

1 LAND USE COMMISSION MEETING

2 HELD ON DECEMBER 10, 2015

3 COMMENCING AT 9:45 A.M.

4
5 MAUI ARTS & CULTURAL CENTER

6 ALEXA HIGASHI MEETING ROOM

7 ONE CAMERON WAY

8 KAHULUI, MAUI, HAWAI'I 96732

9
10 A94-706 KA'ONO'ULU RANCH

11 STATUS REPORT

12
13
14
15
16 Before: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 EDMUND ACZON, Chairperson
3 JONATHAN SCHEUER, VICE CHAIR
4 ARNOLD D. WONG, VICE CHAIR

5 COMMISSIONERS:

6 NANCY CABRAL
7 AARON MAHI
8 LINDA ESTES
9 KENT HIRANAGA

10 DIANE ERICKSON, ESQ.
11 Deputy District Attorney

12 STAFF:

13 DANIEL ORODENKER, Executive Officer
14 SCOTT A.K. DERRICKSON, AICP-Planner
15 RILEY K. HAKODA, Planner/Chief Clerk

16 BRYAN YEE, ESQ.
17 Deputy Attorney General
18 RODNEY FUNAKOSHI, Office of Planning

19 For the State of Hawaii
20 Office of Planning

21 RICHELLE THOMSON, ESQ.
22 Deputy Corporation Counsel
23 ANN CUA, Planning Department

24 For the County of Maui

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1 CHAIRPERSON ACZON: Back on the record.

2 The next agenda item is a status report on
3 Docket No. A94-706, a Petition for reclassification
4 of approximately 88 acres of land from the State Land
5 Use Agricultural District to the State Land Use Urban
6 District for a mix of retail, office, light
7 industrial and commercial uses with approximately 200
8 apartment units at Ka'ono'ulu, Makawao-Wailuku, Maui,
9 Hawaii TMK Nos. 3-9-01:16, and 170 through 174.

10 Will the parties please identify themselves
11 for the record?

12 MR. SAKUMOTO: Good morning, Mr. Chairman,
13 Randall Sakumoto here for the Petitioners, Pi'ilani
14 Promenade South and Pi'ilani Promenade North. And
15 with me is Mr. Charlie Jenks, the Petitioner's
16 representative.

17 MS. THOMSON: Richelle Thomson, Corporation
18 Counsel for the County of Maui. And Ann Cua from the
19 Department of Planning.

20 MR. YEE: Good morning, Deputy Attorney
21 General, Bryan Yee, on behalf of Office of Planning.
22 With me is Rodney Funakoshi from Office of Planning.

23 MR. PIERCE: Good morning, Mr. Chair and
24 Commissioners, Tom Pierce on behalf of Maui Tomorrow
25 Foundation, Inc., South Maui Citizens for Responsible

1 Growth, and Daniel Kanahele.

2 And if I may, I'll just introduce this is
3 who is with me today. Mark Hyde, who is the
4 representative for South Maui Citizens. And behind
5 me to my left is Albert Perez, the new Executive
6 Director for Maui Tomorrow, and behind me is Daniel
7 Kanahele.

8 CHAIRPERSON ACZON: Thank you.

9 Let me update the record in this docket.

10 On September 5th, 2014, the Commission met
11 on Maui and voted that the Land Use Commission was
12 the appropriate accepting are authority pursuant to
13 Chapter 343, Hawaii Revised Statutes, and that the
14 proposed action may have a "significant effect" to
15 warrant the preparation of an Environmental Impact
16 Statement pursuant to Chapter 343, Hawaii Revised
17 Statutes an entered an order on September 10, 2013,
18 to that effect.

19 On September 12th, Commission received the
20 18th annual report for A94-706.

21 On October 8, 2013, the Commission received
22 Maui County Planning Department's amended comment
23 letter on the 18th annual report.

24 On December 31, 2013, the Commission
25 received Petitioner's Motion to Amend Findings of

1 Fact, Conclusions of Law and Decision and Order dated
2 February 10, 1995.

3 On January 21, 2014, the Commission
4 received a status update letter from Petitioner's
5 representative dated January 15, 2014.

6 On April 29, 2014, the Commission received
7 a status update letter from Petitioner's
8 representative.

9 On July 1, 2014, the Commission received
10 copies of the Draft EIS and OEQC Publication forms
11 from Petitioner. On the same date, the Commission
12 requested the publication of the draft EIS in the
13 next available issue of The Environmental Notice.

14 On July 9, 2014, the Commission received
15 correspondence from the Office of Environmental
16 Quality Control advising of the need for updating
17 contact name changes before distributing the Draft
18 EIS.

19 On July 22, 2014, the Commission advised
20 OEQC that the Applicant wanted to address certain
21 matters in the document before it was published and
22 requested a deferral to a future date.

23 On August 11, 2014, the Commission renewed
24 its request to publish the Draft EIS in the next
25 available issue of The Environmental Notice.

1 On October 3, 2014, the Commission sent its
2 comment letter to Petitioner's planner.

3 From September 10, 2013, to December 9,
4 2015, various comment letters, correspondence and
5 annual reports were received and put on file with the
6 Commission.

7 On November 30th, 2015, the LUC mailed the
8 December 10th, 2015 agenda notice to the Parties, and
9 to individuals and entities on the Statewide and Maui
10 County mailing lists.

11 For the members of the public, please be
12 reminded that the Commission will not be considering
13 the merits of the A94-706 petition; rather the
14 Commission is interested in learning what the current
15 state of the proceedings related to this docket is.
16 Public Testimony in regards to this report will be
17 heard after the Applicant has completed its report
18 and the Parties and Commission have completed their
19 questioning.

20 Let me go over our procedures for this
21 docket.

22 First I will call for the Petitioner to
23 provide status update on this matter.

24 After the Petitioner's report and the
25 completion of questioning by the Intervenors, County,

1 OP, and the Commission, those individuals desiring to
2 provide public testimony for the Commission's
3 consideration will be asked to identify themselves
4 and will be called in order to the witness box where
5 they will be sworn in prior to their testimony.

6 The Chair would also note that from time to
7 time I will be calling for a short break.

8 Are there any questions on our procedure
9 for today?

10 Petitioner, would you please provide your
11 status report?

12 MR. SAKUMOTO: Thank you, Mr. Chairman.

13 The last time this matter was before the
14 Commission it was almost two-and-a-half years ago,
15 and I think between then and now the composition of
16 the Commission has changed quite a bit, so what we
17 thought we would do, if it pleases the Chair, would
18 be to go over a brief chronology of this docket.

19 CHAIRPERSON ACZON: That would be helpful.

20 MR. SAKUMOTO: On that note, we prepared a
21 very small packet, which we shared with you, that
22 outlines the key dates and the key events that start
23 from the filing of the docket until today.

24 So if you bear with me for a few minutes,
25 I'll go through this timeline, then Mr. Jenks will

1 also probably provide some supplemental information
2 as to where we are currently on this matter.

3 MR. PIERCE: Mr. Chair, Tom Pearce. One
4 quick interruption. I'm wondering if there is
5 another copy of the status report that Mr. Sakumoto
6 is referring to. We haven't been provided a copy.

7 (A copy was provided.)

8 CHAIRPERSON ACZON: Please proceed.

9 MR. SAKUMOTO: Thank you, Mr. Chair.

10 On July 6, 1994, Ka'ono'ulu Ranch filed a
11 petition for LUC District Boundary Amendment with the
12 Commission. This matter was assigned A94-706.

13 At that time, Ka'ono'ulu Ranch was a fee
14 simple owner of approximately 88 acres of land
15 located at Ka'ono'ulu, Makawao, Wailuku, which at
16 that time was identified as a portion of tax map key
17 nos.: 2-2-2 parcel 15, and 3-9-1 parcel 16.

18 These 88 acres of land constituted what
19 I'll call the original petition area. Ka'ono'ulu
20 Ranch sought to reclassify the original petition area
21 from Agriculture to Urban; and in its petition, it
22 proposed to develop a 123 lot commercial and light
23 industrial subdivision known as Ka'ono'ula Industrial
24 Park.

25 On February 10, 1995, the Commission issued

1 its Findings of Fact, conclusions of Law and Decision
2 and Order reclassifying the original Petition area
3 from Agriculture to Urban subject to 20 conditions.

4 During the course of discussion with the
5 Commission, the County of Maui had embarked on
6 updating all of the community plans for Maui County.

7 And on March 6, 1998, they adopted by
8 ordinance the Kihei-Makena Community Plan identifying
9 the subject lands as light industrial.

10 As required by Condition 1, of the 1995
11 Decision and Order, Ka'ono'ulu Ranch applied to the
12 County of Maui for a change in the zoning of the
13 original petition area from Agricultural to M1 light
14 industrial.

15 In 1999 County of Maui Ordinance No. 2772
16 was passed granting the change in zoning application.
17 After obtaining the change in zoning of the original
18 petition area, Ka'ono'ulu Ranch applied for and
19 obtained from County of Maui final approval for a
20 large lot subdivision for the 88-acre original
21 petition area. This happened in 2001.

22 And subsequently a large lot subdivision
23 consisting of four lots for which preliminary
24 approval was granted in 2003.

25 In 2005 the original petition area was sold

1 by Ka'ono'ulu Ranch to Maui Industrial Partners LLC,
2 which obtained approval of a further large lot
3 subdivision of the original petition area.

4 On August 14, 2009, the County of Maui
5 approved the subdivision of the original petition
6 area into seven lots, six of which are affected by
7 the Motion to Amend that's now before the Commission.

8 These six lots are referred to as the
9 petition area.

10 The final subdivision map was approved, and
11 the subdivision performance was guaranteed by bonds
12 totaling in excess of \$22 million.

13 On August 20, 2009, Maui Industrial
14 Partners sold one of the parcels of the original
15 petition area identified by tax map key 3-9-1, parcel
16 169, comprising approximately 13 acres, and located
17 in the northeast corner of the original petition area
18 to Honua'ula Partners LLC.

19 We note that although the parcel sold to
20 Honua'ula Partners, and the petition area are covered
21 by the same 1995 Decision and Order.

22 Honua'ula Partners is not related to the
23 Petitioner and does not share any common ownership,
24 members, shareholders, or controller with the
25 Petitioner.

1 On September 10, 2010, Maui Industrial
2 Partners sold the parcels which comprised the
3 petition area to the Petitioner.

4 The original plan was to develop a retail
5 complex on the petition area known as Pi'ilani
6 Promenade.

7 And on April 11th -- April 18, 2012, Maui
8 County issued two grading permits to the Petitioner
9 placing the Petitioner in a position to begin
10 construction of on-site and off-site infrastructure
11 for the Petition area.

12 However, on May 23, 2012, Maui Tomorrow
13 Foundation, Inc., South Maui Citizens for Responsible
14 Growth and Daniel Kanahale filed a motion for a
15 hearing issuance of Order to Show Cause and other
16 relief with the Commission.

17 On September 11, 2012, the Commission
18 entered a prehearing order wherein it stated that the
19 Commission would consider this matter in two phases.

20 In Phase 1 the Commission would hold
21 hearings to consider whether the Petitioner and
22 Honua'ula Partners had violated the 1995 Decision and
23 Order. If the Commission determined in Phase I a
24 that violation occurred, the Commission would then
25 hold hearings to determine whether the appropriate

1 remedy for such violation is to revert the land use
2 designation of the original petition area to the
3 state Agricultural District or to a different
4 designation.

5 On February 7, 2013, majority of the
6 members of the Commission determined that the
7 Petitioner's proposed use of the petition area and
8 Honua'ula Partners proposed use of the Honua'ula
9 parcel would violate Conditions 5 and 15 of the 1995
10 Decision and Order, and that Condition 17 had also
11 been violated.

12 The specific findings where that Condition
13 5, civil construction plans approved by the state
14 Department of Transportation, did not provide for nor
15 would the DOT approve installation of the condition
16 frontage road.

17 Condition 15, the findings was that the
18 proposed plan was not consistent with the
19 representations made by the original Petitioner in
20 1994 for a commercial and light industrial complex.

21 And Condition 17, the finding was that the
22 and annual reports were not timely submitted.

23 On April 18, 2013, the Petitioner filed a
24 motion to stay Phase II of the Order to Show Cause
25 proceeding. The Petitioner represented that it

1 intended to file a Motion to Amend the 1995 Decision
2 and Order to allow the development of a project
3 different from that originally presented to the
4 Commission when the 1995 Decision and Order was
5 issued.

6 The Petitioner requested that the
7 Commission stay Phase II to allow the Commission to
8 consider the Motion to Amend.

9 On June 27, 2013, the Commission granted
10 the Motion to Stay Phase II of the Order to Show
11 Cause proceeding and ordered that Phase II would be
12 stayed on the condition that Pi'ilani, the
13 Petitioner, file a Motion to Amend not later than
14 December 31, 2013, and that no construction on the
15 property occur during the stay.

16 In accordance with the Commission's order,
17 the Petitioner filed Motion to Amend on December 31,
18 2013.

19 And very briefly, the Petitioner plans to
20 develop a mix of light industrial and business
21 commercial uses with 226 apartment units on the
22 petition area.

23 The project would also include the
24 installation of significant infrastructure and
25 off-site improvements addressing the requirements

1 from both County of Maui and state Department of
2 Transportation.

3 That concludes my summary.

4 CHAIRPERSON ACZON: Thank you, Mr.
5 Sakumoto.

6 Mr. Pierce, any questions for the
7 Petitioner?

8 MR. PIERCE: No questions, Mr. Chair, but I
9 would like to, at the appropriate time, clarify a few
10 points on the record.

11 CHAIRPERSON ACZON: Okay. County?

12 MS. THOMSON: We have no questions. Thank
13 you.

14 CHAIRPERSON ACZON: Mr. Yee?

15 MR. YEE: Just a quick question.

16 If you know, who represents Honua'ula
17 Partners in this matter, if you know?

18 MR. SAKUMOTO: I don't know right now. My
19 law firm was representing them as well, but I don't
20 know about the status of that representation right
21 now.

22 The partner who was actually doing the work
23 is no longer partner at my firm, so I'm not sure. I
24 don't want to speculate.

25 MR. YEE: May I only ask that at some point

1 in the future we can clarify the status of
2 representation for the party to make sure that proper
3 notice is sent, because if it is not appropriately
4 sent to you, we should send it to someone else.

5 CHAIRPERSON ACZON: Thank you.

6 Commissioners, any questions for the
7 Petitioner?

8 Mr. Pierce -- we will just go to the public
9 testimony first.

10 MR. PIERCE: Mr. Chair, if I may retract
11 and ask one question if there is no questions from
12 the Commissioners?

13 I guess one of the questions, Mr. Sakumoto,
14 was that the end of your presentation, or did you
15 plan on talking about future events?

16 MR. SAKUMOTO: We actually -- you know,
17 Mr. Jenks could go through some of the maps that are
18 included in the handout and talk about the
19 Environmental Impact Statement just to bring the
20 Commission as current as possible. So if we could.

21 CHAIRPERSON ACZON: Why don't you do it now
22 so we can ask questions.

23 MR. JENKS: Thank you.

24 CHAIRPERSON ACZON: Let me swear you in
25 first.

1 Do you affirm that the testimony that
2 you're about to give is the truth?

3 CHARLES JENKS

4 Was called as a witness by and on behalf of the
5 Petitioner, was sworn to tell the truth, was examined
6 and testified as follows:

7 DIRECT EXAMINATION

8 CHAIRPERSON ACZON: State your name and
9 address for the record.

10 THE WITNESS: Charles Jenks, 75 Ka'a Drive,
11 Kula Kai, Kula, Maui.

12 CHAIRPERSON ACZON: Please proceed.

13 THE WITNESS: The packet we handed out
14 includes not only the summary that Mr. Sakumoto just
15 gave, but also a series of maps. I thought it'd be
16 helpful for the presentation to run you through those
17 to understand how the property has evolved.

18 The first exhibit is a large lot map which
19 separated out the 88 acres along the 5,000 acre
20 parcel that was originally a part of the original
21 petition filed by Ka'ono'ulu Ranch Ranch in the early
22 '90s.

23 The second exhibit is the approved large
24 lot subdivision dividing the 88 acres into four large
25 parcels, also identified are the future right-of-way

1 for the highway down through the middle of the
2 property. As Mr. Sakumoto stated, this map you see
3 final subdivision approval from the County of Maui
4 and approved by the State of Hawaii in 2009. It was
5 a bonded final subdivision approval with --

6 CHAIRPERSON ACZON: Please clarify for us
7 which map you're referring to.

8 MR. JENKS: It's the second map. This
9 subdivision was approved with a \$22 million bond that
10 has been since converted to a cash bond being held by
11 the County of Maui for all of the improvements.

12 The third map is associated with the
13 original large lot subdivision that I just described
14 to you, but includes a water tank lot that is
15 required by the County of Maui for the construction
16 of a one million gallon water tank that is a part of
17 the off-site civil improvements that will have to be
18 made by the Petitioner as a part of the subdivision
19 improvements.

20 Lastly I've included two additional
21 attachments. The Chair mentioned the processing of
22 an EIS, the N notice. This document here is the
23 actual notice filed in the OEQC Bulletin. It came
24 out in September of 2013. Petitioner then developed
25 a Draft EIS. That EIS was posted for review and

1 comment by the public. We received the comments and
2 we are now in the process of finalizing that
3 document.

4 After the receipt of all the public
5 comments, the biggest delay that we have had is the
6 traffic engineer for the project became ill and has
7 not been able to complete his studies, even though he
8 had done the work on the previous subdivision work
9 for me. So we have recently hired a new traffic
10 engineer.

11 We will start over again and complete an
12 updated TIAR with current counts for the
13 Environmental Impact Statement that will then be
14 transmitted to the Commission for review and
15 acceptance in the near future, hopefully by sometime
16 in the second quarter of this coming year.

17 So that concludes my discussion and
18 presentation.

19 CHAIRPERSON ACZON: Thank you. Mr. Pierce,
20 you can ask the question now. And I'll give you time
21 to comment later.

22 MR. PIERCE: Thank you, Mr. Chair.

23 CROSS-EXAMINATION

24 BY MR. PIERCE:

25 Q Mr. Jenks, because it was a status

1 conference today, can you provide a bit of any
2 expectations for 2016 in terms of either the
3 Honua'ula project, which is separate, or the Pi'ilani
4 projects, and I guess -- are you able to speak on
5 both of those? Can you speak to both Pi'ilani as
6 well as Honua'ula?

7 MR. JENKS: Yes, I can.

8 MR. PIERCE: Can you assist in
9 understanding what the expectations are for 2016?
10 Potentially any activities before the Land Use
11 Commission?

12 A Certainly.

13 As I just stated, it's our expectation that
14 we will deliver -- the Petitioner will deliver to the
15 Commission a Final EIS in the second quarter of 2016
16 that you will then review and decide on prior to then
17 the hearing on the Motion to Amend which has also
18 been filed -- I think that was December 31st of 2013,
19 as I recall.

20 So you're holding now the Motion to Amend
21 documents. The Final EIS will be given to you
22 hopefully second quarter of 2016, and then the
23 process will run its course from that part on for the
24 petition area.

25 For the Honua'ula parcel 13 acres that was

1 sold for proposed affordable housing project, nothing
2 is going to happen on that piece of land until we
3 have some clarity, Mr. Pierce, on the lawsuit
4 settlement process that we're going through together,
5 that we have spent a lot of quality time together on.
6 Hopefully that will take place also maybe the first
7 quarter of 2016, then we will decide how we are going
8 to proceed with the Motion to Amend, or what are we
9 are going to do with that parcel.

10 But nothing is happening on any of the land
11 until those issues are resolved.

12 Q Just to be clear, for the sake of the
13 Commissioners, the settlement that you're referring
14 to does not relate to the issues -- it may or may not
15 relate, but that settlement is really related to
16 separate lawsuit that was filed by Sierra Club
17 against Honua'ula, that's the one you're referring
18 to?

19 A Right.

20 Q Just to understand, the EIS is submitted,
21 the Applicant for the EIS is Pi'ilani North and
22 Pi'ilani South?

23 A Correct.

24 Q And Honua'ula is not and Applicant to that?

25 A That's correct.

1 Q But Honua'ula is part of the Petition area?

2 A That's correct.

3 Q So can you explain how the EIS, the focus
4 of the EIS as opposed to the Honua'ula project?

5 A I'll do the best I can.

6 The EIS that has been developed for the
7 Motion to Amend for the Petitioner includes the
8 13-acre affordable housing site owned by Honua'ula
9 Partners, to the extent we can, we have analyzed
10 traffic.

11 Many of the other drainage -- those kind of
12 issues have been included as part of the EIS
13 evaluation and included in that discussion.

14 So to the best of our ability, we have
15 taken what we know about the Honua'ula parcel and
16 included the impacts in the context of the EIS for
17 the Promenade properties.

18 Q Okay. One of the dates that Mr. Sakumoto
19 gave was actually the very last date, December 31,
20 2013 when it says that the Petitioner filed a Motion
21 to Amend. Now, Petitioner there is the Pi'ilani
22 North and South, the Promenade North and South?

23 A Right.

24 Q But, Mr. Jenks, can you explain for the
25 Commissioners and for us that Motion to Amend, the

1 reason that was necessary relates back to the fact
2 that Ka'ono'ulu Ranch, when they made a proposal for
3 the light industrial, it was related to the entire
4 property before it was subdivided, what we would call
5 the entire petition area; is that right?

6 MR. SAKUMOTO: Maybe I can try and answer
7 that.

8 The reason the Motion to Amend was filed
9 was because the ruling of the Commission when we
10 requested a Motion to Stay Phase II, was that we
11 would have to file a Motion to Amend the District
12 Boundary Amendment by December 31st, 2013, to reflect
13 the project that in fact we want to build.

14 So that was the problem with the docket in
15 general was that the project that was contemplated in
16 1994 when Ka'ono'ulu Ranch first started this matter
17 was not, in the eyes of the Commission, similar
18 enough to the project which Pi'ilani Promenade wants
19 to proceed with.

20 So we are now doing an EIS that reflect the
21 project that Pi'ilani Promenade wants to proceed
22 with.

23 MR. PIERCE: No other questions, Mr.
24 Commissioner. I reserve the opportunity to clarify a
25 few things for the Commission when you would like to

1 have me do so.

2 CHAIRPERSON ACZON: Ms. Thomson, do you
3 have questions?

4 MS. THOMSON: No, thank you, no questions.

5 CHAIRPERSON ACZON: Mr. Yee.

6 MR. YEE: I'm just going to have to
7 clarify.

8 CROSS-EXAMINATION

9 BY MR. YEE:

10 Q I'm going to have to clarify the discussion
11 between the Pi'ilani Promenade, includes both North
12 and South in that description, and the Honua'ula
13 project.

14 So if I understand it correctly, the Draft
15 EIS is for Pi'ilani Promenade; is that right?

16 A That's correct.

17 Q But it includes information about the
18 Honua'ula project as part of its analysis of the
19 impacts?

20 A That's correct.

21 Q The Motion to Amend, is that only for Pi --
22 intended to be only for Pi'ilani Promenade?

23 MR. SAKUMOTO: Yes, and one of the things
24 that we are requesting the Commission to rule on is
25 that Pi'ilani promenade parcels basically be given

1 their own District Boundary Amendment ruling. In
2 other words, we're requesting that the Honua'ula and
3 Pi'ilani projects basically be separated.

4 They're unrelated projects, owned by
5 different companies, and we're asking that basically
6 the Commission have separate decision and orders for
7 both properties.

8 MR. YEE: I think that clarifies my
9 understanding. Thank you.

10 CHAIRPERSON ACZON: Commissioners? Thank
11 you.

12 Are there any individuals desiring to
13 provide public testimony on this docket?

14 EXECUTIVE OFFICER: Mr. Chair, we have two
15 testifiers, Mike Moran and Daniel Kanahele.

16 CHAIRPERSON ACZON: We will be enforcing
17 the three minute limit on all the testimony.

18 Do you affirm that the testimony that
19 you're about to give is the truth?

20 THE WITNESS: I do.

21 MIKE MORAN

22 Was called as a public witness, was sworn to tell the
23 truth, was examined and testified as follows:

24 DIRECT EXAMINATION

25 CHAIRPERSON ACZON: Please state your name

1 and address for the record?

2 THE WITNESS: My name is Mike Moran, 167
3 Aha Aina in Kihei. I'm president of the Kihei
4 Community Association, and I am speaking for them
5 this morning.

6 CHAIRPERSON ACZON: Please proceed.

7 THE WITNESS: Aloha, Chair and
8 Commissioners. Welcome back to Maui. Mahalo for
9 your service and your endurance.

10 I am here today mostly to listen to the
11 status report, as I am charged by our community to be
12 acutely aware of the status of a massive retail
13 commercial project proposed for this land.

14 This single project creates input just shy
15 of the total of all other proposed projects of all
16 kinds in South Maui to our all volunteer unfunded
17 non-profit.

18 While the mass of required land needed for
19 this is certainly a factor, an almost adjacent
20 project, the research and technology also of great
21 mass, creates much less comment and concern.

22 Much of the community concern on this one
23 is how it was presented or not presented to the
24 community. Much of this goes back to a much media
25 quoted statement by then the proposed developer,

1 Eclipse of Irvine, California, Mr. Douglas Gray in
2 2011. And the quote is: We didn't get community
3 input, but I'm confident they will like it.

4 This Commission's very valid and prudent
5 action in 2012 and continued into 2013 caused a great
6 change in the attitude and conduct of the land owners
7 and their representatives to the community, but of
8 course most of you were not a part of the LUC at the
9 time, so we felt it was prudent to fill in that
10 information.

11 Lastly the title of this segment of your
12 meeting is a challenge to many in the community,
13 since ka'ono'ulu Ranch advises they are not connected
14 in any way any longer, and the community identifies
15 this project as the Pi'ilani Promenade, often called
16 the Mega Mall.

17 One further update since your last actions,
18 a large commercial project in the same area
19 identified as the Krause project or downtown Kihei,
20 an infill retail project is now beginning
21 construction, and our community believes this
22 provides even less need for a large commercial
23 project mauka of the highway.

24 Now we have listened along with you to the
25 report and we wish you a safe trip home and a joyful

1 Christmas season. Mahalo.

2 CHAIRPERSON ACZON: Any questions for the
3 testifier, Mr. Sakumoto?

4 MR. SAKUMOTO: No questions.

5 MR. PIERCE: No questions.

6 MS. THOMSON: No questions.

7 MR. YEE: No questions.

8 CHAIRPERSON ACZON: Commissioners, any
9 questions? Thank you, next testifier.

10 EXECUTIVE DIRECTOR: Daniel Kanahele
11 followed by Lucienne de Naie.

12 CHAIRPERSON ACZON: Let me swear you in.

13 Do you affirm that the testimony you are
14 about to give is the truth?

15 THE WITNESS: Yes, I do.

16 DANIEL KANAHELE

17 Was called as a public witness, was sworn to tell the
18 truth, was examined and testified as follows:

19 CHAIRPERSON ACZON: Please state your name
20 and address for the record?

21 THE WITNESS: My name is Daniel Kanahele.
22 I live in the ahupua'a Paiau (phonetic) in the moku
23 of Honua'ula.

24 Aloha mai kakou high, staff and everyone
25 else that's present. I'm here not testifying as an

1 individual but I'm testifying on behalf of Maui
2 Cultural Lands. Our president is Ekolu Lindsey. His
3 father, Ed Lindsey founded Maui Cultural Lands. The
4 mission of Maui Cultural Lands is to protect and
5 perpetuate and stabilize Hawaiian culture resources,
6 which include native plants and archeological sites/

7 Maui Cultural Lands has done great
8 preservation work in Honokowai Valley and also at
9 Kaheawa Wind Farm where they have done a lot of
10 native plant restoration.

11 On behalf of Maui Cultural Lands, I
12 submitted written testimony to the Commission and I
13 hope that you got it. Basically what I submitted was
14 a letter, which I have in my hand that we sent to the
15 State Historic Preservation Division on July 7th,
16 regarding some considerations that we wanted to share
17 with them with regard to the updated review of the
18 archaeological inventory survey for this project.

19 And so I'm here because -- and I sent that
20 along with a photo because I just wanted to briefly
21 apprise of those concerns that pertain to potential
22 cultural impacts of the project.

23 And so in February of 2014, there was a
24 meeting held, a consultation meeting held, cultural
25 consultation meeting with interested parties and

1 other stakeholders with Charlie Jenks, and also Eric
2 Frederickson, who is the archaeological consultant,
3 works for Xamanek. And we were very interested in
4 what was happening with regard to the survey. They
5 gave an update of what was found.

6 And we also talked about doing a site visit
7 which hasn't occurred yet, but the stakeholders and
8 all parties are interested in doing that and the
9 owner's representative as well as Eric was willing to
10 do that at some point.

11 The concerns that we have since then, and
12 submitted to SHPD, we have are included in the
13 letter. We are concerned that upon the new review of
14 the archaeological inventory survey that some sites
15 haven't been relocated. And there has been
16 culture -- there was a culture access in which we
17 believe one of those sites previously recorded has
18 been found.

19 So our concern that perhaps maybe other
20 sites are still in existence, but being that the
21 survey was conducted during the rainy season and
22 there was a lot of growth, that maybe it was
23 difficult to actually see those sites, so maybe
24 another site visit might be able to discover other
25 sites.

1 We also feel that there should be included
2 in the survey some new information, some
3 archaeological studies done in adjacent lands that we
4 feel should also be included as part of the
5 archaeological survey. And that's all in the letter.

6 CHAIRPERSON ACZON: Please summarize.

7 THE WITNESS: It's all in the letter that
8 we submitted to SHPD, and we encourage you to review
9 those things. And thank you for the time.

10 CHAIRPERSON ACZON: Any questions for Mr.
11 Kanahele?

12 MR. SAKUMOTO: No questions, Mr. Chair.

13 CHAIRPERSON ACZON: Mr. Pierce?

14 MR. PIERCE: No questions.

15 CHAIRPERSON ACZON: Ms. Thomson?

16 MS. THOMSON: No questions.

17 MR. YEE: No questions.

18 CHAIRPERSON ACZON: Commissioners? Thank
19 you.

20 EXECUTIVE OFFICER: Lucienne de Naie.

21 CHAIRPERSON ACZON: Do you affirm that the
22 testimony that you're about to give is the truth?

23 THE WITNESS: I do.

24 -o0o-

LUCIENNE de NAIE

Was called as a public witness, was sworn to tell the truth, was examined and testified as follows:

CHAIRPERSON ACZON: Please state your name and address.

THE WITNESS: Lucienne de Naie, P.O. Box 610, Haiku.

DIRECT EXAMINATION

THE WITNESS: Welcome back, and thank you for the marathon session last Monday. I've never seen a session like that before in 20 years of going to Land Use Commission meetings, but I know that you're a very consciousness group of Commissioners.

I'm here to just speak to the land of Ka'ono'ulu where the Pi'ilani Promenade project is located. It's described as its potential for commercial or industrial development, but actually it's quite a place. And it's located kind of between two branches of a very major waterway. Now, these waterways, because the trees have been cut upslope and the rainfall conditions have changed over the last 200/300 years, these waterways don't have the water in them that they used to.

But this project is bordered by a gulch or stream, intermittent stream called Kulanihakoi. And

1 that name refers to a very special concept in
2 Hawaiian culture which is a heavenly pool. And when
3 it overflows this pool, the rains come to the earth.

4 Now, the fact that this place bordered by a
5 stream or river that has a name connoting abundance
6 of water and that it has a little branch of the
7 stream that goes through the middle of the property
8 as well, shows that it maybe had a very, very
9 different phase 200 years, 300 years ago.

10 And in truth, if you look at cultural
11 surveys, which I do, of areas that are just mauka of
12 the Pi'ilani Highway, the major highway in the South
13 Maui area, none have had the concentration of
14 cultural sites that this property has, including a
15 petroglyph stone, which I'm not aware of any other
16 petroglyph stones found on any of the properties
17 mauka.

18 That stone has since been removed for
19 safekeeping by Mr. Rice who owned the property, but
20 it denotes the fact that we really should look deeper
21 into what is on this land. I have been taken there
22 by cultural practitioners, and to see it through
23 their eyes, is very different than to see it through
24 the eyes of someone who is just looking at its
25 development potential.

1 Things that may look very unprepossessing,
2 like a mound of rocks, could have very, very specific
3 spiritual purposes.

4 So we just urge you folks, we know your due
5 diligence is to look at the broad range of resources
6 in any parcel, agricultural, cultural, biological,
7 please keep that in mind as the EIS comes to you for
8 review.

9 Thank you for your time.

10 CHAIRPERSON ACZON: Thank you. Any
11 questions for the testifier?

12 MR. SAKUMOTO: No questions, Mr. Chair.

13 MR. PIERCE: No questions, none.

14 MS. THOMSON: No questions.

15 MR. YEE: No questions.

16 CHAIRPERSON ACZON: Commissioners? Next
17 testifier, please?

18 EXECUTIVE OFFICER: No more testifiers, Mr.
19 Chair.

20 CHAIRPERSON ACZON: So we're done with
21 public testimony.

22 Mr. Sakumoto, do you have any final
23 comments?

24 MR. SAKUMOTO: No other comments. Thank
25 you.

1 CHAIRPERSON ACZON: Mr. Pierce?

2 MR. PIERCE: Mr. Chair, if I may, and
3 Commissioners, just like to spend a minute or two. I
4 understand the reason for this meeting is mostly just
5 to get an understanding from the Pi'ilani and
6 Honua'ula with respect to what their plans are for
7 2016. And to a degree this relates to potentially
8 your schedule over the upcoming year.

9 I guess what I would say, Commissioners,
10 most of you who are -- almost all of you who were not
11 here back in 2012 when this came up, this was a very
12 contentious issue. And I think Mr. Sakumoto has done
13 a very good job of laying out some of the primary
14 facts.

15 There's just a couple of things that I
16 would point out that do affect. And I'm just
17 limiting myself today to what might affect your
18 decision-making going forward. Not to stir up things
19 that were settled before, but there remain a couple
20 of complications with the case that I think will be
21 important for the Commissioners to hear quickly about
22 today.

23 And keep in mind, because almost certainly
24 it will require my clients to be back here at that
25 point in time when these things come up to try and

1 have them addressed. Of course, we're interested in
2 trying to figure out something that works that will
3 simplify things, but also meet our original
4 objectives when we filed our motion -- or petition
5 for an Order to Show Cause.

6 So, Commissioners, just by way of
7 background, as was laid out in this summary of
8 significant dates and events, there was an original
9 petition filed by Ka'ono'ulu Ranch that related to
10 this entire property. And as result of that, we had
11 a decision and order issued by the Land Use
12 Commission back in 1995.

13 And what happened is, back in 2011/2012 was
14 that Pi'ilani -- and I'll -- that will be for north
15 and south, and Honua'ula had gone to the county and
16 requested permits, including grading permits, and
17 they weren't granted. And it was the position of
18 Pi'ilani and Honua'ula who you understand are now
19 standing in the position of Ka'ono'ulu Ranch.

20 They're now the petitioner, having moved
21 forward almost however many years that is, 17 years.
22 So they're standing in the same position, and having
23 to fulfill the same obligations that were under that
24 Decision and Order that was obtained by Ka'ono'ulu
25 Ranch.

1 But it was their position that the project
2 that they were proposing was a light industrial
3 project. And met the requirements of the D and O.
4 And as this summary status shows in February 7th of
5 2013, there was an oral ruling by the Land Use
6 Commission that there had been a violation, that in
7 fact, portions of the property did not constitute
8 light industrial -- or excuse me -- portions of the
9 development that were being proposed did not
10 constitute light industrial.

11 And this was a very significant issue for
12 my clients and for the community, because the
13 expectations have been that that's what the project
14 was going to be, and there has never been an
15 opportunity for the community to weigh in on this
16 issue, because it never came back before the Land Use
17 Commission. So that's what caused this case to
18 happen.

19 Procedurally, what I think is important,
20 was because there had never been a petition or
21 request for amendment filed by either Honua'ula or
22 Pi'ilani, when our petition for an Order to Show
23 Cause came before the Land Use Commission, it related
24 to both the properties, and to this day, both the
25 properties, both of the owners are tied at the hip.

1 They are still owners of a property that is subject
2 to this 1995 Decision and Order.

3 Everyone recognized that when we were going
4 through our contested case process a couple of years
5 ago, but that is one of the outstanding issues that
6 is a complication, and that goes to some of the
7 questions that were being asked, which is who
8 representing Honua'ula, and who is representing
9 Pi'ilani, and what does the EIS cover.

10 Because, in fact, we have two different
11 projects here that were part of the original
12 petition. And the LUC was aware of this, and that's
13 why LUC did include a requirement that the Petitioner
14 file a Motion to Amend, but there has been no
15 decision made on that Motion to Amend, so the idea is
16 that the Petitioner now, having gone through years
17 and years of this, one of the Petitioner, the
18 Pi'ilani Petitioner wants to bifurcate from
19 Honua'ula.

20 There are complications associated with it,
21 and I'm not in a position to go into it today, but
22 that's one of the issues we need to consider.

23 The other thing that is a complication,
24 Commissioners, is the fact that although the Land Use
25 Commission ruled orally that there was going to be --

1 they orally ruled that there was a violation. What
2 happened after that was they ordered the parties to
3 do what is normally -- that's required by an agency.
4 They asked the parties to submit their proposed
5 Findings of Fact and Conclusions of Law. And that
6 did occur.

7 And we, on behalf of my clients, we asked
8 the Commission at that point in time to go ahead and
9 complete their decision-making.

10 But at that point there was a motion filed
11 to stay the proceeding that was filed by the
12 Petitioner. And as a result of that, we still do not
13 have a final Decision and Order that was rendered in
14 this matter.

15 What that potentially means, and we need to
16 evaluate this, and with my clients, as to what
17 happens when the EIS is being submitted and being
18 requested to be submitted, and we still have -- we
19 don't have a final Decision and Order.

20 I'm not here today or prepared to say what
21 that means, but it's one of the issues that I think
22 is important for the Commissioners to understand.

23 So what it means, there might come a time
24 where we may ask you to enter those Findings of Fact,
25 Conclusions of Law, or maybe we can figure out a way

1 that it doesn't need to happen.

2 But at any rate, what it does mean for sure
3 is that there remains an existing contested case
4 proceeding that was started back in 2012 and that
5 remains.

6 So that when you're looking at the EIS or
7 looking at the Petition, the Motion to Amend has been
8 filed by Pi'ilani, we can't look at those in a vacuum
9 because there's still this outstanding contested case
10 that left unresolved issues outstanding.

11 So if I may, Mr. Chair. One moment,
12 please.

13 I'll leave it at that, Mr. Chair. Thank
14 you, Commissioners for your time today.

15 CHAIRPERSON ACZON: Thank you. Ms.
16 Thomson, any comments?

17 MS. THOMSON: No, none.

18 CHAIRPERSON ACZON: Mr. Yee, any final
19 comment?

20 MR. YEE: At the risk of delaying this
21 process, I am going to try to hopefully give a brief
22 summary as to where we are and where we're going.

23 The highlights of this are that in 1995 the
24 Commission urbanized the petition area for light
25 industrial uses.

1 And then about 15 years later the land was
2 sold to new owners, and the new owners decided
3 instead of doing light industrial uses, they were
4 going to do residential and retail on two separate
5 parcels.

6 And that process continued at the county
7 level. When it came to LUC, and through Maui
8 Tomorrow's motion for Order to Show Cause, the Office
9 of Planning looked at it. And our position was, you
10 know, when you change the use, you potentially change
11 the impacts of the project.

12 And one of the requirements, or the
13 conditions of this case, was that you substantially
14 comply with your representation. So where your
15 representation in 1995 was, we are going to put in
16 light industrial commercial, and all the analysis was
17 about impact for light commercial. We don't think
18 you can, consistent with the representation, then
19 change the use to something we had not considered.

20 The Commission agreed that it was not
21 consistent with -- did not substantially comply with
22 the representation. And then -- but the Office of
23 Planning had suggested that a Motion to Amend be
24 filed. And so subsequently at some point a motion, I
25 believe in December 2013, a Motion to Amend was

1 filed.

2 It's our view, that if a Motion to Amend is
3 granted, that would probably then moot out the Order
4 to Show Cause proceeding that was stayed, so because
5 it was based upon the old conditions.

6 So if you change the conditions, the new
7 conditions are no longer being violated, because
8 you're amending it to be consistent with your
9 proposed action. The idea being in the Motion to
10 Amend, you're proposing your new uses. You explain
11 what the impacts are. The Commission would look at
12 those impacts, and if appropriate, impose such
13 additional -- or different conditions as may be
14 needed.

15 Just give you one simple example.

16 There was a requirement in the old
17 decision, initial decision for a frontage road.
18 There's sort of a universal agreement, frontage road
19 doesn't make any sense now. But the condition is
20 still there.

21 So that would be among the kinds of things
22 that would need to be changed to make sure that
23 everything is consistent and proceeding accurately.

24 Before they filed a Motion to Amend,
25 however, they needed to file the they believed they

1 needed to file the Environmental Impact Statement.
2 So what is happening now is we're waiting for the
3 Environmental Impact Statement in order to proceed
4 with the Motion to Amend, which if granted, would
5 then moot out the Order to Show Cause proceeding that
6 was entered back in 2013 or so. So that's where we
7 are.

8 Moving forward, we understand then from the
9 testimony today that in the second quarter of 2016 we
10 can expect the Draft EIS to be filed. That then goes
11 through the process and eventually getting to the
12 Final EIS.

13 What needs to be clarified at some point in
14 this process is this Draft EIS solely for Pi'ilani
15 Promenade, or is it for Pi'ilani Promenade and
16 Honua'ula as well.

17 I understand that they included the
18 Honua'ula development in consideration of the
19 impacts, so you sort of have to. The roadway that
20 will service both properties is the same roadway. So
21 in order to consider the traffic impact, you have to
22 know how big the road to be -- in order to figure out
23 how big the road to be, you need to know how many
24 people will travel on it, and where they're going to
25 be traveling, because commercial travels different

1 than residential travel, it has different impacts.

2 So we understand that even if this EIS was
3 solely for Pi'ilani Promenade, they do need to
4 consider the Honua'ula development.

5 But the question arises whether, in
6 addition to Pi'ilani Promenade, are they also
7 proposing that this Draft EIS be needed or be used
8 for Honua'ula. And if Honua'ula ever filed a Motion
9 to Amend, what they want to do.

10 So that takes us back to my initial
11 question of, which we would like clarity on who
12 represents Honua'ula. And I know there's different
13 owners, and they're geographically located next to
14 each other. And so there is an inherent
15 interrelationship between the two projects, so they
16 sort of have to you work together. They're the same
17 road, next to each other. Got to be sure all the
18 uses are consistent with each other.

19 But that clarity would be useful. It
20 doesn't have to happen today, but it's our suggestion
21 moving forward is that we get that clarity, certainly
22 by the time -- hopefully the Draft EIS will be clear,
23 but it will have to be before you accept the Final
24 EIS.

25 So that would be the comments from Office

1 of Planning in terms of what is happening and what
2 will happen as we move forward. Thank you.

3 CHAIRPERSON ACZON: Thank you, Mr. Yee.

4 Commissioners, do you have any kinds final
5 questions or comments for the parties?

6 Commissioner Hiranaga.

7 COMMISSIONER HIRANAGA: So I don't really
8 have firsthand information regarding this particular
9 item, but Mr. Pierce brought up the term "light
10 industrial use" -- and you guys correct me if I am
11 wrong, because this is just from memory -- but one of
12 the issues which I guess contributed to this
13 situation is that under the Maui County Code the
14 proposed, initial proposed use is a permitted use in
15 light industrial zoned lands, which is I believe M1
16 which is light industrial. And examples -- and you
17 can correct me if I am wrong -- Kaahumanu Shopping
18 Center is located on M1 zone land. The Maui Mall is
19 zoned -- located on M1 zoned land. Maui Marketplace,
20 which has Sports Authority, Lowes, couple other
21 stores there, all located on M1 zoned land. Target,
22 Walmart, COSTCO, Home Depot, and I believe the county
23 during this hearing in 2012, testified that as far as
24 they were concerned, this was a permitted use that
25 was proposed under the county code. And that -- what

1 created this conflict, confusion for the proposed
2 development -- I'm not saying who's right and who's
3 wrong, but since you did bring up the term "light
4 industrial use" for the proposed shopping center, I
5 just wanted to bring clarity to that, that it was
6 not -- I think the initial developer consulted with
7 their legal attorneys, and it was a permitted use,
8 and there was precedence for it, so that's why they
9 proceeded.

10 I'm not saying that what they proposed was
11 right or wrong, so I think there was some unforeseen
12 circumstances. And then with this particular -- I
13 don't know what the term is -- challenge, I guess.
14 I'm not sure what the County of Maui is doing so that
15 something like this doesn't happen in the future.
16 Because no one has challenged Maui Mall or Maui
17 Marketplace. It's kind of an accepted permitted use
18 within M1 zone land.

19 So the question becomes -- I'll be very
20 brief -- is why not zone it B1 or B2, which is
21 business, which is another permitted use under that,
22 because typically when you do B1/B2 zoning, the
23 subdivision improvement requirements are greater,
24 which increases the cost of the project, which
25 increasing the value of the land, which then

1 increased if you are going to sell or lease, raises
2 those rates. That's why a lot of developers go the
3 M1 route.

4 Just for clarity. You're welcome to
5 comment, Mr. Pierce, if I'm correct or wrong.

6 MR. PIERCE: Thank you.

7 Well, what I understand Commissioner
8 Hiranaga is referring to is the County -- the Maui
9 County Code and what the interpretation of the Maui
10 County Code is.

11 Once again, this is why this gets
12 complicated. Things weren't finalized a couple years
13 ago, because -- if the Commissioners need to, we will
14 be able to point in the record to the fact that it
15 was found that Mr. Spence's, the Planning
16 Commissioner's testimony, was irrelevant with respect
17 to what happens under the Maui County Code.

18 The underlying issue, Commissioners, here,
19 on behalf of my non-profit clients here who are
20 dealing with many Maui issues, is that there is a
21 lack of respect for Decisions and Orders that are
22 made by the Land Use Commission.

23 So our focus through the entire case that
24 we presented was on the very detailed language. As I
25 recall there was 130 to 180 detailed Findings of

1 Facts and Conclusions of Law that were presented to
2 the 1995 Land Use Commissioners at that point in
3 time. And that was done after days and days of
4 hearing where there was an opportunity for folks to
5 testify either on behalf of the public or by the
6 county. And then that record became the record.

7 And it was recorded on title to the
8 property. This is what is disturbing about these
9 types of situations, Commissioners, is the fact that
10 it is recorded on the property as an encumbrance, as
11 you all know. That's what these decisions and orders
12 do. They're something that people should be able to
13 expect means something.

14 And what we found was that over the period
15 of time that there was change in ownership, was there
16 that there were no annual reports that identified any
17 of the things that were being contemplated, even
18 though they, at minimum, were questionable in terms
19 of whether they fit within the constraints of the
20 Decision and Order. There was no attempt made at in
21 any time for someone to come back to the Land Use
22 Commission.

23 Instead they went to the county. And it's
24 our position that that was not the appropriate place
25 for them to go. If they had issues or concerns about

1 whether they met the Decision and Order that was
2 issued by the Commissioners, they needed to come back
3 to you. That did not occur, and that's the reason we
4 filed an Order to Show Cause, and that's why there's
5 significant testimony on that issue.

6 So what we would present, and this is in
7 fact what the findings, I believe if we had the final
8 findings here, it would show that the information
9 with respect to whether or not these other projects
10 on Maui are or are not permitted under light
11 industrial on the Maui County Code was irrelevant,
12 because the question really points down to was there
13 or is there a particular instance an underlying
14 Decision and Order by a Commission that has specific
15 requirements and constraints in it. And in our
16 particular situation, that was the case.

17 So, Commissioners, I would just ask for
18 you, as you do hear this issue in the upcoming year,
19 to not be attracted to /TRAOBGD these types much
20 slippery slope arguments that this issue will be
21 potentially made by the county, we anticipate that
22 they will be made by the county.

23 We think that they're disturbing to say the
24 least, because there they're really challenging your
25 authority is our position on that.

1 What I would ask the Commissioners, because
2 I think it issue is complicated and there was an
3 entire history that came on before, is that before
4 the EIS is heard by you, I think the appropriate
5 thing you might be to do is to -- by the way, I want
6 to back up.

7 I appreciate Commissioner Hiranaga bringing
8 this to the attention. I think it is a good
9 illustration of a confusion in the public. And it's
10 one that I think was sharpened during our case, and
11 so it actually is a very good one for that. And so I
12 appreciate Mr. Hiranaga bringing that to the
13 attention of the Commission. Because I think it
14 actually is one of those places where, as I said, the
15 question is on any particular point when you're in a
16 particular process, are we looking at the county
17 code, because if I'm in front of the Maui Planning
18 Commission, or if I'm in front of the Planning
19 Director, I understand it's his or her rules, the
20 rules of the county at that point in time that do
21 have supremacy. But in this particular instance it
22 was the Decision and Order. So I just mention that.

23 At any rate, Commissioners, what I would
24 ask just as a way of something that you might want to
25 consider ordering is that there be a briefing by the

1 parties before --

2 CHAIRPERSON ACZON: Commissioner Hiranaga,
3 did that answer your question?

4 COMMISSIONER HIRANAGA: He's in the
5 process. Continue briefly.

6 MR. PIERCE: The only thing I was going to
7 ask is I think, because of the history of the case,
8 it would be helpful for you, before you hear the EIS,
9 because that sounds like the next thing that would be
10 before the Commission, I think it would be helpful
11 for the Commission to offer the parties an
12 opportunity to brief the background and provide
13 relevant background regarding the contested case and
14 how it colors or affects how you make your decisions
15 on the EIS, and whether it's procedurally properly
16 before you at the time that you hear the EIS.

17 That's what I would ask. Thank you.

18 VICE CHAIR SCHEUER: I have a few
19 questions. Unfortunately I'm thoroughly enough
20 confused that I'm not sure who here it's best
21 answered by.

22 Is this Status Report the annual report by
23 Pi'ilani Promenade South and North?

24 MR. SAKUMOTO: No. This Status Report was
25 made at the request of the LUC staff. We filed an

1 annual report in writing. And I believe the last one
2 was filed in March of this year. So that's the
3 annual report.

4 VICE CHAIR SCHEUER: Because on the website
5 I could only find a 2014 annual report for Honua'ula,
6 and perhaps I'm missing it. There's a present amount
7 of material.

8 But you're filing your annual reports now
9 separately from Honua'ula Partners?

10 MR. SAKUMOTO: Yes.

11 VICE CHAIR SCHEUER: In the EIS document
12 that you're preparing, we heard some testimony
13 regarding the AIS. Does the AIS study in support of
14 your Draft EIS, cover the entirety of the original
15 petition area, or simply the parcel controlled by
16 Pi'ilani North and South Promenade.

17 MR. JENKS: The archeologist, Xananek
18 Researchers did the original AIS work for Mr. Henry
19 Rice when he did the original D and O for the
20 conversion from ag to urban.

21 So I hired the same firm to do the update
22 for this EIS, and my understanding is that it covers
23 the entire area. I will am affirm that and let you
24 know, but my understanding is it covers the same
25 area.

1 VICE CHAIR SCHEUER: So both the parcels
2 controlled by Honua'ula Partners as well as the
3 parcels that you're representing today?

4 MR. JENKS: That's correct.

5 VICE CHAIR SCHEUER: Thank you.

6 CHAIRPERSON ACZON: Anybody else?

7 MR. YEE: Could I try to briefly respond to
8 Commissioner Hiranaga's question?

9 I think Commissioner Hiranaga correctly
10 reported Maui County Zoning requirements. They do
11 have a pyramided process by which if you have the
12 light industrial zoning, you can have these other
13 uses as well that are not normally considered to be
14 light industrial.

15 And I think you also accurately reflected
16 the arguments that were raised by the county and the
17 petitioners in this case trying to argue that they
18 should be allowed to move forward and not in
19 violation of any representation.

20 But when I said that their initial
21 representation was that they would do light
22 industrial, I omitted a whole series of testimony
23 about the specific uses that they said they were
24 going to do on this piece of property in the various
25 studies and testimony that they have.

1 So it was not simply a representation
2 generically that they're going to do light
3 industrial, and it's not just an interpretation of
4 what does light industrial mean under county zoning
5 requirements. It was that they said they were going
6 to do this, this and this. And as a group we all
7 understood and reflected in the findings of fact,
8 this would be light industrial.

9 So the Office of Planning's argument is
10 we're not interpreting county zoning requirements,
11 we're interpreting a State Land Use Commission
12 Decision and Order.

13 So what did you mean when you use those
14 terms? In light of the specific facts in evidence
15 that were in evidence in the record at the time. And
16 I won't go into all of them.

17 But when we look at the marketing report,
18 which describes the uses, et cetera, those uses did
19 not include residential, did not include retail. And
20 so we had argued to the Commission then that even
21 though county zoning would have allowed all of these
22 things under light industrial zoning, that's not
23 what's meant in the LUC Decision and Order and
24 therefore is a violation of LUC Decision and Order,
25 even if it would be consistent with the county

1 zoning.

2 I just wanted to offer that as explanation
3 as to what happened.

4 I will say I don't know to what extent you
5 really need more. Mr. Pierce is suggesting more
6 briefing, and if you need it, we will provide it.
7 I'm just not sure how helpful it would be to go back
8 over a decision already made.

9 The Draft EIS, I think really is a document
10 looking forward to proposed uses. And I think that's
11 where your focus can be on, rather than what happened
12 before, because the Motion to Amend really is a
13 solution, not a punishment. It's not something that
14 looks back. It looks ahead at what they're proposing
15 to do rather than what they had proposed in the past,
16 for whatever it's worth.

17 CHAIRPERSON ACZON: Thank you, Mr. Yes.

18 Any further comments, suggestions? Thank
19 you.

20 Commissioners, a status report, we are not
21 required to take any action at this time. If no
22 action is taken, the status report will remain, and
23 this docket will remain open.

24 Is there any further discussion? There
25 being no further discussion -- Commissioner Hiranaga.

1 We're done with this docket.

2 COMMISSIONER HIRANAGA: I would like to
3 make a motion to request for Executive Session to
4 consult with the board's attorney on questions and
5 issues pertaining to the board's powers, duties,
6 privileges, immunities and liabilities.

7 CHAIRPERSON ACZON: Any second?

8 COMMISSIONER CABRAL: I'll second it.

9 CHAIRPERSON ACZON: Motion made by
10 Commissioner Hiranaga and seconded by Commissioner
11 Cabral to go into Executive Session.

12 Those in favor say "aye", opposed.

13 (All responded affirmatively.)

14 (The proceedings ended at 10:53 a.m.)

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CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on December 10, 2015, at 9:45 a.m., the proceedings contained herein was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision; that the foregoing represents, to the best of my ability, a true and correct copy of the proceedings had in the foregoing matter.

I further certify that I am not of counsel for any of the parties hereto, nor in any way interested in the outcome of the cause named in this caption.

Dated this 10th day of December, 2015, in Honolulu, Hawaii.

JEAN MARIE McMANUS, CSR #156