

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

LAND USE COMMISSION
STATE OF HAWAI'I

ACTION

A85-595 KUILIMA DEVELOPMENT CO. (O'ahu)
_____)

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for an Action Meeting at the Airport Conference Center, 400 Rodgers Blvd. Suite 700, Room #3, Honolulu Hawai'i, commencing at 8:35 a.m. on November 8, 2013, pursuant to Notice.

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

A P P E A R A N C E S

COMMISSIONERS:

DENNIS ESAKI
RONALD HELLER, CHAIRMAN
LANCE M. INOUE
ERNEST MATSUMURA
CHAD McDONALD
CAROL TORIGOE

EXECUTIVE OFFICER: DAN ORODENKER

CHIEF CLERK: RILEY HAKODA
STAFF PLANNER: SCOTT DERRICKSON
DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.
AUDIO TECHNICIAN: WALTER MENCHING

Docket No. A85-595 Kuilima Development Co. (O'ahu)

For the Petitioner: WYETH MATSUBARA, ESQ.
CURTIS TABATA, ESQ.
DREW STOTESBURY, KDC

For the County: DAWN TAKEUCHI-APUNA, ESQ.
Deputy Corporation Counsel
RANDY HARA, DPP

For the State: BRYAN YEE, ESQ.
Deputy Attorney General
JESSE SOUKI, Exec. Drtr.
OFFICE of PLANNING

For the Movants
Defend Oahu Coalition: GREGORY KUGLE, ESQ.
BETHANY ACE, ESQ.

I N D E X

	PUBLIC COMMENTS	PAGE
1		
2		
3	Victoria Cannon	11
4	Danna Holch	12
5	Paul Nelson	14
6	Tim Vandever	15
7	Tom Pohaku Stone	21
8	Peter H.M. Lee	24
9	Angela Huntmer	26
10	Brandy Burke	30
11	Cindy McMillan	32
12	Bob Nakata	34
13	Andrea Anixt	37
14	Margaret Primacio	42
15	Tamayo Perry	43
16	Dr. Kioni Dudley	48
17	Sarah Cadiz	51
18	Jesse Ryan Kawela Allen	53
19	Ben Shafer	55
20	Allison Lum	57
21	Rodney Nakashima	60
22	Bob Wynam	63
23	Ralph Makau	65
24	Gill Rivere	73
25	Junior Fremrahal	76

I N D E X cont'd

PUBLIC COMMENTS	PAGE
Rob Borecca	78
Buddy Ako	79
Warren Sole	82
Drew Stotesbury	142

--00--

ORAL ARGUMENTS

BY MR KUGLE	84
BY MR. MATSUBARA	105
BY MR. YEE	123, 160

REBUTTAL

BY MR. KUGLE	135
--------------	-----

--00--

1 CHAIRMAN HELLER: Okay. Let's get started.
2 I'm calling the meeting to order. The first order of
3 business is the Minutes from our October 17th, 2013
4 meeting. Is there a motion for approval?

5 COMMISSIONER INOUE: So moved.

6 COMMISSIONER ESAKI: Second.

7 CHAIRMAN HELLER: Any discussion, any
8 corrections to the minutes? Hearing none, all in
9 favor say aye.

10 COMMISSIONERS: Aye.

11 CHAIRMAN HELLER: Any opposed? The minutes
12 are approved. Next order of business is our tentative
13 meeting schedule. I'll ask our executive officer to
14 update us.

15 MR. ORODENKER: Thank you, Mr. Chair. On
16 November 22 we have a video conference for the
17 adoption of the Form of the Order for A10-787 which is
18 the Maui R&T petition. And A13-797 which is CMBY.

19 December 11th and 12th is currently open.
20 January 8th and 9th we'll be on Kaua'i to consider the
21 Kaua'i IAL Petition filed by Kamehameha Schools Bishop
22 Estate; and to consider approval for the LUC to file a
23 declaratory ruling for renewable energy utilities on
24 Class A agricultural land.

25 January 22 and 23rd we will be having a

1 status report from Ko Olina Development on the boat
2 ramp.

3 Then February 12, 13 is currently open.

4 And February 26 and 27 is when we have to
5 consider the declaratory ruling for renewable energy.

6 CHAIRMAN HELLER: Thank you. Next item on
7 the agenda is Docket No. A84-595 Kuilima Development.
8 This is a hearing and action meeting regarding Docket
9 No. A85-595 Kuilima Development (O'ahu) to consider
10 Defend O'ahu Coalition's Renewed Motion for Issuance
11 of an Order to Show Cause Why the Boundary
12 Reclassification of Kuilima Development Company Should
13 Not Be Revoked for Failure to Perform Conditions,
14 Representations and Commitments by Kuilima Development
15 Company in Docket No. A85-595 filed on June 18, 2013,
16 hereafter referred to as the 'renewed motion'.

17 Will the Parties please identify themselves
18 for the record.

19 MR. MATSUBARA: Good morning, Chair Heller,
20 Commissioners. Wyeth Matsubara and Curtis Tabata on
21 behalf of Turtle Bay Resort Company, LLC. With me to
22 my left is Drew Stotesbury of Turtle Bay Resorts.

23 MR. HARA: Randy Hara with the City and
24 County of Honolulu, Department of Planning and
25 Permitting.

1 MR. YEE: Good morning. Deputy Attorney
2 General Bryan Yee on behalf of the Office of Planning.
3 With me is the Executive Director Jesse Souki.

4 MR. KUGLE: Good morning, Chairman. Greg
5 Kugle and Bethany Ace, the Damon Key firm here for
6 Defend O'ahu Coalition. Also present in the room
7 today are a number of the Defend O'ahu Coalition
8 members and board members.

9 CHAIRMAN HELLER: Thank you. Let me update
10 the record. On February 4, 2010 the Commission met to
11 consider Defend O'ahu Coalition's Motion for Issuance
12 for an Order to Show Cause why the boundary
13 classification of Kuilima Development Company should
14 not be revoked for failure to perform conditions,
15 representations and commitments by Kuilima Development
16 Company in Docket No A85-595 filed on April 1, 2008.

17 The Commission was unable to make a ruling
18 on the motion at that time and determined that a new
19 hearing would be set by the executive officer.

20 On June 18, 2013 the Commission received
21 DOC's renewed motion and Exhibits A and B. On
22 June 25, 2013 the Commission received and granted a
23 request for extension of time to file briefs and
24 responses from Petitioner's representative Jonathan
25 Steiner and also received Defend O'ahu Coalition's

1 amended Certificate of Service to the Parties.

2 On July 19, 2013 the Commission received
3 notice from Mr. Steiner that Mr. Wyeth Matsubara would
4 be representing Petitioner. Mr. Matsubara later
5 requested and was granted an extension of time to many
6 file briefs and responses on August 1, 2013.

7 On August 22, 2013 the Commission received
8 OP's response to DOC's Renewed Motion, Respondent
9 Turtle Bay Resort Company, LLC's Memorandum in
10 Opposition to DOC's Renewed Motion and the City and
11 County of Honolulu's Statement of Position.

12 On September 12, 2013 the Commission
13 received Defend O'ahu Coalition's Reply Memorandum in
14 Support of the DOC's Renewed Motion.

15 On November 7, 2013 the Commission received
16 Defend O'ahu Coalition's Petition to Intervene. From
17 January 1, 2013, 3:30 p.m. to November 7, 2013 the
18 Commission received approximately 1,162 e-mail
19 comments regarding this docket. These e-mails have
20 been made part of the record.

21 Let me briefly describe our procedure for
22 today on this docket. First, I will call for those
23 individuals desiring to provide public testimony to
24 identify themselves. All such individuals will be
25 called in turn to our witness box where they will be

1 sworn in prior to their testimony. After public
2 testimony the Commission will hear argument on DOC's
3 Renewed Motion. At the conclusion of oral argument
4 and after questions from the Commissioners and the
5 answers thereto, the Commission will conduct its
6 deliberations. Are there any questions on our
7 procedures for today?

8 MR. MATSUBARA: I have no questions.

9 MR. KUGLE: No questions.

10 CHAIRMAN HELLER: Let me remind the
11 audience that the Commission is addressing the
12 specific matter of whether or not to grant the Motion
13 for issuance of an Order to Show Cause. The
14 Commission may grant the motion if the Commission has
15 reason to believe that there has been a failure to
16 perform according to the conditions imposed, or the
17 representations or commitments made by Petitioner.

18 This is *not* an evidentiary hearing. The
19 Commission is only making a determination on whether
20 or not to grant the motion for issuance of an Order to
21 Show Cause. *If* the motion is granted, an evidentiary
22 hearing will be held, and the Parties will be given
23 the opportunity to present their cases, and the public
24 will be afforded an opportunity to provide public
25 testimony.

1 For those that are testifying the
2 Commission would appreciate it if you could confine
3 your testimony to issues consistent with this matter
4 and avoid repetitive testimony.

5 In addition, a 3-minute time limit on
6 testimony will be enforced. Let me remind those who
7 have submitted written testimony that the written
8 testimonies are already part of the record. It's not
9 necessary to read us your written testimony. If you
10 would summarize it or if you have anything you want to
11 add to it that's fine. But it's not necessary to read
12 the written testimony.

13 Before we begin public testimony let me
14 just put one disclosure on the record in this docket,
15 my usual disclosure, but I don't think I've done it in
16 this particular docket yet. In my law practice I
17 present taxpayers in real property tax appeals. In
18 those cases, at least the ones on O'ahu, the adverse
19 party is the City and County of Honolulu. I make that
20 disclosure to see if anybody has any objections to my
21 continued participation in this case. Does anybody
22 wish to raise any objection?

23 MR. MATSUBARA: No objection.

24 MR. KUGLE: No objection.

25 CHAIRMAN HELLER: All right. Then we will

1 proceed with public testimony. Mr. Orodenger, if you
2 will call the witnesses in order.

3 MR. ORODENER: Thank you, Mr. Chairman.
4 Victoria Cannon followed by Donna Holt.

5 THE WITNESS: Good morning, Chair and
6 Commissioners.

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

10 THE WITNESS: I do.

11 CHAIRMAN HELLER: Please state your name
12 and address and then proceed.

13 THE WITNESS: My name is Victoria Cannon,
14 92-102 Oloa Place in Makakilo.

15 CHAIRMAN HELLER: Go ahead.

16 THE WITNESS: Thank you for the
17 opportunity. Once again it's good to see everyone. I
18 support Defend Oahu Coalition's renewed Motion to Show
19 Cause. Failure to perform to fulfill conditions,
20 representations and commitments made by the developer
21 in 1986 in exchange for this zoning modification on
22 real property should be examined carefully and
23 completely.

24 It is nothing less than brazen in your face
25 bad business behavior. The Land Use Commission gave

1 them what they wanted. They failed to perform. We
2 must conclude that consequences should be levied. And
3 this modified parcel should revert back to its
4 original Ag clarification. We must do our part to
5 stop land speculation. We must place consequences for
6 this and any other failure to comply.

7 The new consortium of multi-national banks
8 and mainland speculators will not provide more than a
9 minimum of number of minimum wage jobs when what O'ahu
10 needs are professional jobs in their communities to
11 get people off our roads. We need housing. The
12 housing they're proposing is most certainly not
13 affordable. I mean that's a no-brainer. The
14 destruction of our coastline and all the cascade of
15 consequences that will follow are not worth the
16 losses.

17 Stop this endless islandwide land
18 speculation and let's do the right thing. Support
19 this motion. Thank you.

20 CHAIRMAN HELLER: Parties, any questions?
21 Commissioners, any questions? Thank you. Next.

22 MR. ORODENKER: Dana Holt followed by Paul
23 Nelson.

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

1 and testified as follows:

2 THE WITNESS: Yes.

3 CHAIRMAN HELLER: Please state your name
4 and address and then go ahead.

5 THE WITNESS: Sure. Good morning. I'm
6 Dana Holt. I live at Turtle Bay at 47-901 Kamehameha
7 Highway. I provided written testimony. So I wanna
8 just summarize what I've written just to speed things
9 up.

10 But I was born and raised in Hawai'i, left
11 for over 20 years in the mainland and just came home a
12 few years ago to run Turtle Bay as vice-president
13 general manager. My role since being home was really
14 to help the many, many people on the North Shore get
15 jobs.

16 I don't know if you know this but we get
17 the calls at the hotel from many people who go away to
18 the Mainland, especially football players from Kahuku,
19 come home after their career is over or it's generally
20 a period looking for work. These people need to take
21 care of their families and the next generations to
22 come.

23 So I think that just to summarize beyond
24 what I've written in testimony is that my role as
25 general manager is not just to run an operation, but

1 to provide good jobs and some housing in that area for
2 the many people that live three and four families in
3 one home. And with these jobs they can be able to
4 afford their own homes. So I urge you to support this
5 plan at Turtle Bay. Thank you very much for your
6 time.

7 CHAIRMAN HELLER: Stay there just a minute,
8 please. Parties, any questions?

9 MR. MATSUBARA: No questions.

10 MR. KUGLE: No questions.

11 CHAIRMAN HELLER: Commissioners, any
12 questions? Thank you. Next.

13 MR. ORODENKER: Paul Nelson followed by Tim
14 Vandever.

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

18 THE WITNESS: I do.

19 CHAIRMAN HELLER: Please state your name
20 and address and then go ahead.

21 THE WITNESS: My name is Paul Nelson. I
22 live in Waialua. I support the Coalition. I'm the
23 director on the part of Save Haleiwa Beach group.
24 What I have to say, perhaps, is a little more
25 philosophical than specific. I'm interested in the

1 difference between the common good and private
2 demands. Kuilima, Turtle Bay is a special interest
3 over the common good. Same is true for La'ie. Both
4 are exclusive. The history will show that the general
5 public is pretty much excluded from the areas that
6 they need for recreation and life along that shore.

7 We're increasing the private interest over
8 the common good by supporting these kinds of
9 development plans. We have a problem with population
10 already. We need to provide for the general good.
11 Thank you.

12 CHAIRMAN HELLER: Thank you. Parties, any
13 questions? Commissioners, any questions? Next.

14 MR. ORODENKER: Tim Vandever followed by
15 Tom Pohaku Stone.

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

19 THE WITNESS: I do.

20 CHAIRMAN HELLER: Please state your name
21 and address and then go ahead.

22 THE WITNESS: My name is Tim Vandever. My
23 address is 1545 Bertram Street, Honolulu, Hawai'i.
24 Aloha. Good morning, Chair Heller and Members of the
25 Commission. As you heard my name is Tim Vandever.

1 I'm co-chair of the Defend O'ahu Coalition on whose
2 behalf I speak today. I was a 7-year employee at
3 Turtle Bay Resort. I was the Local 5 shop steward for
4 my department, Employee of the Year at the resort in
5 2005, and I still frequent and utilize the property
6 for recreation on a regular basis.

7 Defend O'ahu Coalition requests,
8 respectfully requests, that the Land Use Commission
9 issue an Order to Show Cause to the developer at
10 Turtle Bay Resort today and eventually return the
11 236 acres of resort property classified to Urban
12 District in 1986 to its original classification due to
13 decades of inaction by this developer.

14 The developer has failed to comply with
15 representations, conditions and commitments made to
16 the LUC and therefore the property should revert back
17 to the Agricultural District until and unless the
18 developer comes forward with a new boundary
19 reclassification Petition for its newly proposed use.

20 This case goes to the heart of the issue
21 underlying the entire development proposal with Turtle
22 Bay Resort. The failure on the part of this developer
23 to fulfill conditions, representations and commitments
24 is not in question. It is a matter of fact that
25 owners of Turtle Bay made commitments to the State and

1 promises to residents that the expansion proposed on
2 and around this proposal would provide jobs and
3 affordable housing to Ko'olauloa --

4 MS. ERICKSON: Excuse me, Mr. Vandever.
5 Could you slow down just a tad.

6 THE WITNESS: Certainly -- on and around
7 this parcel would provide jobs and affordable housing
8 for Ko'olauloa and the North Shore. It is a fact that
9 this expansion never happened. The developer admits
10 as much in their briefing filed in response to our
11 motion.

12 Now a new group of multi-national banks and
13 speculators has come before our community with more
14 promises and a completely different plan. The latest
15 developer at the resort whose paid spokespersons you
16 have already heard and will continue to hear this
17 morning, has embarked on an aggressive public
18 relations campaign advocating for a completely new
19 Project on this rural property that we believe would
20 negatively impact the quality of life of residents on
21 O'ahu.

22 They will argue that they're entitled to
23 build a sprawling mega-resort stretching from Kahuku
24 Point to Kawela Bay. And they'll argue that it will
25 be the best development you've ever seen. Don't

1 believe it. According to their own Supplemental
2 Environmental Impact Statement ordered by the Hawai'i
3 Supreme Court in 2010, the latest developer on
4 property, Canadian company Replay Resorts, now plans
5 to build condotels and time share units instead of the
6 full service hotel as promised in the LUC Decision and
7 Order in 1986, as well as in the City and County of
8 Honolulu unilateral agreement dated the same year.
9 And I'll provide a document for you if I'm allowed to
10 submit evidence.

11 CHAIRMAN HELLER: Yes. You can give that
12 to our clerk.

13 THE WITNESS: Okay. This is from the Final
14 Supplemental Environmental Impact Statement. It
15 clearly shows that of the new hotels they're planned
16 to be timeshare and condominium units. Although it
17 might prove more lucrative for an outside speculator
18 to build condotels and timeshares, these units would
19 provide only a fraction of the jobs that would be
20 available in a full service hotel.

21 CHAIRMAN HELLER: Please bring your remarks
22 to a conclusion.

23 THE WITNESS: I've got one more page. This
24 is beside the point since condotels and timeshares
25 were never part of the deal. We must never forget

1 that it was full service hotels promised to ensure
2 employment opportunities which predicated zoning
3 changes at the city and state level. The latest
4 development: The developer at Turtle Bay Resort has
5 conveniently forgotten his promise.

6 The notion of development entitlements is
7 also in question. We know that recently one of the
8 Mainland owners of the property, Highland Capital,
9 sued Credit Suisse who took over the deed at Turtle
10 Bay in lieu of foreclosure in 2008 for fraud,
11 conspiracy and unjust enrichment in connection with a
12 series of syndicated loan transactions that Credit
13 Suisse syndicated and marketed based on unreasonable
14 and deceptive appraisals. And I will submit this into
15 testimony as well, a copy of that lawsuit.

16 The lawsuit alleges that the multi-national
17 bank inflated the price of numerous properties on the
18 Mainland and in Hawai'i including Turtle Bay Resort.
19 This lawsuit bolsters the argument that if the lenders
20 feel they lost money on Turtle Bay, the way for them
21 to address this is to sue Credit Suisse, not develop
22 timeshares and multi-million dollar condos on our
23 coastline.

24 If the allegations are true it is clear
25 it's not the community or the Commission's fault

1 that they lost money. It's Credit Suisse's fault and
2 to some extent the fault of the former owner venture
3 capital fund Oaktree, LLC.

4 We have seen scores of different developers
5 and numerous owners speculate on this property over
6 the last 27 years. Just since the time of our
7 original filing in 2008, I believe this Commission has
8 seen four different developers try to explain this
9 outdated expansion. And just out of curiosity who
10 from the new development team was here when we filed
11 our motion in 2008? Just a show of hands.

12 So here we have a new dog and pony show,
13 one that advocates a plan that's never been considered
14 by this Commission.

15 Regardless of how you feel about condotels
16 and time shares, and I'm bringing my remarks to a
17 close, regardless of what you think the likelihood is
18 of promises being kept this time around, regardless of
19 whether or not you believe this developer when they
20 tell you they're committed to our community and not
21 just committed to flipping this property or gambling
22 on its further speculation, regardless, the Commission
23 has an obligation to let residents give testimony on a
24 project that could severely impact their quality of
25 life.

1 Residents of Ko'olauloa, and the North
2 Shore especially, deserve the chance to hear for
3 themselves just what their neighbors at Kuilima are up
4 to. We believe that the law matters. And feel that
5 the Commission has a mandate and an obligation to
6 require the developers make good on promises to our
7 state and community in exchange for modifications.
8 When developers fail to do so there should be
9 consequences.

10 Please revoke this reclassification and
11 make the new owners of the resort prove that this new
12 proposal is valid and sustainable. Please issue an
13 Order to Show Cause and move this process on to the
14 next step. And I welcome any questions.

15 CHAIRMAN HELLER: Parties, any questions?
16 Commissioners, any questions? Who's next?

17 MR. ORODENKER: Tom Pohaku Stone followed
18 by Peter H.M. Lee.

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

22 THE WITNESS: Yes, I will. Maybe you
23 shoulda asked that of the other two people too.

24 CHAIRMAN HELLER: Please state your name
25 and address.

1 THE WITNESS: My name is Tom Pohaku Stone.
2 I represent Kanalu, a non-profit organization that we
3 disseminate cultural education, traditional. And
4 we're here in support of what Turtle Bay and Replay
5 Resorts is doing today. We're not living in 2-0-8
6 (sic). And I believe the comments made just recently
7 regarding the development of 2-0-8, you know, at the
8 time of 2008 with high-rise hotels we're against.

9 The plan that stands today is something
10 that we can be accepting of. It provides for a larger
11 point of our community that is in need of housing,
12 jobs that keep them closer to their homes.

13 Ko'olauloa and the residents of Ko'olauloa
14 have a long drive. They have families that they
15 actually can't see. I spend a lot of time in my
16 community. I am from that community. I've spent over
17 50 years on the North Shore.

18 So when I look at all the testimonies
19 that're coming out here, is that development of the
20 North Shore has become very rampant.

21 The entire North Shore is owned by the
22 surfing industry which has no affordable housing but
23 rentals that are illegal. And they're also out of our
24 price range. We can't afford a home. So this gives
25 us an opportunity to keep our families home instead of

1 moving to the 9th island, which is Las Vegas, and
2 being replaced by so many outsiders. So our effort
3 here is to be supportive of what's trying to be done
4 today for our community. Because we have families
5 that are just melting down. We can't have that no
6 more. I work with a lot of young children that are in
7 that position today because their parents aren't
8 there. So we always helping.

9 We understand that there *is* a lot of
10 conflict regarding this. But we have to make a
11 decision. The decision is based on the needs of our
12 community, not a personal decision.

13 When people talk about development,
14 Makakilo for example, Makakilo wasn't there. Neither
15 was 'Ewa Plains the way it is today. Neither is
16 Honolulu, neither is Waikiki. But if we as residents,
17 local community, take a position of being active, then
18 we can have some progress that's controllable.

19 James Campbell developed all this land out
20 in this area. And there was no input by the public,
21 minimal, because we were the silent majority. Today
22 we are not the silent majority. We have spokespeople
23 here. We have kupuna here that are in favor of this
24 development plan. We're going to hold onto that and
25 fight for it. Because for too long there's been

1 voices from *outside* Hawai'i influencing, right, and
2 they're the minority. It's time the majority is
3 heard. And as a Hawaiian, you know, I rarely come out
4 and support any of this. In 2'08 (sic) we're the ones
5 standing against the concept of this development.

6 In 2010 we were asked to listen and just be
7 open minded. Trust me, I'm not an open minded person
8 when it comes to development. But I took a position
9 realizing the needs of the community before my own,
10 because all I care everybody on the North Shore can go
11 home. That's how I feel. Okay. Thank you.

12 CHAIRMAN HELLER: Parties, any questions?
13 Commissioners, any questions? Thank you. Next.

14 MR. ORODENKER: Peter H.M. Lee followed by
15 Angela Huntemer.

16 PETER H.M. LEE
17 being first duly sworn to tell the truth, was examined
18 and testified as follows:.

19 THE WITNESS: Yes.

20 CHAIRMAN HELLER: Please state your name
21 and address and then go ahead.

22 THE WITNESS: Peter H.M. Lee, 94-10128 Kepa
23 Street, Waipahu, Hawaii. Sorry, I submitted the
24 testimony late so I'm not sure if you got it but I do
25 have 20 copies here.

1 Aloha, members of the state Land Use
2 Commission. My name is Peter H.M. Lee. I'm with
3 Hawai'i Laborers/Employers Corporation Education
4 Trust. It's an acronym for -- the acronym is LECET.
5 LECET is the labor/management partnership between the
6 Hawai'i Laborers Union Local 368 and its unionized
7 contractors.

8 Hawai'i LECET strongly supports this
9 Project and applauds the new owners engaging the North
10 Shore and Ko'olauloa community to understand its
11 concerns. As a result the owner on their own accord
12 dramatically downsized its earlier development plans.

13 We hear often the mantra all the same:
14 "live, work and play" when designing new communities.
15 Turtle Bay Resorts understands this, but also realizes
16 that the importance of agriculture. Their new plan
17 will dedicate 469 acres to farmers to grow diversified
18 food crops, and 75 acres for a farmers market that
19 would serve the needs of both residents and public.

20 This unique combination brings to life the
21 new concept of live, work, play and *farm* to Hawai'i.
22 And the North Shore community and Ko'olau community
23 will be a shining example of how this can work.

24 Their new plan will also provide a lot of
25 benefits to the community. I won't go through that.

1 We just humbly ask for your support to allow Turtle
2 Bay the opportunity to execute its new development
3 plans, plans that will have positive impacts to not
4 only North Shore and Ko'olauloa community but also to
5 the local construction industry and farming industry
6 as well. Thank you.

7 CHAIRMAN HELLER: Parties, questions?
8 Commissioners, questions? Thank you. Next?

9 MR. ORODENKER: Angela Huntemer followed by
10 Brandy Burla?

11 THE WITNESS: Hello. My names is Angela
12 Huntemer.

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

16 THE WITNESS: Yes. I first came upon this
17 issue --

18 CHAIRMAN HELLER: I'm sorry. Address,
19 please.

20 THE WITNESS: Oh, my address. I'm
21 extremely fortunate to live at Kuilima Estates East
22 which is on the Turtle Bay Resort property. I live at
23 57-077 Kuilima Estates.

24 CHAIRMAN HELLER: Go ahead.

25 THE REPORTER: Could you move the

1 microphone towards you more. Thank you.

2 THE WITNESS: So I first came upon this
3 issue when I was reviewing the Final Supplemental EIS
4 for Turtle Bay's development. I have submitted some
5 written testimony but I'll just summarize here.
6 Immediately it struck me when these conditions were in
7 the -- they're in the Final EIS, and it struck me as
8 kind of incongruous with what was actually happening
9 on the ground.

10 So I became interested in it. Then I found
11 the Defend O'ahu Coalition case. The finalizing,
12 drafting and finalizing things do not constitute
13 fulfillment about the conditions that they were
14 supposed to do.

15 Laying a few pipes and wires don't
16 constitute completion of a building project or really
17 even with the beginning of it.

18 I'm extremely troubled by the flip-flopping
19 of the representation of the Petitioner that this
20 Project is the same as it was in the 1980s. When the
21 Final Environmental Impact Statement that they have
22 just released, and was accepted by DPP, maintains that
23 it's very different. This doesn't make sense. It's
24 either the same or it's different.

25 In all our public relations communications

1 it's characterized as 'very different'. So I would
2 just ask you to consider that. It just -- they cannot
3 maintain that both is true. I teach pre-school. And
4 even the children at 4 years old know the difference
5 between "same" and "different". Sorry. I don't mean
6 to appear flippant, but it is a huge problem.

7 I'm also extremely troubled by the
8 assertion that Defend O'ahu Coalition doesn't have
9 standing. Of course they have standing. There's
10 precedence of such groups having standing in cases
11 like this before, themselves included.

12 Condition No. 1 Full service hotel. That
13 jumped out at me. Even in the Final EIS the
14 Petitioner specifically says that the hotels will not
15 be full service. And this is part of a trend
16 worldwide. You might tell by my accent I'm not from
17 here. It's a trend worldwide to develop hotels that
18 have minimal service. 'Minimal service' means low
19 paying jobs obviously. It's not hard to figure that
20 out.

21 Conditions. They say they have intentions
22 relating to 2, 3 and 7. Well, they're still
23 intentions. Nothing's happened. They have a golf
24 course. They capped a well. They widened Kuilima
25 Drive. It's not substantial.

1 Extremely troubled by Condition No. 9.
2 Having gone through the thousand six hundred pages
3 and the 2,000 pages of comments and replies for their
4 Final EIS, I'm extremely troubled by the lack of
5 freshwater monitoring.

6 They were directed to do nearshore
7 monitoring which they've done. It's not very
8 comprehensive. And the locations are kind of limited.
9 But as anyone that has any knowledge of hydrology or
10 biology will tell you that to really know what's going
11 on with the wetland system -- and this is a coastal
12 wetland system -- you have to do freshwater.

13 CHAIRMAN HELLER: Please bring your
14 testimony to a completion.

15 THE WITNESS: Their Final EIS did not have
16 any freshwater quality status or aquatic status. So
17 this is a huge problem as well.

18 Also regarding the marsh, not only the
19 Petitioner maintains that they've improved the marsh.
20 Well, back in the 1989's they meet with Fish and
21 Wildlife. Fish and Wildlife sent them a project to
22 implement and it involved making 2 huge problems for
23 the four species of endangered water birds that live
24 there. They've not done that.

25 They did build a partial moat. The moat

1 won't keep rats, mongoose, cats or any of that stuff
2 out so I don't really....it's better than nothing but
3 it's nothing like they were supposed to implement. So
4 their representation that they've actually started
5 with this restoration is false.

6 CHAIRMAN HELLER: Please wrap it up.

7 THE WITNESS: Okay. And also they actually
8 got to destroy 12 acres of wetland back in the 1980's
9 in exchange for this fabulous plan of making the pools
10 which was never done.

11 So I would really urge you to support
12 Defend O'ahu Coalition's Motion to Show Cause. I
13 think that the evidence that we saw when this matter
14 went to the Supreme Court, that the Supreme Court
15 decided that stuff that had been decided back in the
16 '80s was no longer pertinent. And I believe that it's
17 a similar case for you folks now. Thank you.

18 CHAIRMAN HELLER: Parties, any questions?
19 Commissioners, any questions? Thank you. Next.

20 MR. ORODENKER: Brandi Burke followed by
21 Cindy McMillan.

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

25 THE WITNESS: Yes.

1 CHAIRMAN HELLER: Please state your name
2 and address.

3 THE WITNESS: Good morning. My name is
4 Brandi Burke. My resident address is 54-238 Honomu
5 Street in Hau'ula. Aloha and good morning. I come to
6 you today as a resident, as an employee, and as a
7 member of the community who supports better good.
8 I've already submitted written testimony on behalf of
9 a group called *Honuamoa* (phonetic) which I
10 participated. But I come before you today with my
11 testimony as a personal testimonial.

12 I am a product of the community. I
13 graduated from Kahuku High School. Went on to
14 college, went off to find careers in Honolulu. I
15 traveled every day like everyone else does but somehow
16 I got disconnected from my family. And I was
17 fortunate at Turtle Bay for offering me the
18 opportunity to work there.

19 And I feel that myself as an individual, as
20 an active community member, and a citizen that I am a
21 true model of Ko'olauloa, you know. And for me I come
22 here to ask for your support in this Project because
23 there's more kids out there like me that needs the
24 opportunities to grow professionally.

25 The facts have been presented. It's before

1 you, so I won't go on and on about what it is. But
2 there's more of me that can be out there in our
3 community to give back and be a voice for those that
4 are not speaking. Thank you.

5 CHAIRMAN HELLER: Parties, any questions?
6 Commissioners, any questions? Thank you. Next.

7 MR. ORODENKER: Cindy McMillan followed by
8 Bob Nakata.

9 THE WITNESS: My name is Cindy McMillan.
10 My address is 1100 Alakea Street, fourth floor.

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

14 THE WITNESS: Yes.

15 CHAIRMAN HELLER: Please go ahead.

16 THE WITNESS: Cindy McMillan. I'm here
17 today to represent the Pacific Resource Partnership.
18 PRP is a consortium of the Hawaii Regional Council of
19 Carpenters and the signatories that are -- the
20 contractors are the signatory to the carpenters.
21 Sorry. We're here today to support the Turtle Bay
22 Resort. I think sometimes PRP and the construction
23 industry as a whole is pitted against community
24 members who don't support development.

25 And I believe that there are probably more

1 things that we agree on than sometimes is evident.
2 One of those things is public input and a community
3 engagement in a Project of this size. I believe that
4 the Supplemental EIS has been a rigorous process.
5 There has been extensive public scrutiny and ample
6 opportunity for the community to comment on the plans
7 that the Turtle Bay Resort has put forward today.

8 I also believe that the Turtle Bay Resort
9 has done more than is required in the EIS Project and
10 has communicated with community members.

11 Now, having said that I also know that
12 there are many people, some of them in this room, who
13 feel that their voices haven't been heard. And I
14 believe that the resort has listened to those voices
15 and the result is a dramatically scaled-down Project,
16 61 percent reduction in units. And that will have a
17 reduction in impacts on the community.

18 Appropriate development is not the same
19 thing as no growth. No growth has consequences that I
20 think, again, this is an area where some of us can
21 agree. No growth means no jobs, no homes for local
22 people.

23 All right. Kids gonna have to go, leave
24 here to live up on the Mainland because there's
25 nowhere for them to live, no jobs for them here. I

1 don't believe that's an outcome that anybody would
2 like to see.

3 In conclusion PRP supports this Project and
4 we'd like to see it move forward. Mahalo.

5 CHAIRMAN HELLER: Parties, any questions?
6 Commissioners, any questions? Next.

7 MR. ORODENKER: Bob Nakata followed by
8 Andrea Anixt.

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

12 THE WITNESS: I do.

13 CHAIRMAN HELLER: Please state your name
14 and address then go ahead.

15 THE WITNESS: Bob Nakata, 47-417 Lulani
16 Street in Kaneohe. I'm pretty much a life-long
17 resident of Kahalu'u. I've been involved in these
18 land use planning processes since about 1972 when I
19 returned from seminary in New York City.

20 I grew up on a taro farm in Kahalu'u at a
21 time when Kahalu'u and the Windward Coast the primary
22 economic activity was small farming. When I returned
23 from seminary I saw the plans for a Second City in
24 Kahalu'u which would have totally urbanized that area.
25 This kind of process was going on all over the island.

1 At the time that I went to seminary this
2 was the late 1960s when there was tremendous amount of
3 rioting on the mainland. Part of the reason for that,
4 there were ethnic tensions and all that, but also
5 people in the ghettos and the big cities had no access
6 to the country. And I was afraid that is the kind of
7 thing that would happen to O'ahu. People of Honolulu
8 would be locked into that urban center.

9 So I liked it when the General Planning
10 process evolved into Honolulu, urban Honolulu being
11 the growth area. Second City was to be the 'Ewa
12 Plains. The traffic system was designed to go that
13 way. The Honouliuli sewage treatment plant was
14 planned for that area.

15 Everything was lined up for development to
16 go there, not the North Shore 'cause the
17 infrastructure was not there for the North Shore to be
18 developed.

19 That's why Kamehameha Highway has been such
20 a crucial part of the decision-making. Other things
21 have happened now. Global warming is eroding
22 Kamehameha Highway at least along the Windward coast
23 where I'm -- that I'm familiar with. So what happens?

24 Places like He'eia, Ka'a'awa, Punalu'u,
25 Hau'ula where the shoreline is already being eroded

1 you see pilings being placed along the shoreline to
2 keep the ocean from coming in. But with the sea level
3 rise occurring that's going to become a bigger
4 problem.

5 The billions that are being spent on the
6 infrastructure on this island are being spent along
7 the south shore. When will Kamehameha Highway be in
8 line for that? I think for at least 30 years there
9 are no plans for funding for Kamehameha Highway. So
10 those are severe problems.

11 The speculation that has gone on on this
12 property has been going on for 50 years, ever since
13 the first General Plan was put together in the 1960s I
14 believe.

15 CHAIRMAN HELLER: Please bring your
16 testimony to a conclusion.

17 THE WITNESS: That plan showed a highway
18 taking off from Haki'ipu'u through the back of Kahana
19 Valley all the way down to Kuilima, Turtle Bay. That
20 was removed in the 1980s I believe.

21 So infrastructure has been removed rather
22 than put in place to support this kind of development
23 that is being proposed. Certainly the plans have been
24 downsized, but it's still an urban development of
25 sizeable proportions. So my opposition to this

1 continues. Thank you.

2 CHAIRMAN HELLER: Parties, any questions?
3 Commissioners, any questions? Next.

4 MR. ORODENKER: Andrea Anixt followed by
5 Margaret Primacio.

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

9 THE WITNESS: Yes.

10 CHAIRMAN HELLER: Please state your name
11 and address and then go ahead.

12 THE WITNESS: Andrea Anixt. Malmalua
13 Street in Ka'a'awa. I'm also on the Board of
14 Directors of the Ka'a'awa Community Association and
15 the O'ahu MPO Metropolitan Planning Organization
16 Citizens Advisory Committee. We oppose -- well, I
17 don't know about the Citizens Advisory Committee --
18 but Ka'a'awa land, Waiahole/Waikane, Punalu'u,
19 Hau'ula, the North Shore Neighborhood Board, Sunset
20 Beach Community Association, the Kailua Neighborhood
21 Board, Kahalu'u Neighborhood Board, all are opposed to
22 the passage of the developments, the two developer's
23 developments in Bill 47.

24 And the reason basically is that it's not
25 country. By the time you add about 8,000 extra people

1 at Turtle Bay and 9,000 at Malaekahana for Envision
2 La'ie their end at BYU.

3 So the vision for the General Plan and
4 Ko'olauloa's Sustainable Communities Plan for
5 Ko'olauloa is that it seeks to preserve the region's
6 rural character and its natural, cultural, scenic and
7 agricultural resources.

8 This has been the plan since 1977 I think
9 was the last time when I first testified for that.
10 The region will remain country characterized by small
11 towns and villages with distinct identities that exist
12 in harmony with the natural settings of mountain
13 ridges and winding coastline.

14 So how does this plan allowing this
15 developer 300 percent expansion to -- and the other
16 development -- double the population from Kawela Bay
17 to Ka'a'awa? How far does that facilitate the Keep
18 the Country Country basically?

19 Turtle Bay has put out some data that says
20 61 percent of the people find this favorable to
21 downsize their development. Probably, yes, they might
22 like to downsize it to nothing or to what's already
23 existing I should say. A lot of us really do enjoy
24 going to Ola's or something like that.

25 But there is a problem with the claim that

1 they are downsizing so much because it's timeshares.
2 It brings in new people. It does not increase the
3 jobs like they say it does, but it certainly increases
4 the traffic.

5 We already have traffic problems that you
6 hear about all the time at Laniakea through North
7 Shore. We have one, 2-lane highway. The state of
8 Hawai'i has said -- the DOT has said they will never
9 widen the highway. The O'ahu MPO, which is 80 percent
10 of the money to do such kinds of things, it's the
11 federal money -- they've said it's an unsustainable
12 land use cycle to try to put this kind of development
13 out where there is no infrastructure.

14 And this is a basic reason to oppose this
15 loss of country and the urban escape for people from
16 Honolulu, the primary urban core. This is lacking.

17 It will cost us all tons of money if we
18 actually do come out and build an H-4 for their Turtle
19 Bay and Malaekahana. Who's going to afford that? It
20 took 30 years and billions of dollars to build H-3.
21 So that was \$80 million a mile in 1990 dollars. We
22 can't afford that. They're not going to do it.

23 So the problem remains, the infrastructure.
24 We have one road. It's a 2-lane road. So any
25 expansion at this point 30 years past when they were

1 given permission doesn't cut it.

2 Also the job -- the sustainable -- no, the
3 supplemental impact statement that they had to do at
4 Turtle Bay claimed -- I'll read this: "They claim
5 they're gonna make 1500 jobs," in some of their
6 propaganda, publicity. It says, "As presented in the
7 social economic impact analysis in table 514 the
8 number of new continuing operation positions at the
9 Turtle Bay Resort will climb to about 753, an increase
10 of 72 percent over current conditions."

11 CHAIRMAN HELLER: Please bring your
12 testimony to a conclusion.

13 THE WITNESS: Okay. But the type of job it
14 says here is, let's see: Islandwide the average
15 annual wage for the combined industries which is
16 tourism is an industry -- is approximately 22,850 a
17 year. They will not be able to afford even affordable
18 housing. Resort workers at Turtle Bay gain union
19 wages if they're in Local 5. But this kind of
20 development when it's timeshares that's going to be
21 neighborhood people that come in, work for cash, don't
22 pay tax on it. It's not a job that even gives them
23 the 22,000 a year non-living expense.

24 I think also we go about talking to Chip
25 Fletcher all the time about what's going to happen

1 with sea level rise. This is another coastal
2 development. Think about that.

3 It's right on the water. Who's going to
4 pay the insurance? We've already seen that the
5 National Flood Insurance Program is going bankrupt
6 because of storms like Sandy on the mainland. As he
7 says here, "More sand is not going to solve the
8 problem."

9 CHAIRMAN HELLER: Please wrap it up.

10 THE WITNESS: Okay. It says, "Taxpayers
11 help subsidize the National Flood Insurance Program
12 already. And with these billion dollar disasters will
13 we taxpayers continue to support new hotels on
14 coastlines? They're within a hundred feet of the
15 ocean, 100 to 300 they're talking about setback. Some
16 of the buildings are 90 feet in height. This is not
17 country, but the recommendation of this man Chip
18 Fletcher who does these sea level rise information
19 says, some beaches may join the long list of
20 endangered things on our islands. In the end we need
21 to identify some legacy beaches where the beach is the
22 most important consideration.

23 Will that be Waikiki with all its
24 infrastructure, the jobs, the workforce housing
25 nearby? Or something remote like Turtle Bay?

1 I ask you to support the DOC because of
2 traffic mainly and also because Keep the Country
3 Country is a real good idea on this island where the
4 traffic is already too much to handle.

5 CHAIRMAN HELLER: Thank you. Parties, any
6 questions? Commissioners, any questions? Who's next?
7 Margaret Primacio followed by Tamayo Perry.

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

11 THE WITNESS: Yes.

12 CHAIRMAN HELLER: Please state your name
13 and address then go ahead.

14 THE WITNESS: Margaret Primacio. I live in
15 the former plantation camps 56-490 Kamehameha Highway.
16 I've been a resident of the camps of the camps for
17 over 60 years. I'm a director of Defend O'ahu
18 Coalition. And I support the issuance of an Order to
19 Show Cause.

20 The company didn't perform as promised.
21 And therefore the benefits to the state and its people
22 has never happened. We haven't realized that.
23 Therefore we're asking that issuance to be done. And
24 too many times developers in our area in Ko'olauloa
25 are given, granted urban designations. And the

1 benefits to the community remain unfulfilled.

2 This has happened in La'ie, Turtle Bay,
3 even in the camps in Kahuku where the landscape is
4 changing people's lives drastically and not at all
5 benefiting many of the residents still in the area.

6 Why issue the Order to Show Cause? It
7 would be the first time in over 25 years a developer
8 has been held accountable by government and its
9 people.

10 How can you assure otherwise the residents
11 of our community and the residents of Hawai'i by not
12 acting as a Commission and issuing this order? How
13 can you assure that the rural nature of our community
14 would not end? I ask your support on the -- on the
15 Petition by Defend O'ahu Coalition. And I thank you
16 for your time.

17 CHAIRMAN HELLER: Parties, any questions?
18 Commissioners, any questions? Let's take a 5-minute
19 break for the benefit of our court reporter and then
20 we'll start back up.

21 (Recess was held at 9:30)

22 CHAIRMAN HELLER: (Gavel 9:45) Back on the
23 record. We are continuing with public testimony.

24 TAMAYO PERRY

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

1 and testified as follows:

2 THE WITNESS: I do.

3 CHAIRMAN HELLER: Please state your name
4 and address and then go ahead.

5 THE WITNESS: My name is Tamayo Perry,
6 P.O. Box 174 Kahuku, Hawai'i 96731. First of all, I'm
7 really nervous because I'm not a professional speaker.
8 I'm really tired because I found out about this about
9 4:30 this morning when my wife was looking through
10 Facebook. So, again, it comes to me also being a
11 layman in law and litigation and terminologies.

12 I'm assuming why I'm here in defense of
13 Defend O'ahu Coalition is because Turtle Bay is
14 skipping processes or steps. So what I'm getting at
15 is it seems like what's right for one person should be
16 right for another. We're here for due process. I
17 figure they should have to do the same concept of due
18 process.

19 My issues are I don't know how the EIS, the
20 Environmental Statement, how it transpired or how it
21 got the leverage it did and the consideration that, I
22 guess, through law you're not allowed or you're
23 allowed to put out the counters for numbers any time
24 you want. I don't know exactly what your formula is.
25 But what I've been noticing is the least busy time of

1 the year that these things were going out count cars
2 and stuff. It's not during the Triple Crown. It's
3 not during peak hour in summer. It kinda comes in
4 certain months that I've noticed they're not really a
5 busy tourist, tourist time.

6 So on that note, like I said, I don't do
7 any kind of business. I'm on the north shore now.
8 But I do all my business Laie way. The other day I
9 was going out on a weekend, traffic was doing fine.
10 And after I did my chores and errands coming back
11 towards the North Shore there was a little fender
12 bender. No one was hurt. No one was turned around.
13 But that 2-lane highway pretty much stopped traffic
14 both ways for over an hour for a little fender bender.

15 So I'm going, like, what is the EISIC (sic)
16 or whatever you call it? What is it accomplishing?
17 And considering the Turtle Bay a place where who's it
18 benefiting? I guess when I'm out there, just as a
19 civilian from that side of the island, it does affect
20 me. It's my livelihood. When you work 5 days a week,
21 people can't get here.

22 So there's definitely a lack of testimony
23 from the regular citizens that happen to be 9 to 5.
24 Every single one of you guys is on the clock. So you
25 guys are all getting paid.

1 For people in this hard era of living to
2 make money have to get work. These meetings are
3 basically -- when I look around obviously we've got
4 some green shirts, but I'm pretty sure everybody found
5 out about this last minute.

6 What I'm getting at this due process -- is
7 it due process or is it attrition? Are we just being
8 worn out as a general community while the bottomless
9 pockets just keep getting to do what they want to do
10 on a daily level?

11 So all I'm saying here is people need to be
12 accountable. Whether you're super rich or super poor
13 we have to have the same laws for everybody.

14 So what I'm getting at is this ESCIC (sic),
15 it should be looked at a lot more considering our
16 lives are going to be affected, affected for over
17 decades to come. With this traffic you get your two
18 days of a weekend, people from town wanna go out and
19 have their vacation, their two days off. Literally
20 repair, you're bummed. You're working all week. You
21 wanna enjoy something other than concrete jungle.

22 So what I'm getting at is you guys need to
23 look a lot more than just a couple months out of a
24 year to see how it affects the general community. I'm
25 from the east side. And I'm against all this

1 development until we have an infrastructure that will
2 allow it so that our daily lives cannot be hindered in
3 such a way. It's really affecting all of us and we're
4 tired.

5 Like I said you guys are here making money.
6 Anyone that wants to be against this is going to lose
7 money. So I look around, how many people, how many
8 non-profit people for this are getting their pockets
9 lined? I don't make a single cent. I lose money
10 being here. In fact I'm probably losing reputation
11 but it doesn't matter. I'm for the public and for the
12 community. I'm for O'ahu having something left to be
13 preserved. Because once it's gone it's gone forever.
14 It'll never be there again.

15 And people on the mainland have all their
16 vested interests in our state of Hawai'i while all
17 this money gets siphoned out of our islands. Yet we
18 get affected. There's little businesses and big
19 businesses.

20 People that try and do right in the state
21 of Hawai'i get affected. But all these big businesses
22 that are all in it for themselves get to run amuck and
23 get to change the law. That's all I have to say.
24 (Applause).

25 CHAIRMAN HELLER: Parties, any questions?

1 Commissioners, any questions? Sir, would you come
2 back please.

3 (witness retaking the stand)

4 COMMISSIONER ESAKI: Just a clarification.
5 Commissioners over here do not get paid. We're from
6 another island some of us.

7 THE WITNESS: That's another fact I had to
8 say. Why is O'ahu being so overburdened? Everyone
9 has a strong statement. Outer islands, why don't we
10 share the wealth and get commerce going on Kauai, Big
11 Island, Moloka'i?

12 Why does O'ahu have to get saturated with
13 all of this? It's, like, let's share the wealth. If
14 you're from outer islands let's think how to get your
15 commerce going. That's how I would do it. This is
16 where I'm from and I just don't like the way things
17 are goin'.

18 CHAIRMAN HELLER: Commissioners, any
19 further questions? Thank you. Who's next?

20 MR. ORODENKER: Dr. Kioni Dudley followed
21 by Sara Cardis.

22 DR. KIONI DUDLEY
23 being first duly sworn to tell the truth, was examined
24 and testified as follows:

25 THE WITNESS: I do.

1 CHAIRMAN HELLER: Please state your name
2 and address, then go ahead.

3 THE WITNESS: I'm Dr. Kioni Dudley. My
4 address is 92-1365 Hauone Street Kapolei, 96707.
5 Commissioner Heller and Commissioners, I'm here today
6 to speak in support of the people who want the country
7 to be kept country.

8 I am the president of the Friends of
9 Makakilo. I speak for them. I also speak for the
10 800,000 people on this island who don't live on the
11 North Shore. We need to Keep the Country Country. I
12 heard Bob Nakata up here talking about the old days.
13 You know, I remember what the country was like way
14 back when. Then they began building. The little guy
15 gets just one house here, one house there and one
16 house here and one house there. The country is going.
17 And we need it. You know, you need it. I speak for
18 you because you need the country.

19 Don't you need to get away as I need to get
20 away? Aren't there times when you just get to the
21 point where you just totally had it and you just gotta
22 get away to the country? What the hell are we gonna
23 do if there's no country? You know, we really have to
24 think about this is an opportunity. This is an
25 opportunity. We screwed up when we first approved

1 Turtle Bay way back when. We've been suffering with
2 this damn thing all along. And we've got to get rid
3 of it, you know. We need to Keep the Country Country.
4 This is the opportunity, take advantage of the
5 opportunity.

6 I want to also speak, just people have
7 mentioned rising seas. Rising seas and Chip
8 Fletcher's work is wonderful but Chip Fletcher has
9 done more than just rising seas. He's done a study
10 with Koia Rotswell also about groundwater inundation.
11 The groundwater sits on top of the rising seas. As
12 the seas rise the groundwater rises.

13 This whole area with its wetlands, wetlands
14 are wetlands because of the rising -- because the sea
15 is under there. And when the sea rises it will come
16 above the ground. And we know that's gonna happen in
17 Waikiki. Their study has shown it's gonna happen in
18 Moili'ili. It's going to happen in Kaka'ako.

19 Just this morning there's another big hotel
20 gonna be built in Waikiki. How stupid. I mean we've
21 got this major problem. It's gonna start in 30 years.
22 It's going to be happening out there too. How can we
23 approve anything out there with this major problem?
24 We're going to lose the land. We're going to lose
25 Ka'a'awa. We're going to lose Punalu'u. We're gonna

1 lose all these places all along the sea, Haleiwa. The
2 closer you are to the sea the more problem there's
3 going to be.

4 You know, it's just unfair to the people of
5 the future for us to be building junk out there now.
6 This is going to be sitting unoccupied once the seas
7 rise. I just want to say these things. I really
8 encourage you to Keep the Country Country. Thank you.

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

11 MR. ORODENKER: Sarah Cadiz followed by
12 Jesse Ryan Kawela Allen.

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

16 THE WITNESS: I do.

17 CHAIRMAN HELLER: Please state your name
18 and address, then go ahead.

19 THE WITNESS: My name is Sarah Cadiz. My
20 address is 58-040 Kapuai Place, Sunset Beach, Hawai'i.
21 Good morning, Commissioners. My name is Sarah Cadiz
22 and I'm here representing myself and my family. I
23 wanted to submit testimony and ask the Commissioners
24 to continue with the process that you have begun with
25 Turtle Bay in respect to the D&O and the nine

1 conditions. Since about 2010 I've been present of a
2 lot of the organized meetings that Turtle Bay had,
3 came out to our community. They asked us. They said,
4 they talked about the expansion. They asked for input
5 from us community in Sunset and other areas around the
6 North Shore. We put in our recommendations. They
7 listened to what we had to say.

8 And what came from that is a downsized
9 expansion plan that is on the table today. That came
10 about because they asked the community. They went out
11 and they asked us. I was present at these meetings.

12 It's actually, the new expansion that
13 they're planning now that's on the table is actually
14 less than what they were entitled to in the unilateral
15 agreement when you folks first gave them this plan
16 with the FEIS they just completed. That was way back
17 in '85 I believe.

18 So the fact that they've downsized quite a
19 bit compared to what the original plan was, and the
20 fact that they went out to the community and they
21 asked our input, I ask you folks just let them
22 continue the process.

23 The FEIS just completed just recently they
24 wanted to make sure that all the environmental issues
25 and the community issues were met. And they did that.

1 So they're moving along through process. They're
2 doing their due diligence. They're trying to do good
3 by the community. I ask you folks to just let them
4 continue to do their due process.

5 And let us as a community to continue to
6 dialogue with them so that we can make sure that we're
7 both -- that they build something that we're both
8 happy with, us in the community and the people that
9 own the land. That's all I ask. I thank you for your
10 time today.

11 CHAIRMAN HELLER: Parties, any questions?
12 Commissioners, any questions? Who do we have next?

13 MR. ORODENKER: Jesse Ryan Kawela Allen
14 followed by Ben Shafer.

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

18 THE WITNESS: Yes, I do.

19 CHAIRMAN HELLER: Please state your name
20 and address then go ahead.

21 THE WITNESS: Jesse Ryan Kawela Allen, 322
22 Aloa Street, Kailua, Hawai'i. My profession here in
23 Hawai'i is Real Estate Associate, so I'll be brief in
24 my comments. I deal with a lot of condotels in town.
25 I'd just like to make clear to the folks in La'ie who

1 think that they're going to be able to purchase these
2 properties, to purchase a condotel we need 40 percent
3 downpayment, *if* you can get financed. Then you get a
4 3-in-1 ARM or 5-in-7 ARMS. You're rates are gonna
5 adjust to very high rates. It's not going to be this
6 4 percent interest rate. But for the most part it
7 requires cash to buy condotels.

8 Secondly, as far as growing up on the North
9 Shore I've had to experience the moving away from the
10 North Shore to find work. But has always been the
11 case. The North Shore tends to be more of an
12 agricultural community, tourist driven. There's
13 nothing wrong with that.

14 I think what needs to happen is more
15 creativity to expand upon those instead of just going
16 the easy way out and taking these temporary jobs for
17 the construction workers, for the carpenters, for the
18 union guys. That's real quick money in and out.

19 So I don't know what's wrong with leaving,
20 going to the mainland. I joined the Army. I've lived
21 in Colorado. I've lived in New York. I've seen what
22 overdevelopment causes. So I come home and here I am
23 fighting the fight.

24 So that's the information I just wanted to
25 convey to folks is that this is not the dream

1 development for the north shore. It's not a way for
2 the people to get out of their multi-family living
3 situations on the North Shore.

4 CHAIRMAN HELLER: Parties, any questions?
5 Commissioners, any questions? Thank you. Who's our
6 next speaker?

7 MR. ORODENKER: Ben Shafer followed by
8 Allison Wong.

9 THE WITNESS: Good morning.

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

13 THE WITNESS: Yes, sir.

14 CHAIRMAN HELLER: Please state your name,
15 your address then go ahead.

16 THE WITNESS: Aloha mai ka kou. My name is
17 Ben Shafer. If you look at the overall plan on the
18 Ko'olauloa area, actually the whole Ko'olauloa/
19 Ko'olaupoko area, and we look back in history, we find
20 that that was supposed to be the Second City, smaller
21 area.

22 And when they moved it down to Kapolei,
23 which made sense, that left our area open. Now, if we
24 start developing which they gonna do -- which they
25 had planned to do back in the '60s, earlier '60s, the

1 whole coast would have been developed already.

2 What's gonna happen is after these,
3 whatever groups come in to get their permits to build
4 then there'll be another group. Then there'll be
5 another group. And there'll be another group. It's
6 not gonna end.

7 I think your job is to determine whether we
8 want that for our island, our side of the island, or
9 we want to keep it open. We look on Maui. We look on
10 -- there are certain areas on the island where you
11 want development and there are certain areas you want
12 to keep as is, not for yourselves but for the next
13 generation and the next generation and the next
14 generation and this is one of those places. We cannot
15 just keep building because we can call it progressive,
16 we have to think smarter.

17 In Europe they don't keep building. They
18 just keep what they have and make it better. That's
19 what we need to do here is make things better, not to
20 think that we can just build over everything and it
21 will be better for everybody.

22 The promises about jobs, a lot of 'em never
23 pan out. A lot of 'em never pan out. Kapolei ideal
24 to afford a Second City to have the businesses all out
25 there. It hasn't panned out yet. So what makes you

1 think it's gonna pan out on our end when you keep
2 building on our side?

3 All the businesses in Kapolei should have
4 been set up already so that the people will be
5 attracted to stay there. Don't have to drive to down.
6 That was the whole idea. But you have all the traffic
7 coming in. What's gonna happen on our side be the
8 same thing. I just hope that you realize that in the
9 long term this is not what we want. This is not what
10 Hawai'i was supposed to be about. Waikiki, fine.
11 Certain areas, fine. But the rest of the island
12 should be off limits. Thank you. (Applause).

13 CHAIRMAN HELLER: Parties, any questions?
14 Commissioners, any questions? Who do we have?

15 MR. ORODENKER: Allison Lum followed by
16 Rodney Nakashima.

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

20 THE WITNESS: Yes.

21 CHAIRMAN HELLER: Please state your name
22 address and then go ahead.

23 THE WITNESS: My name is Allison Lum. I
24 live at 3632 Keahole Place. I'm here in support, to
25 testify in support of Defend O'ahu Coalition's

1 petition and motion. And I personally live and work
2 in town but I visit the North Shore frequently for
3 recreational purposes and beaches. I think for a lot
4 of people that live in town this is one of the places
5 that we can look back and remember, you know, as youth
6 we, you know, remember what it was like, remember what
7 Hawaii used to be like.

8 Now a lot of things are changing, right?
9 International Marketplace is going to be turned into a
10 Sacks Fifth Avenue. There's lots of things happening
11 in town area that are out of control. As people
12 previously mentioned there's infrastructure issues.

13 But what I want to particularly focus on
14 today, and I also have a connection to the Aikea
15 movement through that to Local 5 and our members that
16 work at Turtle Bay Resort.

17 So I think that a lot of developers come
18 in, we're very used to this, that the promise of jobs
19 and housing, which we all need and we need to live
20 here to keep our people on island and to not be pushed
21 off the island and be forced to go to the mainland.

22 But we really have to look at what kind of
23 jobs when developers promise because really all of the
24 revenue and profits usually go get sucked up to the
25 mainland or off-island. So it's really up to us and

1 politicians and boards like this to look carefully at
2 what kind of jobs are we taking about. Certainly the
3 promise of construction jobs, that's great, but we all
4 know that after the development's built those are
5 temporary jobs.

6 And then if they're talking about putting
7 up condos and timeshares in the plan, we know for a
8 fact that in the hotel industry alone in the last 5
9 years we've lost 3200 jobs due to the conversion of
10 hotels into condos. And this is about \$34 million in
11 tax revenue for local and state taxes.

12 As we all know these are the kinds of
13 things that support money to build our infrastructure,
14 our roads, our schools. And for every one job that's
15 lost in the hotel industry there's 1.7 lost in the
16 community. That could be a public school teacher, for
17 example.

18 So it really behooves us to look very
19 diligently and carefully and not just look at kind of
20 the PR sort of appeal of jobs and housing but what
21 kind of housing? What's the affordability or the AMI
22 on the housing that's being promised? Where's it
23 gonna be located? All that kind of stuff.

24 But with the jobs, you know, if it's not a
25 full service hotel we know for a fact that really

1 there's not a lot of real jobs there. We need good,
2 sustainable long-term jobs for our communities.

3 So I really encourage you to consider
4 what's before you today, not just for ourselves but
5 for future generations. And that's for future
6 generations to be able to experience what we love and
7 cherish about Hawai'i.

8 And those, you know, to keep that alive for
9 future generations but also for jobs so that our
10 families are not constantly being split up. I know
11 everyone here has either a child or a grandchild that
12 is faced with this experience. Thank you.

13 CHAIRMAN HELLER: Parties, any questions?
14 Commissioners, any questions? Thank you.

15 MR. ORODENKER: Rodney Nakashima is our
16 last testifier signed up.

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

20 THE WITNESS: Yes.

21 CHAIRMAN HELLER: Please state your name
22 and address and go ahead.

23 THE WITNESS: My name is Rodney Nakashima.
24 I live at 1731 Democrat Street. I'm here -- well,
25 first of all, thank you, council, for letting me say

1 my testimony. And thank you for everybody out here.
2 You know, I was born and raised here. I'm 53 years
3 old. I'm an Aikea member and also a hotel worker.

4 I've seen the islands change. And I agree
5 with Defend O'ahu Coalition that we should keep the
6 Country Country. For one thing the infrastructure is
7 not ready for any big development. At Laniakea itself
8 already the congestion is so bad that I feel like I'm
9 in prison because I gotta time myself when the traffic
10 is there and when it's not.

11 I have no freedom to just go to surf or to
12 do anything there because the traffic is terrible. So
13 I'm literally planning my day around the traffic
14 'cause I don't wanna sit in someplace that used to
15 take me 5 minutes to go and come home, now takes me
16 hours. That's not the way I want to spend my life
17 with sitting in my car fighting through traffic.

18 I believe that development needs to have a
19 balance to it. It has to balance community. It has
20 to balance the businesses. It has to balance the
21 infrastructure and sustainable jobs for the community.

22 A development that's just gonna sustain a
23 job for five years or ten years doesn't make sense
24 because you wanna retire from these jobs. There's
25 very few jobs in the tourism industry right now that

1 provide that.

2 I know there's some union hotels that do
3 that. There are people that can work there from the
4 beginning and retire. And those are sustainable jobs.

5 Those are great jobs to have in. That's what we
6 should be shooting for, that people can make a
7 decision if they wanna leave it or not.

8 But to lose a job because of condo
9 conversions or condominiums and the owner decides to
10 sell it, makes it difficult for me to work for
11 somebody knowing that if this person sells this condo
12 I no longer have a job because a new owner comes in.
13 And makes it difficult at an older age to find a trade
14 or learn something so that you can start all over
15 again.

16 So development has to, it has to provide
17 for everybody. And especially the state. We're
18 suffering. We need to fix our roads and
19 infrastructure. If we can't get enough tax revenue
20 out of the development then why do it? Thank you.

21 CHAIRMAN HELLER: Parties, any questions?
22 Commissioners, any questions? Did we have an
23 additional sign up? Is there anyone else present who
24 wants to submit public testimony? Okay. Please come
25 forward.

1 BOB WYNAM

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

4 THE WITNESS: I do.

5 CHAIRMAN HELLER: Please state your name
6 and address and then go ahead.

7 THE WITNESS: My name is Bob Wynam. I live
8 at 59-524 Aukuku Street which is up in Pupukea. What
9 I would like to do is jump into a couple -- my
10 thoughts are from different people's point of view.
11 If I could jump into your shoes for a minute it's
12 interesting to be a commissioner. I've gone to
13 several of these meetings. I'm kind of curious how
14 things work.

15 We all raise our hand to swear to tell the
16 truth. And what's fascinating to me is when the
17 lawyers finally stand up one says "they never did
18 this". The other one stands up says, "Oh, we did all
19 this."

20 So you guys are the judge and the jury.
21 It's pretty amazing 'cause, you know, somebody not
22 telling the truth. So you have to get through that
23 assessment.

24 The other thing that's going on here is
25 when a developer gets their land, value goes way up,

1 they come in to make these representations. They say,
2 "okay." And then aren't held accountable. That's a
3 breach of contract. You try that stuff on a business
4 thing and someone is going get down and hammer you.
5 You're the hammer. Guys come in here and make
6 promises.

7 It seems to me if I was in your shoes I'd
8 say, "Oh, shoots, you know. It looks like there's a
9 problem here and you have to address it." You guys
10 have kicked the can down the road for 5 years. Let's
11 not deal with this now. It's time. Another guy's
12 pair of shoes it might be interesting to put on is the
13 developer's pair of shoes.

14 Here's a guy -- you notice I use the word
15 "developer" not "speculator". I think maybe somewhere
16 there's speculators but we're dealing with developers
17 now. I understand there's a distinction, but they got
18 a cloud on this property.

19 If they wanna sell off these lots and try
20 to get guys to come and stuff when there's clouds on
21 their property, that's not a very healthy situation to
22 be in. I think you guys owe it to the developer to
23 come in and make a decision too. You don't have to
24 say yeah, up, downzone it. There's ways you can go
25 sideways.

1 My understanding is the order didn't say
2 you gotta do this. And it didn't pick up all the
3 representations. It didn't put any timelines. That's
4 not right. That's not how we're doing business in
5 Hawaii today. Maybe you guys need to set that right.
6 You guys got a lotta power. And it's gonna be
7 interesting to see how you guys play it out.

8 So anyway that's my mana'o. Thank you for
9 the opportunity to come in and share one man's
10 opinion. Okay? Mahalo.

11 CHAIRMAN HELLER: Parties, any questions?
12 Commissioners, any questions? Thank you, sir.

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

16 THE WITNESS: I do.

17 CHAIRMAN HELLER: Please state your name,
18 your address and then go ahead.

19 THE WITNESS: Ralph Makaiau, 56-134
20 Pu'ulaulea Street Kahuku, Hawai'i. There's one point
21 that I'm going to make clear which I oppose the Defend
22 O'ahu Coalition to revoke the Urban Zoning on this
23 land. And hopefully I can speak specific to the area
24 that you're in charge, the Hawaii Land charge.

25 However, I'm a product of plantation. I

1 represent a point of view that comes from my parents
2 belonging with the management of Kahuku Plantation
3 that invited a developer of any kind, whether it was
4 agriculture or tourism or others, to come to the
5 Kahuku area to provide jobs knowing that plantation
6 agriculture was not sustainable both for Kahuku
7 Plantation and Waialua Plantation.

8 They knew about it as early as the late
9 '50s that sugar was going out of business. And they
10 selected the land that was in cane production. They
11 utilized the land to the advantage of cane. They also
12 selected in that area was heavily occupied by the
13 Defense Department for the airport. So that land was
14 tremendously disturbed prior to the negotiations of
15 allowing a resort zone or urban zone in this area.

16 But fundamentally, I worked at Turtle Bay
17 since 1972. And I remember my parents asking for job,
18 alternate job subsistence. But specific to the
19 hatched area that the LUC is considering today, after
20 the many ownerships which I've also worked as the
21 facilities manager not only for the property
22 buildings, but I also worked as a facilities manager
23 for the entire property's natural resource which was
24 shoreline, wetlands, potable water, waste treatment
25 plant and so forth, all the needs.

1 So I have dealt, you might say, where the
2 rubber meets the road kinda that. And I still work
3 for the ownership today as such.

4 And I've been able to convey the original
5 intentions of my, my parents and my parents'
6 generation on providing job opportunity for the area.
7 Today it's very complicated, but it still remains
8 fundamentally simple. Locals, traditional locals in
9 the North Shore area, in the Ko'olau area still need
10 jobs.

11 Now, in this hatched area it's a necessary
12 area because in the original concept people say Keep
13 the Country Country. Define "country". The way I
14 define "country" specific to this area involves an
15 open space golf course. It involves roughly 160
16 affordable homes. Obviously, oh, that term doesn't
17 play currently in the state because it's too
18 expensive.

19 CHAIRMAN HELLER: Please bring your
20 testimony to an end.

21 THE WITNESS: Thank you. It's the
22 developer's choice to make it affordable. But the
23 other issues are also to protect the shoreline parks
24 in a native sort of way, in a conservative sort of
25 way. So what I'm saying the original intent still

1 survives today.

2 I lived with the developer. They're very
3 consistent and have provided the fundamental open
4 discussion with all of the Parties. So for that
5 reason I oppose the DOC request to change the zoning.
6 Thank you.

7 CHAIRMAN HELLER: Parties, any questions?

8 MR. KUGLE: I have a few questions.

9 CHAIRMAN HELLER: Go ahead.

10 MR. KUGLE: Mr. Makiau, do you work for
11 Turtle Bay?

12 THE WITNESS: I do.

13 MR. KUGLE: And what's your position?

14 THE WITNESS: Currently I'm the senior
15 project manager, Turtle Bay Development.

16 MR. KUGLE: Okay. You were at Turtle Bay
17 since '72?

18 THE WITNESS: April 28 as a matter of fact.

19 MR. KUGLE: Okay. You were there during
20 1983, '84, '85 when the plan was being put together
21 for the original Turtle Bay expansion? Do you recall
22 that?

23 THE WITNESS: The original plan, if I'm
24 correct, started way in the early mid to late 1960s.
25 Plan in the '80s. Yes, I was there.

1 MR. KUGLE: I'm referring specifically to
2 both the Land Use Commission Petition that we're
3 actually talking about today as well as the adjoining
4 side of the property that was under county
5 jurisdiction in the 1980s, '85, '86. Do you recall
6 that?

7 THE WITNESS: I was present.

8 MR. KUGLE: So how many hotels were
9 proposed to be put on the property during the '85-'86
10 entitlement process?

11 THE WITNESS: Hotels were five properties.

12 MR. KUGLE: And those were called full
13 service hotels, correct?

14 THE WITNESS: During the same period of the
15 presentation as well as the negotiations for the five
16 properties it was also identified in the unilateral
17 agreement that hotels would be defined at least
18 51 percent to be full service hotels.

19 MR. KUGLE: And of those four or five
20 hotels how many are out there today? And I'm not
21 talking about the existing Turtle Bay Hotel, but of
22 the new ones.

23 THE WITNESS: They have not built any more
24 hotels.

25 MR. KUGLE: You were talking about the

1 hatched area which is the Ag land that was
2 reclassified in 1986 by the Land Use Commission. How
3 many condominiums units were proposed to be put on
4 that land?

5 THE WITNESS: I don't know. I don't recall
6 the exact number. It was plus or minus a thousand
7 units.

8 MR. KUGLE: About a thousand. How many are
9 out there today?

10 THE WITNESS: None.

11 MR. KUGLE: Now, you've been part of the --
12 you're the Project manager for the Turtle Bay plan
13 now, is that correct?

14 THE WITNESS: I'm part of the team, yes.

15 MR. KUGLE: How many condominiums are
16 planned under the new plan that was publicized in the
17 supplemental environmental impact statement? How many
18 condominium units are planned for the hatched area
19 that we're talking about today?

20 THE WITNESS: I would have to draw a blank
21 on my recollection of the numbers only because that
22 hatched area boundary slices the units in half for
23 that parcel.

24 MR. KUGLE: If you look at the map behind
25 you which is the new Master Plan, it talks about a

1 density of potentially 4 units per acre on that Ag
2 area. Is that your understanding?

3 THE WITNESS: That sounds about right.

4 MR. KUGLE: So those are single-family
5 houses? Or are they the condominiums that were being
6 considered back in the early '80s?

7 THE WITNESS: I don't recall.

8 MR. KUGLE: Do you recall in the -- did you
9 participate in the Supplemental Environmental Impact
10 Statement process?

11 THE WITNESS: Yes, I did.

12 MR. KUGLE: The developer's new plans
13 involve what they call 'resort residential' which is
14 really a mix of single-family residential and
15 townhouse or condo units, is that right?

16 THE WITNESS: Yes, that's my understanding.

17 MR. KUGLE: And that's very different from
18 what was being proposed to the Land Use Commission in
19 1985 when the developer proposed 1,000 condominium
20 units on that hatched parcel, is that right?

21 THE WITNESS: By reduction yes. I would
22 say yes.

23 MR. KUGLE: Okay. I have no further
24 questions.

25 CHAIRMAN HELLER: Anything further from the

1 Parties?

2 MR. MATSUBARA: I have a follow up. Wyeth
3 Matsubara, Turtle Bay. I understand that the SEIS
4 that you're just being questioned on, does it also
5 include a proposal that includes a full buildout
6 consistent with the 1985 original Master Plan?

7 THE WITNESS: Can you restate that?

8 MR. MATSUBARA: Sure. The SEIS proposes 4
9 different scenarios of which Turtle Bay is proposing
10 this proposed action which is similar in terms of
11 what's going to be out there, but a reduction in
12 density. They also in the SEIS are also proposing a
13 full buildout if that's their desire or choice among
14 the Parties?

15 THE WITNESS: Thank you for clarifying.
16 Yes, that is correct.

17 MR. MATSUBARA: No further questions.

18 MR. KUGLE: I have one additional question
19 just to clarify that.

20 CHAIRMAN HELLER: Go ahead.

21 MR. KUGLE: You're not saying that Turtle
22 Bay is proposing the full buildout, right? I mean in
23 the SEIS it's saying its preferred action is the
24 single-family residences and the reduced number of
25 hotels that we were just talking about, correct?

1 THE WITNESS: As I understand it there's a
2 preferred plan of the full buildout, of the full
3 buildout.

4 MR. KUGLE: That's right, yes. Okay.
5 Thank you.

6 CHAIRMAN HELLER: Commissioners, any
7 questions? Thank you. Is there anyone else present
8 who wishes to provide public testimony? Come forward,
9 please.

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

13 THE WITNESS: I do.

14 CHAIRMAN HELLER: Please state your name
15 and address then go ahead.

16 THE WITNESS: My name is Gill Rivere. I
17 live at 65-137 Hukilau Loop in Waialua.

18 CHAIRMAN HELLER: Go ahead.

19 THE WITNESS: Thank you. As I stated my
20 name Gil Rivere. I'm one of the directors of Keep the
21 North Shore Country. And it was our experience we
22 were involved in the Supreme Court case that required
23 the Supplemental EIS.

24 One of the most obvious and prominent
25 elements of that case was that decades had passed

1 between the time of the EIS and that the studies were
2 dated and needed to be updated specifically in regards
3 to traffic and environmental impacts on endangered
4 species.

5 So the court ruled that timing *does* in fact
6 matter. So before this Land Use Commission you have a
7 question about a conditional zoning change from the
8 '80s.

9 I think it's important to recognize that
10 it's conditional land use change based on certain
11 conditions which arguably haven't been met. They
12 perhaps are moving toward those. They've been doing
13 things and they intend to do that.

14 But once again we come back to the question
15 of, well, how long do they have? Do they have forever
16 to do it? If this Commission chooses to not pursue
17 this further, 20 years from now are we likely to come
18 back and say, "Yeah, they still haven't done
19 anything"?

20 Or more relevantly, I guess, to the
21 question at hand is the analogies are completely
22 different -- well, not completely different but
23 there's a reduced Project. There's a different
24 concept. There's not -- you're not talking full
25 service hotels. You're talking timeshares or condo

1 hotels.

2 So there's a little bit of a different
3 twist to it. And one might argue that that's probably
4 allowed by the original intent that market
5 circumstances can come. I don't know how you can get
6 around the kind of skirting the definition of 'full
7 service' hotel. But, you know, for those of us that
8 go there from time to time and surf, where we enjoy --
9 we do enjoy the existing hotel. We enjoy the golf
10 course. We enjoy the existing facilities.

11 We do have concerns about the impacts and
12 the delivery of the Project and what they're gonna do.
13 It seems very relevant that this Commission should look
14 very carefully about what's happening, what are the
15 timelines.

16 I remember testimony a few years ago when
17 this was first picked up, the Office of Planning said
18 that probably -- if I remember the testimony right --
19 Office of Planning said: They may not be able to
20 reverse it in its entirety but you *could* put
21 conditions going forward. So I'd like that to be
22 considered too. Maybe it doesn't have to be an all or
23 nothing question. That's up to you folks to
24 determine.

25 But if it's gonna go forward, I do think it

1 is very reasonable and it's right in your jurisdiction
2 to figure out what's going forward and when it will go
3 forward. As people have said we do need to start
4 requiring some accountability on proposals for our
5 community for infrastructure and other planning
6 matters. Thank you for allowing me to testify.

7 CHAIRMAN HELLER: Parties, any questions?
8 Commissioners, any questions? Is there anyone else
9 present who wishes to provide public testimony? The
10 hand in the back come forward please.

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

14 THE WITNESS: I will.

15 CHAIRMAN HELLER: Please state your name
16 and address, then go ahead.

17 THE WITNESS: Thank you. My name is
18 Junior Fremrahal. My address is house 372 New Camp,
19 Kahuku. It's a plantation community camp. I've lived
20 in Kahuku all my life, which is 81 years. The only
21 time I left Kahuku is my time in Viet Nam. I was
22 involved in putting together the unilateral agreement
23 which is a pertinent document for the residents of
24 Kahuku primarily because there are some entitlements
25 that are there.

1 And I wanna make sure we protect these
2 entitlements and make sure somehow we get those
3 entitlements in the very near future.

4 I have 48 grandchildren and 52 great-great
5 grandchildren. A lot of them I know -- most of 'em my
6 sons and daughters are all on the mainland. And
7 they'd sure like to come back to Kahuku to spend the
8 rest of their time in Kahuku.

9 I feel strongly -- I'm opposed to the
10 recommendation that OC is recommending. I feel
11 strongly because Turtle Bay is one of the few places
12 where lot a people work.

13 When the first -- when the hotel was first
14 built, lot of our plantation workers worked at that
15 hotel. In fact we had -- at that time we had more
16 people working because the whites would go to work
17 too. As a result we depended on the hotel to be
18 prosperous.

19 I cannot see how by cutting or reducing
20 their goals and whatever they wanna do there would
21 hurt our community. Primarily I can name the
22 Ko'olauloa area that needs the help because there's
23 few jobs out there.

24 The other aspect is the road. Everybody
25 talk about the road on Kam Highway. Hey, forget it.

1 We gonna have a 2-lane highway whether we like it or
2 not and we gotta live with it. That's why 9:00
3 o'clock at night we don't go on the highway because we
4 know the Polynesian Cultural traffic gonna be down the
5 road and things like that?

6 When there's an event at the hotel, a big
7 event at the hotel, we try refrain. Furthermore, even
8 the surfing situation and the turtle situation we live
9 with it. We learn to live with it.

10 If anybody feel that we gonna have a 3-lane
11 or 4-lane, forget it. We tried to work it out with
12 the Neighborhood Board and the City to make
13 decelerating lane, accelerating lanes, more bus stops
14 off Kam Highway so that the traffic would continue
15 moving on.

16 CHAIRMAN HELLER: Please try to bring your
17 testimony to a conclusion.

18 THE WITNESS: Okay. I pau. (loud laughter)

19 CHAIRMAN HELLER: Parties, any questions?
20 Commissioners, any questions? Is there anyone else in
21 the room who wishes to provide public testimony? Come
22 forward.

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

1 THE WITNESS: I do.

2 CHAIRMAN HELLER: Please state your name
3 and address, then go ahead.

4 THE WITNESS: My name is Rob Borecca. I
5 live at 2757 Iwawai Place in Manoa. And I just want
6 to be brief. I just wanted to say I support the
7 Defend O'ahu's Coalition's motion to revert the zoning
8 or to show cause to revert the zoning back to
9 agricultural. Thank you.

10 CHAIRMAN HELLER: Parties, any questions?
11 Commissioners, any questions? Last call. Is there
12 anyone else in the room who wishes to provide public
13 testimony? Come forward please.

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

17 THE WITNESS: I do.

18 CHAIRMAN HELLER: Please state your name
19 and address and then go ahead.

20 THE WITNESS: Good morning. My name is
21 Buddy Ako. I live at 45-077 Waikoloa Road, Kaneohe.
22 I recently moved there but I was a life-long resident
23 of Ko'olauloa. Now, I'm old enough to put you on the
24 sugar train and take you through the old contrast
25 about what has occurred over the country over the last

1 30, 40, 50 years.

2 When the plantation closed down people were
3 very reluctant to accept an alternative industry that
4 would en masse take the laid off 300 workers and
5 transition them into an industry that could probably
6 absorb that.

7 So, but I'm not going to take you on this
8 train. You got your valuable time to consider. I am
9 in opposition to this motion. I ask you to consider
10 fact from fiction, truth -- I mean half truths from
11 opinion. I feel like Norm Chow right now. I'm too
12 old for this, man.

13 But I think you need to understand that to
14 say that nothing has been done over the years is so
15 far from the truth that I can't believe people would
16 get up and say it. Not everything was done. But the
17 tremendous amount of improvement, the tremendous
18 amount of benefits for the community needs to be
19 stated here. The gated community is removed under the
20 new ownership. It's free parking.

21 I see fishermen all over the property real
22 happy that now they can come and no longer get kicked
23 out. I lived during the times when Campbell owned all
24 of the coastline and we never had access to it. You
25 had to be connected to the management in order to get

1 that kinda access.

2 So here we are today. Kahuku and the rest
3 of Ko'olauloa is still country, but it is a vibrant,
4 growing community that will try to accommodate future
5 generations. We wanna live and work and remain in the
6 area. This thing is part of an overall plan that the
7 community negotiated three, four years. Like he said
8 I was there when this thing was happening.

9 I don't know the technical end. But the
10 proposal to do an apartment and this many units was
11 based on the fact that when we sat down, the
12 community -- I was the community relations guy then --
13 was based on the fact that we needed to get something.
14 Maybe we not going get half a loaf, but we no longer
15 going get no loaf.

16 So we end up with this order with the
17 conditions. We end up with the city's unilateral
18 agreement that protects the entitlements that was
19 negotiated during that period.

20 This is the fourth owner I've gone through.
21 Without the unilateral, the city's ordinance that
22 protected our -- and is an enforceable ordinance
23 through those entitlements, affordable housing and all
24 that good stuff, we would have been out in the cold
25 years ago.

1 But nobody gives the community at that
2 point in time the credit and the foresight to create a
3 document that would have been long gone as the
4 ownership changed. So I told you I won't take you on
5 this long train ride.

6 So I'm just gonna wrap it up and tell you
7 that I am in opposition. Allow this thing to happen
8 and please vote 'no'. Thank you.

9 CHAIRMAN HELLER: Parties, any questions?
10 Commissioners, any questions? Okay. Sir?

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

14 THE WITNESS: Yes.

15 CHAIRMAN HELLER: Please state your name,
16 your address and then go ahead.

17 THE WITNESS: My name is Warren Sole. I
18 live at 56-330 Olonui Place, Kahuku. I've been a
19 resident there for about 30 years. I'd like to bear
20 my testimony that I support this Project. I've been
21 following this Project for nearly 30 years. And the
22 promises made by the -- that were made to the groups
23 that tried to develop the property.

24 It's in litigation now. And, you know,
25 they're tryin' to get the promises owed to them to be

1 completed. I feel that the promises that they made
2 were, you know, were valid because my grandchildren
3 now are working for Turtle Bay. They work there.
4 They're employed there. They have families and
5 they're employed there. There's many, many residents
6 there who, whose families are employed there at Turtle
7 Bay. And that's one point.

8 The other point is I'm tired of looking at
9 the koa bushes alongside the road that's there because
10 they can't do anything. They can't develop the
11 property. And, you know, is that what we want? Is
12 that what we wanna use our land for? To grow only koa
13 bushes?

14 I mean we can't see the ocean. What
15 they're proposing is inner roads that you have a view
16 of the ocean. I mean the basis may not be very
17 accommodating for beach goers but the scene, it's a
18 scenic drive. It's a nice scenic drive or it can be
19 like a bike path or something.

20 But the thing is not many people see it.
21 I've seen most of that property because I was a fire
22 fighter down there. I was a captain. And we had to
23 have access to the beach in case we needed to rescue.
24 But that time you had to really know where you were
25 going because how would you identify the location?

1 Where are you at?

2 We did one rescue where there was a boat in
3 distress, but I couldn't send my men out because it
4 was too rocky and the waters was too rough. And
5 that's the situation that's there. It still exists.
6 Hasn't changed. The rocks are there and the beaches.
7 There's not much beach to do access. The swimming is
8 dangerous. But it's a scenic property.

9 And those that harvest the salt from the
10 land, I mean that was the only place that I seen where
11 the rough water came in and the water settled out into
12 the pools and had people harvesting sand -- I mean the
13 salt.

14 As the sun dried it out there were people
15 that came there and practiced their practice of
16 harvesting the salt. And they used the salt. Those
17 that were expert fishermen went out and harvested the
18 salt from the sea.

19 CHAIRMAN HELLER: Please bring your
20 testimony to a conclusion.

21 THE WITNESS: What's that?

22 CHAIRMAN HELLER: Please bring your
23 testimony to a conclusion.

24 THE WITNESS: Okay. Thank you. I'd like
25 to have this board consider approval of this plan.

1 Thank you.

2 CHAIRMAN HELLER: Parties, any questions?
3 Commissioners, any questions? Thank you. All right.
4 That concludes the public testimony portion of our
5 meeting. We will now have presentation of argument by
6 the Parties. I'd like to ask you to try to keep it to
7 20 minutes or less for each party. Mr. Kugle, are you
8 read to proceed?

9 MR. KUGLE: Yes, Chair. I'm ready unless we
10 need to take a break first.

11 CHAIRMAN HELLER: Let's go ahead and maybe
12 we can take a break part way through the argument.

13 MR. KUGLE: Thank you very much, Chair
14 Heller, Commissioners. My name's Greg Kugle. And I
15 do represent Defend O'ahu Coalition. Before I start
16 with my prepared comments I wanted to thank you all
17 for your time because I know it's valuable. And we
18 really appreciate your being here today and listening
19 to us.

20 At times you may feel that there's some
21 frustration. That's because a lot of this stuff has
22 been going on for a very a very, very long time. '95
23 I was graduating from high school and surfing up at
24 Kahuku. And most of us weren't, you know, weren't
25 sitting, where you're sitting where you're sitting

1 obviously at that point.

2 So I realize that the Commission has
3 changed over and over and over again. But we were
4 also here in 2008 through 2010 making some of these
5 same arguments. So I do appreciate what the
6 Commission does, that you're here.

7 I know that you read the material. I'm not
8 going to repeat what we've filed. We filed briefs.
9 Everybody's filed some briefs and we'll argue on that.

10 One other thing I wanted to do before I
11 really got into my comments was to thank all the
12 public testifiers today, those that testified in favor
13 of my position and those that testified in opposition
14 to my position. Because everybody's was passionate.

15 And that's true whether they were just
16 people who live in the community, whether they're
17 employed by Turtle Bay Resort, whether they have
18 relatives employed by Turtle Bay Resort, everybody, I
19 think has a legitimate position.

20 But one thing struck me. And whether they
21 were testifying in favor of Turtle Bay or in favor of
22 Defend O'ahu Coalition, every one of them talked about
23 the 'new plan' up at Turtle Bay. And it's very
24 different from what was approved. And they all
25 stressed that. They stressed that they went through

1 in the last year or two, a community outreach program.

2 You heard various community members testify
3 whether they were part of that or not, whether they
4 agree with the results or not. But the significant
5 thing is, and even the paid Turtle Bay representatives
6 who got up here and testified this morning were
7 telling you that that's a different Project or that
8 we're looking at and talking that was approved in
9 1985. And that will be part of my comments. But I
10 thought it was very poignant because it came out from
11 almost every witness this morning.

12 Now to my comments. The Turtle Bay
13 expansion Project dose represent, really, all that's
14 wrong with the development process in Hawai'i, and why
15 people have become so cynical about it. And today the
16 Commission does have the opportunity to right that
17 wrong or at least take a step forward in that
18 direction.

19 The Turtle Bay expansion Project was sold
20 to the community, to the Commission and to the city
21 council in 1985 at a time when jobs and housing were
22 critically short especially in that community.

23 After the closure of the Kahuku Sugar Mill
24 a plan to construct 3 new full service hotels, one
25 thousand condominium units on this property, another

1 thousand on the adjacent property and a hundred
2 affordable housing units seemed very attractive to
3 everybody.

4 At that time there was little or no
5 opposition. In fact I've read the transcripts from
6 the 1985 and '86 hearings. And it was not opposed.

7 With the Project scheduled to be completed
8 between 1988, that was Phase 1 was going to be done in
9 1988, and the early 1990s Phase 2, relief was just
10 around the corner for the suffering Kahuku and North
11 Shore communities.

12 At the time most of the witnesses testified
13 the exact testimony you're hearing today. "We need
14 jobs for our children. We need housing for our
15 children. They want to stay in Kahuku, work in
16 Kahuku." The same arguments were being made to the
17 Commission back then.

18 Now, while it sounded like this was just
19 what the community needed, nothing was further from
20 the truth. The problem was that this Project at that
21 time was speculation and land banking at its worst.

22 The original Applicant in 1985 was the
23 Prudential Insurance Company and its subsidiary
24 Kuilima Development Company. After obtaining the Land
25 Use Commission approval and the city and county

1 approval, Prudential flipped the property to a
2 Japanese company called Asahi Juken and its subsidiary
3 Kuilima Resort Company. That occurred in 1988 just at
4 the time Phase 1 was promised to be done.

5 Then the Japanese company, allegedly
6 because of a downturn in the economy, almost
7 immediately thereafter Asahi Juken's development
8 quote, unquote "stalled." I use the word "stall" not
9 because that's my word but because that is Turtle
10 Bay's word.

11 Turtle Bay's gonna tell you how they
12 proceeded diligently through the 1980s and the 1990s
13 developing this Project, but that's not quite true.

14 In the status report that the Commission
15 asked for in 2008 filed by not Mr. Matsubara but the
16 other law firm that was representing Turtle Bay at the
17 time, they wrote in their report the Project
18 "stalled". That's true.

19 They also filed many reports with the City
20 and County of Honolulu saying due too financial
21 conditions they had stopped work. They even pulled
22 building permits in 1990 for a hotel and never built
23 one.

24 After Asahi Juken's financial problems
25 Turtle Bay was picked up by a speculator, Oak Tree

1 Capital Management Company in 1999. Other than
2 renovations to the existing hotel and villas, and
3 they'll probably tell you how much money they spent
4 cleaning up the existing hotel, nothing happened until
5 2005 when Oaktree went into the city for bulk
6 subdivision approval.

7 They were seeking to carve up that property
8 into smaller lots to be sold to developers for the
9 individual hotel lots and apartment lots. That's when
10 the public, who long ago believed -- correctly
11 believed -- that this Project had been abandoned,
12 that's when the public woke up.

13 Oaktree eventually lost the property to its
14 lender in foreclosure. And as you heard a recent
15 lawsuit alleges that lender overinflated the value of
16 the property is now being sued by *its* investors.

17 Who do we have to deal with today? I don't
18 know. So here we have another developer. Now it's
19 Turtle Bay Resort Company and Replay Resorts, whoever
20 they are. And they published just less than a month
21 ago and the City finally accepted the Final
22 Supplemental EIS which is the document that you heard
23 some testimony about. And that was done after we
24 actually filed this Petition in June.

25 That Supplemental Environmental Impact

1 Statement, which was required by the Hawai'i Supreme
2 Court, indicates that Turtle Bay Resort Company and
3 Replay Resorts want to build a very different project
4 than what was sold to the public, to the Commission
5 and to the city council in 1985 and 1986.

6 Gone are the three full service hotels, the
7 expansion of the existing hotel. And that's replaced
8 by two smaller condotels or timeshares. They don't
9 know which. But it's gonna be not a full service
10 hotel. And timeshare and condotel don't provide the
11 level of jobs that hotels, full service hotels do.

12 Also on this property the parcel that we're
13 looking at, 236 acres on the western side that was
14 reclassified, gone are the thousand condominium units
15 in the Petition Area. And it's going to be replaced
16 by resort/residential which is gonna be single-family
17 homes.

18 The other thousand condo units which were
19 on the other side of the parcel, are also being
20 converted to something called 'resort residential'
21 which is described as lower density, probably
22 single-family, maybe something else. But it's a very
23 different Project.

24 The affordable housing which was supposed
25 to be provided on or offsite is now going to be put in

1 the Petition Area. It's being called something else.
2 It's not affordable housing. It's 'community
3 housing'. I'm not sure what that is. It's not a term
4 we usually use, but it's called community housing now.

5 So here we are today. As I said the
6 Commission has the chance to right a wrong, to put an
7 end to the speculation, and to give the community some
8 input, and to require the new developer to go through
9 the normal process that every developer does when
10 presenting a project to the Commission as part of a
11 boundary reclassification proceeding.

12 This Commission should revert the land to
13 Ag and then consider whatever the latest proposal is
14 that's coming from the developer. Then it should
15 issue a new Decision and Order with appropriate
16 conditions reflecting its standard process not this
17 backward process that gives approval to something.

18 Twenty years go by -- 30 years I should say
19 go by, nothing's built out there. And then the plan's
20 being changed. And you're being asked to allow it to
21 go forward.

22 Now, I want to talk about some legal
23 things. And that is first off in some of the
24 opposition papers it was suggested to you that you
25 don't have the power, the authority to revoke,

1 reclassify, modify or anything like that. Nothing
2 could be further from the truth.

3 Both the laws that are in existence today
4 as well as those that were in existence, in effect in
5 1985 when this was approved, very clearly give you
6 that authority.

7 In all the arguments in the papers that you
8 don't have the authority, that you can't consider
9 this, that's smoke and mirrors. That's trying to
10 prevent you from actually looking at what's out there
11 which is nothing today, nothing that was promised back
12 in 1985. And they don't want you to get to the
13 merits.

14 Now first, the Hawaii Supreme Court has
15 made very clear that the Land Use Commission and other
16 agencies have an inherent power and authority to
17 revisit permits that were issued, particularly when
18 there have been changes, particularly when conditions
19 haven't been satisfied.

20 The case I'm talking about, and it's been
21 briefed, it's called Morgan vs. The Kauai Planning
22 Commission. Case came out of Kaua'i. It wasn't a
23 Land Use Commission. It was the Kaua'i Planning
24 Commission.

25 In 2004 the Hawaii Supreme Court held that

1 the Planning Commission had the inherent and implied
2 power to reconsider a Special Management Area permit
3 that it had issued. The permit was issued in 1981.
4 And it wasn't until the late '90s and 2000's that the
5 Planning Commission was asked to reconsider that
6 permit because the property owners did not build what
7 the permit said they could build.

8 The Hawai'i Supreme Court said they had
9 power to reopen that and modify and impose new
10 conditions to ensure compliance. And to fulfill the
11 Planning Commission's mandate, which under 205A is
12 identical to *this* Commission's mandate under Chapter
13 205. You have the authority to review projects, to
14 grant permits and to ensure that conditions are
15 complied with.

16 Now, we also have the existing rules today.
17 The regulation HRS 15-15-93 which says -- it doesn't
18 say what a movant like ourselves, Defend O'ahu
19 Coalition, come forward but it says that: "Whenever
20 the Commission shall have reason to believe that a
21 failure to perform according to the conditions imposed
22 or to the representations or commitments made by the
23 Petitioner, the Commission *shall* issue and serve an
24 Order to Show Cause.

25 Then you move into a more formal proceeding

1 where it allows the Petitioner to come forward and
2 show why they shouldn't be reverted, what they have
3 done to complete that Project, and the reasons why
4 they haven't made that progress to date.

5 There might be some argument that this
6 Commission can apply 15-15-93 because that rule wasn't
7 in existence in 1986 when this Project was approved.
8 Well, that's also been dispelled by the Hawaii Supreme
9 Court in the Morgan case I just mentioned, there in
10 Morgan that were adopted by the Kauai Planning
11 Commission allowing revocation or modification of a
12 permit.

13 They were passed in the '90s even though
14 that permit had been issued in the '80s. The Supreme
15 Court had no problem with the application of those
16 procedural rules to reopen the permit.

17 That's exactly the situation here. But in
18 addition laws from 1986 or the Commission's
19 regulations certainly allowed reopening and reversion
20 as well.

21 Rule 6.3, which was in effect when the
22 Commission issued -- the original Commission issued
23 its Decision and Order, said after setting a 5-year
24 maximum time to make substantial progress in a project
25 the rule says, quote, "the Commission may act to

1 reclassify the land to an appropriate district
2 clarification upon the failure to perform within the
3 specified period according to representations made to
4 the Commission.

5 Similarly Rule 7.2, which is called
6 "failure to comply" says, quote, "The approval granted
7 by the Commission on a petition for boundary change
8 may be reversed if the parties bound by the conditions
9 attached to the approval fail to comply with the
10 conditions." End quote.

11 So there's no doubt that the rules that
12 existed then, the rules that exist now and the
13 Commission's inherent authority, allow it to reopen,
14 revert, modify, and to do all those things.

15 Now, there's also been some briefing by the
16 opposition to our motion that suggests that I think
17 it's a ludicrous proposition that a petitioner, a
18 developer who comes before the Commission is not bound
19 by its representations that are made unless the
20 Commission puts a condition into the permit or into
21 the Decision and Order that says "you're bound by your
22 representations."

23 But that's ridiculous. It's also not
24 supported by the rules. Rule 6.3 says, quote, and
25 this was the rule that was in effect in 1986, "The

1 Commission may act to reclassify land upon the failure
2 to perform within the specified period according to
3 the representations made to the Commission." So of
4 course you're bound by your representations.

5 Hawaii Revised Statute 205-4G also says
6 that "The Commission shall act to approve a petition,
7 deny the petition or modify the petition by imposing
8 conditions necessary to uphold the intent and spirit of
9 this chapter or the policies and criteria established
10 pursuant to Chapter 205-17 or to assure substantial
11 compliance with representations made by the Petitioner
12 in seeking the boundary change," end quote.

13 And of course the Land Use Commission's own
14 decision-making criteria 205-17(4) also says that "In
15 its review of a Petition for reclassification the
16 Commission shall specifically consider, among other
17 things, the representations and commitments made by
18 the Petitioner in securing the boundary amendment."

19 So you have the right to rely on the
20 representations made by every Petitioner. Your rules
21 and your statute say you have the right to rely on
22 them. And you don't need to have a condition written
23 into a Decision and Order as is done today, that says,
24 "The Petitioner is bound by its representations"
25 because an approval, a permit, a zoning change would

1 be irrelevant if you couldn't rely on the
2 representations of the Parties seeking that.

3 Now, time limits. You'll probably hear
4 arguments saying: Well, in 1986 the Land Use
5 Commission just made a mistake and didn't put time
6 limits into its Decision and Order. Therefore it's
7 unenforceable. It's open ended. They have until
8 eternity to do that. Well, that's not so.

9 It's not so because the law that was in
10 effect at the time that was granted set its own time
11 limitations. They were extraneous to the Decision and
12 Order. They existed because they were written law
13 which was the Land Use Commission regulations.

14 So you have Rule 6-2(1) which says, quote,
15 "Petitioners submitting applications for redistricting
16 to Urban shall also submit proof that development of
17 the premises in accordance with the demonstrated need
18 therefore will be accomplished within 5 years from the
19 date of Commission approval." End quote.

20 Rule 6.3 also says the same thing.
21 "Petitioners requesting amendments to District
22 Boundaries shall make substantial *progress* in the
23 development of the area redistricted to the new use
24 approved for a period specified by the Commission not
25 to exceed 5 years from the date of boundary approval."

1 In other words, the rules make clear that
2 the outside time limitation was 5 years. Now, the
3 Commission in 1986 considered that. That's why
4 there's a Findings of Fact No. 60 in the Decision and
5 Order that has the time schedule.

6 Finding of fact 60 says, "Petitioner
7 proposes to complete substantial portions of the
8 infrastructure described in Finding of Fact 17 as well
9 as complete 315 of the proposed 1,000 resort
10 condominium units within 5 years of the Commission's
11 approval, and to complete the entire resort by 1996."

12 Now, that didn't come out of thin air. It
13 was the evidence that was before the Commission at the
14 time. In fact the predecessor to the Office of
15 Planning was called the Department of Planning and
16 Economic Development in 1986. They submitted written
17 testimony to the Commission. They recommended
18 granting the Petition. They said at page 26 of the
19 written testimony, quote, "Substantial portions of the
20 infrastructure for the Petition Area as well as the
21 315 of the 1,000 resort condominium units will be
22 completed within 5 years of Commission approval.

23 "In addition, the completion date of the
24 entire Kuilima Resort expansion will be 1996.
25 Therefore, Department of Planning feels that

1 incremental districting for the Petition is not
2 warranted," end quote.

3 Incremental districting was the practice of
4 the Commission to reclassify in sections depending on
5 5-year increments. You wouldn't get reclassified to
6 your next -- your next section until you were done the
7 first phase.

8 So DBEDT didn't feel it needed that because
9 they specified this 10-year timeframe. And that was
10 reflected in finding of fact 60.

11 Now, I also told you about the -- I read
12 through the testimony that the Commission heard in
13 1985 at the public hearing and the 1986 decision
14 hearing. There was testimony about this. I think
15 it's important because the Office of Planning's
16 attorney at the time was a man named Mr. Kaneshige.
17 Mr. Yee now sits in his place. Norm Kwon, who was the
18 developer's representative, was on the stand. So the
19 state's attorney asked Mr. Kwon -- and this is at page
20 159 of the 1985 public hearing.

21 "Question: Mr. Kwon, can you comment on
22 when Phase 1 and Phase 2 as described in the Petition
23 will be complete?

24 "Answer: Okay. Phase I we anticipate
25 somewhere between, again, it's subject to government

1 approval, but we anticipate somewhere about mid '88
2 for Phase 1. Phase 2 we want to commence immediately
3 after '88. So give it a couple years after that.

4 "Question: So by 1990?

5 "Answer: '90, '91, around there.

6 "Question: With respect to the hotels that
7 have been posed by the Petitioner, when do you
8 anticipate those to be completed?

9 "Answer: The hotels, H-2 on a site there
10 is going to be the first luxury hotel site. We intend
11 to have that completed in the first phase. H-1 we
12 intend to have happen in the next phase, also H-3.
13 H-4 is an extension to the Turtle Bay Hilton. We're
14 not exactly sure when that's going to be."

15 So I say that because these dates didn't
16 come out of a vacuum. There were commitments. There
17 were representations made by the developer. They
18 found their way into the Decision and Order. They are
19 there: Finding of Fact 60, and our brief refer to some
20 other findings of fact that talk about the schedule.
21 The schedule was important because that was required
22 under the Land Use Commission rules that were in
23 effect at the time.

24 And so you're going to be told that there
25 was no timeframe. There was. It existed in the laws,

1 in the regulations that were in place at the time.
2 And it was very much discussed by the Commission. It
3 was understood by the Petitioner.

4 CHAIRMAN HELLER: You're a little bit past
5 the 20 minute mark.

6 MR. KUGLE: Okay. I'll wrap it up. Thank
7 you. And I would ask for the opportunity to respond
8 at the close of the other case if I have that time.

9 CHAIRMAN HELLER: We'll see how we're doing
10 on time.

11 MR. KUGLE: Very good. Thank you. There
12 was one other quote that I think is helpful for you
13 that comes from 1980 from one of the Commissioners
14 who's sitting in the seats you're sitting in now. And
15 that was Commissioner Cuskaden said at page 61 of the
16 decision-making testimony.

17 Quote, "But one of the major concerns I
18 always have is a Petitioner comes in, makes all these
19 representations, all the pie in the sky comments.
20 Then later down the line without a condition attached
21 to the land itself they can go ahead and sell portions
22 here and there. And then every comment,
23 representation that the Petitioner and counsel make in
24 good faith are just by the wayside. There's no way to
25 do it. That's why I think this is essential." He was

1 referring to imposing conditions about the full
2 service hotels.

3 He then later asked Mr. Takeyama, who was
4 the attorney for Kuilima at the time. He said, "I
5 don't see where the Petitioner at this point is now
6 coming back attempting to back pedal saying, "wait a
7 minute. Don't hold us to what we've said. I hope that
8 is not what is being said." And Mr. Takeyama said,
9 "No."

10 They knew that they were making
11 representations to the Commission that the Commission
12 could rely upon.

13 I wanted to just tell the Commission what
14 normally happens when somebody, a developer, is not
15 going to meet their time schedule. You have what you
16 have in the, for instance, in the Shipman case which
17 was a 1985 docket just like this one on the Big Island
18 in Ka'u for a reclassification for an industrial park.

19 They came in after they were not able to
20 complete the development, or substantially complete
21 it. They asked for an extension from the Commission.
22 The Commission granted in part and said, "We're not
23 going to give you an additional five years. We'll
24 give you an additional three years." That's what a
25 developer does when they can't complete what they were

1 going to.

2 These guys never did that. Even up until
3 2008 when we filed our original motion, they had never
4 come back to this Commission and ever said, "We're
5 having problems. We can't do what we said we were
6 going to do but we intend to do it. Can we get
7 extensions?" Never happened.

8 Now, I wanted to close by saying that I
9 know -- and the Commissions have changed recently and
10 most of you are newer members. But the Land Use
11 Commission has begun, I think, to show that there are
12 teeth to the rules, that people are bound by what they
13 represent.

14 So you had -- there's some older cases
15 Order to Show Cause cases: The Kanaekapu'u case which
16 is a Hawaii Supreme Court case, coming out of Nu'uuanu
17 Valley. There's a Lanai Company case. Those were
18 both Orders to Show Cause cases that went to the
19 Hawaii Supreme Court. But then you also have the more
20 recent cases: The Bridge Aina Lea case and Pi'ilani
21 Promenade case.

22 And I think that it would be both
23 unreasonable and in fact, very arbitrary for this
24 Commission in light of those two cases and some of the
25 older cases to not look at this situation here and

1 say, "We need to move to the next phase. We need to
2 issue an Order to Show because it's very clear.
3 Mr. Makiau admitted one of the conditions is: Build
4 hotels. They haven't built any hotels. One of the
5 conditions is: Build condos on the property. They
6 haven't built any condos on the property.

7 There clearly is evidence before the
8 Commission that they have not done not only what the
9 conditions say but what was represented to the
10 Commission. So I think it would be arbitrary in *this*
11 situation to not issue an Order to Show Cause.

12 Now, let that process play out. We don't
13 know where it goes, but I think there's certainly been
14 a *prima fascia* showing of failure to comply. I think
15 it is appropriate that the Commission move on. And,
16 frankly, what would happen and what should happen is
17 that this land should be reverted to Ag.

18 And with their whole new development plan
19 that they've spent as they'll tell you, the last 2
20 years developing and all this community input. Well,
21 that's never come back to the Commission. That needs
22 to come here.

23 And they need to start over and present
24 that plan to you and let the public that you've heard
25 from today, testify about its merits and then you can

1 reclassify or not based on their new plan.

2 CHAIRMAN HELLER: Please wrap it up.

3 MR. KUGLE: You will get conditions that
4 reflect current practice. Thank you for your time.

5 CHAIRMAN HELLER: Holly, you okay for one
6 more or you want to break now?

7 THE REPORTER: Yes! (audience laughter)

8 CHAIRMAN HELLER: Okay. Short break.

9 (Recess was held. 11:10-11:20)

10 CHAIRMAN HELLER: Okay. Let's get back on
11 the record. Mr. Matsubara, are you ready?

12 MR. MATSUBARA: Yes, Chair.

13 CHAIRMAN HELLER: Please go ahead.

14 MR. MATSUBARA: Thanks, Chair,
15 Commissioners. Wyeth Matsubara and Curtis Tabata on
16 behalf of TBR and Drew Stotesbury next to me. TBR's
17 position is that Defend O'ahu Coalition's motion
18 should be denied at this time. But before that I want
19 to make it crystal clear that we always have taken the
20 position that this Commission has the ability and
21 still has, retains the power to act to reclassify this
22 land.

23 And not one time have I ever represented or
24 come here saying this Commission does not have the
25 power or the authority to come in and to take charge

1 of any of these decision and orders. That's
2 absolutely untrue. We give great deference to this
3 Commission in every single case we do. In every
4 single proceeding we have in front of you that is the
5 utmost hammer and deference that we give to you and
6 relate that to our clients.

7 So crystal clear: This Commission has the
8 authority and the power to reclassify. However, in
9 this case we believe that the Commission does not need
10 to issue an Order to Show Cause or does not need to
11 issue a reclassification in this matter as TBR has not
12 failed to comply with any of the conditions in the
13 1986 decision and order.

14 At controversy in this matter is whether
15 TBR is in compliance with the Commission's 1986 D&O
16 granting reclassification for 236 acres of
17 agricultural land to urban.

18 Now in comparison of this 1996 D&O to more
19 modern District Boundary Amendment D&O's, D&O's
20 reflects how the Commission's D&O's have evolved over
21 the last 26 years. Whereas the Commission's current
22 D&O's normally contain over 20 conditions. This 1986
23 D&O only has 9 conditions.

24 This is important to note as the Commission
25 has recently addressed Orders to Show Cause or OSC

1 motions in the Bridge Aina Lea matter, and the
2 Ka'ono'ulu Ranch matters in which conditions in those
3 decision and orders were violated. In those cases OP
4 supported the ability of this Commission to issue an
5 OSC, based upon failure to comply with the conditions
6 in those decision and orders.

7 However, in this matter TBR has not
8 violated any conditions in this 1986 Decision and
9 Order. And, likewise, the State Office of Planning is
10 against the issuance of an OSC in this matter.

11 Established laws, rules and statutes never
12 reflect or require a specific completion date or
13 deadline for development projects. This Commission
14 has the wisdom, has always understood the
15 difficulties, the risks and costs involved with
16 respect to development projects in Hawai'i.

17 This Commission has always understood that
18 all developments are often subject to forces beyond
19 our control such as market forces, and permitting by
20 regulatory agencies.

21 As the Commission has always had this
22 understanding, the Commission has never established
23 the condition in any of their decision and orders that
24 we require the Petitioner to full completion of a
25 project within a certain deadline. Development

1 schedules and market studies are forecast to indicate
2 a demand and need for the Project. The final
3 deadlines and firm completion dates have never, ever
4 been required.

5 The laws always reflect and establish
6 'substantial progress' or 'substantial commencement'
7 to address land speculation issues, never final
8 completion. Substantial progress reflects the
9 commitment by the Petitioner to invest in the backbone
10 infrastructure which is non-revenue generating costs,
11 to ensure that commitment comes from the Project.

12 The significant initial investment shows
13 the commitment by the Commissioner. Even today
14 Decision and Order conditions still do not require or
15 establish a full completion of a project by a certain
16 deadline and keep consistent with a substantial
17 commencement rule by only requiring a backbone
18 infrastructure deadline and never require the full
19 buildout deadline.

20 In this matter Petitioner TBR has conducted
21 substantial progress in the Petition and has made that
22 initial commencement within the Petition Area. TBR is
23 firmly committed to the Project and will continue to
24 fully comply with this Decision and Order.

25 I want to take a quick step back for some

1 of the Commissioners that weren't here in the prior
2 docket. I'm going to use the Office of Planning's
3 exhibit here on the wall. We have a similar one but
4 since it's up there I'm not going to make Mr. Tabata
5 go up.

6 What this exhibit shows is that this area
7 in red here is all currently urban. This whole area
8 here was designated by the State way back in the day
9 when they first initially started designating land
10 designations as urban. This was the State's planned
11 urban area for this section of the island.

12 Petitioner's land is right here, this 236,
13 which is adjacent to the already existing urban land.
14 Nothing in this Petition Area today or nothing in this
15 D&O is going to affect any of this urban land in this
16 area again.

17 It's already deemed resort by the County.
18 This whole area is already in their Sustainable
19 Communities Plan. What we're talking about today is
20 this adjacent urban area right here.

21 Now, I want to go back and give you some
22 updates as to what we've done since our last hearing
23 in 2010. Since the last hearing TBR in good faith has
24 invested a substantial amount of time and capital into
25 the Project spending over \$37 million in the last 2

1 years alone.

2 On April 8th, 2010 the Supreme Court State
3 of Hawai'i issues its decision in the Unite Here Local
4 5. The result of this ruling was to mandate that DPP
5 require a supplemental Environmental Impact Statement
6 be completed in accordance with HRS chapter 343 and
7 prohibit any further groundwork or construction by TBR
8 relating to the Project until an SEIS is completed.

9 In effect there was a stay for the last 2
10 years on any further development in the Petition Area.

11 As the Coalition noted, we went in for our
12 subdivision permit in 2005. So just the permitting
13 regulatory delays alone have been on from almost, from
14 2005 til today. New ownership took over the resort
15 just before the Court issues its decision. The new
16 ownership lead by Drew Stotesbury, made a conscious
17 decision to initiate an extensive public outreach
18 program for the purpose of listening to the
19 community's concerns and vision for the resort before
20 beginning its preparation for the SEIS.

21 TBR's goals, although not required, would
22 identify key elements of the development plan for the
23 resort that would reflect a balance of the needs of
24 the community, the owners and the environment. TBR
25 retained Lee Sichter to prepare a full SEIS, to do a

1 full inclusive SEIS and prepare a comprehensive plan
2 and to conduct extensive community outreach.

3 As an integral part of preparing the SEIS
4 TBR specifically sought to establish meaningful
5 community relationship with the general public and
6 particularly with all the stakeholders involved with
7 the land at TBR.

8 I think you heard testimony today here from
9 members who may at one time may have been against this
10 Project but because of the community outreach I think
11 they were able to reach common ground.

12 TBR made it a point to address the
13 Coalition's request to the Commission back in 2009
14 that the developer bring all sides together by working
15 with the community to change the size and scope of the
16 current expansion Project proposed for Turtle Bay
17 Resort.

18 To achieve its goal a multi-faceted
19 consultation process was undertaken. A deliberate
20 effort was made by TBR's project team to initiate
21 requests with various stakeholders, to listen to them
22 in settings or forums of their choosing.

23 Over the past 2 and-a-half years TBR has
24 engaged and invested over 225 separate meetings with
25 the public totaling approximately 1,000 hours of

1 meetings with the public which comprised about 100
2 separate groups and hundreds of individuals to receive
3 community input regarding the Project. TBR invested
4 approximately \$2 million in its effort to complete a
5 well-thought out and planned SEIS and conduct public
6 outreach.

7 This SEIS as noted was completed and
8 submitted for reviews to DPP on August 19, 2013. DPP
9 recently accepted this SEIS on October 23, 2013.

10 Now, I want to briefly go into legal
11 arguments. Standing. I believe standing is still an
12 issue. I believe you received a motion from the
13 coalition yesterday indicating that they're filing for
14 their motion for standing.

15 I believe that supports our position that
16 the coalition does not have standing in this matter.
17 Right on that point alone you can dismiss this matter,
18 OSC's motion -- Defend O'ahu Coalition's motion for an
19 OSC.

20 The authority relied on, 15-15-93, was not
21 applicable and is not retroactive *clearly* to our case.
22 There's no statutory legal authority for an Order to
23 Show Cause. I wrote last week Friday indicating this
24 position.

25 The Commission's current authority to issue

1 on Order to Show Cause arises from HRS 205-4G. 205-4G
2 currently states in part: The Commission may provide
3 by condition that absent substantial commencement of
4 the use of the land in accordance with such
5 representations, the Commission shall issue and serve
6 upon the Parties bound by the condition an Order to
7 Show Cause why the property should not revert to its
8 former land use classification or be changed to a more
9 appropriate classification.

10 That OSC provision, section 205-4(g)
11 however, did not exist in 1986 when this D&O was
12 issued. The Legislature did not grant the LUC the
13 ability to conduct OSC hearings or to revert land via
14 an OSC proceeding until 1990 which was 4 years after
15 this D&O was approved.

16 Now, Defend O'ahu Coalition raises
17 Kaniakapupu. I assume that's the case when they say
18 Kanaiakapupu. It's Kaniakapupu. But again the
19 Kaniakapupu case is very distinctive from this case.

20 That case 15-15-93 was applicable to that
21 Decision and Order. Rule 15-15-93 requires and offers
22 ability for the Commission to order an Order to Show
23 Cause. Again, 15-15-93 was not relevant to our
24 Decision and Order. By statute no rule or statute is
25 retroactive unless specifically stated.

1 There's no rule or statute that says that
2 15-15-93 or HRS 205-4(g) is retroactive. Therefore
3 they do not apply in our Decision and Order. This is
4 why the Coalition is not arguing its statutory rights
5 of reversion. They argue that the rules in effect in
6 1986 provide for a reclassification of land in the
7 event Petitioner fails to perform to his
8 representations.

9 Petitioner -- Defend O'ahu Coalition relies
10 on Rule 6-3. Rule 6-3 references that "Petitioners
11 requesting amendments to District Boundary Amendments
12 shall make substantial progress in the development of
13 the area redistricted to the new use approved within a
14 period specified by the Commission not to exceed 5
15 years from the date of approval of boundary change."

16 The Commission may act to reclassify, not
17 Order to Show Cause, not revert. They may act to
18 reclassify the land to an appropriate district
19 clarification upon failure to perform within a
20 specified period according to representations made to
21 the Commission *provided* that the Commission in seeking
22 such a boundary reclassification complies with
23 requirements of section 205-4 HRS.

24 Again, it's noted that section 6-3, the
25 rule in effect and applicable to our Decision and

1 Order at that time, does not authorize the Commission
2 to issue an Order to Show Cause or to revert lands.

3 Rule 6-3 allows the Commission to
4 reclassify the land if the Petitioner fails to make
5 substantial progress in the area redistricted in a
6 specified time period provided that such clarification
7 by the Commission complies with the DBA process under
8 205-4.

9 When you read Rule 6-3 and the version of
10 205-4 that existed in 1986, it is clear that the
11 Commission *may* reclassify. You still have the power.
12 You still have the authority to do this. You don't
13 need anybody coming in and telling you "Petitioner's
14 not doing these things."

15 You can do it on your own. You saw that
16 with their Ko Olina boat ramp. There's no party at
17 the table. There's no intervenors. Just the public
18 telling you: This person's not doing what they need
19 to do. The Commission can come in and do things on
20 their own.

21 But in this case the Commission can only
22 reclassify the lands, not be an OSC. Has to do a
23 Petition for District Boundary Amendment or the LUC
24 would file a petition under HRS Chapter 343 EIS if
25 necessary, amend the county community plan if

1 necessary, provide the necessary evidence in the form
2 of expert testimony, extra written reports, et cetera
3 and so on.

4 Given the legal authority that existed in
5 1986 Defend O'ahu Coalition's Motion for an Issuance
6 of an Order to Show Cause should be dismissed.
7 There's no legal authority to grant the motion as no
8 condition existed in the 1986 D&O that would trigger
9 the issuance of an OSC as that was not provided for by
10 law.

11 The Lanai Company case indicates that no
12 condition regarding completion dates or deadlines to
13 development outside or within -- excuse me. LUC can't
14 enforce a condition that is not expressly stated.
15 That's what the Lanai Company tells us.

16 In our matter there's no condition
17 regarding completion dates or deadlines for full
18 completion of any of the conditions that develop
19 outside or within the Petition Area. The LUC cannot
20 now enforce a construction of a condition that was not
21 expressly adopted. And that's what the Lanai Company
22 case let's us know. There's no express conditions as
23 to deadlines or time to complete development.

24 The Commission needs an expressly stated
25 condition as to any time deadlines for completion and

1 may not enforce an implied completion or deadline upon
2 the conditions at this time.

3 Plain language of conditions contained in
4 the 1986 D&O do not give fair notice or adequately
5 express any intent on the Commission's part that TBR
6 is required to comply with any completion dates or
7 deadlines.

8 As stated before, the Commission clearly
9 understood and contemplated the issues regarding the
10 condition to develop outside the Petition Area. Some
11 Commissioners had grave concerns with this condition.
12 Commissioners knew that they did not have any
13 jurisdiction over the development timeframe outside
14 the Petition Area.

15 They also understood the dynamics and
16 difficulty of developing a large Master Planned
17 Project. They understood the complexity and the need
18 for flexibility in the development of our Project.
19 And that is part market driven and subject to forces
20 beyond the control of the Petitioner.

21 The Commissioners specifically chose not to
22 implement any specific time conditions as to deadlines
23 or full completion of the development of the D&O. The
24 Commission under Hawai'i law clearly may not enforce a
25 deadline or completion condition that was not

1 expressly adopted. Therefore this Commission does not
2 need to reclassify the land.

3 Now, Petitioner's in compliance with the
4 D&O and applicable rules as they have made substantial
5 progress in the area districted. The rule in effect
6 when this D&O was established does provide some
7 timeframe values. And that was established under Rule
8 6-3 as we've talked about. And that rule only applies
9 to the Petition Area, the 236 was the area
10 redistricted. And it doesn't require full completion.
11 It only requires substantial progress.

12 Now, in regards to the timeframe issue
13 within the first 5 years, I think we made it clear in
14 our briefs and clear in our past testimony that the
15 Petitioner had made substantial progress in the
16 development of the area redistricted within those
17 first 5 years. They drafted, finalized and submitted
18 various zone change submittals, urban design plans,
19 subdivision applications.

20 And we all know that submitting a plan
21 takes time, money, effort to do this. This is not
22 just some document you turn in. This takes years of
23 time, commitment, effort capital. The Petitioner
24 completed a wastewater treatment plant.

25 They completed a water transmission main.

1 They completed the apana well facility Phase 1 which
2 includes pump No. 1, pump No. 2 as well as water
3 storage tanks. They secured a well construction
4 permit for apana Well No. 2.

5 They did improvements to Punaoleka Marsh
6 after meeting with the U.S. Fish and Wildlife Service.
7 And they committed to continue to doing those
8 improvements pursuant to whatever U.S. Fish and
9 Wildlife deem necessary.

10 They completed a TIAR. As you know in our
11 Petitions how difficult a TIAR can be completed. They
12 completed a 192-acre 18-hole Palmer Golf Course. They
13 also completed various drain improvements, internal
14 roadways, electrical, telephone, other items were all
15 done and completed. Substantial cost, time and
16 efforts were all completed within the relevant 5
17 years.

18 The hundred 13-acre 18-hole Palmer Golf
19 Course and related golf course infrastructure and
20 comfort station alone was in excess of \$20 million at
21 that time.

22 After the initial 5-year period the
23 Petitioner reasonably moved forward with the Project
24 and completed the expansion of the Fasio Golf Course,
25 major renovations to the existing Turtle Bay Hotel,

1 further roadway improvements to the main access road
2 that services the property -- which is widened and
3 improved -- and construction of the ocean villas in
4 anticipation of the expansion Project as well as a
5 substantial amount of capital that had been invested
6 and expanded for planning, design and permitting.

7 In all, more than \$137 million has been
8 spent by the owner in reliance of the land use
9 approvals.

10 We are in compliance with the 1986 D&O. We
11 are in compliance with all of the conditions in the
12 1986 D&O. Our brief lays out that we intend to and
13 fully will comply with those conditions. Nothing in
14 those conditions ever says, "You need to finish your
15 hotel at this date. You need to complete these
16 buildings by this date." There is no drop dead
17 condition. That's where the wisdom of the Commission
18 comes into play.

19 You understand that these development
20 plans, these development proposals are best estimates,
21 market forces, regulatory agencies, they all affect
22 how development moves forward.

23 If the market forces were there at that
24 time I'm telling you this would have happened. The
25 1990s legitimately were tough times for the Japanese

1 companies. But as soon as further developers came in
2 from 2005 they've been trying to get this Project
3 moving.

4 They are in good faith moving forward.
5 They put together a good plan. They show you what
6 they're going forward with. They intend to fully
7 comply. They intend to build hotels. They intend to
8 continue complying with all the conditions. They
9 intend to build the homes, affordable homes.

10 In fact they're increasing the affordable
11 homes for this area. They're maintaining their
12 commitments to the community, commitments to this Land
13 Use Commission. They intend to fully comply with
14 these conditions.

15 I want to touch base a little bit on what
16 was said. Defend O'ahu raises more that there's
17 implied powers that you can come back in. We don't
18 need implied powers. You've got express powers. The
19 rules in place at that time showed that you had
20 express authority to come in and reclassify the lands.

21 We don't need to come back and have applied
22 powers. There's express authority on this Commission
23 that you retain control and authority over Decision
24 and Order. You can reclassify if we're not gonna
25 follow up on our conditions.

1 They cite 15-15-93. That again, as I,
2 stated, is not retroactive, not applicable to our
3 Decision and Order. 15-15-93 is your rule that
4 provides for the issuance of an Order to Show Cause.
5 That rule is not applicable to our Decision and Order.
6 There's no retroactivity by law, by statutory law.

7 Petitioner raises 205-4(g), 205-17(a) all
8 about representations, again, that legislative
9 authority was not given to this Commission under those
10 statutes until 1990 which is after the decision and
11 order.

12 Nothing in those statutes say that it
13 "Shall apply retroactively." Therefore again by law
14 those laws to not apply to the 1996 D&O.

15 I can't be any more crystal clear about
16 this that this Petitioner has come forward. They put
17 together a plan. They made commitments. They made
18 commitments to the community. They went out there.
19 They emphasize that they're not gonna just come in
20 here and do whatever they wanna do.

21 They're going to come in here, comply with
22 the Decision and Order, comply with the conditions.
23 They reach out to the community. Mr. Stoner, that was
24 tremendous. He was against this Project in 2010. He
25 met with the developer.

1 CHAIRMAN HELLER: You're a little past 20
2 minutes.

3 MR. MATSUBARA: I apologize. In the
4 immortal words of Mr. Primacio "I thank you for this
5 Commission." I really hope you dismiss this motion.
6 There's no need to go any further than today. Pau.

7 CHAIRMAN HELLER: Does the County have any
8 argument to present?

9 MS. TAKEUCHI-APUNA: No. The DPP takes no
10 position on this motion.

11 CHAIRMAN HELLER: Mr. Yee.

12 MR. YEE: If there's no objection I'm going
13 to be going to the maps to show some things.

14 CHAIRMAN HELLER: Sure.

15 MR. YEE: Thank you. I know a lot of
16 Commissioners have not been present during some of the
17 earlier proceedings. I just want to go over a little
18 background of this case. The Land Use Commission has
19 not existed eternally. The land use system itself was
20 created in the 1960s.

21 In 1964 to 1969 the Land Use Commission met
22 in quasi-legislative type of hearings, not these type
23 of contested hearings but in a quasi-legislative
24 hearing and classified large areas of land throughout
25 the state.

1 These lands were not conditioned. They
2 were simply said: We looked at the state. And these
3 areas should be urban.

4 They went out and they urbanized a bunch of
5 land. Among these lands was much of what is now the
6 Kuilima Resort area. So all the way from here, all
7 the way out to here were urbanized in 1964 and 1969.
8 There are no conditions attached to it.

9 In 1985 there was a Petition to reclassify
10 this area of the resort. You can see that probably
11 more clearly on the first map in the area in yellow.
12 You'll notice this is the Punaho'olapa Marsh. And for
13 whatever reason half the marsh is in urban, half of it
14 remained in agriculture because the Petition excluded
15 the marsh in 1985.

16 But we just wanted to point that out
17 because if there are concerns about what they're doing
18 on this part of the property, if you are for or
19 against the hotels, if you think this is a good or bad
20 use of the property, that's not actually before you.

21 The issue before you is really solely this
22 Petition and what you can do with this Petition Area.
23 I wanted to point out just geographically give you a
24 little bit of an orientation as well. In 1972 the
25 Turtle Bay Resort was actually created, that's this

1 area here.

2 Between 1986 of course, the LUC reached its
3 decision and Condition 1 related to the construction
4 of hotels. If some of you remember the older
5 documents we had on this you might have seen some of
6 the hotels around Kawela Bay. That's no longer in
7 their preferred alternative.

8 There are two hotels in this shade of blue.
9 This looks like two hotels. It's actually one, one
10 hotel separated by a gathering place. This is one
11 hotel here and one hotel there.

12 The second condition was the construction
13 of affordable housing under their preferred
14 alternative. That appears to be here now in this
15 area.

16 The Condition 3 dealt with traffic
17 improvements for which I think the State's primary
18 concern is going to be the intersections with
19 Kamehameha Highway is where the area would be reviewed
20 most closely.

21 And the Condition 7 is the provision of
22 parks and public access.

23 I'm not aware that we have currently an
24 issue with the provision of public access per se, but
25 the Condition 7 did require the dedication of ten

1 acres of land. And I remember the conversation in the
2 prior documents. This is the area that they were
3 probably looking at for dedication just to point out
4 there are other park areas within the larger Ku'ilima
5 expansion. But I think the discussion on the
6 dedication for my recollection was somewhere in that
7 area.

8 To be clear that has not occurred. The
9 Office of Planning is not suggesting, obviously this
10 is the plan, right? So I'm not suggesting any of the
11 hotels were built as the witness had testified. From
12 1986 to present the golf courses were constructed.

13 That's probably the largest, geographically
14 the largest area of improvement. The golf courses are
15 in green. Both the existing -- there are two golf
16 courses existing Palmer and I don't remember what the
17 name of the other golf course is.

18 Then there's also the Ocean Villas that
19 were constructed. This is the existing Kuilima
20 Estates. Ocean Villas is right here. Kuilima Hotel
21 was improved upon. There were some offset
22 improvements for the apana well facilities and a
23 wastewater treatment facility which was the subject of
24 the first Amended D&O. And there were improvements to
25 the marsh, and I showed you where the marsh was.

1 So I just wanted to make sure you had sort
2 of a general idea what the area is, what happened so
3 far. What you'll notice, though, is that the Petition
4 Area itself has not had the construction of the resort
5 residential units that were the subject of the
6 original Petition.

7 With respect to the Motion for Order to
8 Show Cause and renewed Motion for Order to Show Cause,
9 the Office of Planning's position is that the motion
10 should be denied. We say this because and we laid it
11 out in our brief. I won't repeat it in detail. But
12 basically there is no explicit condition. I think
13 that's pretty clear.

14 The D&O itself does not have a condition
15 that you must comply with your representations, does
16 not have an explicit condition that you shall complete
17 your infrastructure within 10 years, as you will find
18 in all of our more recent D&Os today.

19 There is -- therefore, in order for the
20 motion to move forward you would have to find that
21 there's something else, something implied, perhaps, or
22 something in the rules. And the Movant has argued
23 that either 6-2 or 6-3 provides you with some basis
24 for that. 6-2 is actually the incremental
25 districting, a rule that you have.

1 It really applies more to what do you have
2 to demonstrate when you come to the Commission
3 initially for the reclassification. It's not so much
4 what you do after it's reclassified.

5 Six-3 is similar but it does discuss what
6 occurs, what may occur for enforcement. And, you
7 know, if you don't have -- I'm sorry. I probably
8 should have actually blown it up for you. Because
9 what's interesting, I think, is that everyone's
10 reading the exact same wording and everyone's
11 emphasizing the different part of the paragraph.

12 Six-3 says that the "Petitioner shall make
13 substantial progress in the development of the area
14 redistricted to the new use approved within a period
15 specified by the Commission."

16 What's interesting is it talks about the
17 area redistricted by the Commission, redistricted to
18 the new use approved. And some people will emphasize,
19 "within the period specified by the Commission."

20 And then you look at the next part, "Not to
21 exceed 5 years from the date of approval of the
22 boundary change." You have to read -- the problem is
23 you really need to read the whole thing, of course.
24 But some people will say: Oh, you have to specify a
25 period. Others will say: No, but it can't be more

1 than 5 years. So one side said: Well, there must be
2 a requirement within 5 years 'cause it says it can't
3 be more.

4 The other side says: No because you have to
5 specify.

6 So the Office of Planning's construction of
7 this is you have to read them both together. Your
8 limitation on your authority is 5 years. But in order
9 for you to give that fair notice to the Petitioner you
10 need to specify it in your condition.

11 And if you didn't specify it in the
12 condition, then although you have the authority to
13 require something, you didn't actually do it.

14 The second sentence goes on to say, "The
15 Commission may act to reclassify the land to an
16 appropriate district classification. But failure to
17 perform within the specified period."

18 That term "within the specified period" I
19 think clearly refers to the specified period in the
20 sentence before. Is the period that you specified
21 according to representations made to the Commission.

22 Now, the Movant emphasized that term
23 "according to the representations made to the
24 Commission". But that was just the representations
25 with respect to a specified period which you need to

1 lay out in the condition. So it's not a general
2 requirement to comply with all representations. It's
3 really only referring to the time period for
4 substantial progress on the construction. And it's
5 actually not specifically a requirement for compliance
6 for a timetable for compliance with conditions.

7 It's a timetable, if anything, for
8 substantial progress. So, and as I said, even if
9 there was a timetable it needed to be laid out by the
10 Commission or specified by the Commission as part of
11 the conditions. So you certainly had authority, I
12 think, back then to impose such a requirement. The
13 bottom line for the Office of Planning is you never
14 did.

15 From our perspective under the Lana'i Water
16 Case which tells us we have to provide fair warning,
17 fair notice to the Petitioners. You can't give that
18 fair notice if you have to imply a deadline.

19 So nobody knows what the deadline is.
20 Nobody knows that there is a deadline unless you're
21 very specific about it. And if you look at the
22 history of the land use cases we've never come back to
23 you, other than this case, no one has ever come back
24 to you with other cases -- Office of Planning
25 certainly hasn't -- to say, "Look at all of these

1 cases that were reclassified way back when and the
2 haven't developed. Therefore all of them should be
3 moving to an Order to Show Cause."

4 We haven't -- that has not been the
5 practice of the Land Use Commission. It would
6 certainly be unusual or it'd be a surprise, I guess,
7 to people to learn that. I think the fact that it
8 would be a surprise is the basis for our argument that
9 there is not fair notice or fair warning.

10 The renewed motion raises three new
11 arguments which I'll try to deal with fairly briefly.
12 And that is they say there are three new things that
13 happened. By the way, I should say I'm not actually
14 opposed to the fact that they filed the renewed
15 motion. I think it was a useful mechanism to bring
16 the subject up again. I just don't think there *is*
17 anything new necessarily relevant to this case.

18 The first matter they brought up was the
19 Unite Here Local 5 case which talks about the need to
20 -- that the Environmental Impact Statement can't be
21 relied upon forever. But you have to remember that's
22 because there was still a decision pending before the
23 City.

24 So there was a current decision that had to
25 be made or approval that had to be given by the City.

1 And they said: Well, the City couldn't use the old
2 EIS. They had to have a newer, updated EIS was
3 required. It doesn't say per se that a decision
4 that's already been made somehow becomes stale. You
5 made a decision. That's still valid.

6 There's nothing about the Unite Here Local
7 5 decision that says you have to revisit that
8 decision. They talk about the two Order to Show Cause
9 cases that occurred. We want to be very clear about
10 this.

11 The Office of Planning views those cases as
12 being very different factually from this case. The
13 first case was Bridge Aina Le'a. In that case, as you
14 may recall, there was a specific condition that said
15 the "affordable housing shall be constructed" or I'm
16 sorry, "that they shall get Certificates of Occupancy
17 for the affordable housing within 5 years from the
18 date of D&O." Very clear, very specific. Didn't
19 happen. And the Office of Planning went so far as to
20 recommend not only that there was a violation but that
21 reversion was appropriate.

22 In the Ka'ono'ulu Ranch Case for the
23 Pi'ilani Promenade construction there was a specific
24 condition saying, "You shall comply with
25 representations." And the Office of Planning, as I

1 think most of you do remember 'cause it was a fairly
2 recent case, the Office of Planning concluded "Well,
3 we're not prepared to say reversion is appropriate."
4 But with respect to the Phase 1 or the first issue,
5 yes there were representations.

6 Representations are not being followed.
7 The development being proposed-- and they were very
8 important representations -- the proposed development
9 is not simply less of something. It's a different
10 plan and it has different impacts which were not
11 considered by the Land Use Commission.

12 In this particular case there isn't one no
13 specific condition. So that's very different. The
14 second is with respect to the Draft EIS which is
15 actually the third point brought by the Movant in the
16 renewed motion, the Petition Area does not change the
17 type of development that is occurring.

18 So it's not that they moved from
19 resort/residential into commercial or industrial.
20 They still have resort residential in it. It's just
21 less of it.

22 So neither the type of development nor the
23 impacts -- the type of development had not changed.
24 It's not a different type of development and the
25 impacts are not greater. They're actually, if

1 anything, less.

2 So from the Office of Planning's viewpoint
3 these are very factually distinct from either Bridge
4 Aina Lea or the Ka'ono'ulu case.

5 And I just have the third issue raised was
6 the Draft EIS has been submitted in the meantime.
7 That has not affected OP's analysis.

8 Based on this the Office of Planning
9 recommends that the Motion for Order to Show Cause
10 should be denied. The Office of Planning's not
11 unwilling to find violations when we see that it
12 occurs. We're not even unwilling to recommend
13 reversion when the circumstances are inappropriate.

14 But in our view in this particular case
15 there's not a basis for an Order to Show Cause. That
16 it's better to end this process now because you simply
17 can't find a violation because there's no express
18 condition that's been violated.

19 It is important that there be a finality to
20 our decisions. So we don't recommend looking at
21 decisions and trying to read them how we would want it
22 to be read. Rather, we read it as it is actually
23 written. Based upon this, upon the case law and facts
24 the OP recommends denial. Thank you.

25 CHAIRMAN HELLER: Mr. Kugle, you asked for

1 some time to rebut. Given that you went over the 20
2 minutes originally, I'm not inclined to give you a lot
3 of time but I will allow, say, three minutes at this
4 point. If the Petitioner or OP has any quick points
5 they want to make after that I'll allow that as well.

6 MR. KUGLE: That's fine. I can live with 3
7 minutes.

8 CHAIRMAN HELLER: Okay.

9 MR. KUGLE: I'll try to. A few points.
10 There was a lot of emphasis put on the Lanai Company
11 case. That did say, that talked about an express
12 condition but very different from the facts that we
13 have before us today.

14 The reason is that condition dealt with the
15 removal of water from a high-level aquifer. You can
16 go over the Land Use Commission Rules that are in
17 effect today or in effect in 1985. There's no rules
18 that talk about high-level aquifer.

19 So it's a very different case because that
20 was a condition that was written in because that's one
21 of the very things the Commission does. It looks at
22 those things and determines those.

23 In our case in 1996 there was a set of
24 rules that did provide time limitations. One of the
25 rules is up there. And I read to you several others.

1 Those exist as law independent from the facts of the
2 Decision and Order. Every Applicant's got to abide by
3 the law that exists outside of the Decision and Order.

4 So it is not at all appropriate to say that
5 they don't have fair notice. That's like me saying:
6 I don't have fair notice of the speed limit if the
7 posted sign's not right in front of me. Well, you
8 move from one sign to the next.

9 It's like saying, "I don't have fair notice
10 of things that are written in these big, fat statute
11 books that we all deal with every day." They're
12 written. It exists in the law. It exists independent
13 of what needs to go in the Decision and Order.

14 So I think the Lanai Company doesn't tell
15 you that if it wasn't ever expressed in 1986 it can't
16 be dealt with. One other comment. OP has shifted its
17 position from where it was in 2008.

18 In 2008 OP was suggesting to the Commission
19 that there was something very wrong with this Decision
20 and Order and that the Commission could do something
21 about it. Now OP and myself were necessarily on the
22 same side because I argued for reversion, Order to
23 Show Cause.

24 OP suggested, instead, as I think even
25 Petitioner concedes, you can reopen that and fix it.

1 They argued that it needed to be fixed and it should
2 be fixed. I just tell you that because I think you
3 have a variety of options.

4 The last thing I want to point out and I
5 hopefully won't go over my 3 minutes, is that, again,
6 the emphasis has been on this brand new SEIS,
7 something just accepted by the City yesterday. Well,
8 in 1985 they did a big EIS. They then came with that
9 EIS to the Land Use Commission first, then to the City
10 second. They've got a new plan today.

11 Mr. Yee suggested it was lesser impacts.
12 Well, there was no resort/residential component back
13 in 1985. You can read your Decision and Order. It
14 says "condominium" very clearly, and it talks about
15 these 1,000 units. It's not single family spread
16 around the golf course like Waialae Iki. And I
17 suggest those are a very different impact.

18 The other thing, and the very critical
19 thing is employment. And that was what the Commission
20 was most concerned with in 1985. In fact the old
21 rules actually said, and this is rule 6 --

22 CHAIRMAN HELLER: That's your 3 minutes.

23 MR. KUGLE: Okay. "There will not be
24 employment in this new development" that they're
25 talking about, not at the levels that the Commission

1 thought was the fair tradeoff for what it did in 1985.
2 So there are very different impacts from this new
3 development. Thank you.

4 CHAIRMAN HELLER: Mr. Matsubara, a minute
5 if you want to add anything else.

6 MR. MATSUBARA: I've always been told if I
7 have an opportunity to say something, say something
8 but in this case I think I'm okay. I appreciate the
9 time but we'll pass.

10 CHAIRMAN HELLER: Mr. Yee.

11 MR. YEE: The Office of Planning's position
12 has not changed. In 2008 we did -- our recommendation
13 was you cannot issue an Order to Show Cause. That
14 recommendation is true today. We raised a different
15 issue in 2008, but given, frankly, the amount of time
16 that's passed we think the matter ought to be
17 resolved. So that's all. Thanks.

18 CHAIRMAN HELLER: Well, it's just past 12.
19 I guess it's an appropriate time to take a lunch break
20 then we'll have questions from the Commissioners after
21 that. Let's try to move this along. Can we reconvene
22 at 12:45 promptly? We'll recess 'til 12:45.

23 (Recess was held. 12:04)

24 CHAIRMAN HELLER: (12:55) Okay. Back on
25 the record. We're ready for questions by the

1 Commissioners. Anybody have questions for any of the
2 Parties?

3 COMMISSIONER McDONALD: Actually,
4 Mr. Chair, hearing oral arguments I'd like to move to
5 executive session to consult with our board's attorney
6 on questions and issues pertaining to the board's
7 powers, duties, privileges and liabilities.

8 CHAIRMAN HELLER: Okay. There's a motion
9 for executive session.

10 COMMISSIONER ESAKI: Second.

11 CHAIRMAN HELLER: All in favor? "Aye".
12 Any opposed? Okay. I guess we're in executive
13 session. We don't have anywhere to go so we'll have
14 to ask you to step out.

15 (Executive session was held.)

16 CHAIRMAN HELLER: Okay. We're back on the
17 record. Thanks to everybody for your patience. We
18 had some interesting legal questions to wrestle with.
19 Commissioners, do you have any questions for the
20 parties? Commissioner Esaki.

21 COMMISSIONER ESAKI: Yes. Mr. Matsubara,
22 are you familiar with SCR No. 164?

23 MR. MATSUBARA: SCR?

24 COMMISSIONER ESAKI: Senate Concurrent
25 Resolution.

1 MR. MATSUBARA: Not offhand. If you read
2 it to me or if I take a look at it maybe I'll --

3 COMMISSIONER ESAKI: It calls for a working
4 group with the state and the developer and some other
5 entities to come up with some kind of resolution and
6 report by the end of this month.

7 (Document handed to counsel by Ms. Erickson).

8 MR. MATSUBARA: I'm not familiar with it.

9 COMMISSIONER ESAKI: It calls for, like I
10 mentioned, a working group. And in it says, "The
11 developer has communicated a willingness to negotiate
12 in good faith with the state." So being that you're
13 not familiar with it you haven't been negotiating with
14 the state?

15 MR. MATSUBARA: I personally have not.

16 COMMISSIONER ESAKI: Do you know if the
17 developer has?

18 MR. MATSUBARA: Yes.

19 COMMISSIONER ESAKI: Can I ask the status?

20 CHAIRMAN HELLER: Sure. Is there anything
21 you can tell us about what's going on with those
22 negotiations?

23 COMMISSIONER ESAKI: Pursuant to this
24 concurrent resolution.

25 CHAIRMAN HELLER: I guess since we're

1 effectively taking testimony:

2 Do you swear or affirm that your testimony
3 will be the truth?

4 DREW STOTESBURY

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

7 THE WITNESS: Yes.

8 CHAIRMAN HELLER: For the record please
9 state your name again.

10 THE WITNESS: My name is Drew Stotesbury.

11 CHAIRMAN HELLER: Okay.

12 THE WITNESS: So the negotiations with the
13 governor's working group have been going on. I won't
14 guess on when they started. But we've met
15 face-to-face maybe 4 or 5 times and several other
16 times on the phone. The purpose of which was to
17 explore whether there was an opportunity for the State
18 to enter into a conservation agreement to preserve the
19 lands that are slated for development from
20 development.

21 As we stated in our letter we were prepared
22 to participate in that process in good faith. And
23 we've done that. So we've, as I mentioned, we've met
24 several times. We have another meeting on the books
25 for later this month and should know better by the end

1 of the month.

2 COMMISSIONER ESAKI: Thank you.

3 CHAIRMAN HELLER: Commissioners, anything
4 else? Commissioner McDonald.

5 COMMISSIONER McDONALD: Has Defend O'ahu
6 Coalition been a participant in these proceedings or
7 meetings?

8 THE WITNESS: Not certainly as an entity.
9 I don't know if any of the members of the working
10 group are also members of Defend O'ahu. I would not
11 know the answer to that. But it is a working group
12 that was constituted by the Governor's office that
13 includes people from DLNR, Governor's office, Trust
14 for Public Lands, North Shore Community Land Trust,
15 and a person I would describe as a private individual
16 that has experience in conservation measures.

17 COMMISSIONER McDONALD: If I'm not mistaken
18 I believe somebody from the Coalition actually
19 submitted testimony in favor of the resolution. Any
20 comment from the Movant regarding the due process with
21 the Senate resolution?

22 MR. KUGLE: Yeah. My understanding is that
23 Defend O'ahu Coalition as an entity nor its members or
24 at least its board members are a part of that working
25 group that was established. I would not -- I'm not

1 familiar with the written testimony in support of the
2 SCR, but it wouldn't surprise me that there is.

3 I know there's a strong feeling on the
4 North Shore, not just amongst my client's membership
5 but in general, to looking at what the alternatives
6 for that property are including this concept is of a
7 conservation easement over some or all of the land.
8 That's all I know about it.

9 COMMISSIONER McDONALD: Mr. Matsubara, just
10 clarification. The cost of the improvements -- I'm
11 not sure, I thought I heard 137 million versus
12 37 million?

13 MR. MATSUBARA: Sure. For the past 2 years
14 they've expended \$37 million alone. Prior to that
15 from about 1986 the estimate was 100 million. From
16 '86 til 2010 it was \$100 million spent in the area.
17 And since 2010 till today it's been 37. So total 137
18 million.

19 COMMISSIONER McDONALD: When you say "in
20 total" is that specific to improvements regarding the
21 Petition Area?

22 MR. MATSUBARA: No.

23 COMMISSIONER McDONALD: The entire Turtle
24 Bay Development.

25 MR. MATSUBARA: Correct. I tried to get

1 some itemization. I know for sure the only area that
2 I was kind of able to itemize was the redevelopment
3 for the golf courses which was about 20 million just
4 for that infrastructure alone back in '86 to '86-'87
5 time period.

6 CHAIRMAN HELLER: Commissioners, anything
7 further? Commissioner Inouye.

8 COMMISSIONER INOUE: Mr. Matsubara, I want
9 to explore the SES process a bit, where it stands. I
10 thought I heard yesterday or a couple weeks ago it was
11 approved. What's the next process? What else has to
12 happen on the SEIS?

13 MR. MATSUBARA: The SEIS was approved I
14 think October 23rd by DPP. In fact Petitioner can
15 then proceed and do what they need to do. I believe
16 they are proceeding in what they're trying to do. I
17 haven't been privy to any of what they're going to do
18 for now. There is a time period where it's open for
19 appeal.

20 COMMISSIONER INOUE: What is that period?
21 Do you know?

22 MR. MATSUBARA: Sixty days from the 23rd.

23 COMMISSIONER INOUE: 60 days.

24 MR. MATSUBARA: Correct.

25 COMMISSIONER INOUE: So can things be done

1 without the appeal process? Can you apply for
2 subdivision approval?

3 MR. MATSUBARA: Yes, you can. There's no
4 stay during the appeal period. That would be a
5 developer's risk or not risk or whatnot, but there is
6 no stay. They can proceed. It's up to the developer
7 whether they want to proceed or not or wait until the
8 60 days expires.

9 COMMISSIONER INOUE: Thank you.

10 CHAIRMAN HELLER: Commissioners, anything
11 further? I have a couple questions. Mr. Matsubara, I
12 just want to make sure I understand your
13 interpretation of retroactivity. You said that
14 because there was no rule governing an Order to Show
15 Cause at the time the Petition was originally
16 approved, that it would be, quote/unquote,
17 "retroactive application" if we were to grant this
18 motion now.

19 I just want to make sure I understand
20 correctly your position. Are you saying that *if* we
21 found -- and I'm not saying we're doing this, but *if*
22 we found that as of today there is a condition with
23 which the Petitioner is not in compliance, that going
24 ahead with an Order to Show Cause hearing now on that
25 basis would be retroactive application of the rule?

1 MR. MATSUBARA: That's correct. I believe
2 that the prime foundation is that this Commission has
3 power and authority over the Decision and Order. The
4 process in which they enforce the Decision and Order
5 has changed.

6 We believe that the Order to Show Cause
7 process, which shifts the burden on the Petitioner,
8 which changes our substantial rights, is not
9 retroactive. So the Order to Show Cause process is
10 not applicable to our Decision and Order.

11 What was applicable was as how the rules
12 were laid out in 1986 is pursuant to 6-3 indicates
13 that there is -- if there is a violation found as to a
14 condition, that you can then go ahead and do the
15 reclassification process according to HRS 205-4. At
16 that time HRS 205-4 is your normal District Boundary
17 Amendment process.

18 So you would proceed in doing a District
19 Boundary Amendment reclassification process. That
20 would be the process in which you would bring your
21 hammer down. That's there. You still have that
22 control. You still have the authority to do it.

23 I'm not saying you should definitely. But
24 that would be the Commission's authority. The Order
25 to Show Cause process is extremely different now. It

1 definitely affects their substantial rights. The law
2 and statutes say rules cannot be applied
3 retroactively. That's by statute. Unless they say in
4 the statute and the rules do not say they should not
5 apply retroactively to our position.

6 So I'm saying you still have a process to
7 reclassify the land. It's pursuant to this process
8 and procedure as established in 1986 which is relevant
9 to our Decision and Order. It is not through an Order
10 to Show Cause process.

11 CHAIRMAN HELLER: So you're saying that as
12 of the time we enter a Decision and Order the process
13 for enforcing that Decision and Order is essentially
14 frozen. That if the process for enforcing a Decision
15 and Order is subsequently amended, we can't use the
16 new process on an already existing Decision and Order?

17 MR. MATSUBARA: That is correct because it
18 affects our substantial rights. That's law. That's
19 case law.

20 CHAIRMAN HELLER: Okay. Is there a
21 specific case you're citing for that?

22 MR. MATSUBARA: There's Richard vs Metcalf,
23 82 HI 249.

24 MS. ERICKSON: Would you repeat that,
25 please, Mr. Matsubara.

1 MR. MATSUBARA: 82 HI 249. Basically what
2 I'm saying there's no implied right or anything about
3 an Order to Show Cause. It was clear that there was
4 clearly laid out, clear as black and white, a process
5 in which you could hammer a Petitioner back in 1986.
6 There clearly was. There's no need to try to
7 figure -- there's no remedial process needed. It was
8 there. You had the power of the authority.

9 What changes, though, is that there's an
10 Order to Show Cause process. And clearly if you read
11 the statute as it applies now, if you read the
12 Legislature's intent in 1990 why they created this
13 rule in law, it was then to shift the burden from
14 Commission down to the Petitioner. You're pretty much
15 guilty. There's an Order to Show Cause.

16 You need to prove why you haven't complied
17 with conditions. It's a substantial change. And
18 because of that it does not apply retroactively. And
19 the statute itself doesn't say it should apply
20 retroactively.

21 So it's not just a mere procedural route of
22 doing an enforcement. This is a substantial right
23 that's being changed upon the Petitioner.

24 CHAIRMAN HELLER: Mr. Yee, I also had a
25 question for you. You made the comment that because

1 of the change in what's proposed to happen on the
2 property the burdens may be less. That, you know,
3 environmental impact, traffic impact, whatever, may be
4 less than what was originally contemplated.

5 But wouldn't at the same time the potential
6 benefits also be lessened to some extent? That is
7 economic growth, employment opportunities and so
8 forth?

9 MR. YEE: To recall I was referring to
10 activities within the Petition Area. So, for example,
11 the discussion about the change from full service
12 hotels to condotels are not within the Petition Area.
13 They're outside. So there's no employment
14 opportunities within the Petition Area that would
15 be -- at least no permanent employment -- that would
16 be affected.

17 So I suppose you could say that there would
18 be if there are lower density units how much more
19 construction would there be? Would that be sort of
20 the question that would be raised?

21 It did not seem significant to the Office
22 of Planning that that was an impact that was a
23 consideration for us that would affect an Order to
24 Show Cause.

25 The hotels maybe. I think you could have

1 maybe made a little different argument because that
2 was sort of a point of issue, but hotels were not
3 within the Petition Area.

4 So our point was simply a change in the --
5 there has been no change in the Petition Area use that
6 would be of greater impact or reduced benefit of any
7 significance.

8 CHAIRMAN HELLER: So are you saying that
9 within the Petition Area itself neither the burdens
10 nor the benefits are materially changed?

11 MR. YEE: None of the burdens -- the
12 burdens would not be significantly increased and maybe
13 less probably would be less. The benefits, quite
14 frankly, the benefits were, I guess we didn't really
15 see resort condos as a big benefit; that the
16 affordable housing would have been a big benefit. And
17 that's been increased in total.

18 As you may recall the condition is
19 10 percent. And they're providing basically
20 20 percent of the total units within the entire
21 Petition Area rather than just the area within the
22 Petition.

23 So let me try to explain this again. The
24 condition is: 10 percent of the units within the
25 Petition Area shall be affordable. They're actually

1 providing, I think we might have different numbers,
2 but I calculated it out to something a little more
3 than 20 percent of the total number of units within
4 the entire Project Area.

5 So they're providing more affordable units
6 than would have been required or is required under the
7 existing condition. So that would be the benefit.
8 And they're providing more of that than they would be
9 required under the D&O.

10 CHAIRMAN HELLER: Right. But focusing just
11 on the Petition Area itself, you would agree that to
12 the extent we're looking at burdens it's also
13 appropriate to look at benefits and see if either side
14 of the equation has changed.

15 MR. YEE: Yes. I think that would be fair.

16 CHAIRMAN HELLER: Commissioners, anything
17 else?

18 COMMISSIONER ESAKI: Mr. Kugle, you
19 mentioned the reference to a Morgan vs. County of
20 Kaua'i Planning Department. What was the connection
21 or relevance?

22 MR. KUGLE: Sure. And I'll give you the
23 citation as well. It's Morgan vs. Planning Department
24 which was the Kaua'i Planning Department. The
25 citation was 104 HI 173. That's a Hawai'i Supreme

1 Court decision from 2004. It's relevant in two
2 regards.

3 First off it speaks to Chair Heller's
4 question about the application of the Order to Show
5 Cause rule to a Decision and Order that was adopted.
6 The rule was. Then footnote 12 -- I'm sorry, 13 --
7 the Hawai'i Supreme Court says this about that exact
8 thing, the retroactive application of a rule, a
9 procedural rule.

10 It says, "Morgan argues that Chapter 12 of
11 the Planning Commission's rules of practice and
12 procedure should not retrospectively apply to the 1981
13 SMA use permit. Morgan's argument is without merit.
14 Chapter 12 was validly promulgated on November 5,
15 1992.

16 "In as much as the Planning Commission has
17 authorized to promulgate such rules and regulations as
18 it deems necessary to enforce and carry out the
19 objectives, policies and procedures of the CZMA which
20 is the Coastal Zone Management Act."

21 They finished that footnote by saying,
22 "Because the Planning Department petitioned the
23 Planning Commission in 1996, chapter 12 was already in
24 effect and therefore governed the Planning
25 Commission's authority to revoke, amend or modify the

1 1981 SMA use permit for changed conditions."

2 So that's the exact situation you're faced
3 with. You have the authority to adopt rules. You
4 adopted rules 15-15-93. It's a procedural rule and it
5 can be applied to a 1986 Decision and Order exactly
6 the same as the Hawaii Supreme Court said that the
7 Planning Commission could adopt a rule in 1992 and
8 then apply in 1996 to a 1981 SMA permit.

9 So it's relevant in that regard. It's also
10 the case Morgan vs. Planning Commission case, is also
11 relevant because it stands for the larger proposition
12 which is an agency, whether it be the Kaua'i Planning
13 Department, any county planning department or the Land
14 Use Commission, DLNR, anyone has the inherent
15 authority to go back and deal with changed conditions
16 and circumstances.

17 The facts in that case had to do with a --
18 what was applied for in 1991 was a rock revetment on a
19 coastline facing or fronting four properties on
20 Kaua'i. By the 1990's properties on either side were
21 sustaining erosions so they complained to the Kauai
22 Planning Commission saying "that seawall's damaging
23 our properties."

24 The Planning Commission took a look at it
25 and said, "Wait a minute. You built a seawall not a

1 revetment. We didn't realize it back in the day but
2 now it's causing damage. So we're going to go back
3 in, modify the condition on that thing because you
4 didn't build what you said you were going to build."
5 A revetment and a sea wall operate very differently.

6 So they imposed conditions, modified the
7 conditions. They reopened the permit many years after
8 the fact because of both mistaken understanding of
9 what would have happened with erosion, and the fact
10 that the property owner didn't build what they said
11 they were going to build when they sought the permit
12 from the Planning Commission. Very analogous to
13 today's situation.

14 CHAIRMAN HELLER: Anything else?

15 MR. MATSUBARA: Would I be able to
16 distinguish why it's not applicable to this case?

17 CHAIRMAN HELLER: There's no question
18 pending. Commissioners, anything further?
19 Commissions, what is your pleasure? Commissioner
20 Esaki.

21 COMMISSIONER ESAKI: Because we have
22 pending groups and such I move to defer this action on
23 this.

24 CHAIRMAN HELLER: Do you have a specific
25 timeframe or...

1 COMMISSIONER ESAKI: Until after the
2 legislative session, the next regular session.

3 CHAIRMAN HELLER: Okay. There's a motion.
4 Is there a second?

5 COMMISSIONER McDONALD: I'll second.

6 CHAIRMAN HELLER: Okay. Discussion? Well,
7 I will make a comment. There hasn't really been much
8 discussion today about the working group or
9 negotiations. But obviously to the extent that
10 there's an agreement that could affect this property
11 that may affect whether or not this is the best time
12 to make a decision.

13 I'm a little bit hesitant about deferring
14 this again because this matter has been deferred for a
15 long time already. I think at a certain point the
16 Parties are entitled to a decision.

17 On the other hand there are a couple things
18 that could change the situation materially. One is
19 any kind of agreement between the Petitioner and the
20 State. The other is if there's any appeal of the
21 Supplemental Environmental Impact Statement which
22 we've still got more than a month to go until the
23 period for and appeal runs out.

24 So personally I don't think that at this
25 point a few more months of deferral is necessarily

1 terrible. Although I do think this matter should be
2 brought to a final conclusion. I would personally
3 probably prefer to reach a decision.

4 But given the situation with these things
5 still up in the air I can't say that a deferral is
6 really inappropriate. It might be better to know
7 where we stand in terms of whether or not there is an
8 agreement before we try to make a decision. That's my
9 comment. Commissioners, anything further?

10 COMMISSIONER INOUE: Like Chair Heller I
11 don't necessarily have a problem with deferring. But
12 in a way I do because I think this is just continued
13 to be deferring and all. I'm not sure there's any
14 difference, but I would prefer that it be denied.

15 And anybody can come up with a motion if
16 they would like to because we can't really time what's
17 going to happen with SCR 164 I guess. And the SEIS,
18 because I've heard testimony that the SEIS has 4
19 conditions, one of which is full buildout. Until a
20 subdivision approval is provided we don't really know.
21 We don't have the facts to make decisions.

22 Then when we start to open up Order to Show
23 Causes type of thing that would mean something
24 completely different from what we're hearing today.

25 So I would prefer it be denied without

1 prejudice, of course, without getting into the merits
2 of the arguments being made about the Petition areas
3 on the basis that has been mentioned that the SEIS is
4 still up in the air.

5 The SER 164 is still up in the air.
6 Basically on procedural grounds I would prefer, but I
7 wouldn't have a problem deferring. But we'll just
8 keep going on and on in this process.

9 CHAIRMAN HELLER: So are you making a
10 motion?

11 COMMISSIONER INOUE: I'm not sure I can.
12 I would like to amend it to deny for the same reasons.

13 CHAIRMAN HELLER: Okay. So you're making a
14 motion to amend. An amendment would be to change this
15 to a denial rather than a deferral.

16 COMMISSIONER INOUE: Yeah. For the same
17 reasons.

18 CHAIRMAN HELLER: Is there a second to the
19 Motion to Amend? I will second it myself for purposes
20 of putting it to a vote. Any discussion on the Motion
21 to Amend? Then I'll ask our executive officer to call
22 the roll. This is a vote on the Motion to Amend to
23 change from a Motion for Deferral to a Motion for
24 Denial.

25 MR. ORODENKER: Thank you, Mr. Chair.

1 Commissioner Inouye?

2 COMMISSIONER INOUE: Aye.

3 MR. ORODENKER: Commissioner Matsumura?

4 COMMISSIONER MATSUMURA: No.

5 MR. ORODENKER: Commissioner Biga is
6 absent. Commissioner Torigoe?

7 COMMISSIONER TORIGOE: No.

8 MR. ORODENKER: Commissioner McDonald?

9 COMMISSIONER McDONALD: No.

10 MR. ORODENKER: Commissioner Esaki?

11 COMMISSIONER ESAKI: No.

12 MR. ORODENKER: Chair Heller?

13 CHAIRMAN HELLER: Yes.

14 MR. ORODENKER: Mr. Chair, the motion to
15 amend does not carry 4 to 2.

16 CHAIRMAN HELLER: So now we still have
17 before us the Motion to Defer the hearing until the
18 end of the 2014 legislative session. Is there any
19 further discussion on that motion? Let's call the
20 roll on the Motion to Defer.

21 MR. ORODENKER: Commissioner Esaki?

22 COMMISSIONER ESAKI: Yes.

23 MR. ORODENKER: Commissioner McDonald?

24 COMMISSIONER McDONALD: Yes.

25 MR. ORODENKER: Commissioner Matsumura?

1 COMMISSIONER MATSUMURA: Yes.

2 MR. ORODENKER: Commissioner Torigoe?

3 COMMISSIONER TORIGOE: Yes.

4 MR. ORODENKER: Commissioner Inouye?

5 COMMISSIONER INOUE: Yes.

6 MR. ORODENKER: Commissioner Heller?

7 CHAIRMAN HELLER: Yes.

8 MR. ORODENKER: Mr. Chair, the motion
9 carries 6 votes.

10 CHAIRMAN HELLER: Okay, thank you. Is
11 there any further business on this docket today?

12 MR. MATSUBARA: Thank you for your time,
13 Commissioners.

14 MR. YEE: Can I just ask a clarification?
15 Is that the motion to defer until after the
16 legislative session?

17 CHAIRMAN HELLER: Yes.

18 MR. YEE: Okay. Thank you.

19 CHAIRMAN HELLER: So we will set this for
20 further hearing at some point around June of next
21 year. Motion to adjourn? I'm sorry. We have an
22 executive session. Everybody else doesn't need to
23 stay. We can just go into executive session.

24 COMMISSIONER ESAKI: So moved.

25 COMMISSIONER INOUE: Second.

CHAIRMAN HELLER: All in favor say aye.

COMMISSIONERS: 'Aye'.

(The proceedings were adjourned at 1:50 p.m.)

--oo00oo--

C E R T I F I C A T E

1
2 I, HOLLY HACKETT, CSR, RPR, in and for the State
3 of Hawai'i, do hereby certify;

4 That I was acting as court reporter in the
5 foregoing LUC matters on the 8th day of November 2013;

6 That the proceedings were taken down in
7 computerized machine shorthand by me and were
8 thereafter reduced to print by me;

9 That the foregoing represents, to the best
10 of my ability, a true and correct transcript of the
11 proceedings had in the foregoing matters.

12
13 DATED: This _____ day of _____ 2013
14
15
16
17

18 _____
19 HOLLY M. HACKETT, HI CSR #130, RPR #5910
20 Certified Shorthand Reporter
21
22
23
24
25