this
24 case was filed by Ka'ono'ula Ranch you were deputy h
25 director for the Department of Public Works, right?

1 A That's correct.

2 Q In that position di you have any
3 involvement in the original petition?

4 A Yes, I did.

5 Q As part of that involvement would you have
6 reviewed the materials submitted by the Petitioner?

7 A Yes I would have.

8 Q Do you recall anything about what
9 representations were made in those submissions?

10 A Well, in my role as the deputy director
11 what I would have done is I would have received, the
12 document would have been transmitted to the department
13 for review and comment. The department, all the
14 different divisions would review. They'd send those
15 comments into the director's office. And A letter
16 would be prepared that we would then transmit to the
17 mayor's office for signature and transmittal to the
18 probably to the Department of Planning who would then
19 transmit it to the Land Use Commission.

20 I reviewed the Petition application. And I
21 would also review all the comments that were
22 transmitted to me through the divisions to make sure
23 they were all on target and addressing the right
24 issues and there wasn't anything that was incorrect or
25 out of scope of work.

1 Q Do you recall in your review seeing the
2 conceptual plan for the Project?

3 A I looked at a lot of documents. I remember
4 seeing a subdivision plan in that document.

5 Q Was it your recollection or understanding
6 that was a what's been described as a conceptual plan?
7 Or was that a final detailed plan for what was going
8 to be constructed?

9 A It was discussed and presented as a
10 conceptual plan.

11 Q And in your experience through the county,
12 what does that mean that it's presented as a
13 conceptual plan, if anything?

14 A Well, that it's subject to change. We get
15 a lot of plans. We get subdivision maps that were
16 drafted. For example, for a lot of different types of
17 projects there would be submitted to just get our
18 comment on before they would finalize them. So having
19 a conceptual plan come in for review and discussion
20 with the director or me was not uncommon.

21 Q What about while you were on the Land Use
22 Commission, was it your experience that sometimes when
23 these people come in for these boundary amendments
24 they present conceptual plans that are subject to
25 change as the market evolves?

1 A Well, I do recall a couple of applications
2 that I reviewed. One on the Big Island had a fairly
3 well described illustrative plan showing the different
4 types of uses. I also remember one in the Wai'anāe
5 area of O'ahu that had a general description of "light
6 industrial" as I recall. So look at different level
7 of details on these plans. But based on my experience
8 I knew and I understood the fact that these plans
9 would change over time.

10 Q Going back to when the original Petition
11 was filed and when you were the deputy director for
12 the department of Maui.

13 A Yes.

14 Q Did you attend any of the hearings on the
15 petition in this case that was submitted back in
16 1994?

17 A Yes, I did.

18 Q In what capacity?

19 A I attended as the deputy director of Public
20 Works.

21 Q Were you just there listening or was it
22 more than that?

23 A our testimony was requested and required
24 by, as directed by the mayor. So I attended
25 representing the department to address any questions

1 the Commission might have on the Project.

2 Q Did you testify at that hearing?

3 A I certainly did.

4 Q Did you just go and testify and then take
5 off? Or did you stay throughout the testimony that
6 day?

7 A I learned early on that one had to stay.
8 If you got there early to hear what was going on then
9 stay through the meeting to make sure if there were
10 any additional questions that would be asked you were
11 there to support. Because I was particularly -- I
12 have been particularly sensitive to the fact that a
13 private landowner has a lot of risk and he needs to
14 get issues resolved so I would stick around.

15 Q Do you recall -- do you remember those
16 hearings at all?

17 A I'm 64, Mr. Steiner. I'll be 65 in March.
18 Yeah, I generally remember sitting there.

19 Q Do you recall any discussion regarding
20 possible retail use of the property?

21 A Yes, I do.

22 Q What do you recall?

23 A Well I recall -- I would tell you that
24 prior to this meeting on this particular Project
25 Mr. Bryan Miske was the director of planning. And I

1 was the deputy director of Public Works. I was the
2 only planner in the department. And at the time the
3 Department of Public Works had responsibility for
4 enforcing the zoning code, interpreting and enforcing
5 the zoning code. So I had a lot of people working for
6 me that really had no education in planning.

7 So I was the only guy there that could do
8 that. And I just didn't have the time. Brian and I
9 agreed that we would write up a charter amendment that
10 would transfer the duties of that area of expertise to
11 the Department of Planning.

12 But in the meantime we would have a lot of
13 the discussions about zoning and conflicts in zoning
14 and what was going on on Maui. So Brian and I had a
15 number of discussions about commercial, light
16 industrial, how much, how it should be interpreted.

17 Q Okay. At the hearing itself, though, do
18 you recall there being any discussion or
19 representations being made to the Commission regarding
20 the possibility of there being retail uses on the
21 property?

22 A Yes.

23 Q What do you recall about that?

24 A Well, I was there for much of the
25 testimony. I was there, I think, as I recall, towards

1 the end of the day, Mr. Rice preceded me. And there
2 was -- I do recall discussion about commercial. And
3 Mr. Miske did talk about commercial as well.

4 Q Do you recall Mr. Miske discussing anything
5 about limiting the amount of commercial and retail on
6 the property?

7 A Yes, that was one of the things that Brian
8 and I went head-to-head on over many discussions in my
9 office. He did, during that hearing and that
10 discussion he followed me as I recall, did bring up
11 the idea of the concept of restricting the amount of
12 commercial in the Petition Area.

13 Q You said you went head-to-head with him on
14 that. Could you elaborate on that a little bit?

15 A Well, I was responsible for interpreting
16 the zoning ordinance. When it came to a specific
17 project and it was a request with regard to how much,
18 how much commercial you could have on a project, my
19 philosophy was look: If it's zoned M1 then all these
20 uses are permitted. It doesn't -- the zoning
21 ordinance itself doesn't say: Well, you can only have
22 50 percent of it commercial. It says nothing about
23 allocation of capacity or quantity. And Brian would
24 still, he would make proposals on projects that were
25 not subject to any discretionary approval to try to

1 limit that. And we would always go head-to-head. I'd
2 say, "Brian, you simply can't do that. If you want to
3 change the ordinance or you want to propose changes to
4 the ordinance that would limit the amount of
5 commercial then go ahead and do that. But that
6 notwithstanding you can't sit here and just tell
7 people they're limited just because you think they'll
8 be limited in terms of how much commercial in light
9 industrial district. Because it doesn't provide for
10 that in the ordinance.

11 Q So you guys had a philosophical difference
12 about that.

13 A We had a number of philosophical
14 differences.

15 Q Okay. This attempt to limit the amount of
16 retail, that was brought up at the Land Use Commission
17 hearing?

18 A That's correct.

19 Q Was Mr. Miske suggesting the Land Use
20 Commission should put a condition in limiting the
21 amount of retail versus commercial?

22 A No he was not. He was pushing that forward
23 to the discretionary approval process involved the
24 Planning Commission and the Maui County Council.

25 Q So he was -- he didn't request the

1 Commission to limit the amount of retail.

2 A No.

3 Q So the Commission was aware, then, that
4 there was the possibility of retail?

5 A Yes.

6 Q Did you ever hear the Commission while you
7 were at that hearing, place any limits on the amount
8 of retail?

9 A I do not, no.

10 Q You sai you where there the whole day. Did
11 you ever hear any representative of the owner Mr. Rice
12 or Kaonoulu Ranch, say that they would agree to limit
13 the amount of retail that they were going to develop
14 on the property?

15 A I did not.

16 Q Did you ever say they would limit to
17 anything other than what the permitted uses under the
18 M1 zoning which include B2, B2, B3?

19 A No.

20 Q You just testified that Mr. Miske suggested
21 that the county would seek a limit on this amount of
22 retail through the county, through the zoning process,
23 right?

24 A Correct.

25 Q Were you involved at all in the change of

1 zoning of this property?

2 A Yes, I was.

3 Q What was your involvement?

4 A Well, once again the change in zoning
5 request came after I was made the director of Public
6 Works. So once again even with any kind of
7 discretionary approval process, the Community Plan
8 amendment, change in zoning, those applications would
9 be routed through the department. They come to
10 office. I would then route them to the various
11 divisions. They would then respond back. We'd
12 consolidate their comments in a letter. I would
13 review the reports and the proposals and the letter
14 just to make sure that what they were responding to
15 was something in their scope of work and not out of
16 line. Then I would consolidate those comments, sign
17 the letter, transmit that as our collective comments
18 on the project.

19 Q Okay. And you did that for this Project in
20 the change in zoning context?

21 A That's correct.

22 Q And did you observe any follow up by
23 Planning Director Miske or the county to attempt to
24 limit the amount of retail on the property through
25 zoning?

1 A Yes. What happened was when the Project
2 started through the zoning process, the Petition Area
3 through the zoning process, the Department of Planning
4 made a proposal to limit the amount of commercial in
5 the Project in the Maui Planning Commission.

6 They had had some recent experience. I
7 believe it was the -- it was phase 1 of the Kahului
8 industrial complex which wa an Alexander and Baldwin
9 project which Tom Holliday referred to where the Maui
10 Marketplace is today. There was a discussion about
11 restricting the amount of commercial in the context of
12 the light industrial zone. With that background, Mr.
13 Miske or maybe it was David Blaine at the time, made a
14 proposal to the commission that they restrict the
15 amount of commercial in this application for the
16 Petition Area. And the Planning Commission rejected
17 that recommendation.

18 Q When you say "restrict the amount of
19 retail", were they saying that there should be no
20 retail?

21 A No. They were saying it shouldn't be
22 restricted. The amount of retail should not be
23 restricted.

24 Q I guess I mis -- asked a poor question.
25 The county, when it went to the Commission, what it

1 was asking for -- this is the Maui Land Use (sic)
2 Commission -- were they basically asking the
3 commission to say there should be no retail on this
4 property?

5 A The department was asking the commission to
6 restrict the amount of retail to about 30 percent of
7 the gross area.

8 Q So they were going to allow some retail.

9 A Yes.

10 Q Just trying to place a limit on percentage.

11 A Correct.

12 Q And that was not accepted by -- it went
13 first, what, to the commission or first to the
14 council?

15 A The application first went to the Maui
16 Planning Commission. The commission made a
17 recommendation to the council not including the
18 limitation on the amount of commercial.

19 Q Were there further efforts by the county
20 regarding this limitation made at the council level?

21 A Yes. Despite the fact -- I remember this
22 pretty clearly -- despite the fact that the Planning
23 Commission didn't make -- decided not to restrict the
24 amount of commercial, the Planning Department
25 nevertheless in its presentation at the council made

1 that proposal again. And the council -- they made
2 that proposal at the land use committee and the
3 council rejected it.

4 Q So it appears that the zoning authorities
5 for the county of Maui where this Project is located,
6 felt that it would be unwise to restrict the amount of
7 retail on this particular property.

8 A Yes.

9 MR. PIERCE: Objection. The witness is not
10 in a position to identify what the conclusions were of
11 a body of many people.

12 Q (By Mr. Steiner): In any event, it was not
13 restricted despite the recommendation of the Planning
14 Department.

15 A Correct.

16 Q Just so it's clear for the record. During
17 the period when the property was before the Land Use
18 Commission and when it was rezoned, you weren't
19 working for either Honuaula or Piilani or Eclipse at
20 that time, right?

21 A I was not.

22 Q Were you working at all for Mr. Rice or
23 Kaonoulu Ranch?

24 A I was not.

25 Q You were serving in the public sector.

1 A That's correct.

2 CHAIRMAN CHOCK: About 5 more minutes,
3 Mr. Steiner.

4 MR. STEINER: Okay. I'm about to get into
5 a new subject. I don't know if it makes sense to
6 break now or just continue on and break up that
7 subject matter, in the middle of that subject matter.

8 CHAIRMAN CHOCK: Why don't we save it for
9 November 15th. It's been a long two days here.

10 MR. STEINER: Thank you. And I want to
11 thank the Chair and the Commission for taking the time
12 to hear our evidence today and yesterday.

13 CHAIRMAN CHOCK: Parties, any questions
14 before we adjourn?

15 MR. STEINER: Do we have a schedule yet for
16 those meetings or that will come out?

17 MR. ORODENKER: We'll send Notice to the
18 party and we'll also post the agenda. Generally the
19 meetings on Maui start and finish around the same time
20 as today.

21

22 (The proceedings were adjourned at 1:24 p.m.)

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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 2nd 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 _____ day of _____ 2012

HOLLY M. HACKETT, HI CSR #130, RPR
Certified Shorthand Reporter