

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

Proceedings held on March 23, 2016

Commencing at 1:30 p.m.

West Hawai'i Civic Center

Council Hale - Building G

74-5044 Ane Keohokalole Highway

Kailua-Kona, Hawai'i 96740

AGENDA

I Call to Order

II Adoption of Minutes

III Tentative Meeting Schedule

IV Public Testimony - A89-646 Queen Lili'uokalani
Trust (Hawai'i)

V Hearing & Action - A89-646 Queen Lili'uokalani
Trust (Hawai'i)

Motion for Order Modifying Findings of Fact,
Conclusions of Law, Decision and Order

VII Discussion and Action, if appropriate

2016 Legislation Status Report

VIII Executive Session

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 EDMUND ACZON, Chairperson

3 COMMISSIONERS:

4 JONATHAN SCHEUER, Vice Chair

ARNOLD WONG, Vice Chair

5 LINDA ESTES

NANCY CABRAL

6 CHAD McDONALD

KENT HIRANAGA

7
8 DIANE ERICKSON, ESQ.

Deputy Attorney General

9
10 STAFF:

11 DAN ORODENKER, Executive Director

RILEY HAKODA, Chief Clerk/Planner

12 SCOTT A.K. DERRICKSON, AICP-Planner

BRIANA BERNADINO, Secretary

13
14 BRIAN YEE, ESQ.

RANDY FUNAKOSHI, Planner

15 State Office of Planning

16
17 AMY SELF, ESQ.

Deputy Corporation Counsel

DARYN ARAI, Planner

18
19 BENJAMIN KUDO, ESQ.

CLARA PARK, ESQ.

20 For Petitioner

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1 CHAIRPERSON ACZON: Good afternoon.

2 This is the March 23rd Land Use Commission
3 Meeting.

4 The first order of business is the adoption
5 of the February 24th, 2016 minutes. Are there any
6 corrections or comments on them? If not, is there a
7 Motion to adopt the minutes?

8 COMMISSIONER ESTES: So moved

9 VICE CHAIR SCHEUER: Second.

10 CHAIRPERSON ACZON: Motion moved by
11 Commissioner Estes and seconded by Commissioner
12 Scheuer to adopt the minutes.

13 All in favor say "aye", any opposed?
14 Motion carries, adopted unanimously.

15 The next agenda item is the tentative
16 meeting schedule. Mr. Orodener?

17 EXECUTIVE DIRECTOR: We are here tomorrow
18 for continuation on this hearing.

19 On April 14th we will be on Oahu for an
20 update on the Waimanalo Gulch matter.

21 DR16-55 OP's Petition for Declaratory
22 Order.

23 On April 27 and 28 we are on Maui, and for
24 all in intents and purposes that takes care of the
25 calendar.

1 CHAIRPERSON ACZON: Thank you, Mr.
2 Orodenker. Any questions on the agenda?

3 The next agenda item is a hearing and
4 action meeting on Docket A89-646 Queen Lili'uokalani
5 Trust, Motion for Order Modifying Findings of Fact,
6 Conclusions of Law, Decision and Order filed
7 August 28, 1991.

8 CHAIRPERSON ACZON: Vice Chair Scheuer.

9 VICE CHAIR SCHEUER: Thank you, Mr. Chair.

10 Just in openness I want to disclose that
11 I've been working in this area as a consultant to the
12 National Park Service on some water related issues
13 which do not arise in this proceeding, but I know
14 that the Movant has actually been in opposition to
15 what my client has been seeking in that matter.

16 Nonetheless, I believe that I can be fair
17 and impartial in these proceedings.

18 CHAIRPERSON ACZON: Any objections from the
19 parties?

20 MR. KUDO: No objection.

21 MR. YEE: No objection.

22 MS. SELF: No objection.

23 CHAIRPERSON ACZON: Thank you.

24 Will the parties please identify themselves
25 for the record?

1 MR. KUDO: On behalf of the Lili'uokalani
2 Trust, Petitioner and Movant in this matter, I am Ben
3 Kudo. And with me is my associate Clara Park.

4 MS. SELF: Deputy Corporation Counsel, Amy
5 Self on behalf of the Planning Department for County
6 of Hawaii, and Daryn Arai who is a planner with the
7 county Planning Department.

8 MR. YEE: Good afternoon, Deputy Attorney
9 General, Bryan Yee on behalf of the Office of
10 Planning. With me is Rodney Funakoshi from Office of
11 Planning.

12 CHAIRPERSON ACZON: Let me update the
13 record.

14 On August 14th, 2015, the Commission
15 received Queen Lili'uokalani Trust's Motion for Order
16 Modifying the Findings of Fact, Conclusions of Law,
17 and Decision and Order dated August 28, 1991,
18 Exhibits 1 to 4, and \$1000 application fee.

19 On August 24th, 2015, Commission received
20 State of Hawaii Office of Planning's request for
21 filing extension to September 14th, 2015 to file
22 responses to the Motion.

23 On August 25th, 2015, the LUC mailed a
24 letter granting OP's request for filing of extension.

25 On September 28, 2015, the Commission

1 received OP's request for a filing extension to
2 October 22nd, 2015 to file responses to the Motion.

3 On September 30th, 2015 the LUC mailed a
4 letter granting OP's request for filing extension.

5 On October 16, 2015, the Commission
6 received Queen Lili'uokalani Trust's Supplemental
7 Memorandum in Support of its Motion for Order
8 Modifying the Findings of Fact, Conclusions of Law,
9 and Decision and Order dated August 28, 1991, and
10 Exhibit 5.

11 On October 22, 2015, the Commission
12 received OP's request for a filing extension to
13 November 6th, 2015 for all Parties to file responses
14 to the Motion for Order Modifying the Findings of
15 Fact, Conclusions of Law, and Decision and Order
16 dated August 28, 1991. The Commission granted OP's
17 request on the same day.

18 On November 6, 2015, the Commission
19 received OP's response to the Motion for Order
20 Modifying the Findings of Fact, Conclusions of Law,
21 Decision and Order dated August 28, 1991 and
22 Exhibit 1. The Commission also received an email
23 from Hawaii County Planning Department requesting a
24 new filing deadline on same day.

25 On November 20th, 2015, the Commission

1 mailed a letter granting County's request for a new
2 deadline and also a letter to Petitioner requesting
3 additional information to support the Motion.

4 On January 11, 2016, the Commission
5 received Queen Lili'uokalani Trust's Second
6 Supplemental Memorandum in Support of its Motion.

7 On January 2rd, 2016, the Commission
8 received County's Response to Petitioner's First and
9 Second Supplemental Memorandum in Support of its
10 Motion and Exhibits 1 and 3.

11 On March 4th, 2016, the Commission received
12 OP's Supplemental response to Queen Lili'uokalani's
13 Motion.

14 On March 11, 2016, the Commission received
15 Queen Lili'uokalani Trust's Third Supplemental
16 Memorandum in Support of its Motion.

17 On the same day, the Commission mailed a
18 March 23rd and 24th, 2016 LUC agenda notice to the
19 Parties and to the Statewide and Hawaii mailing
20 lists.

21 On March 21st, 2016, the Commission
22 received correspondence from Intervenor's
23 Representative, Mark Van Pernis, advising that he no
24 longer represented the Intervenor, Greater Kona
25 Community Council, which was involved in the original

1 District Boundary Amendment proceeding; and would not
2 be appearing. Public Records disclosed that the
3 entity, Greater Kona Community Council was
4 involuntarily dissolved in 1994.

5 On March 22nd, 2016, the Commission
6 received correspondence from OP updating and revising
7 OP's Exhibit 1 (State Department of Transportation
8 letter) in OP Supplemental Response of March 4, 2016.

9 Our procedure for Docket No. A89-646 will
10 be as follows:

11 First, I will give opportunity for the
12 Petitioner to comment on the Commission's policy
13 governing reimbursement of hearing expenses.

14 I will then call for those individuals
15 desiring to provide public testimony for public
16 hearing portion of the proceedings to identify
17 themselves. All such individuals will be called in
18 turn to our witness box where they will be sworn in
19 prior to their testimony.

20 I note for all present, that in accordance
21 with parliamentary procedure, any of the parties or
22 members of the Commission may question in turn any of
23 these public witnesses

24 After completion of the public testimony
25 portion of the proceedings, I will give opportunity

1 for any of the parties to admit to the record their
2 exhibits and/or witness lists.

3 We will then open our hearing in this
4 matter. The Petitioner will present its case first.
5 Once Petitioner is completed with its presentation,
6 the order of presentation will be as follows: County
7 of Hawaii Planning Department, the Office of
8 Planning. I note for the record that the Intervenor
9 in the original district boundary amendment
10 proceeding, the Greater Kona Community Council, no
11 longer exists as it was involuntarily dissolved in
12 1994, and is not present or represented at today's
13 proceedings.

14 Once the Parties have completed their
15 presentations, the Commission will deliberate on this
16 matter.

17 The Chair would also note for the Parties
18 and public that from time to time I will be calling
19 for short breaks.

20 Any questions on our procedures for today?

21 MR. KUDO: No questions.

22 CHAIRPERSON ACZON: Thank you.

23 Good afternoon, Mr. Kudo. Has the
24 Petitioner been advised of the LUC's policy on
25 reimbursement of LUC hearing expenses?

1 MR. KUDO: Yes, we have, and we have no
2 problem.

3 CHAIRPERSON ACZON: Thank you.

4 Are there any individuals desiring to
5 provide public testimony on this matter?

6 EXECUTIVE DIRECTOR: Mr. Chair, we have two
7 people signed up to testify, the first being Ken
8 Melrose.

9 CHAIRPERSON ACZON: May I swear you in.
10 Do you affirm that the testimony you're
11 about to give is the truth?

12 THE WITNESS: Yes.

13 KEN MELROSE
14 Was called as a public witness, was sworn to tell the
15 truth, was examined and testified as follows:

16 DIRECT EXAMINATION

17 CHAIRPERSON ACZON: Please state your name
18 and address for the record, and you can proceed.

19 THE WITNESS: Good afternoon. Thank you,
20 Commissioner. My name is Ken Melrose, a resident of
21 Kealahkekua, Hawaii.

22 CHAIRPERSON ACZON: Please proceed.

23 THE WITNESS: I ask that you join me in
24 support of the request and give favorable
25 consideration to this Petition.

1 In 2008, the County adopted the Kona
2 Community Development Plan. It was a community based
3 process that serves as guide a for regional
4 development in the Kona Districts going forward.

5 I served as Chair of the Steering Committee
6 during the creation and adoption process, and the
7 initial Chair of the Action Committee in nurturing
8 its early implementation.

9 The vision statement of the Kona Community
10 Development Plan is a more sustainable Kona
11 characterized by a deep respect for the culture and
12 the environment, and residents that responsibly
13 accommodate change through an active and
14 collaborative community, a change that Kona presented
15 itself over time.

16 In order to achieve the vision, eight
17 guiding principles became the foundation for the Kona
18 CDP. While I feel all are appropriately addressed in
19 the plans of the Petitioner, two are more important
20 and form the basis for my support.

21 Guiding principle number five says: Direct
22 future growth patterns toward compact villages,
23 preserving Kona's rural, diverse and historical
24 Character.

25 And guiding principle number six: Provide

1 infrastructure and essential facilities concurrent
2 with growth.

3 The transportation and land use overall
4 strategies of the Kona Community Development Plan
5 direct future growth to designated growth opportunity
6 areas, all which are located within the urban
7 boundary of the County's General Plan, where a street
8 network can be connected and infrastructure logically
9 connected.

10 The Applicant's lands are located within
11 two of those growth opportunity areas. The subject
12 Petition is located within a targeted growth area
13 being the Makaeo Village Regional Center, TOD, which
14 is seamlessly attached to the Kailua Village core.

15 Their plan proposes to widen and extend
16 existing thoroughfares and connect to existing
17 utilities.

18 To me petition area is very much the right
19 place for Kona to grow now.

20 The Petitioner appears committed to
21 implementing the new community standards of a
22 multi-modal, walkable, mixed use, high density
23 community as a logical extension of the existing
24 Kailua Village.

25 A strong relationship to the existing

1 Kailua Park is proposed to blend the makai edge of
2 the new Makalapua Project District Community in a
3 positive way.

4 With your affirmative vote today, you'll
5 allow the Applicant to move ahead with a County
6 Project District Zoning Process wherein the details
7 of the uses and infrastructure connectivity can be
8 formalized.

9 Thank you for this opportunity to testify.
10 I ask you to approve the subject petition.

11 CHAIRPERSON ACZON: Any questions, Mr.
12 Kudo?

13 MR. KUDO: No question.

14 MS. SELF: No questions.

15 MR. YEE: No questions.

16 CHAIRPERSON ACZON: Commissioners?

17 COMMISSIONER CABRAL: First off, can you
18 turn your volume up a little bit? I could hear you
19 but the AC system is loud for up here.

20 Question, while -- particularly since I'm
21 from the Big Island, but Hilo, as you know, is a
22 whole other world over there. I understand that this
23 land is --

24 THE WITNESS: Can we have some of your
25 rain?

1 COMMISSIONER CABRAL: Occasionally we have
2 a vog day, and there is a big grass fire. I just
3 barely got past on my way here. I wish I could bring
4 rain for you there.

5 The question, when you were very involved
6 with the early stages of this planning, as that, were
7 you a member of the community or did you work in
8 someway or capacity for the developer or for somebody
9 involved or are you, the greatest part of that, just
10 part of that being a member of the community?

11 THE WITNESS: I was a member of the
12 community.

13 COMMISSIONER CABRAL: Thank you as a member
14 of that community for your involvement, because to me
15 that's, very, very important.

16 CHAIRPERSON ACZON: Anybody else?
17 Commissioners?

18 EXECUTIVE DIRECTOR: Kirsten Kahaloa.

19 CHAIRPERSON ACZON: May I swear you in?
20 Do you affirm that the testimony you're
21 about to give is the truth?

22 THE WITNESS: Yes.

23

24 -o0o-

25 KIRSTEN KAHALOA

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

3 DIRECT EXAMINATION

4 CHAIRPERSON ACZON: State your name and
5 address for the record, and you can proceed.

6 THE WITNESS: My name is Kirsten Kahaloa.
7 And I'm representing the Kona Kohala Chamber of
8 Commerce, 75-5737 Kuakini Highway, Kailua-Kona 96740

9 And I did bring a few copies, but not
10 enough. I didn't know how big the group was.

11 Aloha and good afternoon, members of the
12 Land Use Commission.

13 Again, my name is Kirsten Kahaloa, and I
14 serve as Executive Director of the Kona-Kohala
15 Chamber of Commerce here in Kailua-Kona.

16 On behalf of the Chamber I'm here to
17 provide testimony in support of the Queen
18 Lili'uokalani Trust's Motion to remove Urban Phase
19 III lands from the 1991 Decision and Order.

20 Just a little bit about the Chamber. We
21 are West Hawaii Island's leading business
22 organization, representing over 540 businesses in our
23 community.

24 As the largest business organization on
25 Hawaii Island and the fourth largest Chamber in the

1 State, the Kona-Kohala Chamber of exists to provide
2 leadership and advocacy for a successful business
3 environment here in West Hawaii.

4 The LUC's approval to remove the Urban
5 Phase III lands, will allow the Trust to move forward
6 with both its Keahuolu Land Plan and Makalapua
7 Project District development project.

8 The positive outcomes of the LUC's
9 approval, besides attracting more business and
10 community development are the following:

11 Grow and diversify the local economy here
12 in Kona. Ultimately we want our children to see that
13 they don't have to leave Kona to find opportunities
14 and a quality of life.

15 Secondly, provide the opportunity to bring
16 more jobs and careers to Kona, as well as attract new
17 industries, especially sustainable industries.

18 An example is the recent announcement of a
19 new \$20 million Kona Brewing Co., facility on the
20 Trust's lands in the Old Industrial Area. This new
21 facility will produce 100,000 barrels of locally
22 brewed annually and will provide more direct and
23 indirect jobs and visibility for Kona, which is a
24 great thing for our community.

25 And, thirdly, support over 2000 jobs that

1 currently reside on Trust lands. The Old Industrial
2 Area, in many ways represents the working core of
3 Kona. It is full of fun places like Kona Brew,
4 hardworking auto shops, dry cleaners and more. It is
5 the place where Kona works.

6 We want to help these types of business and
7 people continue to succeed and grow while encouraging
8 new opportunities as the Trust proceeds with its two
9 development projects.

10 Thank you for the opportunity to provide
11 testimony on behalf of over 540 businesses in our
12 community, and I encourage the LUC to consider these
13 points in your deliberations in this matter.

14 Thank you.

15 CHAIRPERSON ACZON: Any questions for Ms.
16 Kahaloea?

17 MR. KUDO: No questions.

18 MS. SELF: No questions.

19 MR. YEE: No questions.

20 CHAIRPERSON ACZON: Thank you.
21 Commissioners?

22 I forgot to mention to Mr. Melrose, if you
23 have a copy of your testimony to be submitted to our
24 chief clerk so we can pass it out. By the way, we
25 have a new staff, Briana. Please welcome Briana.

1 Are there any more public witnesses?

2 EXECUTIVE DIRECTOR: We don't have any
3 signed up, Mr. Chair.

4 CHAIRPERSON ACZON: This concludes the
5 public testimony of our proceedings. The Commission
6 will now consider the exhibits by the parties.

7 Please describe exhibits you wish to have
8 admitted to the record.

9 MR. KUDO: We have a series of slides
10 collectively referred to as Petitioner's Exhibit 13,
11 and these slides will be used during the testimony of
12 our first witness, which is LeeAnn Crabbe, Vice
13 President Queen Lili'uokalani Trust.

14 The second exhibit we have is a series of
15 slides labeled Petitioner's Exhibit 14, and these
16 will be used by the second witness that we have who
17 will be Tim Cornwell, who is replacing Richard
18 Gollis. I'll be explaining that situation shortly.

19 At this time I would like to move those
20 exhibits into the record.

21 CHAIRPERSON ACZON: Those are exhibits
22 numbered --

23 MR. KUDO: 13 and 14.

24 CHAIRPERSON ACZON: Any objections from the
25 parties, Commissioners?

1 MS. SELF: No objections.

2 MR. YEE: No objection.

3 Maybe I missed something. Exhibits 1
4 through 13 are admitted.

5 MR. KUDO: It's a series of slides, but
6 collectively they're referred to as Exhibit 13. They
7 didn't label each one.

8 MR. YEE: What I was asking, are you
9 admitting Exhibits 1 through 13?

10 MR. KUDO: Just Exhibit 13 and 14.

11 MR. YEE: No objection.

12 CHAIRPERSON ACZON: Thank you.
13 Commissioners? Having heard all the arguments
14 regarding admission of exhibits, I will allow the
15 exhibits to be introduced.

16 (Petitioner's Exhibits 13 and 14 were
17 received into evidence.)

18 County, do you have exhibits which you wish
19 to have admitted to the record?

20 MS. SELF: We have no exhibits, thank you.

21 CHAIRPERSON ACZON: Mr. Yee?

22 MR. YEE: The Office of Planning submitted
23 within its memoranda in this case one exhibit, and
24 unfortunately we marked them Exhibit 1 because they
25 are attached to different memos. Exhibit 1 I think

1 is a transcript from the McClean case.

2 We have another exhibit that was attached
3 to our Supplemental Response, which is the Department
4 of Transportation letter; and then we later submitted
5 a revision to that letter which we would also ask to
6 be admitted as exhibits into evidence.

7 CHAIRPERSON ACZON: So Exhibit 1?

8 MR. YEE: Well, technically they should be
9 labeled Exhibits 1, 2 and 3, unfortunately that's how
10 we labeled them, but that would be the better way to
11 refer to them in chronological order, 1, 2, 3.

12 CHAIRPERSON ACZON: Any objection from the
13 parties?

14 MR. KUDO: No objection.

15 MS. SELF: No objections.

16 CHAIRPERSON ACZON: Commissioners?

17 Hearing none, State Office of Planning
18 Exhibit 1 is admitted into the record -- 1, 2 and 3.

19 (OP's Exhibits 1, 2 and 3 were received
20 into the record.)

21 Mr. Kudo, please present your case.

22 MR. KUDO: Excuse me, I need to -- we had
23 exhibits attached to our Supplemental Memos. We
24 filed three of them. So we would like those in
25 addition to be admitted into the record. They're

1 Exhibits 1 through 12.

2 CHAIRPERSON ACZON: Exhibits 1 through 12.
3 Any questions from the parties?

4 MS. SELF: No questions about that, but we
5 also had three exhibits attached to our response.

6 CHAIRPERSON ACZON: Let me take care of Mr.
7 Kudo's exhibits first. So you don't have objection?

8 MS. SELF: No objections.

9 CHAIRPERSON ACZON: Mr. Yee?

10 MR. YEE: No objection.

11 CHAIRPERSON ACZON: Exhibits 1 through 12
12 is admitted.

13 (Petitioner's Exhibits 1 through 12 were
14 received into evidence.)

15 Ms. Self?

16 MS. SELF: We had Exhibits 1, 2, 3 attached
17 to our Response to Petitioner's First and Second
18 Supplemental Memorandum in Response Support of the
19 Motion filed January 20th, 2016.

20 CHAIRPERSON ACZON: Any objection from the
21 parties?

22 MR. KUDO: No objection.

23 MR. YEE: No objection.

24 CHAIRPERSON ACZON: So County's Exhibit 1,
25 2, and 3 is admitted.

1 (County's Exhibits 1, 2 and 3 were received
2 into evidence.)

3 Mr. Kudo.

4 MR. KUDO: Chairman Aczon and Members of
5 the Commission, before I begin, I just wanted to
6 explain circumstances that came up yesterday.

7 We planned to put on two witnesses today,
8 LeeAnn Crabbe from Queen Lili'uokalani Trust, and
9 Richard Gollis, who is a market feasibility expert
10 from California.

11 Unfortunately, Mr. Gollis, when he arrived
12 in Kona received a message of a personal family
13 emergency, and got on the next flight back to
14 California. His partner, Mr. Tim Cornwell, will be
15 en route to Hawaii to testify in his place, but
16 unfortunately because of the flight schedule and his
17 schedule, will not be arriving until 9:00 evening.

18 We plan on putting on Tim Cornwell
19 therefore at 8:30 tomorrow morning, if that is
20 convenient for the Commission. We apologize for
21 bifurcating our case between today and tomorrow, but
22 we thought that that would be the only way that we
23 could put on our entire Motion hearing today.

24 CHAIRPERSON ACZON: Can you tell us the
25 nature of the witness' testimony, the nature of his

1 testimony is going to be?

2 Just trying to see if there's going to be
3 somebody who can answer that if there is any problems
4 with any questions for the Commissioners.

5 MR. KUDO: Part of the basis for the Motion
6 is to explain to the Commission why these Phase I and
7 Phase II had difficulty being fully developed from
8 1990. And the market feasibility analyst is going to
9 give the Commission the economics that occurred
10 between 1992 to date. And in particular how it
11 impacted the economy of the Big Island.

12 And that this in large part is the reason
13 why it was -- the development of Phase I and Phase II
14 has been somewhat retarded because of these economic
15 situations.

16 So it is the basis of our Motion, and would
17 be relevant to your consideration.

18 CHAIRPERSON ACZON: Okay. I'll take that
19 into consideration, but I want -- I'm going to go
20 ahead with proceedings, and take questions from the
21 Commissioners. If you think that by the end of the
22 day it's very important for him to testify, we'll
23 take that at that time.

24 MR. KUDO: Okay.

25 The Motion before you today seeks to remove

1 a portion of the Queen Lili'uokalani Trust lands, who
2 is the Petitioner and Movant in this case, referred
3 to as Phase III. And this originates from the 1991
4 Decision and Order issued by this State Land Use
5 Commission.

6 The purpose of this Motion is simple,
7 uncontroversial and straight forward. The Motion has
8 received the support of the State Office of Planning
9 and the County of Hawaii Planning Department based on
10 its filings -- their filings.

11 Before I begin my arguments on the Motion,
12 I would like to tell you a bit about who the
13 Petitioner is so that you will have a better
14 understanding of the context of this Motion and how
15 it fits within the Trust's business plan and mission.

16 The Queen Lili'uokalani Trust is a private
17 operating foundation founded by Queen Lili'uokalani,
18 Hawaii's last reigning monarch. And was founded in
19 1909.

20 The instant petition lands on this Big
21 Island are within the ahupua'a Keahuolu, ancestral
22 lands that were given to the Queen by her mother.
23 The Trust property is dedicated for the benefit of
24 orphan and other destitute children in the Hawaiian
25 islands with preference given Hawaiian children of

1 pure or part aboriginal blood.

2 Over the last 100 years the Trust has
3 continued to fulfill the Queen's mission by carrying
4 for thousands of island children each year throughout
5 the state.

6 The Trust does not charge any fees for the
7 services it provides to the beneficiary children and
8 their families. The Trust programs and services are
9 supported by the revenue derived from its real estate
10 holdings and investments.

11 In 2015 the Trust received about 26 million
12 in real estate revenue from its real estate holdings
13 and spent about 21 of that toward the charitable
14 purpose. Keahuolu is the Trust's only landholding
15 that can provide for meaningful revenue growth. The
16 other parcels of lands that it owns are already
17 developed in Waikiki.

18 The Trust has been involved in Keahuolu's
19 development for decades. From the 1940's, when a
20 portion of that land was condemned by the Territory
21 of Hawaii to serve as the Old Kona Airport, and is
22 now the site used by the County as named as Kailua
23 Park.

24 Later developments at Keahuolu included
25 Queen Lili'uokalani Village, which was a workforce

1 housing project, the Makalapua Shopping Center, the
2 Makalapua Business Center, the Kona Commons Shopping
3 Complex, the Palani Road commercial properties and
4 industrial areas, and the new Kona Judicial Complex
5 which is underway.

6 In 1990, while the Trust was under the
7 institution of management of First Hawaiian Bank, it
8 prepared a land plan for the Keahuolu lands. The
9 Trust petitioned this Commission to reclassify the
10 Keahuolu lands from the State Agriculture and
11 Conservation Districts to the State Urban District to
12 prevent development.

13 I will now refer to Petitioner's
14 Exhibit 13. The Petition filed in 1990 identified
15 three phases of development. Phase I, which is
16 located here, II, and III (indicating).

17 Phases I and II, which are mauka of the
18 Queen Kaahumanu Highway consisted of 545 acres of
19 land. Phase III consisted of 212 acres makai of the
20 highway.

21 The Master Plan focused on large scale
22 commercial development with no plans for residential
23 development. And this was out of a concern at that
24 time that residential lots would be subject to the
25 Lease Conversion Law under the Land Reform Act. Many

1 of these mandatory lease-to-fee conversions were
2 being challenged and litigated during the 1980's the
3 '90's.

4 In 1991 this Commission issued a Decision
5 and Order that reclassified Phase I and Phase II from
6 the Agricultural District to the Urban District. The
7 Commission also ordered that Phase III, makai of the
8 highway, would be incrementally districted or
9 reclassified to the Urban District pending a showing
10 that the Trust had substantially completed Phases 1
11 and Phases II.

12 After the Commission had issued its 1991
13 Decision and Order, the economy, however, took an
14 unforeseen turn for the worst. Beginning with the
15 burst of the Japanese bubble in 1990, and continuing
16 through the global great recession of 2008.

17 To give more context to this Motion we will
18 present two witnesses. Our first witness will be
19 LeeAnn Crabbe, Vice President for the Trust, who will
20 describe the Trust mission and its efforts to develop
21 Phase I and II.

22 Our second will be Tim Cornwell, who will
23 provide a retrospective look at economic and market
24 conditions from 1990 to the present.

25 Ms. Crabbe will testify that since 1991 the

1 Trust has completed the backbone infrastructure
2 improvements required under the 1991 Decision and
3 Order. It has complied with all applicable
4 conditions, and succeeded in attracting some large
5 commercial tenants such as Macy's, Kmart and Regal
6 Cinemas.

7 However, despite the Trust's best efforts
8 it has not been able to fully develop Phase I and
9 Phase II as originally proposed under 1991 Decision
10 and Order.

11 Mr. Cornwell will testify as to the reason
12 for this situation.

13 In 2002, after the Trust became
14 independently managed, the Trust began to re-evaluate
15 its land use plans for Keahuolu lands. Unlike the
16 original Master Plan, which called for only large
17 scale commercial development, the Trust has now
18 revised its Master Plan, which will include
19 significant component of residential development to
20 serve the Kailua-Kona region.

21 The Trust recognizes the need for more
22 housing on the Big Island. The Trust also recognizes
23 a need to diversify so that in the event of other
24 unanticipated recession or depressions, its real
25 estate portfolio will not be dependent only on one

1 particular land use.

2 The Trust's long-term goal for Keahuolu is
3 to not only create a long-term revenue stream to
4 support its services for orphan and destitute
5 children of Hawaii, but also to create a place that
6 serves as model and creation of a sustainable
7 community for the state.

8 The Trust proposes two separate development
9 projects. First, the larger scale Keahuolu Land
10 Plan. This will be the new Master Plan that we will
11 be presenting to you in a different action, under
12 which the Trust proposes to develop approximately
13 1350 acres; and secondly, the Makalapua Project
14 District Development or MPD.

15 The MPD development, which is located in
16 this vicinity here (indicating) is located in Phase
17 III. Under the 1991 Decision and Order, Phase III
18 remains subject to Incremental Districting, and
19 requires the completion of Phase I and II before
20 Phase III can reclassified.

21 We are seeking to remove the Incremental
22 Districting from Phase III so that the Trust can
23 proceed to develop the MPD project, which is here
24 (indicating).

25 The Trust filed this Motion because Phase

1 III needs to be removed from the Incremental
2 Districting before the Trust can move forward, and
3 including Phase III lands in the MPD development.

4 The MPD development includes about
5 14.96 acres of lands in Phase III. The rest of the
6 MPD project is already entitled. The Phase III lands
7 are critical to the MPD development because these
8 lands are necessary to attract the types of tenants
9 needed to support a regional commercial center and to
10 generate revenue needed to support large scale future
11 Keahuolu land plan.

12 In other words, the Trust needs the revenue
13 from that project to support this development of the
14 larger Keahuolu land plan.

15 This Motion is the first step in a two-step
16 process that the Trust is taking in order to proceed
17 with its plans for the MPD development and the
18 Keahuolu land plan.

19 If granted, Phase III will be released from
20 Incremental Districting and will revert back to the
21 Agricultural designation. From there the Trust will
22 need to obtain the necessary land entitlements for
23 Phase III as to the 14.96 acres by first applying to
24 the County to include a less than 15-acre portion of
25 Phase III, and then by amending the County zoning to

1 the proper category.

2 That will be followed with a new petition
3 to this Commission for the remainder of Phase III and
4 a revised Master Plan for Phase I and II.

5 The new petition to be filed with this
6 Commission sometime after the MPD entitlement
7 processes is underway, to implement the revised
8 Keahuolu land plan. This petition will affect Phase
9 I, II, and III of the Keahuolu lands.

10 During this proceeding we will describe our
11 new Master Plan Community to take the place of the
12 one that was presented to this Commission in 1990.

13 That new Master Plan is still being worked
14 on, and should be ready no later than 2018. We
15 originally thought that we could file a new petition
16 by the end of this year, but as we continue to work
17 on and refine our Master Plan, and conduct our
18 ongoing consultations with various government
19 agencies, it is taking longer than we anticipated.

20 Therefore, to be conservative, we hope that
21 the new petition can be filed no later than 2018.

22 We therefore respectfully request that this
23 Commission find good cause to modify the 1991
24 Decision and Order to replace Phase III from the
25 docket and from the Incremental Districting order by

1 granting this particular Motion.

2 At this time I would like call our first
3 witness in support of the Motion, Ms. LeeAnn Crabbe,
4 to the stand.

5 CHAIRPERSON ACZON: Can I swear you in?

6 Do you affirm that the testimony that
7 you're about to give is the truth?

8 THE WITNESS: Yes.

9 LEEANN CRABBE

10 Was called to the stand by and on behalf of the
11 Petitioner, was sworn to tell the truth, was examined
12 and testified as follows:

13 DIRECT EXAMINATION

14 CHAIRPERSON ACZON: State your name and
15 address for the record, and please proceed.

16 THE WITNESS: LeeAnn Crabbe, 1100 Alakea
17 Street, Honolulu, Hawaii 9681.

18 BY MR. KUDO:

19 Q Would you provide your present title or
20 position with Queen Lili'uokalani Trust?

21 A Vice President.

22 Q How long have you been employed at the
23 Trust?

24 A This year will be 14 years.

25 Q Could you briefly describe your duties and

1 responsibilities at the Trust?

2 A I'm responsible for planning and
3 development of Trust real estate, and I also have
4 kuleana for management of all Trust real property
5 throughout the State of Hawaii.

6 Q Would you briefly describe the Trust
7 creation and its history?

8 A What we provided in the PowerPoint is a
9 brief excerpt from the Queen's Deed of Trust. This
10 is the last page of her Deed of Trust that was signed
11 in 1909.

12 As Mr. Kudo mentioned earlier, we are a
13 private operating foundation, meaning we are not
14 grant making, we operate our own programs. So we
15 cannot ratchet down our spending in any one given
16 year, because we have beneficiaries and people that
17 depend on our services on an annualized.

18 And the IRS also does not allow us to do
19 that. We have spending requirements to maintain our
20 nonprofit operating foundation status with the IRS,
21 so we have some funding obligation for charitable
22 purpose on an annualized basis.

23 The Queen signed her Deed of Trust in 1909
24 when she was still alive, so unlike the other ali'i
25 trust in the state, we are not governed from the

1 grave, as I like to say, the others were created upon
2 the death of the grantor.

3 As mentioned, as you can see on the screen,
4 all of the property of the Trust Estate is to be used
5 for the benefit of orphan and destitute children of
6 Hawaiian ancestry.

7 These lands in our Trust supported the
8 Queen until her death in 1917. The Queen actively
9 managed these properties until her death.

10 Q Would you elaborate on what the Trust
11 mission is today?

12 A We provide services throughout the State of
13 Hawaii. Orphan and destitute children. We served
14 approximately 12,000 orphan and destitute children in
15 2015 through direct services, direct social services.
16 We applied social workers and community builders
17 throughout the State.

18 We also served thousands more through our
19 community building efforts and those are frequently
20 done in collaboration with other community partners
21 or organizations, non-profits like us.

22 Q Would you give us some examples of these
23 community programs and services?

24 A Here's our motto of why exist. Our motto
25 is: Healthy children, strong families, caring

1 communities. We provide grief counseling, individual
2 life services, casework and financial assistance to
3 assure that basic needs are met, group services,
4 grief counseling for grandparents that are now
5 raising grandchildren; and building capacity in
6 neighborhoods that have the high concentration of
7 Native Hawaiians in them, build social capacity in
8 Native Hawaiian neighborhoods.

9 A big push for us is making sure that
10 Native Hawaiian children have at least one caring and
11 nurturing adult in their lives, which may or may not
12 be a birth or family member, but making sure there is
13 that one adult they can depend on.

14 Also provide strong support system
15 throughout the community, again, building that social
16 capacity within Hawaiian neighborhoods.

17 Here is a slide showing all of our are
18 children centers of the State of Hawaii. We have
19 centers on all of the major Hawaiian islands and
20 satellite offices as well. Obviously for outreach
21 reasons we're not on Kaho'olawe and Ni'ihau, although
22 we do service Ni'ihau.

23 And, again, as I mentioned last year we
24 serviced directly over 12,000 orphan and destitute
25 children of Native Hawaiian ancestry and thousands

1 more through our community building efforts.

2 This chart that are we're showing here
3 shows the number of beneficiaries that were served
4 over the last ten years. As you can see, the number
5 of beneficiaries we served over the last ten years
6 has grown.

7 Spending on charitable purpose has grown
8 correspondingly as well. And as you might know, in
9 those areas when we had troubling economic times,
10 such as 2008 and 2009, more beneficiaries served
11 typically on the destitute side through our financial
12 assistance programs, again, for basic needs.

13 One thing we would like to note is the
14 needs of our Native Hawaiian children are growing
15 unfortunately, and for us that's not okay. We are
16 perpetual Trust. The IRS has asked us: What would
17 you do with the assets if the Trust were shut down?
18 It's a typical IRS question.

19 We would love to be put out of business and
20 have reason to answer that question, what would these
21 Trust assets do if there were no longer any more
22 orphan or destitute children anywhere on this planet.

23 Unfortunately, that's not reality for us in
24 the foreseeable future, which is why we need to
25 exist, to provide services because sometimes the

1 State cannot or will not provide service.

2 Native Hawaiians lag in all of the typical
3 areas: Education, health, housing and employment.

4 Some statistics: Over 17 percent of school
5 age Native Hawaiian children live in poverty level.
6 And of those missing a parent about 27 percent in
7 single-parent households live in poverty.

8 So for us it's important to increase the
9 level of services that we are able to provide to
10 Native Hawaiian opio and their families.

11 We sometimes describes ourselves as a
12 nongovernmental organization, NGO. Again, providing
13 services or supplementing services that governmental
14 agencies may or may not provide.

15 One example we would give: There was a
16 situation where we had orphaned one children in
17 California, languishing in that state system, where
18 our state CPS would not step in. And our agency
19 stepped in to bring those kids home. They actually
20 live up in Kohala with their grandmother to be
21 reunified with family, grandparent that would keep
22 all five children together.

23 So the grandma, the oldest was Kohala High
24 School, youngest was four years old in preschool.
25 It's quite a strain on a 64-year-old woman, but it

1 was something our agency felt was real important to
2 do for the Native Hawaiian children and help the
3 family.

4 We support these programs through our land
5 base. Hard to see in this light, but we are a small
6 Trust. We have just 6300 acres statewide on only two
7 islands, Oahu and Hawaii Island, and I would compare
8 that to my former employer, the Kamehameha Schools
9 owns over 360,000 acres statewide. So.

10 6300 acres is all we have, and it has to
11 pay all of our bills. On Oahu we have 48 acres, 16
12 acres in Waikiki generate over 70 percent of real
13 estate revenue.

14 So it's a scary place to be. Again,
15 because we are a private operating foundation to be
16 so heavily dependent on one geographic area, Waikiki,
17 and one sector of the economy being tourism.

18 Keahuolu, the 3400 acres we have here in
19 Kona, really presents the only meaningful opportunity
20 we have for growth of our income base over the next
21 several generations.

22 Q Ms. Crabbe, are you familiar with the Trust
23 lands in the ahupua'a of Keahuolu?

24 A I am. As I mentioned, as you can see, we
25 have 3400 acres here in Keahuolu.

1 Q How far did the Trust come to own the
2 Keahuolu lands?

3 A The Queen inherited these lands from her
4 mother Analea Keohokalole.

5 Q How does the development of these lands tie
6 into the Trust mission?

7 A Increased revenues to support our
8 charitable purpose, an expanding reach of those
9 programs and services. Our fiduciary responsibility
10 really is to diversify our asset base. It's just a
11 prudent investor thing not to have your eggs so
12 heavily rated in one basket.

13 And as many of our ali'i trust, we were
14 land rich, cash poor. We had to diversify our
15 portfolio. So we are invested in marketable
16 securities and some private investments that provide
17 that hedge, a defensive hedge against different
18 staggers in the economy.

19 Q Could you briefly describe to us the
20 development history of the Keahuolu lands?

21 A We have got a graphic here, a similar map
22 that Mr. Kudo had up earlier. He mentioned in the
23 1940's the state -- well, the territory at that time,
24 condemned part of our land for development of the Old
25 Kona Airport, which is now in use as the county's

1 Kailua Park. Then in the 1960's we developed the Old
2 Industrial Area, which is B, and as we mentioned,
3 that's basically the small business incubator for
4 Kailua-Kona.

5 Then in the 1970's, we started a camping
6 program along our shoreline just north of the Old
7 Airport Park, and that's noted as C on the map. We
8 operate three camp sites along the shoreline.

9 Also in the 1970's we developed some
10 commercial properties along Palani Road, a couple of
11 shopping centers. We have a office building there,
12 Palani Court.

13 And E, our Kona Unit, which is in the
14 subject Phase III, our Kona Unit was built in 1981
15 where we provide services to all of West Hawaii from
16 Kohala to Ka'u.

17 And the Business Center, F, Business Center
18 which was done in 2000, thereabouts. And that was
19 envisioned as an expansion area for the Old
20 Industrial Area. It's now morphing into a very mixed
21 use type of district.

22 And then in the 2008 we actually opened the
23 first Petco in the State of Hawaii at Kona Commons,
24 with Kona Commons and the Target store. We were
25 second Target store in the state.

1 Moving mauka of Queen Ka'ahumanu Highway.
2 And it's not shown on this particular aerial photo,
3 but farther up Palani Road is the Queen Lili'uokalani
4 Village residential development. And our
5 understanding that was on the condition of the Old
6 Industrial Area, sort of a workforce housing where
7 people working in the industrial area live, Queen
8 Lili'uokalani Village.

9 And then in the 1990's in Urban Phase I,
10 the Makalapua Shopping Center was constructed with
11 Kmart, then Liberty House and Hollywood Theatres.
12 They're all still there no known as -- still Kmart,
13 still alive and kicking for a little bit more.
14 Hollywood Cinema is now Regal Theatres, Liberty House
15 is now Macy's store.

16 In 2013 we opened the Kepo'okalani
17 Interpretive Center. That was part of our mitigation
18 efforts for the Ane Keohokalole Highway.

19 And I'll address some future development
20 that will take place here. Of note, some of the
21 historic or post contact took uses that took place on
22 our properties, up along Ane Keohokalole Highway
23 there was a quarry that was in operation back in the
24 1970's and that village reopened for construction of
25 Ane Keohokalole Highway. And we believe that was

1 done for base course material for Queen Ka'ahumanu
2 Highway in the 1970's.

3 At turn of the century about the 1890's to
4 1924 there was the sisal factory in operation along
5 Palani Road, and a lot of sisal plants up there along
6 Palani Road are still there near the Queen
7 Lili'uokalani Village.

8 Q Are familiar with the land plan that was
9 presented to this Commission in 1990?

10 A Yes.

11 Q Would you describe the project and the
12 three phases of development that were originally
13 planned?

14 A So in the late '80's early '90's the Trust
15 was still so under the institutional management of
16 First Hawaiian Bank. So the land plan that they
17 devised contemplated 100 percent large scale
18 commercial uses. So it was designated in phases as
19 an urban activity area.

20 A centralized business plaza was
21 contemplated, as well as a regional shopping center
22 or regional hospital. Governmental facilities and
23 some civic facilities such as an auditorium. There
24 was no residential uses, as Mr. Kudo mentioned,
25 contemplated in that original plan.

1 Phase I, the 315 acres, included a regional
2 shopping center. We started a little bit of that
3 with the Makalapua Shopping Center. Portions of the
4 mid-level road which have been constructed and is now
5 known as Ane Keohokalole Highway.

6 Also a mauka-makai road past that regional
7 shopping center and a part of that has been
8 constructed. It's known as Makalapua Park. And a
9 regional hospital and civic plaza was planned as part
10 of that Phase I development.

11 Phase II was an in urban expansion area
12 that was to have been developed to be, I guess,
13 simpatico with the State's Kealakehe development,
14 what the State had contemplated in the adjacent
15 ahupua'a of Kealakehe.

16 And then our Phase III area makai of Queen
17 Ka'ahumanu Highway was further urban expansion of the
18 larger plan. It was anticipated that Phases I and II
19 would be done in a ten-year period, and that some of
20 the for Phase III would begin in that ten-year
21 period. All three phases were expected to be
22 completed in 20 years. And total off-site costs were
23 projected at that time at \$130 million in 1990
24 constant dollars. And again it was a 20-year plan.

25 The D and O included requirements on

1 certain backbone infrastructure improvements.

2 Have these been completed?

3 A Yes.

4 Q Are you familiar with the Petition that the
5 Trust filed for the project in the Land Use
6 Commission in 1989, and the LUC 1991 Decision and
7 Order of the Petition?

8 A Yes.

9 Q Under the 1991 Decision and Order, how are
10 the lands in Phase I, II and III reclassified?

11 A So, again, Urban I and II mauka of Queen
12 Ka'ahumanu Highway were redistricted from
13 Agricultural and Conservation Districts Into Urban,
14 and Phase III was incrementally reclassified from
15 Agriculture to Urban when we had showed the
16 Petitioner, meaning us, the Trust had shown
17 significant progress on Phases I and II.

18 So my understanding, as a lay person, of
19 Incremental Redistricting is showing that kind of
20 substantial completion before we could come in for
21 reclassification to Urban.

22 Q Did the 1991 Decision and Order also hold
23 certain conditions?

24 A Yes.

25 Q Can you describe some of these conditions?

1 A Some of the example were, again, we had
2 planned a large business-serving hotel, one of the
3 conditions was the creation of one non-tourism
4 related job for every hotel room that we were allowed
5 to build.

6 We are adjacent to the Kealakehe Landfill,
7 the Old Kona Town landfill here, kind of that big
8 mound. And believe it or not they have cows grazing
9 on this landfill, which is a little disturbing,
10 because there are fires burning underground.

11 So there's some gasses and fumes that are
12 coming out that landfill. You can't see it, but I
13 think there about ten or so fires burning
14 underground. Because we've got lava-tube systems
15 that are feeding oxygen to these fires.

16 But one of the conditions of approval from
17 the 1991 D and O was that we have a no-build area,
18 you can't see it, but it's 1300 feet around that
19 landfill. It's a pretty significant chunk of land.
20 So no-build within 1300 feet of that landfill.

21 And then the last -- there were several
22 conditions, but the other was that infrastructure,
23 because this was a phased project that infrastructure
24 would be brought on appropriate with the phasing,
25 water, wastewater and transportation.

1 Q Can you describe to the Commission members
2 what the current status of Phase I and II are?

3 A So in Phase I we have constructed the
4 Makalapua Shopping Center, about 25 acres. Again,
5 that's Kmart, Regal Cinemas and Macy's. We are just
6 about close to completing our deal with the State of
7 Hawaii for the Kona Judiciary Complex, which will be
8 on ten acres just north of Kmart along Makala
9 Boulevard.

10 That project has been already gone out to
11 bid. Bids were opened in January, and we do hope
12 construction will begin on that Kona Judiciary
13 Complex later this year. It will be great for Kona,
14 it's 140,000 square feet of what we consider major
15 office use. Closer in. Brings our family court
16 system into a much safer area.

17 Let's see. 2013, as we mentioned, we
18 brought in Kepo'okalani Interpretive Center. And as
19 mentioned in our annual reports to the LUC in terms
20 of infrastructure, in order to get Makalapua Shopping
21 Center off of the ground, we did have to provide
22 water source for that. So in 1996 we dedicated the
23 Keahuolu Well No. 1, a reservoir and transmission
24 system to County of Hawaii, Department of Water
25 Supply. In 2010 we entered into a water use

1 development agreement with the County Water Supply as
2 well.

3 Another condition of our approval as we
4 noted is a connection of all of the facilities in
5 urban Phase I and II to the County Wastewater System,
6 that has been completed.

7 And in 2003, in conjunction with widening
8 of Queen Ka'ahumanu Highway, Department of
9 Transportation, State Department of Transportation
10 sent us a letter noting that we had met Condition 8
11 of the 1991 D and O in regard to state transportation
12 requirements.

13 Q Please explain to us why Phases I and II
14 were not substantially completed although the
15 backbone infrastructure has been completed.

16 A The real estate market slowed. No one, I
17 think, could have imagined the Japanese bubble
18 bursting, and then the great recess of 2008. And
19 we've got significant flow mauka of Queen Ka'ahumanu
20 Highway. That's really where Hualalai starts rising.
21 So we have got some topographic challenges there.

22 So changing market demands, I think, from
23 large scale commercial users. As an example, Costco
24 is just to the north of Koloko -- Costco would not do
25 a leasehold deal. They wanted fee simple. At that

1 point we wouldn't do a fee simple deal with a large
2 user like COSTCO.

3 So changing demands, and just, again, one
4 single use large scale commercial, it just didn't
5 work with the market conditions in Kona. The Concord
6 Group market analysis, which we have submitted in one
7 of our -- I think in supplemental number two, shows
8 that we did overestimate the demand for commercial
9 and the tourism product.

10 And Tim Cornwell from the Concord Group can
11 explain that in better detail than I can.

12 We have had several Large scale commercial
13 users that have looked at our property, but the on
14 and off-site cost, again, because the slow and
15 topographic conditions really precluded any kind of
16 meaningful deal from happening.

17 Macy's, just to give an example, we are in
18 active discussions with them to move them makai to
19 the Makalapua project district development where they
20 will have better visibility from Queen Ka'ahumanu
21 Highway, and the topography better suits that kind of
22 large scale user.

23 Example, the Target had 160,000 square feet
24 under roof. That was a lot of concrete to pour, and
25 a lot of boulder ripping to make that plat of pad

1 happen. It was very difficult to do with the slope
2 we've got mauka of Queen Ka'ahumanu. Which is where
3 Phases I and II are.

4 And ultimately being closer to Kailua
5 Village makes a huge difference for these commercial
6 users. The tourist trade coming off Kailua Pier from
7 the cruise ships, and the hotels that are down along
8 Ali'i Drive as well make a large difference in the
9 capture of the tourist market, especially for retail
10 users.

11 Q Can you tell us what efforts the Trust made
12 to develop Phase I and II?

13 A As I mentioned, we had several discussions
14 with large scale commercial users, and it wouldn't be
15 appropriate to name names, but those all fell
16 through. And we didn't run through the on and
17 off-site development costs for those deals.

18 Q Turning our attention to Phase III of the
19 project, which is located makai of the highway, could
20 you describe to us what the current status of that
21 is?

22 A Phase III, again, is subject to the
23 incremental redistricting. Our new master plan will
24 include those lands, because we are contemplating
25 really essentially different uses than the 1990 plan

1 did by including residential. And we're also looking
2 at a different phasing plans.

3 So the linear phasing of going from Phases
4 1, II and then III, from a market absorption
5 standpoint would be arguably very difficult to
6 accomplish, because you're selling basically just one
7 kind of product at a time.

8 So we're looking at different phasing where
9 we could possibly be selling product in our mauka
10 lands and our makai lands at the same time. It gives
11 us a lot quicker absorption, because we're selling to
12 different markets. So uses in phasing will change in
13 the new plan.

14 The only activity that happened in that
15 urban Phase III area was development of our children
16 center in 1981.

17 Q Now, did the Trust decide to revise the old
18 plans?

19 A Yes. When we first in 2002 when First
20 Hawaiian Bank stepped down as institutional active
21 manager and institutional trustee of our Trust, we
22 became at that point an independently managed Native
23 Hawaiian Trust. All three of our trustees today are
24 Native Hawaiian.

25 We reevaluated everything we had, and truth

1 be told, our investment portfolio had taken a very
2 large hit in 2000 and 2001 with the dot com bubble
3 burst, all of these bubbles bursting, in a period of
4 very important growth for the Trust.

5 So we did reevaluate the plans at that time
6 and realized that again, because of topography, the
7 mauka lands, that Urban Phases I and II were better
8 suited for smaller footprint uses, maybe such as
9 residential development, but certainly not
10 singularly -- as a single purpose large scope
11 commercial uses.

12 Q Why did the Trust decide to revise the
13 project plans?

14 A When we looked at the topo, we looked at
15 the market challenges, we did look over the files
16 from First Hawaiian Bank, and the kinds of discussion
17 we had with potential tenants, we realized it really
18 wasn't market -- it wasn't a feasible deal any more,
19 just 100 percent commercial on urban Phases I and II.

20 Q Would you provide us with a brief overview
21 of the Trust revised plans?

22 A The revised plan contemplates two separate
23 projects. And you'll hear maybe some of these
24 acronyms rather than give you the full names. We
25 have two Makalapua Project District development, the

1 MPD development, and the Keahuolu land plan, the
2 larger land plan for 1350 acres.

3 So this is a diagram showing the Makalapua
4 Project District development, about 70 acres. 55 of
5 those acres do have current entitlements. This is
6 the area essentially mauka of the Old Airport Park
7 and makai of Kona Commons. So a lot of -- the locals
8 refer to it as the Kona Commons expansion area.

9 About just under 15 of those acres is
10 crosshatched in that diagram are in the Phase III
11 area right now. We are looking at a dense compact
12 mix use development that is called for in the Kona
13 Community Development Plan that was adopted in 2008.

14 We are basically just north of Kailua
15 Village, and Kailua Village has nowhere to grow other
16 than north toward our land, so it's a great
17 opportunity. A community already exists here. What
18 we are able to provide this community is a way to
19 planfully grow.

20 We are in a corridor, that the Kona CDP
21 designates as a growth opportunity area or regional
22 commercial center. There are four of these large
23 regional commercial centers identified in the Kona
24 CDP. Ours is one. Kailua Village just adjacent to
25 us and there two others in North and South Kona.

1 -- this is an opportunity to organize and
2 intensify new development both in form and function,
3 kind of that new urbanism. And it's really a way to
4 avoid the urban sprawl that we've been seeing
5 along our coast, kind of leapfrog-development that
6 has been taking place along Queen Ka'ahumanu Highway.

7 Infrastructure already exists here. It's
8 good, smart development for Kona. This is envisioned
9 as a mixed use, walkable, multi-modal village, that
10 will provide needed housing, and economic growth for
11 West Hawaii which is one of our fastest growing
12 communities in the State of Hawaii.

13 We're planning a diverse range of uses in
14 close proximity to each other. So right we're
15 looking at residential, hotel, retail expansion, some
16 office use, there's not a lot -- very deep market for
17 office in Kona, but there is some office demand. And
18 some other civic and community uses.

19 So, again, it's an interconnected
20 pedestrian multi-modal street network where we're
21 intermingling homes, buses, entertainment all in one
22 district.

23 This project is going to require a Chapter
24 343 environmental document. We're going to be
25 requesting a less than 15-acre district boundary

1 amendment at the county level.

2 Although, again, we do have existing
3 entitlements on the 55 acres, we will be seeking a
4 zone change at the county level to the project
5 district.

6 Our current zoning does not allow hotel or
7 residential uses. We'll need Special Management Area
8 Permit at the county level again, everything makai of
9 Queen Ka'ahumanu Highway is Special Management Area.

10 We are looking at obtaining those county
11 entitlements, if all goes well, by the end of 2017.
12 We think at the very earliest, and this project would
13 be developed in phases over a 15-year timeline.

14 Q Can you explain the significance of how
15 this MPD development relates to the Motion before us?

16 A We need the release of the Phase III lands
17 from the incremental redistricting so we can take
18 that less than 15-acre portion to include in this
19 Makalapua Project District Development.

20 We basically need that additional acreage,
21 we need the 70 acres in total to provide the right
22 kinds of co-tenancies and to get that interconnected
23 multi-modal street network to make this a financially
24 viable project.

25 As I mentioned earlier, Macy's, we are in

1 very active discussions with them. I've been in
2 Cincinnati a couple of times to bring them makai into
3 this district. It would double the size of their
4 storm from 50,000 to 103,000 square feet.

5 But to get the right kinds of co-tenancies
6 to make this the right kind of vital retail district
7 that the Kona CDP contemplates, we need the acreage,
8 number one, to park it, although we are trying to get
9 people out of automobiles, but, again, to get the
10 trails and that kind of street network going, and to
11 get the right developer interest to bring the
12 residential component in as well.

13 So I guess -- shall I move on?

14 Q Yes.

15 A So, again, we're working on two projects,
16 the Makalapua Project District Development, which we
17 discussed. This is our larger Keahuolu Land Plan.

18 Basically Urban Phase III, the subject of
19 our Motion today, gets divvied up between these two
20 projects. So less than 15 acres would go to MPD
21 development, and remainder of that Phase III area
22 would go into this Keahuolu Land Plan.

23 This Land Plan takes the lands under Phases
24 I and II mauka of Queen Ka'ahumanu Highway, the
25 remainder of Urban Phase III, and another district

1 here, about 600 acres that are currently in State
2 Conservation District would be included in this new
3 Keahuolu Land Plan. So about 1350 acres.

4 Our vision for this is to create a
5 community that nurtures healthy families; is
6 economically resilient, culturally vibrant; connected
7 to aina, because we are a Native Hawaiian Trust.

8 For us we cannot always live in the past,
9 but we've got to be grounded by history and prepared
10 for our future. That's what this plan is about for
11 our Trust.

12 It's a mixed-use community. Again, no sole
13 purpose, that singular purpose zoning. We're looking
14 at about 6500 residential units, including
15 multi-family and single-family, but it's skewed more
16 towards the multi-family side.

17 An additional 1.3 million square feet of
18 commercial uses. We have about 1.3 million square
19 feet on our campus today, with the existing
20 development that I described earlier. And other
21 civic and community uses, such as schools and
22 recreation centers and the like.

23 We're showing 30 percent as dedicated open
24 space, not all of it conditioned. We love lava.
25 It's a great big black sponge. It takes care of a

1 lot of our stormwater events. But it will include
2 trails, walking paths, and some of it will be
3 conditioned for parks and play spaces.

4 And we've got that worked into all of
5 our -- we've got a series of interconnected
6 neighborhoods. It's hard to see, but those dashed
7 lines are basically all of our little neighborhoods,
8 or little ped sheds, or pedestrian sheds where we
9 have services within each of those neighborhoods, so
10 you would never really have to get into a car to
11 leave to get services or play gates or just to throw
12 a ball around with your child.

13 But within the open space areas, we are
14 showing an thousand foot setback along our shoreline.
15 It's a very rugged treacherous shoreline. You've got
16 Class A waters. A lot of very significant
17 archaeological and cultural sites. We have done all
18 of our archaeological inventory surveys.

19 Our staff has worked this property. We
20 felt one staff member, Mike Ikeda, who's been on the
21 property over 40 years and has been probably in every
22 lava tube we have.

23 So we know where our special sites are. We
24 are going to keep all of those in open space. Those
25 are preserved for generations to come. And the

1 shoreline, the 1000 foot setback is a no-build area
2 except for program use. So it's for our kids, where
3 our kids can be Hawaiian.

4 And we would like to embrace our residents
5 as well. The more we educate, the more others can
6 help us protect what we have, to protect and
7 celebrate what we have.

8 When this plan is final, we will file a new
9 district -- well, we'll actually come back to ask
10 that our 1991 Decision and Order for Urban Phases I
11 and II be reopened, because, again, we still want
12 commercial uses up there, but we would like to add
13 residential uses as well. And we'll file a new
14 petition for the remainder of the Urban Phase III
15 land, and this other Conservation District parcel.

16 This is also going to require a Chapter 343
17 environmental document, a State Land Use District
18 Boundary Amendment with your body.

19 We'll need county entitlements such as
20 zoning, although we do have zoning on Phase I now,
21 it's zoned commercial. And we'll need a Special
22 Management Area Use Permit for any of our lands makai
23 of Queen Ka'ahumanu Highway.

24 So following approval of this particular
25 Motion, the new petition for this Keahuolu Land Plan

1 would be submitted no later than 2018, or I will
2 probably be hung by one of my bosses.

3 Q Turning to the MPD development, when does
4 the Trust expect to finalize the plans for the MPD
5 development?

6 A The MPD will be, if the Motion is approved
7 this week, we would start that process immediately
8 with the county. We've just finally refined those
9 plans for the MPD. And at one point we had thought
10 we could process both of the projects concurrently at
11 state and county levels, but unfortunately -- or
12 discussions with different governmental agencies are
13 taking longer than we had anticipated for this larger
14 Keahuolu Land Plan, which is why that will come in a
15 little bit later than the Makalapua Project District.

16 Q Why is it important that the Trust to
17 develop and place the MPD project on the market ahead
18 of the KLP project?

19 A The MPD development is an opportunity.
20 We've got significant retail and hotel interest in
21 getting something going down there. It's, again, a
22 mixed-use project that comports with the county's
23 plans for this area in terms of it's consistent with
24 the Kona Community Development Plan.

25 And we have seen a lot of growth in this

1 area, especially with opening of the Kona Common
2 Project in 2008. The Target store and some other
3 things that are happening down in the Village.

4 The MPD development has the support of the
5 county. We have been working closely with the County
6 Department of Parks and Recreation, the Kailua Park
7 Master Plan in making that happen, the first phase of
8 that happened. The tarmac is still down there from
9 the Old Airport. We've been working on roadway
10 connections and better entries and exits, especially
11 for our tsunami events from the Old Airport Park. So
12 it will enable development of infrastructure, such as
13 roads and water and sewer to Old Airport Park.

14 And it's a major step toward establishing
15 that regional commercial center contemplated in the
16 Kona CDP.

17 CHAIRPERSON ACZON: How long will this be?

18 MR. KUDO: About 10, 15 minutes.

19 CHAIRPERSON ACZON: I would be like to take
20 a short break, but go ahead.

21 Q (By Mr. Kudo): How will the Trust address
22 any potential concerns about the release of the
23 conditions that are presently on the Phase III
24 property as a result of the 1991 decision? How will
25 you address that?

1 A We are willing to carryover any applicable
2 conditions from the 1991 D and O to any new actions.

3 Q What are the Trust plans for the remaining
4 Phase III lands?

5 A They will be included in the Keahuolu Land
6 Plan.

7 Q What would happen if the LUC were to deny
8 this Petition?

9 A Well, we wouldn't be able to move forward
10 with either the MPD development or the Keahuolu Land
11 Plan. We would have to evaluate how we would best
12 move forward to facilitate the MPD development.

13 Because, again, we have immediate
14 opportunities there to realize some of the hopes and
15 answer dreams of the Kona CDP and our Trust as well.

16 The Phase III, release of the Phase III
17 lands should be included, a portion to be included in
18 the Makalapua Project District Development. Again,
19 it's needed in order to attract the kinds of tenants,
20 the co-tenancies and the development partners we need
21 to make this project financially viable.

22 We know from experience at Makalapua
23 Shopping Center, our standalone Macy's, basically our
24 standalone Macy's without parking all around, just
25 doesn't work. You need co-tenancies to get a vibrant

1 retail district going. And I think many of us that
2 travel understand that, the places we like to shop.

3 So without the additional 14 acres from
4 Urban Phase III, we don't know that we could really
5 attract the kind of development interest we need to
6 make the MPD development financially viable.

7 Q Has the Trust been conferring with the
8 County of Hawaii regarding the revised plans,
9 particularly for the MPD development?

10 A Yes, we have.

11 Q What other government agencies has the
12 Trust conferred with about these revised plans?

13 A We continue to meet -- we're kind of
14 past -- we're with many different governmental
15 agencies. So at the state level, Department of
16 Transportation, Department of Education, Department
17 of Land and Natural Resources, Office of Planning.

18 At the county level, Planning Department,
19 monthly or more frequently; Department of Public
20 Works as frequently as that; Environmental
21 Management, Parks and Recreation, mass transit,
22 police and fire.

23 Q Has the Trust begun work for the drafting
24 of an EIS Prep Notice for the Keahuolu Land Plan?

25 A Yes, we have begun an internal Draft of an

1 EIS Preparation Notice.

2 Q Now, in conclusion, how does the Keahuolu
3 Land plan and the MPD development tie into the Trust
4 mission?

5 A These are ancestral lands. They were
6 inherited -- the Trust inherited these lands from our
7 Queen, and she inherited the lands from her mother,
8 Analea Keohokalole.

9 Unlike most developers, we can take a very
10 long term view, and we realize how fortunate we are.
11 So we are putting a lot of investments into public
12 realms and place to make this a special place. We're
13 doing shoreline development. So this is kind of what
14 we're contemplating, this development 2.0, different
15 from what we are seeing north on the coast.

16 So we're really taking an intergenerational
17 view, long-term value for generations to come. We
18 don't need double digit IRR in our initial years.
19 We're making a big investment for big return for
20 future generations, for kids yet to be born. So
21 future asset managers are sitting on an asset that's
22 generating a lot of revenue for charitable purpose.

23 The needs of Hawaiian children are not
24 going down, they're actually increasing, which is a
25 sad statistic for us, and something we don't take

1 lightly.

2 We've looked at the billions of dollars
3 that have been spent on Hawaiian programs. We are
4 not better as a people, so you'll be seeing some
5 changes.

6 We've already reorganized on the charitable
7 side. We're making some big plays on how we start
8 addressing poverty for Native Hawaiian family.

9 But that takes funds and resources. We
10 don't charge any fees to any of our beneficiary
11 children or their family for the services we provide.
12 So we have got to generate more money for our
13 families and our programs.

14 And we've also got to fund -- as many of us
15 know, entitlements don't come cheap. So we have got
16 to fund future entitlement efforts to make these
17 lands profitable or leasable for our are charitable
18 purpose, because our Queen didn't ask that these be
19 left as open space. These lands need to feed our
20 families for generations to come.

21 That may sound somewhat trite, but again,
22 this is all we've got. We don't have a lot of land
23 in the state. So this is our leadership example of
24 how Hawaiians do responsible land development in this
25 state. So we're looking at an evolutionary flexible

1 framework. We've got to be flexible with the market
2 demand, not inflexible. Again, looking back at some
3 of the mistakes we made with one singular purpose, or
4 one singular use in our commercial development.

5 So we are going to need some flexibility on
6 phasing when we come back to you with this land plan.

7 Long-term view, we are not -- we don't have
8 a large carrier on this land other than real property
9 tax and opportunity cost.

10 So what I would like to leave you with is
11 one of the gems that came out of our Community
12 Advisory Group. We like to say we are not investor
13 driven, but beneficiary driven. That's the way we
14 operate, that's the way we plan, and that's the way
15 this development takes place.

16 MR. KUDO: This concludes the direct
17 testimony of Ms. LeeAnn Crabbe.

18 CHAIRPERSON ACZON: Before Ms. Crabbe takes
19 some questions from the parties and Commissioners, I
20 want to take a five minute recess.

21 (Recess taken.)

22 CHAIRPERSON ACZON: We're back on the
23 record.

24 Are there any questions for Ms. Crabbe?

25 MS. SELF: The county has no questions.

CHAIRPERSON ACZON: Mr. Yee?

CROSS-EXAMINATION

BY MR. YEE:

Q Let me focus for the moment on the MPD?

You testified you consulted with Department of Transportation, Department of Education and Department of Land and Natural Resources; is that correct?

A That is correct for the overall Keahuolu plan.

Q Who have you consulted with -- will you consult with the Department of Transportation; the Department of Education? I will add the Department of Defense; Department of Land and Natural Resources; and Department of Health prior to reclassification of the 14.96 acres in the MPD?

A Yes, we are happy to do that. We met with Department of Transportation just a couple of weeks ago, and we did present the MPD development to them at that last meeting. So fairly recent. But we are willing to consult with all of those state agencies.

Q And I was wondering, in any of the documents that were submitted, is there a map detailing the intersections that are discussed in the Department of Transportation's letter?

1 A Well, this map that we have up right now
2 does show the intersections, in terms of the -- the
3 intersections of Queen Ka'ahumanu or -- these are the
4 major backbone roads (indicating). There's obviously
5 a much wider roadway schedule.

6 Q Could you point to -- where is the
7 Manawalea Boulevard connected to Queen Ka'ahumanu
8 Highway?

9 A Right there and up there (indicating).

10 Q Where would the intersection by Hale Maka'i
11 Street and Makala Boulevard?

12 A This is the current signalized intersection
13 at Hale Maka'i, so this signalized intersection gets
14 you mauka to the police station and mauka to the
15 wastewater treatment plant.

16 So we are proposing that this signal be
17 relocated to Manawalea intersection. And over here
18 is Makala Boulevard, which is our major mauka-makai
19 street, connects Kuakini up to Ane Keohokalole.

20 And then our last signalized intersection
21 along Queen Ka'ahumanu is at Palani Road.

22 Q There's a reference to a Road A. Do you
23 know where that is?

24 A It's right here (indicating).

25 Q How does that work into this question of

1 where the intersection should go, the signalization
2 should go?

3 A Well, we had proposed, again, for the
4 overall Keahuolu Land Plan, that Road A, B,
5 potentially we could study it in our TIAR as an
6 signalized intersection; and Department of
7 Transportation has asked that we just consider that
8 right-in/right-out.

9 Should the discussions take us to a place
10 where the signal is not relocated from Hale Maka'i to
11 Manawalea we would request that DOT -- and that is
12 part of our ongoing discussion -- really look at that
13 Road A signalization. So it's part of the continuing
14 discussion with DOT.

15 Q And do I understand then that you will be
16 preparing a Traffic Impact Analysis Report as part of
17 your MPD application?

18 A Yes, it's underway.

19 Q Would you agree to provide a copy --
20 actually ask for a hard copy and one electronic copy
21 of the application after filing with the county?

22 A Absolutely.

23 Q For the record, the Office of Planning has
24 agreed that if they do so, it would constitute
25 service upon the DBED as required by statute.

1 Do you have any plans to submit any further
2 county district boundary amendments? In other words,
3 county boundary amendments for areas 15 acres or less
4 for any of these lands after the MPD 14.96 acres is
5 approved?

6 A Not a this time.

7 Q Do you have any thoughts or plans that you
8 might sequentially redistrict any parts of the
9 Keahuolu lands in a series of 15-acre county district
10 boundary amendments?

11 A No, we don't. It's a large plan that, you
12 know, there are co-dependencies within the larger
13 Keahuolu Land Plan that would preclude that.

14 Q And would you -- is it then also your
15 representation that before you then develop Phase III
16 outside of the 14.96 acres as part of the MPD, that
17 before you develop that remainder of Phase III lands,
18 you will be first coming to the Land Use Commission
19 for a petition for district boundary amendment?

20 A Yes.

21 Q So you will not be developing, say,
22 gentlemen farms on these acreages?

23 A No.

24 Q I think that's -- just to finish up.

25 Did you have an opportunity to review the

1 Office of Planning's supplemental response?

2 A I have.

3 Q Did you see our recommendation in there?

4 A I did.

5 Q Do you have any concerns or problems with
6 the compliance with those recommendation?

7 A No.

8 Q Thank you. Nothing further.

9 CHAIRPERSON ACZON: Commissioners, any
10 questions for Ms. Crabbe? Commissioner Cabral.

11 COMMISSIONER CABRAL: Since I know some of
12 these roads, I've certainly been down to the Kona
13 Park and Old Airport many, many times.

14 You're on one of these -- and I don't truly
15 understand, and maybe you don't yet know.

16 Are you looking at developing in multiple
17 locations simultaneously? You've got a lot of data
18 here.

19 Are you going to be looking, as you go
20 through the approval process, of what's permitted in
21 that? Your mix of what looks like, in terms of one
22 area, you've got 180 units, residential units mixed
23 in with 470,000 square feet of commercial, and
24 15,000 square feet of community, and hotel about 180
25 rooms.

1 Of your residential, what is your vision of
2 what that residential is going to be? Is it
3 single-family dwelling, townhouses, apartments,
4 subsidized low income or a mix?

5 I would like to just understand the
6 community vision there.

7 THE WITNESS: In the Makalapua Project
8 District Development, the 180 units, those will all
9 be multi-family, because, again, it's a dense compact
10 village that we're contemplating.

11 Right now we are looking at almost
12 100 percent rental product, but we are refining the
13 market study to determine more of the "for sale"
14 product will be in the Keahuolu Land Plan area.

15 There seems to be great demand for rental
16 product right now. And we are planning to meet
17 county requirements for 20 percent of those units
18 being affordable.

19 COMMISSIONER CABRAL: I would like to
20 comment on that, because I do a lot of housing on the
21 Hilo side, and high project on this side also.

22 I would like to encourage that there is
23 such a desire to have HUD and low-income housing, and
24 we need so much of it, but I think in these areas
25 what we really need is housing that your working

1 folks that are going to be employed in those areas
2 can, 1, afford to live in; and also can qualify to
3 live in, so you need to have a lot of, in a sense
4 sort of free market, but not above market type of
5 rental rates. So I would encourage you to look at
6 that perfect mix, whatever that might be. Thank you.

7 THE WITNESS: Thank you.

8 CHAIRPERSON ACZON: Vice Chair Scheuer.

9 VICE CHAIR SCHEUER: Aloha. So I have a
10 bunch of questions and I'll ask a couple and see if
11 anyone else wants to ask questions before I go on.

12 First of all, you mentioned in Makalapua
13 project development area, 50 acres is already
14 entitled.

15 Can you walk us through how that 50 acres
16 was entitled?

17 THE WITNESS: This was done, I believe,
18 back in the 1990's, 2000, and again, it was part of
19 100-acre project called Makalapua Business Center
20 actually, and it's zoned MCX at county level.

21 It was originally, I assume that that would
22 be an expansion of the Old Industry Industrial area.
23 So it had that MCX zoning, which allows some light
24 industrial and commercial uses but not residential.

25 It had since morphed -- we started with

1 Increment 1, which included HPM in the Kona
2 International Market Place, Increment 2 had some
3 light industrial, United Laundry, the BMW dealership,
4 and then we brought in Kona Commons.

5 Again, it's close to Kailua Village, and
6 it's flat for the most part. So it's right
7 connection down into the village, and it's much more
8 conducive to that kind of large scale use.

9 VICE CHAIR SCHEUER: When did it enter into
10 the State Land Use?

11 THE WITNESS: Off the top of my head, I
12 couldn't say.

13 MR. KUDO: I wasn't involved at that time,
14 but I was involved in 1990, but I believe they had
15 those lands were urbanized prior to 1980.

16 VICE CHAIR SCHEUER: I would be interested
17 in knowing if the -- and I apologize if I missed it.
18 I reviewed all the material and perhaps mixed it.

19 Were there any conditions placed by the
20 Land Use Commission for those 50 acres of this Common
21 65-acre MPD?

22 THE WITNESS: To be honest, I believe all
23 of those conditions have been met, because we're not
24 submitting -- the only reports we are submitting on
25 that area is to county in regards to zoning

1 conditions.

2 VICE CHAIR SCHEUER: Then I have a second
3 question, and if you want to say, commissioner,
4 please direct that to be the county, that's fine.
5 But I'm interested that having actually read the
6 Common Kona CDP, there is moves to revise it now, and
7 also change the County General Plan and the
8 relationship of the CDP to the County General Plan.

9 So some of the testimony, as well as your
10 testimony, referenced its compatibility with the
11 existing Kona CDP.

12 How does this change in the county's
13 planning process potentially affect what you're
14 trying to do both with the MPD, as well as the larger
15 plan?

16 THE WITNESS: As a lay person -- I'm not a
17 planner -- what I could say is that we are meeting
18 the spirit of the Kona CDP, and we're taking this
19 project district zoning, because, again, we want to
20 add residential and hotel uses.

21 The uses you're talking about right now,
22 Macy's does work with current zoning. So it's --
23 Kona CDP and zoning, we're okay. And I would say the
24 same on the larger land plan, when we have to come
25 back in for those entitlements.

1 VICE CHAIR SCHEUER: Thank you.

2 Just one more question for now.

3 If I understood the various submittals that
4 you've made, you're open to the idea that any of the
5 conditions, as appropriate, that apply to Phase III
6 from the 1990 or '91 actions by the Land Use
7 Commission would be applied to the 15 acres. One of
8 those condition was the condition about having a one
9 for one connection of a non-tourism related job for
10 hotel units, and you're talking about having 180, I
11 believe, hotel units in this.

12 Can you say very briefly how you're
13 planning to keep to that potential condition, since
14 that condition seems to be one that would be
15 applicable to the 15-acre change?

16 THE WITNESS: I think we have been as
17 transparent as possible.

18 And so in discussions with the county, the
19 county could impose that condition on us, and which
20 is why we would serve notice on Office of Planning
21 concurrent with filing anything with the county.

22 VICE CHAIR SCHEUER: So if I can rephrase
23 my question.

24 Assuming the parties and the Commission and
25 the county all agree that that's one of the

1 applicable conditions, do you feel that design of the
2 Makalapua Project District is going to be able to
3 satisfy that condition?

4 THE WITNESS: Absolutely.

5 VICE CHAIR SCHEUER: Because of the other
6 commercial development that's being proposed?

7 THE WITNESS: Yes.

8 VICE CHAIR SCHEUER: I'll stop for now.

9 CHAIRPERSON ACZON: Commissioner Hiranaga.

10 COMMISSIONER HIRANAGA: Good afternoon, Ms.
11 Crabbe.

12 So listening to your testimony, and I did
13 read the material, it was unclear to me. You said
14 you were unable to come to terms with COSTCO because
15 they wanted a fee simple parcel.

16 And so for clarity, does the QLT offer fee
17 simple improved urbanized lands, or is it all fee
18 sold?

19 THE WITNESS: We have done one fee simple
20 transaction, and that was the Target transaction.
21 And we did it basically to solidify our market
22 position with Kona Commons. Target was going to go
23 to another project on this coast, and we needed Kona
24 Commons to be regional retail for West Hawaii.

25 So we didn't -- we kind of grudgingly, we

1 did do one fee simple transaction, and that was with
2 Target, with some significant clawback clauses in
3 that purchase and sale agreement.

4 So we have right-of-first refusal if they
5 ever go dark to take that parcel back. But for the
6 most part, in terms of all of our representations,
7 even in our private letter of rulings of the IRS, our
8 core competency is long-term ground commercial
9 leasing.

10 COMMISSIONER HIRANAGA: Do you find that
11 endurance to meeting your absorption goals, because
12 commercial leasehold is a big minority as far as how
13 people or commercial entities want to gain ownership
14 and build-out properties because there is definitely
15 a time when the lease reverts back to the owner, be
16 it 50 years, or 100 years, the time still comes
17 along.

18 And so is that something that's written in
19 the Trust, or is that just a management philosophy?

20 THE WITNESS: It's -- we have different
21 layers of oversight. So we have the Attorney
22 General. We have the Internal Revenue Service that
23 review our Trust on an annualized basis.

24 The IRS doesn't like us selling too much
25 land. So what do have to go in for private letter

1 ruling before we do any of those kinds of
2 transactions.

3 Without any residential development, the
4 commercial development, without roof tops, it's hard
5 to build more retail because you need people to shop
6 at the store.

7 We believe the right development partners
8 that we have under the developers that we have,
9 understand that you can be very profitable doing
10 commercial leasehold, because you don't have to
11 invest a lot of cash up-front in purchasing the land.

12 And so it's just a difference of do you
13 show land on your balance sheet, or do you show just
14 a ground lease payment on your profit and loss
15 statement on an annual basis. So it's kind of how
16 you look at it from a financing standpoint.

17 So we have found some developers who
18 actually prefer commercial leasehold, those who
19 understand it.

20 COMMISSIONER HIRANAGA: One last question.

21 You mentioned that you were formerly
22 employed at Kamehameha Schools, and they, I believe,
23 have gone to more aggressive fee simple program
24 versus leasehold.

25 Were they regulated by the same

1 requirements by the IRS?

2 THE WITNESS: They have different
3 carve-outs in the IRS code than we do, because we are
4 a private operating foundation. We're not a school
5 or a university or a hospital. So we are 501 c3, but
6 the Kamehameha Schools and even Queen's Hospital,
7 Queen's health systems have different carve-outs in
8 the IRS code than we do.

9 So as an example, they are allowed to have
10 for profit subsidiaries and they are allowed to go
11 vertical, where we are not.

12 So there some nuances in the IRS code
13 between our two organizations.

14 COMMISSIONER HIRANAGA: Thank you.

15 CHAIRPERSON ACZON: Just a quick question
16 related to Vice Chair Scheuer about the conditions.

17 I understand there is 25 conditions on the
18 Decision and Order 1991. Are they still in place?

19 MR. KUDO: Yes.

20 CHAIRPERSON ACZON: So are there any of
21 those conditions going to be affected on this Motion?

22 MR. KUDO: No.

23 CHAIRPERSON ACZON: They're still going to
24 be in place?

25 MR. KUDO: Those conditions will still be

1 applicable to Phase I and II. And then Phase III
2 reverts back to agriculture, so don't need the
3 conditions any more.

4 CHAIRPERSON ACZON: Thank you. Vice Chair
5 Scheuer.

6 VICE CHAIR SCHEUER: Just a couple more
7 questions.

8 Just in your -- I realize that this is a
9 conceptual plan and we're not approving your MPD, but
10 the community use section of the MPD, can you tell us
11 a little more about what that -- the crossover into
12 Phase III. Can you expand?

13 THE WITNESS: We are pretty excited about
14 it. Again, from some of our community engagement, we
15 have been encouraged not to, as a living monument to
16 the Queen, instead of a statute, to create a music
17 hall, since the Queen was such a prolific composer.
18 And we really don't have a performing arts center
19 here in Kona. So that's what we are planning there,
20 and some other community meeting space and things of
21 that sort.

22 VICE CHAIR SCHEUER: Thank you. One last
23 question.

24 I understand and fully appreciate the
25 relationship between the MPD and the larger land plan

1 in terms of providing the financial resources.

2 Are there any other connections, planning
3 concepts or other things that connect these two
4 projects?

5 THE WITNESS: Roads and trail systems,
6 because, again, no cul-de-sacs, no loops and lolly
7 pops. It's an interconnected grid, for sure.

8 VICE CHAIR SCHEUER: So the MPD is being
9 developed in relationship to the fact, knowing that
10 you're going into this larger land plan?

11 THE WITNESS: Correct. You know, existing
12 Kailua Village, which is why, on the larger land
13 plan, although hesitate in planning other people's
14 land, but we are showing connections into state
15 property in Kealakehe as well.

16 VICE CHAIR SCHEUER: Thank you. That's it
17 for me.

18 CHAIRPERSON ACZON: Thank you, Ms. Crabbe.

19 MR. KUDO: We have one more witness who is
20 arriving at 9:00 this evening, so will be testifying
21 at 8:30 tomorrow.

22 CHAIRPERSON ACZON: Ms. Self, how long do
23 you think is your presentation?

24 MS. SELF: Well, we're really going to just
25 rely on our response already filed. We have no other

1 position.

2 CHAIRPERSON ACZON: So you're not going to
3 have any presentation?

4 MS. SELF: No.

5 CHAIRPERSON ACZON: Mr. Yee, how long do
6 you think is your presentation?

7 MR. YEE: The Office of Planning similarly
8 is relying -- will not be presenting any witnesses in
9 this case unless you for some reason had questions
10 and wanted to ask of Mr. Funakoshi. But otherwise,
11 we will be just simply reserving for final argument.

12 CHAIRPERSON ACZON: Parties, Commissioners,
13 do you have anything for this witness tomorrow,
14 burning questions that you guys want to ask him?

15 I'm trying to see if we need the witness in
16 place or we can conclude hearing today.

17 Commissioner Estes.

18 COMMISSIONER ESTES: Pardon me, but what
19 you're saying is that we don't need to hear the
20 witness tomorrow, is that what I'm hearing?

21 CHAIRPERSON ACZON: Yeah, that's correct.

22 COMMISSIONER ESTES: Okay, then I have a
23 couple of questions I want to ask somebody.

24 I have the slides or the testimony for
25 Richard Gollis. You got that? You really don't

1 need -- I just want to know what is NLW?

2 MR. KUDO: That was the name of the company
3 that did the market study Natelson Lavendar Whitney.
4 The market study feasibility study in the 1989 Docket
5 that resulted in the 1991 approval by this
6 Commission. It was a market study submitted and part
7 of the record.

8 COMMISSIONER ESTES: Then I assume what
9 we're going to get from the new Concord Group is the
10 prediction that it looks good, we can do all this,
11 so --

12 MR. KUDO: The Concord Group was asked to,
13 number one, give this Commission an idea of what has
14 happened in the economy from 1990 to date, which
15 included two major recessionary trends, and to show
16 that the Big Island in particular followed the
17 downturn in the economy both in Japan and California,
18 as distinguished from the mainland United States, for
19 two decades.

20 And then the 2008 global recession occurred
21 and everything went down.

22 They have been tasked to do a market study
23 on the MPD, but they were not going to testify on
24 that because it's still on-going. They were just
25 simply here to give you a reason as to why the

1 economy went down, and why the NLW report was
2 originally submitted to this Commission didn't
3 anticipate those downturns in the economic situation,
4 and therefore, the market, for various real estate
5 product that we were predicting in land uses didn't
6 come to fruition. And as a result --

7 COMMISSIONER ESTES: I understand that.
8 That's very clear from this. I only say that we are
9 all optimistic about where things are going, but it's
10 a crap shoot, and with the world the way it is today,
11 anything can change.

12 MR. KUDO: That's correct. I would agree
13 with you.

14 COMMISSIONER ESTES: That's all. Thank
15 you.

16 CHAIRPERSON ACZON: Commissioners, you have
17 the slides of Mr. Gollis in front of you. You guys
18 can use that. Commission -- Vice Chair Wong.

19 VICE CHAIR WONG: Because he's flying in
20 tomorrow.

21 MR. KUDO: Tonight.

22 VICE CHAIR WONG: I think it would be
23 appropriate -- I would like to hear what he says, I'm
24 going to tell you the truth, because I want to hear
25 from what he says, and if possible, if no other

1 parties have anything else to say, if we can move to
2 the other portions of the agenda. Recess this Motion
3 and move to the discussion actions if possible.

4 CHAIRPERSON ACZON: If there is a burning
5 desire by the Commissioners to hear the witness, I'm
6 to bring him in tomorrow. Therefore, I'm going to
7 recess right now and take everything --

8 VICE CHAIR SCHEUER: I'm not sure I have a
9 burning desire, Chair, but I would like to, in the
10 interest of respecting the Movant and Petitioner's
11 efforts to have a witness here, and dealing with
12 unforeseen circumstances, and since we're going to be
13 here anyway, I would like to have that chance to have
14 them -- and I also would be interested in whether
15 it's the staff or the Movant looks into it, I would
16 just like that assurance on responses to my question
17 about whether there were any conditions that still
18 remain on the 50 acres from this body, the 50 acres
19 of the 65 acres. I think that would give us a chance
20 to have an answer to that.

21 CHAIRPERSON ACZON: So since -- let me call
22 a five-minute recess.

23 (Recess was taken.)

24 CHAIRPERSON ACZON: Back on record.

25 The Commissioners are willing to continue

1 the hearing on item V and VI for tomorrow, and go to
2 item VII and VIII on the agenda.

3 Any objection to that? Can I have a
4 Motion?

5 COMMISSIONER HIRANAGA: Mr. Chair,
6 question -- from an overall question. I've not been
7 involved in a full-blown district boundary amendment,
8 but I understand that financial economic projections
9 is part of the justification for redesignating ag
10 land to urban, but from other applicants ten-year
11 absorption, 15, 20 year absorption, no one really
12 knows what is going to happen three months from now,
13 because if they did, they'd be doing something else.

14 But is that something that is an integral
15 part of a decision to revert back to ag? Why is it
16 so important to have these financial projections as
17 part of presentation, is my question. That use of
18 evidence in the future, if an applicant fails to
19 fulfill what has been represented to the LUC in order
20 to get a boundary amendment, is that used as evidence
21 for a possible reversion?

22 CHAIRPERSON ACZON: I guess we wouldn't
23 know. Mr. Orodenger, do you want to -- I'm just
24 offering having options to get this thing so we can
25 use our time properly. Mr. Kudo.

1 MR. KUDO: I believe that the reason for
2 that financial information, and again, this is not a
3 boundary amendment petition, but a Motion that arises
4 out of a previous Land Use Commission decision.

5 The reason that we put on the evidence for
6 the record is so that this Commission has evidentiary
7 basis upon which to support its decision that are put
8 into what are called Findings of Fact. Because you
9 all are finders of fact.

10 So when we put on evidence, you take
11 evidence from -- facts from the evidence that we
12 present that are relevant to your decision, the
13 decision before you, and those are incorporated into
14 your Decision and Order as a finding of fact.

15 So if we put on an economists, and it's
16 relevant to your decision to grant this Motion, you
17 would find certain Findings of Fact from the evidence
18 that we have submitted to you that support your
19 decision to either approve the Motion or deny it.

20 And in this case, the reason that we have
21 the financial person testifying is because we wanted
22 to provide this Commission with the evidence to
23 support an approval of this Motion in your Decision
24 and Order.

25 Does that answer your question?

1 COMMISSIONER HIRANAGA: Yes, it does,
2 helpful.

3 So looking at the PowerPoint slide, it
4 appears that this is primarily all historical in
5 nature, and not projecting justification for the
6 change for the MPD.

7 Is that going to be presented, future
8 projections or the justification for the 15 acres to
9 be taken out of Phase III and added to the --

10 MR. KUDO: The reason that -- the 15 acres
11 is being -- we're asking you to take the Incremental
12 District Order off of the 15 acres is because
13 incremental districting is like a pre-approval of
14 this Commission of urbanization. And the
15 pre-approval says if you come back and show that you
16 finished Phase I and II, or satisfied whatever the
17 conditions that the Commission has imposed, we will
18 consider urbanizing Phase III.

19 Well, the reason that we're putting on the
20 economist is to tell you why we did not substantially
21 complete Phase I and Phase II, but nevertheless we
22 are requesting, in light of the bad economic times,
23 which we are submitting to you as the reason for
24 that, asking you to lift the Incremental Districting
25 Order on the Phase III lands, in essence to proceed

1 forward through the county on the 15 acre portion of
2 it.

3 And then we will later come back with a
4 major new petition for the mauka and makai events,
5 Phase I, II, and III, with a new master plan that
6 addresses the market that we see right now.

7 CHAIRPERSON ACZON: Go ahead, Mr. Yee.

8 MR. YEE: Just to hopefully briefly
9 comment.

10 Generally the Office of Planning doesn't
11 like to go back to old decisions and change them.
12 Everyone had their chance to make their arguments,
13 you win, you lose, you get whatever it is, Decision
14 and Order is issued. Everyone has to comply with
15 that Decision and Order.

16 Sometimes that's not always true.
17 Sometimes conditions have changed. Sometimes
18 something that you required or didn't require. The
19 market conditions change, et cetera. So they're
20 coming back to you, and said you issued a decision in
21 1991, change that decision.

22 And while we normally don't like to, in
23 this case, I think, from our respective, they're
24 demonstrating why that condition should change, why
25 the incremental districting of Phase III should be

1 taken out instead of kept in agriculture.

2 And the reason for that, I believe, there
3 case not ours, but I think the argument is because we
4 thought Phase I and II were going to be developed
5 quickly, because we thought market conditions were
6 going to be great.

7 As it turns out, conditions were not great.
8 So we haven't been able to develop Phase I and II.
9 And furthermore we're going to get a new plan. It's
10 taken so long for us to get here, that the plan we
11 had in 1989 just doesn't make any sense today.

12 So I think -- and so I think what this
13 witness does is provides the evidentiary basis by
14 which you can look back at the 1991 decision and say,
15 yeah, that was the decision, but, yes, in light of
16 these -- of what has happened, which was not their
17 fault, it was the result of market conditions and
18 prediction, or the erroneous predictions, and
19 therefore, we should just withdraw this increment of
20 Phase III of the project.

21 Now, the bottom line of this, of think from
22 our perspective is, each one of the parties have no
23 objection to the Motion. If we all knew you were
24 going to grant the Motion, probably we wouldn't have
25 such a concern.

1 But since we don't know what anyone is
2 going to decide, you know, the Petitioner wants to
3 put on a witness. They had a perfectly good reason
4 why the witness wasn't available today.

5 And so in light of the uncertainty from our
6 perspective what the result is, I frankly think it
7 would be fair to let -- and the man is on the
8 plane -- so given the fact that they're flying him
9 out here, I think it would be fair to allow them the
10 opportunity to present their witness?

11 CHAIRPERSON ACZON: Fair enough.

12 COMMISSIONER ESTES: Yes, I have no problem
13 with listening to the witness tomorrow, but I
14 believed you when you told me all this. You didn't
15 have to bring in an economist to do it.

16 CHAIRPERSON ACZON: That's what I thought.
17 Maybe the PowerPoint presentation was good enough.
18 But to kind of use the time properly, the Chair is
19 proposing to rearrange the agenda today to continue
20 the discussion on agenda V and VI, and go to agenda
21 VII and VIII.

22 COMMISSIONER ESTES: So moved.

23 VICE CHAIR WONG: Second.

24 CHAIRPERSON ACZON: Moved by Commissioner
25 Estes and seconded by Vice Chair Wong to arrange the

1 agenda to go to agenda VII and agenda VIII and
2 continue discussion on V and VI tomorrow at 8:30.

3 Discussion? Hearing none, those in favor
4 say "aye", opposed. Motion carried.

5 Commissioners, we're on agenda --
6 five-minute recess.

7 (Recess taken.)

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1 AGENDA VII - 2016 LEGISLATION STATUS REPORT

2 CHAIRPERSON ACZON: Back on record.

3 Commissioners, we're on agenda VII,
4 legislative status report. Mr. Orodenker.

5 EXECUTIVE DIRECTOR: Thank you, Mr. Chair.

6 Most of the legislation that we were
7 tracking has died. There are only two bills
8 remaining that are of concern to us. One of them
9 is -- I can't remember the number right now. House
10 Bill -- I'll remember.

11 Anyway, it's the one -- it's a bill that
12 would allow -- it's not just directed at us, it's for
13 any contested case hearing to go directly to the
14 Supreme Court on appeal rather than having to go to
15 the circuit court, and intermediate court of appeals.

16 We were just watching that one. I don't
17 think we have an issue with it.

18 The bill that's of most concern, House bill
19 2617, which it was passed by the house originally,
20 having two provisions in it. One was a provision
21 that would have the county submit their general plans
22 to us for district boundary amendment changes, to
23 change the district boundaries in conjunction with
24 the general plans.

25 And the second provision which would have

1 returned the five-year boundary reviews to the Land
2 Use Commission from OP.

3 That bill was heard on the senate side
4 after crossover, and essentially what happened was
5 they removed the provision with regard to changing
6 the five-year boundary review to Land Use Commission.
7 They left in the provision that would change --
8 require the county to submit their general plans to
9 us, and then they reinserted -- or inserted, for
10 intents and purposes, the administration bill
11 expanding our powers.

12 CHAIRPERSON ACZON: That was house bill --

13 EXECUTIVE DIRECTOR: 2617.

14 All the other bills that were related to
15 our powers died. They died on the house side, and
16 then one Senate Bill 2355 that came over from the
17 senate to the house was not -- had a triple referral
18 and was not heard by the deadline, so that bill is
19 dead as well.

20 COMMISSIONER ESTES: Who is sponsoring
21 House Bill 2617?

22 EXECUTIVE DIRECTOR: The original bill was
23 sponsored by Ryan Yamane, Yamashita and Sylvia Luke.

24 CHAIRPERSON ACZON: Vice chair Wong.

25 VICE CHAIR WONG: Mr. Chair, I wanted to

1 move into executive session to consult with the
2 Commission's attorney on questions and issues
3 pertaining to the Commission's powers, duties,
4 privileges, immunities and liabilities with respect
5 to appeals of Commission's decisions, including but
6 not limited to any other matter.

7 CHAIRPERSON ACZON: Is there a second to go
8 into executive session?

9 COMMISSIONER McDONALD: I will second.

10 CHAIRPERSON ACZON: Moved by Vice Chair
11 Wong and seconded by Commissioner Hiranaga.

12 VICE CHAIR SCHEUER: I was trying to follow
13 that last phrase that you added on "any other
14 matter".

15 I prefer to be much more specific about why
16 we are going into executive session.

17 VICE CHAIR WONG: It's regarding, you know,
18 Bridge 'Aina Le'a, Castle & Cooke, and legislative
19 issues also.

20 VICE CHAIR SCHEUER: So to be a difficult
21 Commissioner, we're actually so far only on agenda
22 item VII?

23 VICE CHAIR WONG: And also the legislative
24 issues. It's part of VII and it's going to be
25 rolling into VIII.

1 COMMISSIONER HIRANAGA: Well, just move
2 onto VIII>

3 VICE CHAIR WONG: There is some issues on
4 legislative sessions.

5 CHAIRPERSON ACZON: Some legislative
6 issues.

7 VICE CHAIR SCHEUER: Are we finished with
8 the public portion of the legislative report then?

9 Okay, thank you and forgive me,
10 Commissioners.

11 CHAIRPERSON ACZON: Discussion? Hearing
12 none, all those in favor say "aye", opposed?

13 Motion carried.

14 COMMISSIONER HIRANAGA: I didn't do the
15 second, Chad was second.

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CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on March 23, 2016, at 1:30 p.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 23rd day of March, 2016, in
Honolulu, Hawaii.

JEAN MARIE McMANUS, CSR #156