

LAND USE COMMISSION

STATE OF HAWAII

July 19, 2017

Commencing at 9:20 a.m.

Held at County of Kaua'i Moikeha Building

Conference Room 2A/2B

4444 Rice Street, Lihue, Kaua'i, Hawaii'i 96766

and

A94-706 Ka'ono'ulu Ranch (Maui) Page 46

Commencing at 2:00 p.m.

Maui Arts & Cultural Center

Morgado Meeting Room

One Cameron Way

Kahului, Maui, Hawaii'i 96732-1137

I. ADOPTION OF ORDER

A17-802 County of Kaua'i Housing Agency
(Kaua'i)

To Consider Adoption of Order for COUNTY OF
KAUA'I HOUSING AGENCY'S Petition for State Land
Use District Boundary Amendment to Amend the
Agricultural Land Use District Boundaries into
the Urban Land Use District for certain lands
situated at 'Ele'ele, Kauai', consisting of
of approximately 75 acres, Tax Map Key No. (4)
2-1-001:054

II. A94-706 Ka'ono'ulu Ranch (Maui) Page 46

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES: (**Kauai Lima Ola**)

2 EDMUND ACZON, Chair
3 JONATHAN SCHEUER, Vice Chair
4 ARNOLD WONG, Vice Chair (Maui only)

5 COMMISSIONERS:

6 GARY OKUDA
7 LINDA ESTES
8 NANCY CABRAL
9 DAWN CHANG
10 LEE OHIGASHI

11 DIANE ERICKSON, ESQ.
12 Deputy Attorney General

13 STAFF:

14 DANIEL ORODENKER, Executive Director
15 RILEY K. HAKODA, Planner/Chief Clerk
16 BERT K. SARUWATARI, Planner

17 DAVID J. MINKIN, ESQ.
18 KELSEY S. YAMAGUCHI, ESQ.
19 Attorneys for Petitioner
20 County of Kaua'i Housing Agency

21 MICHAEL DAHILIG, Director of Planning
22 County of Kauai Planning Department

23 DAWN APUNA, ESQ.
24 RODNEY FUNAKOSHI, Planning Director
25 State Office of Planning

JEAN NISHIDA SOUZA, Intervenor
KA'ONO'ULU RANCH (Maui)
RANDAL SAKUMOTO, ESQ.
LISA CATALDO, ESQ.
Attorneys for Petitioner Ka'ono'ulu Ranch

CURTIS TABATA, ESQ.
BENJAMIN MATSUBARA, ESQ.
Attorneys for Honua'ula Partners, LLC

TOM PIERCE, ESQ.
Attorney for Intervenor

MICHAEL HOPPER, ESQ., Corp Counsel, County of Maui
WILLIAM SPENCE, Director County of Maui
ANN CUA, Planner
Attorney for Maui County Department of Planning

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1 CHAIRPERSON ACZON: Good morning. Welcome
2 back. This is July 19, 2017, Land Use Commission
3 Meeting.

4 The first order of business is the adoption
5 of the June 28-29, 2017 Meeting Minutes, which
6 included the recess and was continued to July 7,
7 2017.

8 Are there any correction or comments?

9 COMMISSIONER ESTES: Yes, I have a
10 question.

11 Page 5, first paragraph, it says: Because
12 of transportation time constraints the parties all
13 waived their closing arguments. Is that true?

14 CHAIRPERSON ACZON: As far as I know.
15 We'll ask everybody. There was an option get
16 15 minutes or wave.

17 COMMISSIONER ESTES: I move approval.

18 CHAIRPERSON ACZON: Any second?

19 COMMISSIONER CABRAL: I'll second.

20 CHAIRPERSON ACZON: The motion has been
21 made by Commissioner Estes and seconded by
22 Commissioner Cabral to adopt the minutes.

23 All in favor say
24 aye". Opposed? The minutes are adopted unanimously.

25 The next agenda schedule is Mr. Orodénker.

1 EXECUTIVE DIRECTOR: Mr. Chair, our next
2 proceedings, we would like to wait until this
3 afternoon.

4 CHAIRPERSON ACZON: Any objections from the
5 Commissioners?

6 VICE CHAIR SCHEUER: No objection.

7 CHAIRPERSON ACZON: This is an action
8 meeting on Docket A17-802, Petition of County of
9 Kaua'i Housing Agency to approve of the form of the
10 order in this matter.

11 The Commission met in Lihue, Kaua'i, on
12 June 28-29, 2017 which was recessed and continued to
13 July 7, 2017.

14 Written public testimony was submitted to
15 the Commission, but various individuals who's names
16 are on record and on July 7th, Intervenor Souza
17 amended exhibit list and exhibits 1, 1A to C3, and 4
18 to 10 which were admitted to the record.

19 The Commission voted that document number
20 A17-802 to grant, with conditions, the Petition to
21 Amend the Agricultural Land Use District Boundary
22 into the Urban Land Use District for certain lands
23 situated at 'Ele'Ele, Kaua'i, consisting of
24 approximately 75 acres. Tax Map Key No.: (4)2-1-001.
25 Lot 54 and instructed staff to prepare proposed

1 Findings of Fact, Conclusions of Law and Decision and
2 Order consistent with its conditions for
3 consideration, deliberation and adoption.

4 At that meeting, prior to voting, all the
5 Commissioners affirmed that they had reviewed the
6 record and transcripts in this docket.

7 On July 14, 2017, Commission mailed an
8 Advisory Notice to the Parties advising them to
9 ensure that all Parties have had the opportunity to
10 present their arguments in recognition of how the
11 July 7th, 2017 proceedings were cut short due to
12 travel time constraints.

13 The Parties will be allowed an additional
14 15 minutes to present closing argument before the LUC
15 on the adoption of the order, and briefly address any
16 issue relating to the evidence presented during the
17 evidentiary hearing, including comments and
18 recommendations from the Petitioner's proposed
19 Decision and Order.

20 On July 17th, 2017, Intervenor submitted
21 proposed Findings of Fact.

22 Will the parties please identify themselves
23 for the record? Please remember to use microphones,
24 talk into the microphone, so our transcriber can
25 record it.

1 MR. MINKIN: Good morning, David Minkin and
2 Kelsey Yamaguchi on behalf of the County of Kaua'i
3 Housing Agency. With me is Kanani Fu, the Director.

4 MR. DAHILIG: Good morning, Michael Dahilig
5 on behalf of the County of Kaua'i Planning
6 Department.

7 MS. APUNA: Deputy Attorney General Dawn
8 Apuna on behalf of State Office of Planning, with me
9 is Rodney Funakoshi.

10 MS. SOUZA: Good morning, Jean Souza,
11 Intervenor.

12 CHAIRPERSON ACZON: Good morning everyone.

13 To ensure that the parties are able to
14 conclude their closing arguments, public testimony
15 will be taken after the arguments and before the
16 Commission considers the Adoption of the Order.

17 The Commission will now have the parties
18 present closing arguments. Mr. Minkin.

19 CLOSING ARGUMENT

20 COUNTY OF KAUA'I HOUSING AGENCY

21 MR. MINKIN: Thank you.

22 Over the three days that we have had
23 testimony and presentations and questions and
24 responses, I think a number of things have become
25 abundantly clear. I think it was then Vice Chair

1 Scheuer who kept saying we don't need to hear
2 about the housing, we understand that housing is
3 needed on Kaua'i.

4 But there was a reason why we were doing
5 that. We needed to have you folks understand that
6 not only is housing an issue on the Island of
7 Kaua'i, but it's also an issue on the west side. And
8 it's an issue on the west side that needs to be
9 addressed. And how is it being addressed?

10 The County, by purchasing this land and
11 basically the deed requiring it to be either
12 agricultural or housing planned ahead. The County
13 now wants to move ahead with its plans and provide
14 for its residents on the west side.

15 And, yes, there has been testimony that,
16 who's going to live there", but I think from the
17 testimony from the Habitat for Humanity we saw that
18 majority of the folks that are moving into their
19 land, their affordable housing, are from the west
20 side.

21 So what do we know? Housing is needed.
22 And how do we go about doing it? Here we did a
23 unique process because we followed HRS 205-17 --
24 excuse me, HRS 205, and had the County Council adopt
25 it, as put forth by the administration. And various

1 things took place there, public hearings.

2 Now we're before you folks for the boundary
3 amendment for the 75 acres. And what have we
4 learned? We have learned that the county is going to
5 be willing, based upon the Commissioner's questions to
6 facilitate working with the community on a number of
7 issues going forward.

8 We have learned that TIARs are going to be
9 done for additional phases. We have learned that the
10 DOE -- we've had two principals come forward. There
11 is capacity currently. There may not be capacity in
12 the future, but we are going to work with DOE and
13 state agencies. We are going to work with KEMA, the
14 local Civil Defense Agency to deal with how we do the
15 community center after we go out for community input.

16 We know that all of the structures are
17 going to be built to county code. We know that all
18 of the structures -- and that's important. Why?
19 Because one of the things that both the state and
20 county came back on Civil Defense issues. We don't
21 really want people out on the road when there is
22 crises, when there's those types of incidents or
23 episodes like Hurricane Iniki. We want them to be
24 able stay into their home if possible. And why is
25 that important? Because these homes are going to be

1 built to current code.

2 We also know there is going to be updated
3 cultural impact studies, updated archeological
4 studies, other conditions proposed by the Office of
5 Planning, slightly modified based upon the testimony
6 here, are going to be adopted.

7 Even a condition that the Intervenor
8 proposed regarding lighting is going to be adopted.

9 We have also basically acknowledged that
10 for the drainage issue, we're going to do best
11 management practices.

12 We are going to take a look at that and do
13 those things, because while the kupuna and kumu hula
14 and Missy Kamai were able to testify that there isn't
15 really anything of cultural and traditional
16 significance on these 75 acres. We know that makai
17 and we know mauka there are.

18 So how do we work those things in? And
19 that's why it's important to basically facilitate and
20 keep going forward with the community. Keep the
21 community engaged.

22 There are questions about whether your
23 responsibility has been met based upon the case Ka
24 Pa'akai. We believe that it has. We believe that
25 the Commission has the relevant facts before it from

1 all of the evidence, not just one portion. And if
2 one portion of our submission was insufficient, we
3 have basically, we believe, corrected that and
4 included that so that you folks can conclude your
5 constitutional mandate is being met.

6 What else? Public Trust Doctrine.
7 Commissioner Okuda mentioned that, and Kaua'i
8 Springs, a case that I was involved with for the
9 County of Kaua'i, basically had the Hawaii Supreme
10 Court state that it's every governmental entity, no
11 matter at what level, has to take a look at the
12 Public Trust Doctrine. That is something the County
13 of Kaua'i is well acquainted with.

14 That was a case that the County of Kaua'i,
15 the Planning Commission went after a water bottler,
16 and that was what the Hawaii Supreme Court said. You
17 just can't pass it off to another agency and say it's
18 your kuleana, you just can't do it.

19 The County of Kaua'i is cognizant of its
20 Public Trust Doctrine, responsibilities of the
21 constitution.

22 What else have we heard? We have heard
23 some folks come in say, Phase I is okay, but we don't
24 know about the other phases. But you've heard from
25 other witnesses that to do it in that sort of

1 piecemeal process, could jeopardize, and probably
2 will jeopardize funding going forward. There are
3 Memorandums of Understanding already with state
4 agencies. Why? Those memorandums deal with the
5 financial aspect. Those financial aspects have to be
6 anticipated, not after the fact, but going forward.

7 Therefore, based upon all of the credible
8 evidence, all of the conditions that we have sought,
9 all of the conditions that the Office of Planning has
10 instituted, as well as those that have been voted on
11 by you folks with amendments and additional
12 amendments at our last hearing on July 7th, this
13 project should be approved. This Boundary Amendment
14 should be approve for these 75 acres all phases at
15 this point in time. To do it piecemeal would not be
16 prudent upon this Commission, because all of the
17 statutory and constitutional elements have been met
18 with our presentation.

19 With that I will end knowing that we have a
20 time frame.

21 CHAIRPERSON ACZON: Thank you. Any
22 questions for Mr. Minkin, Commissioners?

23 Thank you.

24 County, please proceed with your closing
25 arguments.

1 Mr. Dahilig, I have to swear you in again.
2 You swear that the testimony that you're
3 about to give is the truth?

4 MR. DAHILIG: Yes.

5 CHAIRPERSON ACZON: State your name and
6 address.

7 Mike Dahilig with the County Planning
8 Department, 4444 Rice Street, Suite 8473A Lihue.

9 CLOSING ARGUMENT

10 COUNTY OF KAUA'I PLANNING DEPARTMENT

11 MR. DAHILIG: The County of Kaua'i Planning
12 Department stands on the written closing arguments
13 submitted by our attorney this morning.

14 Thank you, Mr. Chair.

15 CHAIRPERSON ACZON: Commissioners, any
16 questions for Mr. Dahilig?

17 Ms. Apuna, please proceed with your closing
18 argument.

19 CLOSING ARGUMENT

20 STATE OF HAWAII OFFICE OF PLANNING

21 MS. APUNA: Office of Planning is in
22 support of this project. We think it's a good
23 project. We really would just like to thank the
24 Commission for their efforts in trying to establish a
25 complete record and have a proper process. So, thank

1 you.

2 CHAIRPERSON ACZON: Thank you, any
3 questions for Ms. Apuna, Commissioners?

4 Ms. Souza, please proceed with your closing
5 argument.

6 CLOSING ARGUMENT

7 INTERVENOR

8 MS. SOUZA: Yes, Jean Souza. I do not have
9 objections to the Petitioner's specific statements in
10 the Petitioner's Proposed Findings of Fact,
11 Conclusions of Law and Decision and Order, however,
12 in light of the new information provided during these
13 hearings, there are other Findings of Facts that I
14 believe should be included.

15 With that, I submitted on Monday 31 new
16 Findings, Proposed Findings, for you to consider for
17 inclusion in your Decision and Order.

18 I don't know whether it's applicable to
19 respond to some of your conditions in the Decision
20 and Order document that was given to us this morning,
21 and I'm just going to go ahead and give you a couple
22 of suggested changes to/or consider.

23 So related to LUC proposed Condition 2 on
24 highway and roadway facilities, I note that there is
25 no provision to consider regional impacts.

1 VICE CHAIR SCHEUER: Mr. Chair.

2 Ms. Souza, if you could just refer us to
3 the page so that we're able to follow along with your
4 argument, please.

5 MS. SOUZA: So this would be the LUC
6 Decision and Order, page 76, item 8 -- excuse me -- B
7 at the top.

8 And I would like to suggest four words to
9 add at the beginning. And it says: An updated TIAR,
10 and add four words, "and regional traffic analysis".
11 And then continue with your wording, "shall be
12 prepared prior to".

13 Then on page 81, at the top of the page,
14 this relates to the condition on stormwater
15 management and drainage. I would like to suggest one
16 sentence, addition of one sentence to be inserted
17 after the word "designed" on the first line, and the
18 new sentence is: "Petitioner shall prevent runoff
19 from the Petition area from adversely affecting the
20 state highway facilities and downstream properties".

21 Then continue on with your sentence
22 "Petitioner shall mitigate".

23 COMMISSIONER CABRAL: Could you reread your
24 line again?

25 MS. SOUZA: Sure. So on page 81, line 1,

1 your wording says, "improvements, or cause them to be
2 maintained or designed as designed. Put a period
3 there and insert one sentence, and the sentence is:
4 "Petitioner shall prevent runoff from the Petition
5 area from adversely affecting state highway
6 facilities and downstream properties." Period.

7 This is modeled after previous condition
8 that you imposed on an affordable housing project on
9 another island.

10 Then on page 82, and this is just minor,
11 but just bringing the LUC terms up-to-date. On page
12 82, Condition 13 refers to the word "Civil Defense"
13 both in the top and title as well as in the second
14 line. And I think the new term is "Emergency
15 Management". So I want to just put it out there that
16 the topic be "Emergency Management", and that Civil
17 Defense Shelter at the end of your sentence, be
18 changed to Emergency Shelter.

19 Then I reviewed some of the transcripts,
20 and I have some suggested changes to the transcripts.
21 And I want to just focus in on those that have a
22 difference in terms of the meaning of the sentence
23 rather than some of the minor changes.

24 So on the transcript for July 7th, page
25 186.

1 VICE CHAIR SCHEUER: Chair, if I may.

2 Ms. Souza, we don't --

3 CHAIRPERSON ACZON: We don't have the
4 transcript.

5 VICE CHAIR SCHEUER: Well, we don't have
6 them in front of us, and we also don't formally adopt
7 transcripts as a record. So I think it's valuable
8 for you to communicate to the Commission and the
9 staff that you believe that the draft transcripts
10 that you received might not fully represent what was
11 said there. But we're not going to take a vote today
12 on adoption of the transcript, if there is -- in the
13 interest of us focusing on your most salient
14 points -- if there is some critical issue that you
15 think that we haven't understood, that might be the
16 most effective thing for you to highlight for us,
17 respectfully.

18 MS. SOUZA: I'm willing to do that, I just
19 didn't know what the process was.

20 There is one statement made by Commissioner
21 Cabral related to amendments to the condition, and
22 this is on page -- I'm just going say this just for
23 correction, just for the record, on page 195 of the
24 transcript for July 7th, Commissioner Cabral said, "I
25 except", e-x-c-e-p-t. I believe it should be "I

1 accept" a-c-c-e-p-t. I think it makes a difference in
2 terms of the interpretation of that line. So just
3 wanted to suggest that correction.

4 CHAIRPERSON ACZON: Otherwise just say --

5 MS. SOUZA: That would summarize my
6 position. Thank you.

7 CHAIRPERSON ACZON: Thank you. Any
8 question for Ms. Souza, or any comments on her
9 changes? Vice Chair Scheuer.

10 VICE CHAIR SCHEUER: Aloha, Ms. Souza. In
11 your intervention, you stipulated to focusing your
12 intervention on seven issues.

13 Just confirming that additional conditions
14 you raised today you believe fall within those seven
15 stipulated areas?

16 MS. SOUZA: Yes.

17 VICE CHAIR SCHEUER: And if I have
18 correctly understood the general -- the major thrust
19 of your argument and intervention, is that you've
20 asked for two alternate things.

21 First, you've asked LUC to consider only
22 approving redistricting of Phase I of the project, or
23 in the alternative, if the Land Use Commission is
24 inclined to approve the redistricting of the entire
25 75 acres, to put certain conditions in place.

1 Have I understood your argument correctly?

2 MS. SOUZA: Yes.

3 VICE CHAIR SCHEUER: With the two additions
4 that you've offered us today to the language of the
5 conditions, are you personally satisfied with the
6 conditions that are now being placed on the record?
7 Or if -- let me rephrase that.

8 Were the Commission to adopt your two
9 proposed changes, with that and what's already in the
10 proposed Decision and Order as conditions, would you
11 be satisfied?

12 MS. SOUZA: Except for the last couple of
13 minutes, I did remember one other thing that I
14 neglected to mention and it was related to one of my
15 areas of concern, and that relates to the
16 notification of potential residents about the hazards
17 associated with Kapa Reservoir.

18 So in my proposed conditions submitted
19 earlier, I did identify a wording, and that wording
20 has not been adopted by the Commission.

21 So with that, plus the other two that I
22 mentioned, yes, I would be satisfied. Thank you.

23 VICE CHAIR SCHEUER: Thank you, very much.

24 CHAIRPERSON ACZON: Commissioner Estes.

25 COMMISSIONER ESTES: In relation to the

1 traffic analysis, tell me what your definition of
2 regional is.

3 MS. SOUZA: Regional implies downstream.
4 So for this, for the Traffic Impact Analysis Report,
5 the traffic expert said that the TIAR addresses local
6 impacts in the area.

7 And so as we have stated, myself and public
8 members have stated, that there are traffic hot spots
9 into town.

10 COMMISSIONER ESTES: Into town meaning
11 Lihue?

12 MS. SOUZA: Yes, between the Petition area
13 and Lihue, yes.

14 CHAIRPERSON ACZON: Anybody else,
15 Commissioners? Thank you. Commissioner Ohigashi.

16 COMMISSIONER OHIGASHI: Can I ask Planning
17 Department to comment what is your definition of
18 region?

19 MR. DAHILIG: In doing a --

20 COMMISSIONER OHIGASHI: In doing a TIAR.

21 MR. DAHILIG: Traditionally TIARs are not
22 exact science, they're a prediction. So it tries to
23 encompass as much of a capture area as possible.

24 So to be able to describe the definition of
25 region is related on understanding of the

1 socioeconomic activity in and around an area.

2 So, for instance, and area like
3 'Ele'ele-Hanapepe, if look at a capture area that
4 looks at where the jobs are, where the residents are
5 and where the residents are going in and out of.

6 So it's qualitative, not quantitative. So
7 I would hesitate to say that our department has a
8 Rubric to say that a region that encompasses a TIAR
9 is in fact the correct region. We leave it up to
10 traffic engineers.

11 COMMISSIONER OHIGASHI: TIAR, does that
12 take into account other -- a certain area? Normally
13 takes into account a certain area, correct?

14 MR. DAHILIG: Correct.

15 COMMISSIONER OHIGASHI: Would the word
16 "region" used to expand that area, and would it take
17 place or would it be just --

18 MR. DAHILIG: The word "region" leaves it
19 up to whoever is interpreting it at that time whether
20 something is being met or not. So I would have
21 difficulty saying that if you were to use the word
22 "region" in an order, that it is a fixed area. But
23 that, again, I think if you were leaving that up to
24 the traffic engineer that is qualified under state
25 law to provide those professional services, they

1 would determine what that regional area is.

2 COMMISSIONER CHANG: Mr. Chair.

3 CHAIRPERSON ACZON: I want to make sure
4 Commissioner Ohigashi --

5 COMMISSIONER OHIGASHI: I'm just thinking.

6 COMMISSIONER CHANG: Ms. Souza, my
7 understanding from regional is you want it much
8 broader than the TIAR that was being proposed to look
9 at the specific area of Hanapepe-'Ele'Ele. When
10 you're talking about regional, you want it expanded
11 beyond what was being proposed, is that correct, to
12 include areas like Lihue?

13 MS. SOUZA: If I could just give a little
14 background.

15 So one of the testimonies presented to you
16 included a graphic from a multimodal study done for
17 the County of Kaua'i. And it looked at the different
18 regions of the island, and it identified the presence
19 of populations that had jobs in different regions and
20 how much housing was provided in each region.

21 That table which was presented as
22 attachment to one of the testimonies by Councilmember
23 Yukimura. It showed that the number of jobs was
24 smallest in the west side and larger in all of the
25 other districts on the island. And yet the housing

1 provided on the west side was more.

2 My point is that most of the people in
3 Hanapepe-'Ele'Ele do commute to other regions of the
4 island for jobs. So I believe that there was no
5 professionally submitted evidence on the record that
6 indicated that all or most of the people that will be
7 taking housing in the Petition area already live in
8 Hanapepe-'Ele'ele. I think we have to assume that
9 they will be from elsewhere. So therefor, there will
10 be, yes, on-site traffic impacts, but there will also
11 be regional impacts as people drive to other job
12 centers.

13 So I'm advocating the expansion of the
14 traffic analysis to include regional impacts, not
15 just on-site impacts.

16 COMMISSIONER CHANG: And I know our time is
17 short, so I don't want to belabor this, but that does
18 conflict with some of the testimony that we received
19 which looked at that the affordable housing, that
20 many of the residents was designed to address the
21 west side.

22 So people living on the west side would be
23 able to -- would be living in these affordable
24 housing minimizing the traffic outside of
25 Hanapepe-'Ele'ele. And I don't want to dwell on this

1 too long because time if of the essence. I just want
2 to be very clear that that is your statement, and
3 that there is other testimony that was provided which
4 may be a little different from your assessment.

5 MS. SOUZA: I have been paying attention to
6 what people have said and who has said it. Both the
7 traffic expert and the marketing expert both did not
8 say that the housing will be taken up by all or most
9 of the people already live in Hanapepe-'Ele'ele.

10 The west side is a big region. It extends
11 from 'Ele'Ele all the way to PMRF. So even if people
12 come from Kekaha or Waimea and take up these units,
13 that is still going to be more traffic than people
14 who already live there.

15 So looking at the two professional
16 statements, Traffic Impact Analysis expert and the
17 marketing expert, those are the folks that I was
18 looking at.

19 COMMISSIONER CHANG: Thank you very much.

20 CHAIRPERSON ACZON: Any other questions?
21 Commissioner Ohigashi, any additional questions? I
22 thought I cut you off.

23 COMMISSIONER OHIGASHI: No.

24 CHAIRPERSON ACZON: Commissioner Estes, you
25 okay? Commissioner Cabral.

1 COMMISSIONER CABRAL: I do want to comment
2 on Ms. Souza's comments about the traffic. While I
3 don't know what the traffic is going do, I will
4 support my knowledge that if you're going to get
5 federal housing funds, that your housing then is open
6 to people from all regions, and you cannot, per se,
7 mandate that they have to be from around the
8 neighborhood.

9 So I would encourage the county to prepare,
10 as they get more taxpaying citizens in owning those
11 homes, to be preparing to spend some of that money on
12 expanding roadways, and including their bicycle
13 paths.

14 CHAIRPERSON ACZON: Don't mention bike.
15 Anybody else? Commissioner Scheuer.

16 VICE CHAIR SCHEUER: Chair, can you clarify
17 our scheduling challenges that we have alluded to?
18 When do we have to be out of here and back to the
19 airport?

20 CHAIRPERSON ACZON: Chief clerk?

21 CHIEF CLERK: Our flight is scheduled
22 departure is 11:24, boarding starts about 11:00
23 o'clock, so if everyone has already checked in, we're
24 good. But I still have to breakdown everything and
25 get it checked in.

1 VICE CHAIR SCHEUER: So my procedural issue
2 is that Intervenor has suggested three changes to
3 language to the conditions, one of which we don't
4 actually have in front of us.

5 CHAIRPERSON ACZON: We can take it up
6 during deliberations.

7 VICE CHAIR SCHEUER: Thank you very much,
8 Chair. I was going to say in relations to that that
9 we certainly don't have to have LUC concurrence from
10 the parties, but I would strongly prefer it, if it is
11 at all possible for there to be concurrence on the
12 parties, so I didn't know whether or not there was
13 sufficient time for there to be a brief recess where
14 that is worked out at some point during our process.

15 CHAIRPERSON ACZON: We will try our best.
16 If not, there's another day.

17 Anybody else, questions for Ms. Souza? If
18 not, Mr. Minkin, do you have rebuttal?

19 MR. MINKIN: Yes, very short.

20 REBUTTAL ARGUMENT

21 MR. MINKIN: I heard four changes by Ms.
22 Souza. The third one being changing to Emergency
23 Management instead of Civil Defense. And my
24 understanding is the County Charter has been changed,
25 and that now refers to it as Emergency Management, so

1 no problem there at all.

2 The problem with the "and regional traffic
3 analysis" is that it's adding something that our
4 traffic expert did not -- that basically said it's
5 difficult to do. The TIAR for at least Phase I was
6 blessed by the State of Hawaii Department of
7 Transportation. And I believe as long as you have a
8 professional do it, and if there's concerns that get
9 raised by either the county or the State Department
10 of Transportation, then they can have the
11 professional do whatever they want.

12 I don't believe it's something that's
13 incumbent upon this board, Commission, to basically
14 add in "and regional traffic" when it's such a
15 nebulous term, and as long as there is a professional
16 doing it.

17 The issue about Kapa Reservoir, that is
18 something that's wholly out of our control. And as
19 people buy property, there are disclosures that have
20 to be made. Realtors know that. Professionals know
21 that. To force us to do that when it may or may not
22 be within the geographic location, I think would be
23 an onerous task for us to do.

24 And it's something that's now being asked
25 to be done for this 75 acres. Was it also being

1 asked to be done for Habitat for Humanity? Was it
2 done for 'Ele'Ele Nani across the street? I just
3 don't know. I don't think that's appropriate.

4 The one that gives us major heartburn is
5 adding the sentence, insert, "Petitioner shall
6 prevent runoff downstream and from adversely
7 affecting state highway and downward properties".

8 That's something that you just really can't
9 plan for. That's something that goes back to I
10 believe it was Commissioner Chang talked about best
11 management practices. And if we're building things
12 compliant with the code, and we're doing things, and
13 we have heard from the engineers already that the
14 runoff that will occur, based upon the catchment
15 basin and swales and everything else, if they're kept
16 in shape, will be no more than what's already in
17 existence there on Kaua'i Coffee.

18 To indicate or tell us to "shall prevent",
19 I really don't know what "shall", which is mandatory
20 "prevent" means, and I think that's an onerous task
21 for anyone to do.

22 Basically we have been asked to do best
23 management practices, comply with codes, look at
24 things, keep things in proper order so that whereas
25 there was testimony I believe by Ms. Souza and some

1 others about they have swales and people are parking
2 on them, there's going to be parking areas, these
3 things. The swales are going to be kept -- the
4 vegetation is going to be such that water can drain.
5 So I do not believe that that condition should be
6 added. Thank you.

7 CHAIRPERSON ACZON: Thank you for those
8 comments. We'll take that into consideration during
9 our deliberations.

10 Commissioners, any further comments? If
11 not, that would conclude closing arguments.

12 Commission will now hear public testimony.
13 Do we have any? Anyone in the audience who wishes to
14 provide public testimony in this matter? If not,
15 that concludes the public testimony.

16 The Commission is now ready to consider the
17 Adoption of the Order. Commissioners, before you for
18 your consideration, deliberation, and adoption to the
19 proposed Findings of Fact, Conclusions of Law, and
20 Decision and Order prepared by staff as instructed at
21 the last meeting on this docket and modified by
22 today's proceedings.

23 Is there any discussion? Commissioners
24 we're in discussion. Anyone? Who wants to go first?

25 Commissioner Okuda.

1 COMMISSIONER OKUDA: Chair, I first like to
2 thank Intervenor Ms. Souza for her participation. I
3 think it adds to the process which is really
4 important about getting the best decision, might not
5 be perfect, but with everyone's input, and especially
6 the hard work you put in with your expertise. I know
7 it's appreciated by everyone, and that also goes for
8 everyone else who participated.

9 I would ask and urge the Commission to
10 adopt the order as-is, respectfully not including the
11 provisions that Ms. Souza recommended and advocated.
12 I'm not saying that her suggestions don't make sense
13 in a perfect world, but these are my concerns.

14 One concern is the fact that with respect
15 to a condition about absolutely preventing runoff, I
16 believe Hawaii law already addresses that concern,
17 and for that I would call the Parties' attention to
18 the case Rodrigues, R-O-D-R-I-G-U-E-S, versus State
19 of Hawaii, which is found at 52 Hawaii 156. That's a
20 Hawaii Supreme Court case that basically says that if
21 you negligently divert water, the person who
22 negligently diverts the water may be liable under the
23 theory of negligence.

24 So I believe Ms. Souza's concern about
25 runoff is well taken, but I believe the Hawaii law

1 already addresses that issue.

2 As far as traffic study, I agree that the
3 evidence shows that there's a process in place with
4 expertise that would consider these items in the
5 future, and there's some things that we don't have a
6 crystal ball as far as predicting the future, but I
7 believe the evidence has shown that at least this
8 county administration has taken its responsibilities
9 under the law seriously as far as how they proceed
10 regarding this.

11 And, finally, I would urge not to have an
12 adoption requiring the warning of risks of the
13 reservoir, and one reason is, I do not believe the
14 evidentiary record is sufficient to show the level,
15 if any, of risk.

16 We didn't have any engineering studies or
17 anything like that to form an evidentiary basis, and
18 our decisions have to be based on the evidence. So
19 there isn't an evidentiary basis to put in a
20 condition about warning with respect to the risk of
21 reservoirs. And absent that type of evidence, my
22 concern is that if the Land Use Commission were to
23 acknowledge something, which may or may not be a
24 risk, we may be setting inadvertently a standard of
25 care which might create liability against certain

1 parties, including the state, when we really didn't
2 intend to do so.

3 So would I urge the adoption of the
4 Decision and Order as written respectfully, Ms.
5 Souza, without your suggested amendments or revisions
6 or additions which I believe have shown
7 thoughtfulness on your part, which we do appreciate.

8 CHAIRPERSON ACZON: Thank you, Commissioner
9 Okuda. Vice Chair Scheuer.

10 VICE CHAIR SCHEUER: Asking for a little
11 forbearance. I'm going to have a somewhat long
12 response to Commissioner Okuda's suggestions, and
13 then my general comments on the document.

14 I'll be as efficient as I can. For the
15 specific proposed amendments to the conditions
16 proposed by Ms. Souza, I see no reason to not -- for
17 a motion not to at very least incorporate the change
18 to Emergency Services that the county has agreed to.

19 So rather than unchange, as Commissioner
20 Okuda suggested, I think at the very least that seems
21 to be a noncontested change.

22 I do agree with the analysis by
23 Commissioner Okuda regarding the reservoir. And also
24 just observe that we do have on the docket that the
25 county, which is helping put infrastructure in place

1 and has acquired the lands and is doing various
2 things to get this affordable housing developed is
3 not actually the sales entity, not the actual
4 developer entity, having them try to make sure that
5 third-party is going do that informing seems to be
6 like a point of difficulty in actual implementation.
7 So would I be disinclined to accept that proposed
8 condition of the Intervenor.

9 Regarding runoff, I will politely disagree
10 with some of the characterization of the testimony
11 done by Mr. Lincoln, because under cross-examination
12 from Commissioner Okuda the engineer, who testified
13 about the runoff, stated on the record that there
14 were best practices that are available that are not
15 planned to be used in this development.

16 And so while I'm not convinced that the
17 phrasing is correct that Ms. Souza has prepared, I
18 think there is something a little more that we could
19 perhaps add onto a condition, and it might be a
20 simple as a phrase about, you know, all available
21 best practices that would address any of the runoff
22 concerns that we've had.

23 I don't think requiring no runoff is a
24 practicable concern, but I believe we could address
25 those. Those are my four responses.

1 I then wanted to state a few general things
2 for the record.

3 I wanted to say this last time and this is
4 done as kindly and as respectfully as I can.

5 I'm very grateful to the Intervenor having
6 stepped forward at cost to herself to do it. And
7 respectfully, Mr. Minkin, I found your questioning of
8 her during her presentation abusive and not welcome.
9 I thought it was not necessary.

10 It is certainly fine to be an aggressive
11 and good advocate for your client, and I think that's
12 necessary, but I think it crossed the line a little
13 bit in terms of being appropriate for somebody who at
14 no reward for herself is just trying to participate
15 in this process.

16 I want to just highlight a couple other
17 things during testimony. Not an Intervenor,
18 Councilmember Yukimura came forward and raised a
19 number of significant concerns about the project, and
20 was strongly seeking that we only approve Phase I of
21 the project. There is reasons I don't agree -- while
22 I have tremendous respect and a long relationship
23 with Ms. Yukimura, I don't agree with what she
24 suggested.

25 When rereading her three testimonies she

1 submitted to us, two of her points were that traffic
2 was insufficiently analyzed, and that impact on
3 agricultural lands were insufficiently analyzed.

4 I think the record those otherwise. That
5 the record that county put together actually shows
6 that with the TIAR issues addressed with looking at
7 the overall impact on significant Agricultural
8 Important Lands in this county those impacts have
9 been addressed.

10 I am inclined to actually agree with a
11 number of the other concerns Ms. Yukimura raised
12 about the concentration of affordable housing,
13 whether this is the ideal location for affordable
14 housing. How we can ensure that it is indeed west
15 side residents who get those units. I think those
16 are legitimate concerns.

17 And I think those are really not concerns
18 of the Land Use Commission. I think those are the
19 concerns of Kaua'i County, the council and the mayor.
20 We are not an appellate body in that sense.

21 I don't necessarily know that I would have
22 put all my eggs in this one basket. I would have
23 preferred, because I have advised other agencies on
24 the same, to have a land acquisition policy in place
25 before choosing which land to buy.

1 Those are my feelings, but that has nothing
2 to do with what my responsibilities are. It's not
3 our job to question the county in terms of approving
4 or disapproving the project based on those concerns
5 that she raised.

6 Finally, I just do want to note for the
7 record, in case my fellow Commissioners didn't
8 notice, that we did receive very good testimony from
9 Sabra Kauka, kumu hula, about the importance of this
10 project and her concern about development. She did
11 send in written testimony afterwards on July 7th that
12 said with increased knowledge of the project, she
13 would have preferred to have only Phase I approved.

14 So there was a certain thing about the rush
15 of proceedings that we didn't get maybe everything we
16 wanted to hear all at once.

17 That said I also stand by my great aloha
18 and thanks to the County of Kaua'i for stepping up.
19 Not a perfect project, no project is, but doing
20 something the county doesn't have to do, but trying
21 really hard to address a very real need for residents
22 of the island and going through this. Very, very
23 grateful to the mayor, to the council, to the housing
24 department for putting this project forward.

25 Thank you for your patience in listening to

1 my remarks.

2 CHAIRPERSON ACZON: Commissioners. Anybody
3 else? Commissioner Chang.

4 COMMISSIONER CHANG: Thank you.

5 I too would like to commend the parties,
6 and in particular the Intervenor, who I think made
7 everybody a lot more accountable by providing sort of
8 a level of consciousness, the community's
9 consciousness, and I appreciated that.

10 I just want to quickly address some of the
11 your proposed recommendations.

12 In my view I think the regional is not
13 appropriate. I think the TIAR, it would be incumbent
14 upon the county, given the way that the project is
15 being imposed, that right now only Phase I is
16 approved.

17 When they proceed on the other phases, they
18 will have to consider all of those other projects or
19 the status at that time, and in my view I think
20 having the TIAR updated before they proceed on the
21 next phases will be some adequate protection.

22 The overall traffic issues in Lihue and
23 beyond, that is really, I think, a countywide issue
24 that they need to address, which is probably, in my
25 view, beyond this particular project.

1 With respect to the runoff, I too, putting
2 on my attorney's hat, I worry about the liability
3 issue. I think that my intention on making those
4 additional amendments about the swales, the
5 vegetation, maintenance, that the intention there was
6 to create a higher standard of BMPs. And, again, the
7 future projects will all have to be reviewed, and
8 they will go through their own end assessment and
9 have to comply with whatever the requirements are at
10 that time.

11 So it will be incumbent upon the county to
12 apply the best management practices at the time they
13 proceed with those future phases.

14 Civil Defense, I agree, I think we can just
15 change it to whatever the appropriate language is.
16 If it's Emergency Management language, then that's
17 what it should be changed to.

18 I, like Commissioner Okuda, with respect to
19 the disclosure about the reservoir, am extremely
20 reluctant because of potential exposure both to the
21 project, who has no control over that by creating
22 this warning.

23 However, it will be incumbent upon the
24 county and those around there to make sure that there
25 are safety measures in place, because I think you

1 have put everybody on notice. And now with that
2 notice is a high ended scrutiny that they will all
3 have to adhere to. So I am comfortable with Ms.
4 Souza's proposed amendment to the emergency, but I
5 would have the proposed findings stand on its own.

6 I would like to make a final comment. The
7 first day of proceedings I think you all realized as
8 we proceeded with your Cultural Impact Assessment, it
9 just wasn't -- there were some real concerns, let me
10 put it that way.

11 And I greatly appreciated the next day
12 bringing in the practitioners, bringing in the people
13 who had ancestral connections to those lands that
14 should have been included in the first CIA. But the
15 fact that they were recognized as experts, the fact
16 that they were given opportunity to speak, I really,
17 really appreciated having them -- that we could hear
18 it personally rather than in a report, and I think
19 the record is much stronger as a result of that
20 testimony.

21 And from someone who has advocated, we have
22 an affirmative obligation to preserve and protect
23 traditional and customary practices. To unilaterally
24 say there are no traditional and customary practices
25 for me is -- Hawaiians lived on here for centuries.

1 They walked those lands. There's probably something
2 going on. So currently, based upon the record, I
3 think we now have a good idea what happened and we
4 also now have some protections I believe in the makai
5 area.

6 But I do appreciate the second day of
7 testimony hearing from all of the witnesses as to
8 their connection to these lands, and their firsthand
9 testimony. So thank you.

10 CHAIRPERSON ACZON: Thank you. Anybody?
11 Commissioner Estes.

12 COMMISSIONER ESTES: I move adoption of the
13 order with the change "Emergency Services".

14 COMMISSIONER CABRAL: I'll second that.

15 CHAIRPERSON ACZON: Okay. It has been
16 moved by Commissioner Estes and seconded by
17 Commissioners Cabral to approve the form of the
18 order. Is there any discussion?

19 VICE CHAIR SCHEUER: Mr. Chair, I would
20 like to propose an amendment to the motion, just one.

21 On page 81, in lieu of the proposed
22 language offered by the Intervenor, on line 2, on
23 page 81 I would propose an amendment inserting the
24 words "best practices for", between the words
25 "incorporating" and "low".

1 So it would read: Petitioner shall
2 mitigate nonpoint source pollution by incorporating
3 best practices for low impact development practices
4 for on-site stormwater.

5 CHAIRPERSON ACZON: Are you including
6 introducing that amendment?

7 COMMISSIONER ESTES: And I accept it.

8 COMMISSIONER CABRAL: And I accept that.

9 COMMISSIONER OHIGASHI: Can you just
10 repeat?

11 VICE CHAIR SCHEUER: Yes.

12 The amended line would read, we are again
13 on page 81, under conditions, under the proposed
14 order, beginning at line 1, at the end of line 1.

15 The Petitioner shall mitigate nonpoint
16 source pollution by incorporating -- insert three --
17 best practices for. And the remainder of the
18 sentence remains the same.

19 And I believe that actually addresses the
20 spirit of the Intervenor's comments and reflects more
21 accurately what we had on the record.

22 MR. MINKIN: For the record, we have no
23 objection with that.

24 CHAIRPERSON ACZON: Commissioner Okuda.

25 COMMISSIONER OKUDA: After considering what

1 Commissioner Scheuer has said, I think his amendment
2 better accurately reflects the record, and I believe
3 it's consistent with the Rodrigues case also. So
4 thank you for clarifying that point.

5 CHAIRPERSON ACZON: Commissioners, there is
6 a motion to approve the form of the order with
7 amendment. Is there any further discussion? Hearing
8 none, Mr. Orodener, please poll the Commissioners.

9 EXECUTIVE DIRECTOR: Thank you, Mr. Chair.

10 The motion is to adopt the order with to
11 add the language "Emergency Services" and as amended
12 by Commissioner Scheuer, to add additional language
13 regarding best practices.

14 Commissioner Estes?

15 COMMISSIONER ESTES: Yes.

16 EXECUTIVE DIRECTOR: Commissioner Cabral?

17 COMMISSIONER CABRAL: Yes.

18 EXECUTIVE DIRECTOR: Vice Chair Scheuer?

19 VICE CHAIR SCHEUER: Aye.

20 EXECUTIVE DIRECTOR: Commissioner Okuda?

21 COMMISSIONER OKUDA: Yes.

22 EXECUTIVE DIRECTOR: Commissioner Chang?

23 COMMISSIONER CHANG: Yes.

24 EXECUTIVE DIRECTOR: Commissioner Ohigashi?

25 COMMISSIONER OHIGASHI: Yes.

1 EXECUTIVE DIRECTOR: Chair Aczon?

2 CHAIRPERSON ACZON: Yes.

3 EXECUTIVE DIRECTOR: Thank you. Mr. Chair,
4 the motion passes unanimously.

5 CHAIRPERSON ACZON: Thank you everyone.
6 Thank you for your patience.

7 Commissioner Okuda.

8 COMMISSIONER OKUDA: Could I just say one
9 thing? It's a follow up to what Commissioner Chang
10 had said.

11 With respect to protection of Native
12 Hawaiian practices, which is enshrined in our
13 constitution, I think the record should make clear,
14 as one who worked at 1978 Constitutional Convention,
15 you could pick the number of Native Hawaiian
16 delegates on one hand. There weren't that many in
17 the constitution.

18 What Commissioner Chang spoke about is not
19 simply a Native Hawaiian concern, it's a statement of
20 community values, and I think it's a community value
21 that cuts across ethnic lines, economic lines,
22 neighborhoods, it's statewide because that
23 constitution was ratified by not everyone in the
24 state, but by a statewide vote.

25 So I think it's important to keep in mind

1 that when we inquire into these items in these types
2 of proceedings, we are not doing it just for a
3 certain limited community, it's an inquiry that
4 reflects community values of everyone who lives in
5 Hawaii.

6 I just like to state that for the record.

7 CHAIRPERSON ACZON: Thank you, Commissioner
8 Okuda.

9 The Land Use Commission will now recess and
10 reconvene at Maui Arts and Cultural Center at
11 approximately 2:00 p.m. today.

12 (The proceedings recessed at 10:40 a.m.)
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CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on July 19, 2017 at 9:20 a.m., the
proceedings contained herein was taken down by me in
machine shorthand and was thereafter reduced to
typewriting under my supervision; that the foregoing
represents, to the best of my ability, a true and
correct copy of the proceedings had in the foregoing
matter.

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

Dated this 19th day of July, 2017, in Honolulu,
Hawaii.

/s/ Jean Marie McManus
JEAN MARIE McMANUS, CSR #156

LAND USE COMMISSION

STATE OF HAWAII

July 19, 2017

Commencing at 2:00 p.m.

Maui Arts & Cultural Center

Morgado Meeting Room

One Cameron Way

Kahului, Maui, Hawai'i 96732-1137

ACTION

A94-706 Ka'ono'ulu Ranch (Maui)

To consider acceptance of Pi'ilani Promenade North, LLC's and Pi'ilani Promenade South, LLC's Final Environmental Impact Statement in support of their Motion for Order Amending the Findings of Fact, Conclusions of Law, and Decision and Order Dated February 10, 1995, which reclassified approximately 88 acres at Ka'ono'ulu, Makawao-Wailuku, Maui, Hawai'i.

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 EDMUND ACZON, Chair
3 JONATHAN SCHEUER, Vice Chair
4 ARNOLD WONG, Vice Chair

5 COMMISSIONERS:

6 GARY OKUDA
7 LINDA ESTES
8 NANCY CABRAL
9 DAWN CHANG
10 LEE OHIGASHI

11 DIANE ERICKSON, ESQ.
12 Deputy Attorney General

13 STAFF:

14 DANIEL ORODENKER, Executive Director
15 RILEY K. HAKODA, Planner/Chief Clerk
16 BERT K. SARUWATARI, Planner

17 RANDAL SAKUMOTO, ESQ.
18 LISA CATALDO, ESQ.
19 Attorneys for Petitioner Ka'ono'ulu Ranch

20 CURTIS TABATA, ESQ.
21 BENJAMIN MATSUBARA, ESQ.
22 Attorneys for Honua'ula Partners, LLC

23 TOM PIERCE, ESQ.
24 Attorney for Intervenors

25 MICHAEL HOPPER, ESQ.
Corporation Counsel County of Maui
WILLIAM SPENCE, Director County of Maui
ANN CUA, Planner
Attorney for Maui County Department of Planning

DAWN APUNA, ESQ.
Deputy Attorney General, State of Hawai'i
RODNEY FUNAKOSHI, Planner
Attorney for State Office of Planning

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1 CHAIRPERSON ACZON: Good afternoon. This
2 is the Maui portion of the July 19, 2017, Land use
3 Commission meeting.

4 The minutes for the June 28, 29 and
5 July 7th, 2017 were unanimously adopted earlier this
6 morning on Kaua'i.

7 The next agenda is the attentive meeting
8 schedule.

9 EXECUTIVE DIRECTOR: Thank you, Mr. Chair.
10 We'll be here tomorrow for continuation on this
11 docket.

12 On July 26th we will be on Kaua'i for
13 action on Maui Community College and Island Schools,
14 and also to take action on the request to be the
15 accepting authority for the EISPN for Honua'ula
16 Partners.

17 August 9th on Oahu. August 10th we will be
18 on Kaua'i again to adopt the order for Island Schools
19 and UHKCC.

20 On August 23rd, we will be on Maui for
21 Pukalani Associates Motion for Extension of Time.

22 On September 6th and 7th we will again be
23 on Maui -- on the 6th we'll be on Maui for Waikapu
24 Town, and on the 7th we will be on Oahu for Solar
25 Special Permits.

1 September 20th to 22nd HCPO, and that is
2 all we have on the schedule for right now.

3 CHAIRPERSON ACZON: Commissioners, any
4 questions about our schedule?

5 Thank you, Mr. Orodenker.

6 Next agenda item action meeting on Docket
7 No. A94-706 Ka'ono'ulu Ranch to consider the
8 acceptance of the Final Environmental Impact
9 Statement.

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

12 MR. SAKUMOTO: Thank you, Mr. Chair.
13 Randall Sakumoto and Lisa Cataldo on behalf of
14 Petitioners.

15 MS. APUNA: Deputy Attorney General Dawn
16 Apuna on behalf State Office of Planning. With me is
17 Rodney Funakoshi.

18 MR. HOPPER: Hello. Michael Hopper, Deputy
19 Corporation Counsel for Maui County Department of
20 Planning. With me is Planning Director Wil Spence
21 and planner Ann Kua is also here.

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

1 MR. TABATA: Good afternoon, Chair, members
2 of the Commission. Curtis Tabata and Benjamin
3 Matsubara for Honua'ula Partners LLC.

4 CHAIRPERSON ACZON: Let me update the
5 record in this docket.

6 On December 10, 2015, the Petitioner
7 provided a status report to the Commission. From
8 then until now the Commission received various
9 correspondence. Annual reports and testimony, which
10 was posed to our website and made part of the record.

11 On July 1st, 2016, the Commission received
12 Notice of Appearance for Counsel for Honua'ula
13 Partners LLC.

14 On March 9, 2017, the Commission made a
15 site visit to the Petition Area.

16 On June 27th, 2017, the Commission received
17 Petitioner's Volumes 1-5 and digital copies.

18 On July 12th, 2017, the LUC mailed the
19 July 19-20th, 2017 agenda to the Parties, and to the
20 individuals and entities on the Statewide, Kaua'i and
21 Maui mailing lists.

22 On July 13th, 2017, the Commission received
23 Notice of Change of Counsel for Petitioner.

24 On July 14th, 2017, the Commission received
25 OP's and Maui County's Comments and Concerns

1 Regarding Docket A94-706 to Consider Acceptance of a
2 FEIS.

3 In addition, on July 18, 2017, the
4 Commission received an email from Intervenors
5 Requesting Sufficient Testimony Time for Maui
6 Tomorrow Foundation, South Maui Citizens for
7 Responsible Growth, and Daniel Kanahele.

8 Mr. Pierce, do you, in fact, represent the
9 individual and organizations referenced in your
10 request?

11 MR. PIERCE: I represent the Intervenors,
12 yes.

13 CHAIRPERSON ACZON: You have the ability to
14 call them as witnesses. If they do give public
15 testimony, they'll be subject to the same time
16 constraints as the other testifiers.

17 MR. PIERCE: Thank you, Mr. Chair. I
18 understand we will be given the opportunity to call
19 them as witnesses. Thank you, Mr. Chair, that works
20 for us.

21 CHAIRPERSON ACZON: Yeah, just to be fair
22 with public testimony.

23 MR. PIERCE: I appreciate that from the
24 Commission.

25 CHAIRPERSON ACZON: Let me briefly describe

1 our procedure for today on this docket.

2 First, I'll give opportunity for the
3 Petitioner to comment on the Commission's Policy
4 governing reimbursement of hearing expenses.

5 I will then call for those individuals
6 deciding to provide public testimony.

7 After public testimony, the Petitioner will
8 be called to make its presentation.

9 After the completion of the Petitioner's
10 Presentation, we will receive any comments from the
11 County of Maui Planning Department, the State Office
12 of Planning and Intervenor on Petitioner's Final EIS.

13 When public testimony begins, I will call
14 for those individuals deciding to provide public
15 testimony to identify themselves. All such
16 individuals will be called in turn to our witness box
17 where they will be sworn in prior to their testimony.

18 The public testimony today should be
19 limited to the Petitioner's Final EIS and should not
20 go into the merits of the Petitioner's Motion to
21 Amend the LUC's Decision and Order in this docket.

22 Also, if you have written testimony or
23 other documents you would like to submit, please give
24 them to the Chief Clerk so they can be filed-stamped
25 and made part of the record.

1 After completion of the presentations, the
2 Commission will then conduct its deliberations. The
3 Chair would like to remind the parties and public
4 that per HAR 11-200-23(d) - In the event agency fails
5 to make a determination of acceptance or
6 non-acceptance within 30 days of the receipt of the
7 Final EIS, then the statement shall be deemed
8 accepted.

9 The Chair would also note for the parties
10 and public that from time to time I will be calling
11 for short breaks. And please, use the microphone
12 when you're testifying or speaking.

13 Are there any questions in our procedure
14 for today, parties?

15 MR. PIERCE: Mr. Chair, Tom Pierce on
16 behalf of the Intervenors. I just have one question.

17 I'm not sure I heard when would you like
18 for us in your process today to call our witnesses?

19 CHAIRPERSON ACZON: During your
20 presentation.

21 MR. PIERCE: Thank you very much.

22 CHAIRPERSON ACZON: After the public
23 testimony.

24 COMMISSIONER OHIGASHI: Mr. Chair.

25 CHAIRPERSON ACZON: Go ahead, Commissioner

1 Ohigashi.

2 COMMISSIONER OHIGASHI: Being that I'm a
3 resident of this county, I do know some of the
4 Intervenors. Clare Apana assisted myself, together
5 in the community effort, regarding connections to, I
6 think it was Maui Lani Partners. We testified in
7 front of the Planning Commission and the County
8 Council and was able to obtain some legislation, but
9 it wasn't a formal group.

10 And I do know Daniel Kanahele because
11 through social matters. I want to disclose that.

12 The third person I do know is Maui Tomorrow
13 Albert Perez. I believe that from time to time he
14 would stop by my office and talk story.

15 But other than that, I want to make sure
16 those disclosures are on the record.

17 CHAIRPERSON ACZON: Any objections by the
18 parties for Commissioner Ohigashi's participation?

19 MR. SAKUMOTO: No objections from the
20 Petitioner.

21 MS. APUNA: No objection.

22 MR. HOPPER: No objection.

23 MR. PIERCE: No objection from Intervenors.

24 CHAIRPERSON ACZON: Thank you.

25 For those of you who just came in and

1 wanted to testify, please sign in our testifiers,
2 please.

3 Mr. Sakamoto, has our staff informed you of
4 the Commission's policy on reimbursement of hearing
5 expenses? If so, could you please state your
6 client's position with respect to this policy.

7 MR. SAKUMOTO: Yes, Mr. Chairman, they have
8 advised us, and we accept the policy.

9 CHAIRPERSON ACZON: Thank you.

10 Is there anyone in the audience who desires
11 to provide public testimony on the matter before us?
12 For public witnesses who are testifying, the
13 Commission would appreciate it if you could confine
14 your testimony to the acceptability of the FEIS and
15 avoid repetitive testimony.

16 In addition, a three-minute time limit on
17 testimony will be enforced.

18 Anyone? First testifier.

19 EXECUTIVE DIRECTOR: Thank you, Mr. Chair.
20 Our first testifier is Joan Martin followed by Mario
21 Cardone.

22 I would also like to apologize ahead of
23 time if I mispronounce the names. Some of the
24 handwriting is not very good.

25 CHAIRPERSON ACZON: The chair for the

1 testifiers is on this side.

2 EXECUTIVE DIRECTOR: Joan Martin followed
3 by Mario Cardone.

4 CHAIRPERSON ACZON: As soon as your name is
5 called, please wait by the left side to the witness
6 box.

7 May I swear you in first?

8 Do you affirm that the testimony that
9 you're about to give is the truth?

10 THE WITNESS: Yes, sir.

11 CHAIRPERSON ACZON: Please state your name
12 and address for the record.

13 THE WITNESS: My name is Joan Martin. My
14 address is 85 Manino Circle, Number 202, Kihei,
15 Hawai'i.

16 CHAIRPERSON ACZON: Please proceed.

17 JOAN MARTIN

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

20 DIRECT EXAMINATION

21 THE WITNESS: Good afternoon.

22 Again, my name is Joan Martin. I have
23 lived in Kihei since 1998 and wish to indicate my
24 strong support for acceptance of the Final
25 Environmental Impact Statement submitted for the

1 Pi'ilani Promenade project in Kihei, Hawai'i. I
2 believe that the FEIS is complete and response to all
3 the environmental questions regarding the project,
4 including extensive cultural surveys of the project.

5 While this hearing is focused on the
6 acceptance of the FEIS, I do want to note that when
7 completed the project will include 226 apartments
8 with 25 percent affordable under the Maui County
9 workforce housing requirements for those earning 80
10 to 120 percent of the area median income.

11 The lack of sufficient affordable rentals
12 in our community is at a crisis, and I support this
13 effort.

14 I also support the creation of additional
15 retail opportunities in South Maui and the jobs that
16 will come with it. Right now, if I want to by a pair
17 of socks, I have to drive to Central Maui and back.
18 I can get shaved ice and a tourist T-shirt easy
19 enough in Kihei, but what about shoes or a birthday
20 gift? No luck.

21 I want to close my remarks by thanking the
22 Commission for coming to Maui after a long day
23 already on Kaua'i. Thank you for your service and
24 for the courtesy of hearing my testimony today.

25 CHAIRPERSON ACZON: Any questions for the

1 testifier?

2 MR. SAKUMOTO: No questions.

3 MS. APUNA: No questions.

4 MR. HOPPER: No question.

5 CHAIRPERSON ACZON: Intervenors?

6 MR. PIERCE: No questions.

7 CHAIRPERSON ACZON: Thank you, Ms. Martin.

8 Mr. Cardone.

9 EXECUTIVE DIRECTOR: Following Mike Moran.

10 CHAIRPERSON ACZON: Let me swear you in
11 first.

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

14 THE WITNESS: I do.

15 CHAIRPERSON ACZON: Please state your name
16 and address for the record.

17 THE WITNESS: Mario Cardone, 202 Ohukai
18 Road, Kihei.

19 CHAIRPERSON ACZON: Please proceed.

20 MARIO CARDONE

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

23 DIRECT EXAMINATION

24 THE WITNESS: My name is Mario Cardone.

25 I'm a commercial real estate broker specializing in

1 the North Kihei industrial area. I've been involved
2 in this area for the past 24 years. I live in North
3 Kihei across the highway on Ohukai Road, and have
4 lived there for over 30 years.

5 Pi'ilani Promenade project has a direct
6 impact on where I live and where I work.

7 The current project is greatly improved
8 over the previous plan proposed by Eclipse
9 Development. I did not believe that the scale and
10 type of retail that was previously proposed was
11 appropriate. However, I would like to see Pi'ilani
12 Promenade's EIS accepted by the Land Use Commission,
13 to give this project the chance it deserves to
14 provide the community based industrial, apartment and
15 commercial uses it is promising.

16 All parcels in the Pi'ilani Business Park
17 and Kihei Commercial Center subdivisions, which are
18 immediately to the north of Pi'ilani Promenade, have
19 been developed, and the vacancy of ground floor
20 industrial and commercial space is very low.

21 The vacancy rate island wide for industrial
22 space is less than one percent, and adding space for
23 warehousing, light manufacturing, industrial service
24 businesses, and the like, is very much needed.

25 Community based commercial space is also

1 very much needed. This would be for all sorts of
2 personal and business services, home improvement
3 businesses, and flex spaces for office and retail
4 uses coupled with warehouse or manufacturing space.

5 The more apartment projects we can
6 encourage, the better. Apartments at any economic
7 level help fill the housing needs of a growing
8 community. This project will provide more than its
9 fair share, as well as related pedestrian and bicycle
10 paths in a park.

11 Community based retail meant to provide
12 Kihei residents with alternatives to shopping in
13 Kahului would be beneficial for the Kihei community,
14 and will help control traffic congestion. We need
15 commercial areas that do not primarily cater to the
16 visitor market.

17 In conclusion, I would hope Land Use
18 Commissioner will approve the project's EIS and move
19 it to the next step in the process. Thank you.

20 CHAIRPERSON ACZON: Any questions? Mr.
21 Sakumoto?

22 MR. SAKUMOTO: No questions.

23 MS. APUNA: No.

24 MR. HOPPER: No.

25 MR. PIERCE: No questions.

1 MR. TABATA: No questions.

2 EXECUTIVE OFFICER: Mike Moran followed by
3 Linda Berry.

4 CHAIRPERSON ACZON: Do you affirm that
5 testimony that you're about to give is the truth.

6 THE WITNESS: I do.

7 CHAIRPERSON ACZON: Thank you, please state
8 your name and address for the record.

9 THE WITNESS: My name is Mike Moran, 167
10 Aha'aina Way in North Kihei, and I'm speaking for the
11 Kihei Community Association today.

12 MIKE MORAN
13 Was called as a public witness, was sworn to tell the
14 truth, was examined and testified as follows:

15 DIRECT EXAMINATION

16 We are testifying against accepting the
17 EIS. The Kihei Community Association or KCA is an
18 all volunteer unfunded non-profit with 57-year
19 history of representing the desires of the Kihei
20 community, such as street designs, stormwater
21 management and transportation. We have no financial
22 stake in your process.

23 Unfortunately, Sarofim's developers did not
24 consult with the KCA before deciding to build
25 regional retail outlet in our community. Today we

1 will offer a team testimony to touch on failing
2 specific segments within the FEIS.

3 We also support the cultural aspect to be
4 offered by Daniel Kanahele.

5 We have serious concerns about the negative
6 and environmental impacts of the proposed Pi'ilani
7 Promenade. Our community does not support the
8 project in its current configuration, as best as
9 anyone can define it in this conceptual offering.

10 In the 1990's, KCA members who worked on
11 the Kihei-Makena Community Plan were committed to
12 smart growth and designated the plan to prevent
13 further sprawl and concentrate commercial activities
14 makai of the Pi'ilani Highway.

15 Four Areas were designated for commercial
16 services on page 17 of the plan. The proposed
17 Pi'ilani Promenade site is not among those commercial
18 sites approved by the plan.

19 KCA supports positive projects like the
20 Krausz Companies, Inc. plan for their development as
21 the Kihei Town Center. It has been designated to
22 meet the needs of the community and is supported by
23 the KCA. We do not want to see unfair competition
24 from the proposed Sarofim protract in attracting
25 anchor tenants contribute to the failure of the Kihei

1 Town Center or now called Downtown Kihei.

2 Our community needs affordable housing like
3 the 100 percent affordable rental housing directly
4 across from this site set to break ground in 2018,
5 not a huge unneeded commercial entity with a
6 smattering of such housing.

7 KCA would like to make clear that the
8 Pi'ilani Promenade project is contrary to our
9 community plan, a legal document created by the
10 community to guide development in significant ways.

11 By circumventing the wishes of the
12 community, which are spelled out clearly in this
13 legal document, the Pi'ilani Promenade, as proposed,
14 will be detrimental to our natural, cultural, and
15 economic environment upon which our island is based.

16 Before discussion of the specific sections
17 of the EIS by our team, we want to point out again
18 the vague nature of the overall plan which is
19 referred frequently in the EIS as conceptual. While
20 the owner has designated areas for light industrial,
21 retail and apartments, without specific site layouts,
22 building use, or building designs, it's difficult to
23 predict actual impacts to this project.

24 And this is further complicated by the
25 Sarofim website which designates this property solely

1 as retail, even though categories of industrial,
2 residential and business are assigned to their other
3 properties. We question, does this indicate the
4 owner hopes to build --

5 CHAIRPERSON ACZON: Please summarize.

6 THE WITNESS: Does this indicate that the
7 owner hopes to build out this site as 100 percent
8 retail? Mahalo.

9 CHAIRPERSON ACZON: Thank you. Any
10 questions?

11 MR. SAKUMOTO: No questions.

12 MS. APUNA: No.

13 MR. HOPPER: No.

14 MR. PIERCE: No.

15 MR. TABATA: No.

16 CHAIRPERSON ACZON: Ms. Berry.

17 May I swear you in first?

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

20 THE WITNESS: Yes.

21 CHAIRPERSON ACZON: Please state your name
22 and address for the record.

23 THE WITNESS: Linda Berry, 4 Waikalani Hema
24 Place, Kihei.

25 CHAIRPERSON ACZON: Please proceed.

LINDA BERRY

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

DIRECT EXAMINATION

THE WITNESS: Thank you. I'm representing Kihei Community Association, and I will address the Alternative Section of the EIS which presents two alternatives and dismisses them both.

There is a third alternative that's not discussed, which KCA finds preferable, and I would like to tell you what it is and how we arrived at it.

KCA has been fighting this project for years and we're tired of it. So early this year, when the project came back to life, we decided to take a new approach, and imagine what the owners might build here that would serve Kihei.

Lack of housing for local families has reached crisis proportions. But the Kihei-Makena Community Plan does not provide for housing in this location mauka of the highway.

Since the Community Plan was adopted 20 years ago, four changes that were not anticipated by the plan have impacted our community.

First, the nationwide failure of retail centers makes the need for additional retail space

1 questionable.

2 Second, the State of Hawaii DOE has begun
3 construction of Kihei High School on the site
4 directly adjacent and south of this site.

5 Third, we have run out of land for much
6 needed local housing below Pi'ilani Highway.

7 And fourth, a precedent for housing above
8 the highway has already been set at the Research and
9 Technology Park, about a mile south of this site.
10 That business park has been revised to become a mixed
11 use neighborhood, with the new Kihei Charter School
12 and residential developments already underway.

13 With these four changes in mind, we
14 concluded that this site, adjacent to the new high
15 school, makes sense for residential development.

16 To prove the feasibility, we have drawn up
17 detailed plans showing a mix of residential spaces,
18 including apartments, multi-family condominiums, live
19 work units, and single-family housing.

20 A connector road runs north-south through
21 the site which will connect housing to the north, to
22 the new Kihei High School to the south, and keep
23 extra traffic off Pi'ilani Highway.

24 The site, which -- the gulch which bisects
25 the site, and which Sarofim plans to concrete over,

1 destroying natural Hawaiian cultural sites, our plan
2 leaves the gulch in its natural state, leaving the
3 sites intact, and also allowing stormwater to seep
4 into the ground naturally.

5 Where the owners envision paved parking
6 lots, the green space in our plan will minimize
7 existing stormwater drainage issues.

8 We did present this plan to the owners in
9 April for their consideration, but have no commitment
10 that they will revise their plans. No alternative --

11 CHAIRPERSON ACZON: Please summarize.

12 THE WITNESS: No alternative design shown
13 in the FEIS preserves the small gulch, reduces
14 existing flooding downslope or protects significant
15 cultural sites. No alternative design shows all
16 residential use of the property.

17 Thus, the FEIS analysis is incomplete in
18 meeting minimum requirements listed in HAR 11-200-17.
19 Thank you.

20 CHAIRPERSON ACZON: Any questions?

21 MR. SAKUMOTO: No questions.

22 MS. APUNA: No questions.

23 MR. HOPPER: No questions.

24 MR. PIERCE: No.

25 CHAIRPERSON ACZON: Commissioners?

1 COMMISSIONER OKUDA: Can you give that date
2 again when that plan was transmitted to the
3 Applicant?

4 THE WITNESS: We met with them in person in
5 April.

6 COMMISSIONER OKUDA: When you met with
7 them, did you also show that diagram?

8 THE WITNESS: Yes, and we gave them copies
9 too. And they said they didn't -- while we had
10 interesting ideas, they didn't want to change what
11 they were doing at that time.

12 COMMISSIONER OKUDA: Mr. Chair, at some
13 point in time I would ask that that illustration or
14 demonstrative be made part of the record.

15 THE WITNESS: Thank you.

16 CHAIRPERSON ACZON: Any objections from the
17 parties?

18 MR. SAKUMOTO: No objection, Mr. Chairman.

19 MS. APUNA: No.

20 MR. HOPPER: No.

21 MR. PIERCE: No

22 MR. TABATA: No.

23 CHAIRPERSON ACZON: What exhibit number is
24 that, Riley?

25 MS. ERICKSON: LUC 1.

1 CHAIRPERSON ACZON: Let the record show
2 that LUC, Exhibit LUC 1 was accepted for the record.
3 Thank you.

4 (Exhibit LUC 1 was marked and received into
5 evidence.)

6 Anybody else, Commissioners?

7 EXECUTIVE DIRECTOR: Rob Weltman followed
8 by Charlene Schulenburg.

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

11 THE WITNESS: I do.

12 CHAIRPERSON ACZON: Please state your name
13 and address for the record.

14 THE WITNESS: Ron Weltman, 188 Wailua
15 Place, Kihei.

16 CHAIRPERSON ACZON: Please proceed.

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

20 DIRECT EXAMINATION

21 THE WITNESS: Speaking for KCA regarding
22 the transportation impacts of the proposed Pi'ilani
23 Promenade development, KCA's concerns are based on a
24 Hawai'i State criteria for Complete Streets,
25 Kihei-Makena Community Plan, the Kihei Road Design

Standards, and the EPA Green Streets criteria.

The Hawai'i Complete Streets criteria include the provision of pedestrian and bicycle traffic in addition to motorized vehicles in the design of roadways within the development, as well as public roads impacted by the development.

The project includes the construction of a shared-use pedestrian and bike path along the mauka side of Pi'ilani Highway, adjacent to the project and within the project site, in addition to two bike lanes on Pi'ilani Highway.

However, the sketchy conceptual nature of the site plan does not allow for comments on the usability of the bike and pedestrian paths, but it is clear that the number of bike and pedestrian paths indicated are nowhere near the number needed to serve a 75-acre site.

The Kihei-Makena Community Plan stipulates reducing traffic on Pi'ilani Highway, not increasing it. The population of South Maui is not sufficient to support all the retail space already available with more retail to come in Downtown Kihei project.

While the Introduction to Volume 4 of the EIS states that "the objective of this project is to provide services for the tourist and residents of the

1 Kihei area, and that marketing efforts will be
2 directed toward the South Maui area."

3 The proposed commercial square footage will
4 require marketing to customers from other parts of
5 the island, increasing traffic to and around the
6 site. And that is not considered in the FEIS.

7 North Pi'ilani Highway is a choke point for
8 all traffic in and out of South Maui. The FEIS
9 indicates that in 2016 the level of service was
10 already unacceptable for some traffic patterns at
11 seven intersections among those to receive additional
12 traffic due to the project.

13 And that the level of service will
14 deteriorate even without the project through 2032
15 when the project is complete.

16 With the project, four intersections will
17 have unacceptable service in almost all directions
18 when it completes in 2032.

19 The FEIS suggests possible mitigations,
20 particularly, quote, "future roadway construction in
21 the area will provide additional capacity", end
22 quote, but does not stipulate when they would be
23 constructed, who would be responsible and who will
24 pay for the necessary improvements.

25 In addition, KCA requests evaluation of

1 roundabouts the in lieu of additional signalized and
2 stop sign intersections to conform to Kihei-Makena
3 Community Plan goals for pedestrian oriented walkable
4 community without unacceptable congestion for
5 commuter time traffic.

6 CHAIRPERSON ACZON: Any questions?

7 MR. SAKUMOTO: No questions.

8 MS. APUNA: No.

9 MR. HOPPER: No.

10 CHAIRPERSON ACZON: Commissioners? Thank
11 you. Next testifier.

12 EXECUTIVE DIRECTOR: Next Charlene
13 Schulenburg followed by Gary Passon.

14 CHAIRPERSON ACZON: May I swear you in
15 first?

16 Do you swear that the testimony that you
17 are about to give is the truth?

18 THE WITNESS: To the best of my knowledge,
19 because I am actually representing somebody who could
20 not be here who is a professional architect who is on
21 the KCA committee and is an expert.

22 CHAIRPERSON ACZON: Please state your name
23 and address for the record.

24 THE WITNESS: Charlene Schulenburg, 1390
25 South Kihei Road.

CHAIRPERSON ACZON: Please proceed.

CHARLENE SCHULENBURG

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

DIRECT EXAMINATION

Speaking on behalf of Mary Wagner, also known as Randy, she is a professional architect, a member of the A.I.A., and is certified in the LEED AP.

The watershed protection is not adequately addressed by the Pi'ilani Promenade EIS, because it does not follow basic low impact design principles.

It is no longer acceptable to place streambeds or gulches underground in conduits and rerouted pathways. The developers are not following a nationally accepted standard that was created 20 years ago by a group of architects, engineers, developers and government agencies for the Center for Watershed Protection Association.

In reference to the tributary gulch that transects the property to the Kulanihakoi Gulch, the Pi'ilani Promenade EIS fails to consider the following principles found in the Consensus Agreement On Model Development Principles to Protect Our Streams, Lakes and Wetlands.

1 And she does cite this, and you guys were
2 given copies of this, she sent them in.

3 The first one is: Create a variable width,
4 naturally vegetated buffer system along all perennial
5 streams.

6 The second is: The riparian stream buffer
7 should be restored and preserved with native
8 vegetation that can be maintained throughout the plan
9 review delineation, construction and occupancy stages
10 of the development.

11 The EIS states that Drainageway A will be
12 routed to the East Kaonoulu Street right-of-way.
13 This is directly contrary to the purpose of the Model
14 Development Consensus. The natural course of the
15 existing gulch should not be changed, nor should the
16 gulch be hardened or placed into conduit.

17 Another article from the library of the
18 Center for Watershed Protection is the Architecture
19 of Urban Stream Buffers. An average buffer width of
20 50 to 200 feet is required to allow for variation in
21 gulch flow during high storm activity. Proper
22 vegetation stabilizes the ground to help decrease
23 erosion and increase uptake into the ground. None of
24 this is addressed in the EIS.

25 As a professional architect, Randy has

1 lived for 20 years makai of the proposed development,
2 and Randy and the KCA are alarmed by the narrow
3 vision showed shown in this EIS.

4 We have all seen and watched the brown
5 water conditions occur repeatedly in the ocean with
6 worsening intensity. Storms have increased in
7 frequency and duration. Flooding is now commonplace
8 and we need to be working to prevent future
9 occurrences, not aggravate them.

10 The gulch that has served this acreage over
11 a millennia should not be altered. It needs to be
12 restored and preserved.

13 The Promenade project is not sensitive to
14 the unique and fragile concerns of our oceanside
15 community. The apparent cut and fill and
16 manipulation of the site, including relocating a
17 gulch is cavalier to the real cost to the health of
18 our ocean and to those of us who reside here, and
19 future inhabitants.

20 CHAIRPERSON ACZON: Please summarize.

21 THE WITNESS: In summary, let's do what is
22 pono. Thank you.

23 CHAIRPERSON ACZON: Any questions?

24 MR. SAKUMOTO: No questions.

25 MS. APUNA: Nope.

1 MR. HOPPER: No.

2 MR. PIERCE: None.

3 CHAIRPERSON ACZON: Mr. Passon.

4 EXECUTIVE DIRECTOR: Followed by Mike
5 Foley.

6 CHAIRPERSON ACZON: May I swear you in?

7 Do you swear that the testimony that you're
8 about to give is the truth?

9 THE WITNESS: I do.

10 CHAIRPERSON ACZON: Please state your name
11 and address for the record.

12 THE WITNESS: Gary Passon. I live at 1390
13 South Kihei Road in Kihei.

14 CHAIRPERSON ACZON: Please proceed.

15 GARY PASSON

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

18 DIRECT EXAMINATION

19 THE WITNESS: Good afternoon, Members of
20 the LUC.

21 My name is Gary Passon and I'm a member of
22 the Kihei Community Association and a member of the
23 KCA Planning Committee. I represent the KCA today
24 and myself in today's hearing.

25 The KCA objects to the proposed FEIS for

1 many reasons. I would like to focus on the
2 economics, Section 3. I have provided a more
3 complete description and specific articles in support
4 of our assessment as notes to each of you today.

5 A material premise of the FEIS is that the
6 chosen economic model's projection supports the need
7 for over 500,000 square feet of additional Big Box
8 Commercial Retail space in Kihei.

9 We do not believe the models have been
10 adjusted to accurately reflect the changing retail
11 landscape nor the specific economic and retail space
12 and social environment in Kihei.

13 Fact: Kihei Town Center, KTC, or also
14 called Downtown Kihei, when considered in conjunction
15 to the two shopping areas located adjacent to the
16 east and the west of the KTC will constitute over
17 500,000 square feet of commercial retail space.

18 KTC was developed with specific community
19 input, and the developer substantially modified their
20 design to fit into the community. KTC was sized,
21 laid out, and has become supported by the community
22 because it looks like the community, is an in-fill
23 project, and because the developer has supported the
24 community's efforts to be a walkable, bike-able and a
25 mass-transit supported community.

1 The community feels this significant
2 additional retail space coming on-line soon, and the
3 underutilized retail space along Kihei Road offer
4 significant and sufficient choice, access and
5 economic retail purchasing opportunities to Kihei
6 residents.

7 The mega mall will significantly upset the
8 by economic balance in the community by unnecessarily
9 increasing the available retail space by a
10 significant amount.

11 Fact: The Pi'ilani Promenade would put in
12 large box stores into the Kihei community where
13 access to those stores is already approved and they
14 are being developed only 20 minutes away in Kahului.

15 Lowes Hardware big box and Target, having
16 recently opened, are just two examples. Not fully
17 having assessed the Kahului big box evolution on
18 which the FEIS economic models are based is a flaw.

19 Fact: Retail buying rules are changing.
20 Economic modeling of the buying needs in this FEIS
21 are based on prior models which assume a square
22 footage need per person based on car-centric retail
23 purchasing.

24 Significant new retail studies and models
25 as well as all of our real-life experience here in

1 Hawai'i suggests that on-line purchasing and
2 overnight delivery will continue to grow, and free
3 shipping will reduce the need for many trips to the
4 stores.

5 Radio Shack's failure in Kihei and across
6 the country is just one example of this coming trend.
7 The FEIS seems to be ignoring this trend away from
8 brick-and-mortar stores and the changing retail space
9 needs per resident because of the on-line buying, and
10 is therefore flawed.

11 Fact: Based on current studies many people
12 believe large mega stores will be replaced with
13 distribution centers located out of town. This will
14 likely cause significant underutilized retail space
15 in the future.

16 The project's failure over the long run
17 would blight the community with an underutilized
18 large concrete massive mall --

19 CHAIRPERSON ACZON: Please summarize.

20 THE WITNESS: -- with large parking lots,
21 highly visible from the highway, blocking view
22 planes, disturbing cultural pathways and sites, be
23 environmentally unsound, and has the potential of
24 having a significant negative effect to the
25 community.

1 We request you reject the FEIS because the
2 analysis is insufficient and flawed. Thank you.

3 CHAIRPERSON ACZON: Any questions for the
4 witness?

5 MR. SAKUMOTO: No.

6 MS. APUNA: No.

7 MR. HOPPER: No.

8 MR. PIERCE: No.

9 MR. TABATA: No.

10 CHAIRPERSON ACZON: Commissioners? Thank
11 you.

12 EXECUTIVE DIRECTOR: Mike Foley, followed
13 by Pam -- I'm sorry, I can't make out your
14 handwriting -- from Maui Chamber of Commerce.

15 CHAIRPERSON ACZON: Do you swear that the
16 testimony that you're about to give is the truth?

17 THE WITNESS: I do.

18 CHAIRPERSON ACZON: Please state your name
19 and address for the record.

20 THE WITNESS: Mike Foley, 160 Kionakai
21 Road, Kihei.

22 CHAIRPERSON ACZON: Please proceed.

23 MIKE FOLEY

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

DIRECT EXAMINATION

THE WITNESS: My name is Mike Foley. I'm former Planning Director for Maui County, and I have 42 years of experience as a land use planner and environmental consultant. I'm testifying today as an individual in opposition to the Land Use Commission's acceptance of the proposed Final EIS.

The project description in this EIS is extremely vague and incomplete. The law requires a detailed project description, and this document doesn't have one.

The majority of the site is apparently intended for commercial use, but that is really unclear. How much of it is commercial? How much of it is industrial? We don't know.

The traffic study inadequately considers other South Maui developments, and is also incomplete. You've already heard testimony previously about the existing vacancies in South Maui in commercial sites, and also the impact, it has not been addressed, regarding the A&B commercial project in Kahului, and the internet retail, which is an obvious growing trend.

This proposed project would be urban sprawl. The Final Environmental Impact Statement is

1 incomplete and inaccurate. The project would
2 negatively change the character of Kihei, and that's
3 not adequately addressed. The people of South Maui
4 have never had an opportunity to comment on this
5 proposed project, only on the FEIS before this
6 Commission. And we thank you for that opportunity.

7 The Alternative Section is also incomplete,
8 as you heard previously testified by Linda Berry.
9 There should have been an additional alternative
10 considered where the site would be developed in all
11 residential uses. Thank you.

12 CHAIRPERSON ACZON: Thank you. Any
13 questions?

14 MR. SAKUMOTO: No questions.

15 MS. APUNA: No.

16 MR. HOPPER: No questions.

17 CHAIRPERSON ACZON: Commissioners? Thank
18 you. Next testifier.

19 EXECUTIVE DIRECTOR: Do you swear that the
20 testimony that you're about to give is the truth?

21 THE WITNESS: I do.

22 CHAIRPERSON ACZON: Please state your name
23 and your address for the record.

24 THE WITNESS: My name is Amber Putsis. I'm
25 here to read Pamela Tumpas' testimony on her behalf.

1 Her address 95 Mahalani Street, number 22A, Wailuku,
2 Hawai'i 96793.

3 AMBER PUTSIS

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

6 DIRECT EXAMINATION

7 THE WITNESS: My name is Amber. I'm here
8 to testify or to read Pamela Tumpap's testimony.

9 She is president of the Maui Chamber of
10 Commerce. We are here to support Pi'ilani Project.

11 The Maui Chamber of Commerce supports
12 growth, which promotes the quality of life in Maui
13 County and enhances the attractiveness of Maui as a
14 visitors' destination. It is the Chamber's position
15 that development should occur only in conjunction
16 with appropriate planning processes and be
17 coordinated with the development of adequate physical
18 and social infrastructure.

19 Since its initial proposal, this project
20 has greatly progressed to help support our community.
21 A series of discussions with the community was held
22 which help shaped the current vision. The project
23 now includes multi-family, affordable rental housing,
24 needed light industrial uses, pedestrian and bicycle
25 access paths and a park.

1 It is entitled to be a vibrant regional and
2 sub-regional center providing residential, light
3 industrial, and commercial opportunities for local
4 residents and visitors. It is a project that would
5 create jobs during the development and long after,
6 generate revenue for the county and state, and
7 improve both economies, and provide amenities and
8 infrastructure for the area.

9 It contribute to one of our community's top
10 priorities, desperately needed affordable housing
11 units. A recent statewide study indicates that Maui
12 County will need close to 14,000 new affordable
13 housing units by the year 2025. And the Maui Island
14 Plan indicates there will be a demand for additional
15 34,367 housing units in just Maui through 2030, with
16 9,735 units in Kihei-Makena.

17 Whatever the correct number is, we are
18 woefully behind. However this project will be a
19 tremendous help and start as it will fill roughly two
20 percent of the projected Kihei-Makena demand through
21 2030 with the development of 226 multi-family rental
22 units, with the pricing for these units expected to
23 be affordable for Maui Island residents in a market
24 with very limited supply.

25 Further, at least 25 will 226 units will be

1 rented at an affordable rate determined by the Maui
2 County Department of Housing and Human Concerns.
3 They will be a mix of one and two bedroom units, and
4 are targeted at the full spectrum of workers in the
5 development. So therefore, this project is a key
6 component to meet our affordable housing goals.

7 In support of businesses, this project will
8 help meet regional commercial demand by providing
9 space in South Maui for expanded retail that will
10 help alleviate the need to travel to other locations
11 on the island for shopping.

12 According to an economic study by The
13 Hallstrom Group, all of the quality and competitive
14 spaces along South Kihei Road, or in newer, modern
15 centers, were occupied, and that there is a lack of
16 quality, modern, well-located inventory. The
17 Pi'ilani Promenade project will help satisfy the
18 market demand by providing needed light industrial
19 and commercial uses.

20 It's also important to the Maui Chamber of
21 Commerce that this will --

22 CHAIRPERSON ACZON: Please summarize.

23 THE WITNESS: They will create jobs and
24 deliver well in that area. And for these reasons,
25 along with the physical and social infrastructure

1 this project will create, we stand in support of the
2 Pi'ilani Promenade project.

3 CHAIRPERSON ACZON: Thank you.

4 Any questions?

5 MR. SAKUMOTO: No questions.

6 MR. HOPPER: No.

7 MR. PIERCE: No.

8 CHAIRPERSON ACZON: Vice Chair Scheuer.

9 VICE CHAIR SCHEUER: Good afternoon. I
10 realize you're reading testimony that you may not
11 have played a role in preparing.

12 Do you understand what our proceeding is
13 today?

14 THE WITNESS: It's for the acceptance of
15 the Environmental Impact Statement.

16 VICE CHAIR SCHEUER: So you realize we are
17 not voting for or against the project today? Do you
18 have any testimony related to the acceptability of
19 the FEIS?

20 THE WITNESS: No. Just that we support the
21 acceptance of it.

22 VICE CHAIR SCHEUER: Has the Maui Chamber
23 of Commerce ever opposed development in front of the
24 Land Use Commission?

25 THE WITNESS: Not to my knowledge, but I

1 couldn't say for sure whether or not.

2 CHAIRPERSON ACZON: Anybody else,
3 Commissioners? Thank you. Next.

4 EXECUTIVE DIRECTOR: Robin Knox followed by
5 Basil Oshiro.

6 CHAIRPERSON ACZON: May I swear you in
7 first?

8 Do you swear that the testimony that you're
9 about to give is the truth?

10 THE WITNESS: Yes, I do.

11 CHAIRPERSON ACZON: Please state your name
12 and address.

13 THE WITNESS: My name is Robin Knox. I
14 live at 28 Waikalani Place.

15 CHAIRPERSON ACZON: Please proceed.

16 ROBIN KNOX

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

19 DIRECT EXAMINATION

20 THE WITNESS: I've been a Kihei resident
21 for 11 years, and for the past six years I've lived
22 just makai of where this project is going to go in
23 off of Kulanihakoi Street.

24 By way of background, I am an environmental
25 scientist with 30 year's experience in Clean Water

1 Act. I was the former coordinator of the Southwest
2 Maui Watershed Plan that looked at this area from a
3 water quality impact. And I'm testifying on behalf
4 of myself, but I do consult with the Kula Makai Aha
5 Moku Council and the Kihei Community Association.

6 And I want to support what the KCA said
7 about not changing the drainage, the natural
8 hydrology, and the things they said about green
9 infrastructure and low impact development.

10 You cannot approve this EIS as it is. It
11 is incomplete and inadequate with regard to impacts
12 to water quality. First off, there is not even a
13 section called "water quality" in the thing. It
14 incorrectly assumes that there is no impact to
15 groundwater quality because there is no on-site
16 sewage disposal. However, it does not discuss the
17 impact of the 114,000 gallons per day that will be
18 sent to the Kihei Wastewater Treatment Plant.

19 After treatment at treatment plant, that
20 wastewater will be injected into the groundwater from
21 where it goes into the ocean. It represents, even
22 after treatment, 6.6 pounds per day of total nitrogen
23 and similar poundage of other pollutants that adds up
24 to over 2400 pounds per year, over a ton per year of
25 nitrogen. And as I will discuss further, these

1 waters are already impaired with respect to nitrogen.

2 The EIS does not estimate or quantify
3 pollutant loads, not only from sewage, but doesn't
4 look at stormwater infiltration or irrigation with R1
5 water, and how that will contaminate groundwater.

6 Even further, the Marine Water Quality
7 Report in Appendix J is flawed because it states that
8 the only potential effects to the ocean come from
9 groundwater, from the basal groundwater moving into
10 the ocean, and it does not address stormwater
11 discharges, or the fact that a stream carrying
12 stormwater discharges flows into those ocean
13 segments.

14 It assumes that in meeting the county
15 minimum stormwater standards, that water quality will
16 be protected. This is flawed because it does not
17 consider what happens in storms greater than the
18 design 50-year one-hour storm.

19 I've lived there for six years and once
20 about every 12 to 18 months in that time, there has
21 been major flash flood carries literally tons of
22 sediments down into the ocean.

23 The areas where this project is supposed to
24 be built are areas that were contemplated for
25 ecological restoration in the Southwest Maui

1 Watershed Plan.

2 CHAIRPERSON ACZON: Please summarize.

3 THE WITNESS: The EIS completely mentions
4 that the receiving waters are impaired and have been
5 reported to congress by DOH for not meeting nitrogen
6 standards and turbidity standards.

7 Repeatedly the Applicant says they
8 understand what the DOH is telling them that the
9 project cannot cause or contribute to the exceedance
10 of the standards, yet the EIS fails to offer a plan
11 for mitigation of discharge of tons of sediment and
12 nitrogen compounds into the ocean.

13 CHAIRPERSON ACZON: Any questions?

14 MR. SAKUMOTO: No.

15 MS. APUNA: No.

16 MR. HOPPER: No.

17 MR. PIERCE: No.

18 CHAIRPERSON ACZON: Commissioners?

19 EXECUTIVE DIRECTOR: Basil Oshiro followed
20 by Ron Vaught.

21 CHAIRPERSON ACZON: May I swear you in
22 first?

23 Do you swear that the testimony that you're
24 about to give is the truth?

25 THE WITNESS: I do.

1 CHAIRPERSON ACZON: Please state your name
2 and address for the record.

3 THE WITNESS: Basil Oshiro, 505 Nanakai
4 Street, Kihei.

5 CHAIRPERSON ACZON: Please proceed.

6 BASIL OSHIRO
7 Was called as a public witness, was sworn to tell the
8 truth, was examined and testified as follows:

9 DIRECT EXAMINATION

10 THE WITNESS: Aloha, Commissioners and all
11 in attendance. My name is Basil Oshiro, Kula Makai
12 Aha Moku representative.

13 We agree that this Final EIS is not
14 complete for the following reasons.

15 New sites that we have found is more
16 unlikely not recorded, for one, or being ignored,
17 which is just my opinion on the ignored part.

18 Some sites that are the means for the
19 military use, the cultural trails for ease of moving
20 mauka to makai in the area.

21 The plan alters drainage, grading plan will
22 damage this cultural sites in the construction area.
23 The Ka'ono'ulu Gulch, which we call it Ka'u Gulch --
24 they use a different name on some places -- is a
25 natural drainage for the area, and there are cultural

1 sites inside of this drainage gulch or area.

2 Altering this drainage, the natural
3 drainage of the area, will and can affect our -- will
4 and can affect makai, and protecting our wetlands is
5 part of our culture. And in this Kulanihako'i
6 muliwai and the Kalepolepo Fishpond is part of this
7 affects that will come if this Final EIS should pass.

8 It's also affecting our fishery that
9 practice for generations and decades for me.

10 And this EIS that we're having now, the
11 Final does not address what can happen makai of the
12 construction area. We want, through this, is to
13 protect our wetlands, the muliwai.

14 And I move on with, as noted previous
15 written testimonies, the projected construction site
16 has many cultural sites, and we have not yet have
17 found, and when the grading and grubbing --

18 CHAIRPERSON ACZON: Please summarize.

19 THE WITNESS: Does come up, then we will
20 find artifacts from precontact which has already been
21 found.

22 The culture protocol of this whole EIS,
23 Final EIS has not been followed. The protocol has
24 not been followed.

25 CHAIRPERSON ACZON: Thank you.

1 THE WITNESS: We suggest all sites
2 preserved for education of our future generation and
3 for visitors alike.

4 CHAIRPERSON ACZON: Thank you. Any
5 questions?

6 MR. SAKUMOTO: No questions.

7 MS. APUNA: No.

8 MR. HOPPER: No.

9 CHAIRPERSON ACZON: Commissioners? Vice
10 Chair Scheuer.

11 VICE CHAIR SCHEUER: Mr. Oshiro, kala mai.
12 Just to clarify your testimony. You say that there
13 is traditional fishing resources makai of the site
14 that could be affected by development of the site?

15 THE WITNESS: Yes.

16 VICE CHAIR SCHEUER: That you're familiar
17 with as a practitioner?

18 THE WITNESS: Yes. Right now I'm a
19 president of the Maui Cooperative Fishing
20 Association. I'm a member Aha Moku Maui, Inc., as
21 board member. So I'm actually a fisherman. And I
22 got tied up, and my forte is fishing, but what
23 happens mauka will affect makai.

24 VICE CHAIR SCHEUER: Have you fished in the
25 area makai of this development?

1 THE WITNESS: Yes, for many years, even
2 before I lived in Kihei. My actual growing up is in
3 Paia. But growing up as a fisherman, I used the
4 whole island wherever I could access.

5 VICE CHAIR SCHEUER: Did the consultants
6 for this project contact you to discuss fishing
7 resources in the area?

8 THE WITNESS: No.

9 VICE CHAIR SCHEUER: Thank you very much.

10 CHAIRPERSON ACZON: Any others?
11 Commissioner Chang.

12 COMMISSIONER CHANG: Aloha, just a few
13 questions to follow up on Commissioner Scheuer's
14 questions.

15 One, you talked about that many of the
16 military sites that they have documented. Have you
17 read the Cultural Impact Assessment and
18 Archaeological Inventory Survey?

19 THE WITNESS: That's the thing. When I
20 requested the latest on the Final of this thing, I
21 didn't get it. So from what we went on the site
22 visits, and what was written in the previous
23 testimonies, many of the sites were military.

24 But our belief is the military used the
25 cultural trails, so to make it easy for them, because

1 there's always something up there that shows, or you
2 can actually see the paths.

3 Maybe now it's all overgrown, but back in
4 the war zone -- not war zone, but the war time, there
5 were paths that could be seen.

6 COMMISSIONER CHANG: I want to follow up on
7 the paths. Are you aware of any mauka-makai trails
8 that go above this project site and below the project
9 site?

10 THE WITNESS: I haven't actually gone
11 on-site visits, because we have to get permission to
12 get up into the private lands, and I've been denied a
13 few times to actually walk the land. So I cannot
14 verify actually, but I can see from what I walk on
15 the site visits where we did have access. I can read
16 the land, how the water flows; how the trails
17 probably were there. But I cannot actually go up and
18 go investigate on it.

19 COMMISSIONER CHANG: Let me ask you also
20 about -- did they meet with the Aha Moku Council, do
21 you know?

22 THE WITNESS: No.

23 COMMISSIONER CHANG: Their Cultural Impact
24 Assessment concludes that there are no traditional
25 customary practices that exist on that project site.

1 Would you agree or disagree?

2 THE WITNESS: I disagree to that. I have
3 that, but I had to cut it short.

4 When you do cultural practices, it's not
5 advertised. It's just done. The practitioners would
6 gather maybe two or three, maybe five people at the
7 most, which we have done, and done the practice.

8 So there is cultural practice going on
9 without anybody else knowing except the people that
10 do it.

11 COMMISSIONER CHANG: You say that you're
12 familiar with the fishing area makai of this project
13 site. What kind of fishing do you guys do over
14 there?

15 THE WITNESS: We usually like we go dunking
16 for ulua, muliwai. And we do a lot of whipping along
17 the shoreline over there. So it's pretty much from
18 Ma'alaea to Makena where we can get to. So the
19 fishing area is vast.

20 COMMISSIONER CHANG: You talked about a
21 natural gulch in this property.

22 THE WITNESS: Yeah. And it's not a very
23 big gulch when it comes down to the area, just maybe
24 about ten, maybe 12-foot deep. And we've noted there
25 is like a dam or waterfall over there. So I have

1 looked mauka of that dam, and I see a punawai, a
2 reservoir there that was natural, and it's filled in
3 with soil or debris, mostly dirt right now.

4 COMMISSIONER CHANG: Do you know if there
5 are mo'olelos above this place, stories of this place
6 long time ago that talks about this area, what it was
7 used for?

8 THE WITNESS: Okay. There's testimony on
9 this too, and that was part of what I was going to
10 talk about too, but not enough time.

11 So my other comment was, is not -- EIS not
12 complete because whoever was doing the interviews --
13 I'm not going to mention names on that one -- they
14 didn't actually find the kupuna. They talked to me.
15 They talked to my wife, and two other people. But I
16 don't really consider myself kupuna, because I don't
17 really have the generational knowledge of the area.

18 COMMISSIONER CHANG: But you are aware that
19 there are kupuna from that area, and they were not
20 spoken to that you know of?

21 THE WITNESS: I have two people that
22 actually are, I consider kupuna and lineals to the
23 area.

24 COMMISSIONER CHANG: Thank you so much,
25 Basil. I appreciate your testimony.

1 CHAIRPERSON ACZON: Thank you, Mr. Oshiro.

2 We will take Mr. Vaught's testimony and
3 take a short recess after that.

4 Do you swear that the testimony that you're
5 about to give is the truth?

6 THE WITNESS: It is.

7 CHAIRPERSON ACZON: Thank you. Please
8 state your name and address for the record.

9 THE WITNESS: My names Ronald Vaught. I
10 live at 170 Ohukai Road, Kihei. I've been there for
11 46 years.

12 CHAIRPERSON ACZON: Please proceed.

13 RONALD VAUGHT

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

16 DIRECT EXAMINATION

17 THE WITNESS: Incidentally, I discovered
18 that Ohukai Road was a gulch. If it were not filled
19 in, I wouldn't living there. But my wife is as close
20 to pure Hawaiian as you can find. She teaches
21 culture. She teaches Hawaiian history at the grade
22 level in the schools. That's not what I'm here to
23 talk about, but I do speak on her behalf.

24 I've lived on Maui for 60 years. I've been
25 on Ohukai since 1971, which is 46 years. I've been

1 on Maui since there was nothing after Azeka Store
2 until Makena was developed. It was Azeka Store Meat
3 Market and Gas Station, and there were some 40,000
4 people living on Maui at that time.

5 I spent much of my time building and
6 managing radio stations. Working in radio gave me a
7 lot of time and purpose for which I put into South
8 Maui. I was president of the Kihei Elementary School
9 PTA, and I'm only giving you my history so that you
10 know who I am.

11 When I saw the Pi'ilani Highway was set to
12 be built below the school, I was able to influence
13 the state to realign the school so that the
14 subdivisions beneath school would not -- the children
15 wouldn't have to cross over the highway to get to
16 school.

17 And it's amazing what a little influence
18 being on radio can do when you talk to the state
19 engineers.

20 Around 1973 the county brought a 36-inch
21 water main from Wailuku to Wailea and Makena, and
22 that's where we get our water. I haven't used
23 groundwater for a long time.

24 But then came the hotels. With the hotels
25 8000 jobs. 8000 rooms, 8000 jobs, and no homes were

1 built. No homes were built on behalf of the hotel
2 employees. If you put two shifts into those hotel
3 rooms, you've got 16,000 people traversing from
4 Makena or Wailea to come out of there and go home
5 somewhere in Kahului or some other area.

6 Truth be told, the project that is the
7 Pi'ilani project was submitted before, and it was
8 not -- it had some affordable houses attached to it,
9 but it was turned down, and rightfully so, because
10 they had a bridge -- the plan, the plan was changed,
11 and they had increased the commercial part of it, and
12 they had increased a lot of other things.

13 I see in this plan the building of homes.
14 The building, at least it's a start to help some of
15 those people.

16 CHAIRPERSON ACZON: Please summarize your
17 testimony.

18 THE WITNESS: Summarize, yes.

19 I see they're going to bring in excellent
20 selection of businesses. I have read the EIS. I
21 didn't read all 4,000 pages, but I read the EIS, and
22 I can strongly believe that it is going to protect me
23 and my neighbors. My neighbors are down Ohukai Road
24 from this project.

25 And so I believe it needs to be approved

1 before we can start building houses.

2 CHAIRPERSON ACZON: Thank you.

3 Any questions?

4 MR. SAKUMOTO: No questions.

5 MS. APUNA: No.

6 MR. HOPPER: No.

7 CHAIRPERSON ACZON: Commissioners?

8 Commissioner Estes.

9 COMMISSIONER ESTES: I don't have a
10 question. I'm just wondering, I'm concerned about
11 all the people have to stand up. Is there any way to
12 get some more chairs in here?

13 CHAIRPERSON ACZON: We'll take a
14 five-minute recess.

15 (Recess taken.)

16 CHAIRPERSON ACZON: We're back on the
17 record.

18 EXECUTIVE DIRECTOR: Next witness Vernon
19 Kalanikau followed by Chantal Lonergan.

20 CHAIRPERSON ACZON: May I swear you in
21 first?

22 Do you swear that the testimony that you're
23 about to give is the truth?

24 THE WITNESS: Yeah, yeah, yes, I do.

25 CHAIRPERSON ACZON: Please state your name

1 and address for the record.

2 THE WITNESS: My name is Vernon Kalanikau.
3 I'm from 426 Kenolia Road in Kihei. I've been in
4 this area since 1965.

5 CHAIRPERSON ACZON: Please proceed.

6 VERNON KALANIKAU
7 Was called as a public witness, was sworn to tell the
8 truth, was examined and testified as follows:

9 DIRECT EXAMINATION

10 THE WITNESS: I watch this area go from no
11 flood to more flood nowadays. So talking about the
12 EIS, I here to tell you guys do not accept it at this
13 moment. Give the community more opportunity to feed
14 on that, add to that.

15 The EIS, it's very vague. It needs more
16 work. I just saw some documents today about --

17 VICE CHAIR SCHEUER: Kala mai, just one.
18 Can we have someone ask the people in the hallway to
19 be quiet, because I want to be able to hear. Mahalo.

20 THE WITNESS: I only need one break because
21 I'm hungry.

22 So, again, I from the area since '65.
23 Watched this place just get runned over through the
24 years. Looking at the EIS, no way. I mean I'm from
25 the area. We have an ohana over here. We got to

1 recognize them, Hewahewa, that's their kuleana lands.
2 They get the history. We got to listen to them.
3 They got the history.

4 I raised up right across the street from
5 this mall or Promenade. We recently had that big
6 flood, I think March 7. Then we had another one a
7 month later. I recorded that. I never bring my
8 flash drive. I don't know the process, so I would
9 like to give you guys that flash drive of what ten
10 minutes of rain will do above this project and not
11 rain in Kihei. And it flooded. It teared up South
12 Kihei Road all makai.

13 So my concern would be coming from surface
14 water, water quality to Kulanihakoi to the muliwai
15 and to the ocean, our reefs. All in that area
16 everybody should know already our reefs are dead.
17 Our homes are all tumored out. The 'opae is gone.
18 The o'opu is gone. And I trying to figure out how
19 going to reestablish that, but if going have one
20 project mauka of this moku, ahupua'a, we got to do
21 better on the cultural side and the environmental
22 side.

23 I mean for me, I willing to work with these
24 guys. This whole thing should be about they got to
25 work with us, the people of the area, and the

1 community, especially the ones with generational
2 knowledge.

3 Now I'm going to talk about the pohakus,
4 sacred sites in this area. A lot of the area up
5 there get astrological pohakus, cannot be removed,
6 they going to remove them, whatever. But everything
7 is activated now only because of what is going on in
8 this project right now. Families are coming home.
9 They want to reconnect. They want to practice their
10 traditional rights. I'm included in that.

11 My dad through the '60s, the '70s, up until
12 '84 we did our practices makai in the muliwai near
13 the fishpond. And back in those days had 'opae, had
14 limu ele'ele, had o'opu, had aholehole.

15 CHAIRPERSON ACZON: Please summarize.

16 THE WITNESS: So I just hear that no accept
17 the EIS. We got to be, people of the area, the
18 families got to be included in the conversation more
19 right now. Mahalo.

20 CHAIRPERSON ACZON: Any question for the
21 testifier?

22 MR. SAKUMOTO: No questions.

23 MS. APUNA: No questions.

24 MR. HOPPER: No questions.

25 CHAIRPERSON ACZON: Commissioners? Thank

1 you.

2 COMMISSIONER CHANG: I have a question.
3 You said that there are families from the area that
4 have ancestral ties.

5 THE WITNESS: Yeah, one is I think going to
6 testify today Hewahewa.

7 COMMISSIONER CHANG: Do you know whether
8 they were contacted for the Cultural Impact
9 Assessment?

10 THE WITNESS: No, just for me, I don't
11 think so. I was in this mix for what, about four or
12 five months now. I been there longer than anybody
13 else.

14 And like I said, I watch this place go from
15 nothing to what it is today, that fast. So we got
16 issues, flooding.

17 CHAIRPERSON ACZON: Commissioner, she's
18 going to be testifying.

19 COMMISSIONER CHANG: Thank you very much.

20 CHAIRPERSON ACZON: Mahalo.

21 Next testifier.

22 EXECUTIVE DIRECTOR: Next testifier Chantal
23 Lonergan followed by Tom Cook.

24 CHAIRPERSON ACZON: Do you swear the
25 testimony you're about to give is the truth?

1 THE WITNESS: Yes.

2 CHAIRPERSON ACZON: Please state your name
3 and address for the record.

4 THE WITNESS: My name is Chantal Lonergan.
5 And the address is 95 Mahalana Street.

6 CHANTAL LONERGAN
7 Was called as a witness, was sworn to tell the truth,
8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 THE WITNESS: Thank you, Mr. Chair, Members
11 of the Commission. Thank you for hearing testimony
12 today.

13 My name is Chantal Dugied Lonergan, a
14 37-year resident of Maui County speaking on behalf of
15 the construction industry of Maui representing over
16 1,530 working class citizens.

17 Our mission statement is to unify the
18 building community through active advocacy,
19 communication and education to sustain growth through
20 best practices. We are engaged with holding our
21 members to a high standard for the betterment of our
22 community.

23 When clear requirements are communicated,
24 quality projects can be developed to meet our
25 community expectations and make an overall positive

1 impact on the quality of our life.

2 We are here today because the project
3 Environmental Impact Statement has been prepared and
4 submitted for processing and acceptance by you, the
5 State Land Use Commission.

6 We respect and advocate for the process,
7 and applaud participants who have engaged with the
8 community to develop visionary planning for
9 generations. We ask you to listen specifically to
10 the experts who have reviewed the completed document.

11 We understand the project originally
12 accepted back in 1994 has evolved in response to both
13 community input and economic conditions. On behalf
14 of the over 1530 working class Maui residents, and in
15 order to have an opportunity to continue discussing
16 changes to the project during the Motion to Amend
17 within the confines of this Environmental Impact
18 study which was developed under the purview of
19 Hawai'i Revised Statutes, Chapter 343, I ask that you
20 accept the EIS as submitted for processing.

21 Further, in an effort to save time, may I
22 ask everyone in the room who is not represented, I
23 know many of them have left already, but if they are
24 not testifying today, and they are in support of
25 accepting the EIS, may they please raise their hand.

1 So these are in addition to the 1530
2 members of our community that I represent. Thank
3 you.

4 CHAIRPERSON ACZON: Any questions?

5 MR. SAKUMOTO: No.

6 MS. APUNA: No questions.

7 MR. HOPPER: No questions.

8 CHAIRPERSON ACZON: Thank you. Next
9 testifier.

10 EXECUTIVE DIRECTOR: Next testifier Tom
11 Cook, followed by Michelle Del Rosario.

12 CHAIRPERSON ACZON: Do you swear that the
13 testimony that you're about to give is the truth?

14 THE WITNESS: I do, sir.

15 CHAIRPERSON ACZON: Thank you. Please
16 state your name and address for the record.

17 THE WITNESS: Tom Cook. My address is 18
18 Pohalani Place in Kihei.

19 TOM COOK

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

22 DIRECT EXAMINATION

23 THE WITNESS: I've lived in Kihei for the
24 last ten years. I used to live Upcountry Kapakalua
25 for 35 years where I sold my family property to my

1 son.

2 I'm a general contractor. I have no
3 affiliation with this project whatsoever. But over
4 50 projects 21 of which were in Hawaiian Homes in
5 Waiohale, very steep properties. I'm addressing the
6 requirements that the county and the state hold the
7 building industry to for the BMPs for erosion
8 control, and the archaeological monitoring for
9 archaeological preservation.

10 I think lay people don't understand the
11 extent that we are held to, and the high standards.
12 There are many examples of failures of this over the
13 years. Back in Maalaea Triangle was the worst one,
14 that's when the BMPs really became serious and people
15 started taking note.

16 So anyway, I live in Kihei. My wife and I
17 and my teenage daughter, who just got her license,
18 I'm supportive of this concept of this project. I'm
19 hoping you accept this EIS so we can have further
20 discussion about it.

21 I won't be driving to Kahului as often
22 because of this project. The Upcountry highway that
23 the State Department of Transportation is coming
24 through this property, so I think that -- I tried to
25 read the EIS and I couldn't stay awake.

1 So thank you for the opportunity. I am
2 supportive of this. I understand this is not the
3 approval, correct?

4 CHAIRPERSON ACZON: That's correct.

5 THE WITNESS: This is simply acceptance of
6 the EIS, and that we will have more opportunities to
7 comment on the project in its review; is that
8 correct?

9 CHAIRPERSON ACZON: That's correct.

10 THE WITNESS: Thank you Commissioners for
11 the opportunity.

12 CHAIRPERSON ACZON: Thank you. Questions?

13 MR. SAKUMOTO: No questions.

14 CHAIRPERSON ACZON: Commissioners? Next
15 testifier.

16 EXECUTIVE DIRECTOR: Next Michelle Del
17 Rosario followed by Mark Hyde.

18 CHAIRPERSON ACZON: May I swear you in?

19 Do you swear that the testimony that you're
20 about to give is the truth?

21 THE WITNESS: Yes.

22 CHAIRPERSON ACZON: Thank you. Please
23 state your name and address for the record.

24 THE WITNESS: My name is Michelle Del
25 Rosario. My address is 19 Kuanene Parkway, Makawao,

1 Hawai'i 96768.

2 CHAIRPERSON ACZON: Please proceed.

3 MICHELLE DEL ROSARIO

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

6 DIRECT EXAMINATION

7 THE WITNESS: I am the executive assistant
8 to Councilmember Kelly King who is here and will be
9 testifying later today.

10 We are in opposition of your acceptance of
11 the Final EIS. This project is not consistent with
12 the Community Plan, and we would like to see the
13 project come before the County Council Planning
14 Committee for a Community Plan Amendment.

15 As far as the impact statement itself, and
16 to speak to that. There's going to be a large
17 traffic impact in Kihei over the next couple of
18 years. We have Alexander & Baldwin with a large
19 residential community being built now in North Kihei,
20 as well as this project is not consistent with the
21 community's desire and supported by the Kihei
22 Community Association for a Kihei Town Center
23 project.

24 We already have ingress and egress issues
25 at the entrance to Hale Pi'ilani residential

1 subdivision, as well as the new Alexander & Baldwin
2 project. I know of at least one death where a young
3 adult was killed in that area in North Kihei trying
4 to cross the highway.

5 I feel if you put a project like this on
6 that side of the highway you're going to have young
7 people trying to go to the stores and the vendors
8 there, and possibly incur additional injuries or
9 death as well as the massive impact of traffic.

10 Also have a lot of drainage issues in the
11 area. One of the top issues that we get calls to our
12 office is regarding flooding. So I know if it is
13 raining Upcountry, even if it's not in Kihei, my
14 phone is going to be running off the hook.

15 So flooding and the flooding plan that is
16 in process right now are major issues in the Maui
17 community.

18 So I'm asking you to vote against the
19 acceptance of this Final Environmental Impact
20 Statement.

21 CHAIRPERSON ACZON: Thank you. Any
22 questions?

23 MR. SAKUMOTO: No questions.

24 MS. APUNA: No.

25 MR. HOPPER: No.

1 MR. PIERCE: No questions.

2 CHAIRPERSON ACZON: Commissioners? Thank
3 you.

4 COMMISSIONER CABRAL: I have a couple.

5 I've heard a couple of references to the
6 other housing project that reference Alexander &
7 Baldwin. Can you tell me how many units are planned
8 for that development and what their economic price
9 point is that they will be developing and selling
10 those units at?

11 THE WITNESS: Some of the units are already
12 under vertical construction, a couple hundred units.
13 I don't know the exact count. There are condos and
14 townhome units being built there. And they have both
15 workforce affordable housing and market priced units.

16 COMMISSIONER CABRAL: Thank you.

17 CHAIRPERSON ACZON: Next.

18 EXECUTIVE DIRECTOR: Mark Hyde followed by
19 Gene Zarro.

20 MR. PIERCE: Mr. Chair, because of the
21 Chair's order that we will be permitted to give
22 testimony, Mark Hyde is the representative for South
23 Intervenor South Maui Citizens for Responsible
24 Growth, so he will waive his time now for the
25 opportunity to give his testimony later.

1 CHAIRPERSON ACZON: Thank you. Next.

2 EXECUTIVE DIRECTOR: Gene Zarro followed by
3 Cody Nemet Tuivaiti.

4 CHAIRPERSON ACZON: May I swear you in
5 first?

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

8 THE WITNESS: Yes.

9 CHAIRPERSON ACZON: Please state your name
10 and address for the record.

11 THE WITNESS: My name is Gene Zarro. I
12 live at 22 Ulanui Place in Pukalani. I actually
13 sleep there, I pretty much live in Kihei.

14 CHAIRPERSON ACZON: Please proceed.

15 GENE ZARRO

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

18 DIRECT EXAMINATION

19 THE WITNESS: I'm here testifying for
20 myself personally, as well as one of the founders of
21 Kihei Charter School. That young person that died
22 from the previous testifier was one of our students.
23 So we miss Sterling.

24 So what I would like to say is first of
25 all, I realize that this is just an acceptance

1 process for the FEIS, and with that said, I am in
2 strong support of this going forward, approving the
3 FEIS statement.

4 I think it's a necessary next step so that
5 we can do things to alleviate some of the pressures
6 on the community in South Maui.

7 I would like to put my KCS hat on and I
8 would like to speak to the workforce housing issues.
9 We lose teachers every year because they cannot
10 afford to live and work in Hawai'i. Whether you know
11 this or not, Hawai'i has the lowest paid teachers in
12 the country. When you combine that with the highest
13 cost of living in the country, it is nearly
14 impossible for anyone to hold down a new employee
15 unless they have family or someone they can live
16 with.

17 An example is that a new teacher in our
18 school will pay upwards of \$800 plus, plus, plus to
19 rent a bedroom in Kihei. And this has to be
20 alleviated. We need to stop the revolving door at
21 the Kahului Airport for these people that want to
22 come and want to help us.

23 If we have an educational system in Hawai'i
24 that needs improvement, it's not going to be improved
25 by these new teachers that wish to come here but

1 can't afford to stay here. The ones that can pay 800
2 a month just for a bedroom are the lucky ones. The
3 ones that have to live in Haiku and Kula, those are
4 beautiful communities, but not when you have to
5 commute 45 minutes to get to work and back.

6 So with that said, I am again in strong
7 favor of approving this. It is a necessary next step
8 to alleviating some of the pressures in South Maui.
9 Thank you.

10 CHAIRPERSON ACZON: Any questions?

11 MR. SAKUMOTO: No questions.

12 MS. APUNA: No.

13 MR. HOPPER: No.

14 CHAIRPERSON ACZON: Thank you. Next.

15 EXECUTIVE DIRECTOR: Cody Tuivaiti.

16 CHAIRPERSON ACZON: May I swear you in
17 first?

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

20 THE WITNESS: Yes.

21 CHAIRPERSON ACZON: Please state your name
22 and address for the record.

23 THE WITNESS: My name is Cody Tuivaiti. My
24 address is 58 East Welakahao.

25 CHAIRPERSON ACZON: Please proceed.

CODY TUIVAITI

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

DIRECT EXAMINATION

THE WITNESS: Aloha mai kakou. My name is Cody Tuivaiti and I'm here on behalf of the Kula Kai Aha Moku Council.

Mahalo for taking the time to hear us out. I've been in Kula Kai-Kihei my whole life. And I am hanai to the Kino Ohana of Honua'ula. I'm here in opposition to the Final EIS submitted to you, and ask that it be dismissed today.

I was there on the sidewalk with the LUC, even though it lasted for only 15 minutes. The EIS presented feels incomplete and force fed. There are a few issues that I'm deeply concerned with.

First and foremost, is the environmental impacts it will have makai of the project. The planning done in the presented EIS fails to acknowledge the true extent of our flood problems, reef damage, and what a massive culvert system will do to amplify it.

By focusing all the flow into one area, it will severely damage our coastline. Our natural river has pockets of tunnel systems that run our

1 muliwai water beneath the soil. This is the natural
2 way our aina feeds the reef. These culverts will
3 literally steal water from our muliwai, concentrating
4 it into a funnel, creating an impact on our ocean
5 that will be irreversible.

6 We've already seen it before with areas
7 like Kohoma River where the reef is wiped out from
8 the take of nutrients from the soil and creating a
9 massive top layer of flood flow.

10 Another issue close to my heart is the
11 cultural and historical impact. Kula Kai, or Kihei
12 as much as many call it, has lost so much through the
13 years. Said to be the fastest growing city in the
14 nation at one time. The cultural historical aspect
15 of Kula Kai has been lost in concrete.

16 While most generations have seen the rise
17 of Westernization, the new generations are learning
18 connection to the rise of their history, culture and
19 practice.

20 Although mostly everything south of
21 Pi'ilani Highway has been developed, we still have
22 untouched areas mauka of the highway. I see these
23 areas as future platforms for generations.

24 The EIS claims there are to have no
25 cultural significance in these areas with no cultural

1 practice being done. I strongly disagree because
2 I've been up there personally with some kupuna and
3 seen the sites for myself.

4 Also have to say that this is western
5 thinking at its best. I mean, who are they to say
6 there would never be cultural practice with the rise
7 of our lahui. Who are they to say that there are no
8 cultural sites? When I have the chance to question
9 them, they claim to have talked to a few kupuna about
10 the area based on their own research --

11 CHAIRPERSON ACZON: Please summarize.

12 THE WITNESS: -- but who are they to say
13 what kupuna is best for knowing the area?

14 When I get in hold of our kupuna that could
15 offer true expertise by the deadline, doesn't mean
16 it's complete, it means it's incomplete.

17 So while this may provide jobs, the biggest
18 provider is the aina. When the money runs out and
19 the employers move on, who will be left for
20 generations but the aina?

21 CHAIRPERSON ACZON: Thank you.

22 Any questions? Commissioner Chang.

23 COMMISSIONER CHANG: Mahalo for your
24 testimony. I wanted to just ask you a few follow-up
25 questions.

1 Were you contacted for the Cultural Impact
2 Assessment.

3 THE WITNESS: No.

4 COMMISSIONER CHANG: Do you know of -- and
5 you said that you are aware of kupuna from the area
6 that have ancestral ties to this area?

7 THE WITNESS: I'm aware of some.

8 COMMISSIONER CHANG: Do you know whether
9 they were contacted?

10 THE WITNESS: No.

11 COMMISSIONER CHANG: You talked about
12 resources that are mauka of the highway. Do those
13 resources -- do you know whether those resources
14 include like a trail system that may have gone from
15 mauka to makai?

16 THE WITNESS: I have witnessed trails with
17 obvious rock structures.

18 COMMISSIONER CHANG: What kind of fish --
19 are you a fisherman?

20 THE WITNESS: Not seasoned fisherman, no.

21 COMMISSIONER CHANG: You talked about
22 impacts on the nearshore, the muliwai. What kind of
23 resources have you seen have been impacted or may be
24 impacted?

25 THE WITNESS: Well, from growing up there

1 from young, there should be a lot of limu over there
2 and a lot of awa, but nonexistent to these days.

3 COMMISSIONER CHANG: The cultural impact
4 assessment concluded that there would be -- there are
5 no traditional customary practices in this area.

6 And is it your testimony, you said you
7 disagree with that conclusion?

8 THE WITNESS: Yeah, I disagree. The whole
9 area from mauka to makai was an area for land
10 navigation from what I was taught. So a lot of
11 reading of the stars, of the moon, things like that.

12 COMMISSIONER CHANG: Thank you very much
13 for your testimony.

14 CHAIRPERSON ACZON: Commissioner Okuda.

15 COMMISSIONER OKUDA: Thank you.

16 When you said that there were obvious rock
17 structures, can you explain what you mean by that?

18 THE WITNESS: Well, when I was up there, I
19 seen a line of rocks on both sides, you know, which
20 at first maybe looks like it could be knocked in, but
21 as you kind of follow the trail of the rocks, it kind
22 of goes for like long distances.

23 COMMISSIONER OKUDA: Have you noticed or
24 seen any other type of structures that you believe --
25 or other evidence of historical items or evidence

1 which should be followed up on?

2 THE WITNESS: Definitely.

3 COMMISSIONER OKUDA: Can you briefly give
4 us description or tell us what else you've observed?

5 THE WITNESS: Without going into too much
6 detail, and just from what I got from the area from
7 who we were at the time, the rocks were need ed --
8 were celestial rocks. Movement of those rocks would
9 conflict in the purpose of those rocks.

10 So like I was saying earlier, from mauka to
11 makai this is open area on that slope, and it was
12 used for navigational purposes. So these rocks
13 pointed in certain directions. I mean this is
14 just -- not saying that that's -- I'm no kupuna. But
15 this is the information that I've gathered.

16 COMMISSIONER OKUDA: And final question.
17 And I don't mean to pry, but you understand that we
18 kind of function in a quasi-judicial setting, so we
19 have to look at evidence even though that evidence
20 might be rather intrusive.

21 But can you tell us briefly how you know
22 this? Is this training, or education you received
23 from your ancestors?

24 THE WITNESS: I'm learning. Just learning
25 through kumu.

1 COMMISSIONER OKUDA: Okay, thank you.

2 CHAIRPERSON ACZON: Anybody else? Thank
3 you. Next.

4 EXECUTIVE DIRECTOR: Next witness is Donnie
5 Becker followed by Jay Krigsman.

6 VICE CHAIR SCHEUER: For the benefit of the
7 audience, as well as the Commissioners, can we hear
8 how many people have signed up to testify and what
9 number we're on?

10 CHAIRPERSON ACZON: We did 12 in one hour.

11 COMMISSIONER ESTES: We're on number 19.

12 COMMISSIONER CABRAL: I have 20.

13 CHAIRPERSON ACZON: Another 15.

14 May I swear you in first?

15 Do you swear that the testimony that you're
16 about to give is the truth?

17 THE WITNESS: Yes, I do, Your Honor.

18 CHAIRPERSON ACZON: You had to think about
19 that. (Laughter.)

20 Please state your name and address for the
21 record.

22 THE WITNESS: Donnie Becker and I live at
23 270 Ahana, Kihei 96753.

24 CHAIRPERSON ACZON: Please proceed.

25 -o0o-

DONNIE BECKER

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

DIRECT EXAMINATION

THE WITNESS: I've lived in Kihei. I've been coming here since 1975. I was stationed at Schofield Barracks on Oahu, so I've seen Maui changing from 1975 until now.

From what I've listened to with all the testimony going on today is that the expression is "rush the judgment" but I don't like to use the word "judgment", but it sounds like this is all about rushing. For you guys to make a decision here today that's going to affect the future of not only Kihei but the Island of Maui. And it's unbelievable how we have to fight so hard to prove to you that this is such an important time in existence of man on Maui that we have the chance to make this place whole in the future. And the word "pono". And if we don't allow those two words to exist in the communication of the Land Use Commissioners and the public that are trying to convince you that this is such a pivotal time in our is existence.

In Kihei right now there is going to be 600 -- nobody seemed to know the number today -- but

1 there is 600 brand new homes that are being built on
2 Mokulele Highway and Pi'ilani Highway. That
3 intersection will have -- if there's two cars per
4 family, that's 1200 more cars that will be destined
5 for that intersection in the near future.

6 And then we have this development that
7 they're saying it's a mega mall.

8 I mean, these two things are not even
9 connecting each other, and nobody has even mentioned
10 that part of it as much as I think is needed.

11 We're given -- you guys are taking the
12 responsibility of accepting the jobs that you're here
13 to do. I know you're not getting paid, but the
14 responsibility is that you guys said to yourself, I'm
15 going to get on this Land Use Commission and I'm
16 going to do what's pono for the future of Maui and
17 for the future generations who are going to be coming
18 after you guys, the next Commissioners are going to
19 look back and they're going to say, these
20 Commissioners made it a lot harder, or they made it a
21 lot easier for me to do my job.

22 And I hope that you guys will really, you
23 know, deep down really look at the inside of what
24 we're here for.

25 We're blessed to be living in the most

1 beautiful pristine spot that people only dream about,
2 and now we are here deciding that we're rushing to
3 judgment of a mega mall that will influence
4 everything in our future. And I hope that you'll
5 take that into consideration.

6 CHAIRPERSON ACZON: Thank you. Any
7 questions?

8 MR. SAKUMOTO: No questions.

9 MS. APUNA: No.

10 MR. HOPPER: No.

11 CHAIRPERSON ACZON: Commissioners? Thank
12 you. Next.

13 EXECUTIVE DIRECTOR: Jay Krigsman followed
14 by Robert Aldrich.

15 CHAIRPERSON ACZON: May I swear you in?

16 THE WITNESS: Do you.

17 CHAIRPERSON ACZON: Do you swear that the
18 testimony you're about to give is the truth?

19 THE WITNESS: Yes.

20 CHAIRPERSON ACZON: Please State you name
21 and address for the record.

22 THE WITNESS: My name is Jay Krigsman. I
23 have a local address at 225 Piikea Avenue in Kihei.

24 CHAIRPERSON ACZON: Please proceed.

25 -o0o-

JAY KRIGSMAN

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

DIRECT EXAMINATION

THE WITNESS: I'm a principal and represent the ownership of the Pi'ilani Village Shopping Center in Kihei. And roughly 30 acres of land on both sides of Piikea just makai of the roundabout which we hope to develop if Downtown Kihei, the project that you've heard about a few times today.

As you can see in this room, Maui cares about its future. Groups such as Kihei Community Association work closely with the county to assure that their vision of a well thought out planned quality of life environment is maintained and brought forward.

The community's and county's plan for South Maui has been meticulously documented and spelled out in the Kihei-Makena Community Plan and on the Maui Island Plan.

The Kihei-Makena Community Plan specifically calls for commercial development to be focused on a corridor inside the SMA zone makai of Pi'ilani Highway.

The Environmental Impact Statement that is

1 before you is flawed and should be rejected because
2 it does not take into consideration the true impact
3 on the environment of South Maui that will incur once
4 commercial development boundaries in the Kihei-Makena
5 Community Plan are ignored.

6 I've been working the shopping center
7 business for over 30 years, and I can assure you,
8 without question, that a retailer will always choose
9 large open parking fields, highway visibility, and
10 fewer rules, regulations, and restrictions, all of
11 which are available outside of the SMA zone and the
12 infill commercial vision of the Kihei-Makena
13 Community Plan.

14 If the Pi'ilani Promenade is permitted to
15 be built as proposed outside of the Kihei-Makena
16 Community Plan Commercial Zone and the SMA, it will
17 set a precedent that will tear down the commercial
18 boundaries set up by the Kihei-Makena Community Plan
19 and will result in many more projects being built on
20 mauka side of the Pi'ilani Highway dotting the
21 landscape with mainland-style power centers, leaving
22 the infill sites and older obsolete centers in the
23 commercial zone to rot, resulting in blight, homeless
24 hangouts, and environmental eyesore for South Maui.

25 The Kihei Community Association and the

1 county assured us that future development and
2 redevelopment in South Maui would follow the
3 guidelines and requirements of the Kihei-Makena
4 Community Plan and the Maui Island Plan, focusing
5 commercial development in the SMA zone makai of the
6 Pi'ilani Highway, and making everyone subject to the
7 same rules, requirements, and restrictions imposed by
8 the county in the SMA approval process.

9 The Environmental Impact Statement that is
10 before you is flawed and should be rejected because
11 it does not take consideration the negative impact
12 that will occur to the environment in South Maui once
13 the rules and regulations imposed by the county and
14 the SMA approval process are ignored by allowing a
15 commercial development to occur outside of the SMA
16 zone, and the boundaries shown on the Kihei-Makena
17 Community Plan.

18 Let's talk for a minute about the vacancy
19 in the market. There's been a tremendous amount of
20 new vacancy in the last two years on Maui. Lowes
21 moved around the corner to the new A&B center, and
22 the historic Maui Mall sits vacant. Sports Authority
23 at Maui Mall sits vacant. Savers on Dairy Road
24 vacant. Kmart is now vacant with no new prospects.
25 The Target Center has boxes under construction with

1 no prospect --

2 CHAIRPERSON ACZON: You have to summarize
3 your testimony.

4 THE WITNESS: In summary, I believe that
5 the even EIS in front of you for the Pi'ilani
6 Promenade is flawed and should be rejected because it
7 does not take into consideration all of the negative
8 impacts that commercial development at Pi'ilani
9 Promenade will have in South Maui due to its failure
10 to comply with the Kihei-Makena Community Plan and
11 the Maui Island Plan.

12 CHAIRPERSON ACZON: Any questions?

13 MR. SAKUMOTO: No questions.

14 CHAIRPERSON ACZON: Commissioners? Thank
15 you.

16 EXECUTIVE DIRECTOR: Robert Aldrich
17 followed by Hewahewa.

18 THE WITNESS: Aloha kakou.

19 CHAIRPERSON ACZON: Do you swear that the
20 testimony that you're about to give is the truth?

21 THE WITNESS: Yes.

22 CHAIRPERSON ACZON: Please state your name
23 and address for the record.

24 THE WITNESS: Robert Aldrich, 160 Keonikai,
25 Number 16-202 Kihei.

1 CHAIRPERSON ACZON: Please Proceed.

2 ROBERT ALDRICH

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

5 DIRECT EXAMINATION

6 THE WITNESS: I do not think that the EIS
7 should be approved. I think that there are some
8 significant things that are missing in it, and it has
9 to go back to the drawing board. And I say that with
10 some hesitation, because I've read almost all of it,
11 and it's just an incredible document with many, many
12 hours of work and the cost was probably not
13 astronomical, but very high.

14 I have a background growing up in Los
15 Angeles, my grandfather was Los Angeles City Engineer
16 for 22 years. He built structures for the San
17 Gabriel River, the Los Angeles River, turned them
18 into cement, concrete. Wiped out places that had
19 nice flowing rivers, trout, American Indians,
20 everybody was using it.

21 It was in some ways similar perhaps to
22 ancient Hawai'i. Not you sure all the aloha was all
23 there at that time, but in any event I transitioned
24 into hydrology, hung around engineers all the time,
25 got involved in writing thousands of permits that

1 involved sizing corrugated metal pipes. Was able to
2 size rocks to withstand hundred years floods.

3 Things that were kind of odd. And then I
4 come over here and I'm involved with the 'Aha Kiole
5 on Molokai. I was very honored, being the only
6 pigment challenged person over there that I know of.
7 And it was just an incredible experience. And I grew
8 to love the aina and the kai and the things that are
9 out there. They're very precious and there's not
10 much left here.

11 And I'm getting off track a little bit, but
12 I think that from the hydrologic engineering side of
13 it, the EIS was written with the idea that structures
14 would pass a 50-year flood. Not adequate. I know
15 the culverts down here along South Kihei Road are
16 undersized. The county does not have the money, I'm
17 sure, to take care of that.

18 And I don't see how a project as big as
19 Pi'ilani Promenade could be allowed to proceed, when
20 this EIS does not address what needs to be done
21 downstream before you start talking about something
22 upstream that could have terrible effects.

23 The reef out there is dead. It's bleached.
24 I don't see oli oli. I don't see ulu when I go
25 snorkeling. I go whipping along the shores and what

1 have you, and I've tried to spend some time with my
2 that my hanai brothers, Hawaiians, and my friends
3 that are ili kea or white.

4 I'm kind of an oddball having spent a lot
5 of time in the navy, but that's okay. To me the
6 issue is this EIS is not balanced. It needs more
7 integrated planning in it. It needs to include the
8 Kula Kai moku. It needs to get more information as
9 to the archaeology that's up there on the hill.

10 I've talked to Vernon Kalau, and I know
11 it's there. It's just a matter of someone has to go
12 out and say, here it is. Here's the pictures. Come
13 join us in this plan. I can go on and on and on, but
14 it's just -- we need to have more information before
15 we go forward. I hate to put on stop on this because
16 I worked in construction for years and surveying, and
17 I know how much time and effort is put into that, and
18 I know from my point of view doing environmental
19 enforcement and marine biology, marine enforcement
20 and out in the land, I would rather talk to the guy
21 that's on the backhoe, the caterpillar to make sure
22 it's done right, then having to go back to an EIS
23 with 3,000, 4,000 pages and say, this is what it
24 calls for. This is what we need to do.

25 I'm kind of getting ahead of myself. But I

1 think the salient point is this EIS needs more work,
2 therefore, I hope it does not get approved.

3 CHAIRPERSON ACZON: Thank you. Any
4 questions for the testifier.

5 MR. SAKUMOTO: No questions.

6 CHAIRPERSON ACZON: Commissioners? Thank
7 you. Next witness.

8 EXECUTIVE DIRECTOR: Hewahewa followed by
9 Tom Blackburn.

10 CHAIRPERSON ACZON: Do you swear that the
11 testimony that you're about to give is the truth?

12 THE WITNESS: Yes.

13 CHAIRPERSON ACZON: State your name and
14 address for the record.

15 THE WITNESS: My name David Kaawa Hewahewa.
16 196 Iniiniki Street, Wailuku.

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

20 DIRECT EXAMINATION

21 THE WITNESS: I'm here to question -- I want
22 to deny the EIS for one thing. But the question, the
23 Hewahewa Royal Patent that never got addressed.
24 That's my name. It's Royal Patent 7447, Land
25 Commission Award 3237.

1 And we never used to get involved with
2 these kind of things, but our community was crying
3 out for us to step up and to finally -- to put a
4 check onto all this growth that's going on in our
5 islands.

6 And I'm here to deny this, and on the
7 record, I want to say, in order for this body to move
8 forward, why is my name all over the development, and
9 it's never been addressed, for one thing?

10 As far as ancestral knowledge, I've only
11 been practicing for about 12 years. My dad never
12 taught me anything growing up. Because he knew with
13 knowledge came great responsibility. So on his death
14 bed I find out all these things he knew. So, of
15 course, I inquired to practice. In my experience, if
16 you have a direct tie in this line of Hewahewa, it's
17 a DNA link, and it's a straight line that only you
18 can access.

19 So you ain't getting taught by your kupuna,
20 for one thing. It will come to you when you go there
21 and you quiet yourself, and you listen. You will be
22 directed on what to do. Maybe you guys don't
23 understand that concept in Western thinking. But in
24 our way of thinking, you learn as you practice. And
25 who's to say we don't want to go back there and

1 practice? I want to now, because of all this stuff
2 going on.

3 So that's all I have to say. And for the
4 record my name is David Kaawa Hewahewa.

5 CHAIRPERSON ACZON: Thank you, David.

6 Questions for the testifier?

7 MR. SAKUMOTO: No questions.

8 MS. APUNA: No.

9 MR. HOPPER: No.

10 CHAIRPERSON ACZON: Commissioners?

11 COMMISSIONER CHANG: Thank you so much for
12 coming.

13 THE WITNESS: You're welcome.

14 COMMISSIONER CHANG: I know sometimes it
15 can be hard, but thank you so much for being here.

16 Now you mentioned the Land Commission
17 Award.

18 THE WITNESS: Yes.

19 COMMISSIONER CHANG: Is your LCA on this
20 property?

21 THE WITNESS: Yes.

22 COMMISSIONER CHANG: Do you know what
23 happened to that LCA?

24 THE WITNESS: I don't know, because those
25 things got hidden for some reason over the years. So

1 we are trying to find that link, and we will find it,
2 because as far as I know, I'm the only Hewahewa left.

3 COMMISSIONER CHANG: So at this point in
4 time, I understand while you have a LCA, you
5 currently do not have a Western legal title to that
6 property?

7 THE WITNESS: Do they have one?

8 COMMISSIONER CHANG: Fair enough, but you
9 originally had a LCA.

10 Do you know -- your ohana obviously lived
11 on that property at some point.

12 THE WITNESS: Back then, maybe not in
13 recent.

14 COMMISSIONER CHANG: Have you gone back and
15 looked at some of the testimony --

16 THE WITNESS: No, I have not. Only now
17 when my community cries out for us to come forward,
18 we came.

19 COMMISSIONER CHANG: Did anybody come and
20 talk to you who did the Cultural Impact Assessment?

21 THE WITNESS: Not professional people.
22 Just my people.

23 COMMISSIONER CHANG: So no one from the
24 Petitioner came to you and asked you any questions
25 about this property?

1 THE WITNESS: No.

2 COMMISSIONER CHANG: Okay, thank you very
3 much.

4 THE WITNESS: You're welcome.

5 CHAIRPERSON ACZON: Anybody?
6 Commissioners? Thank you. Next testifier.

7 EXECUTIVE DIRECTOR: Next testifier Tom
8 Blackburn-Rodriguez followed by Kaena -- I can't read
9 the last name.

10 CHAIRPERSON ACZON: Do you swear that the
11 testimony that you're about to give is the truth?

12 THE WITNESS: Yes.

13 CHAIRPERSON ACZON: Thank you. Please
14 state your name and address for the record.

15 THE WITNESS: Thank you. My name is Tom
16 Blackburn-Rodriguez. I live at 85 Bonita Circle,
17 number 202, Kihei 96793.

18 CHAIRPERSON ACZON: Please proceed.

19 ROM BLACKBURN-RODRIGUEZ
20 Was called as a public witness, was sworn to tell the
21 truth, was examined and testified as follows:

22 DIRECT EXAMINATION

23 THE WITNESS: I have brief testimony.

24 Aloha, Chair and Members of the Land Use
25 Commission. Thank you for coming to Maui and holding

1 this hearing to provide the opportunity for public
2 comment and to request that the Commission accept the
3 FEIS for Pi'ilani Promenade.

4 Just by way of background. I have lived in
5 Kihei since 1998. My family has been in Hawai'i
6 since 1870 when my ancestor became the assistant to
7 the bishop of Honolulu.

8 I am the founding president of Affordable
9 Housing Land Trust, which develops housing, which
10 remains affordable in perpetuity and never goes to
11 market price.

12 I am also a former president. I served for
13 three years on the Maui Coastal Land Trust, that
14 became the Hawaiian Islands Land Trust. And in 2004
15 the board of directors and the leadership of some of
16 the folks that I know and become friends with in this
17 meeting today, in 2004 the Maui Coastal Land Trust
18 protected 277 acres in the Waihee dunes and wetlands.

19 I come to this project as a consultant for
20 the Pi'ilani Promenade project, and I brought to the
21 Commissioners -- I think you have them -- signed
22 individual postcards by 183 individuals who support
23 the Pi'ilani Promenade with its 226 rental apartments
24 and associated jobs, but could not attend this
25 meeting due to work or family obligation.

1 I thank you very much for accepting their
2 testimony. These are actual postcards, not an
3 internet point and click survey. Had they been able
4 to attend, we would have needed to double the size of
5 this room in order for them to participate.

6 In closing, I respectfully ask the
7 Commissioners to accept the FEIS for the Pi'ilani
8 Promenade project, which has addressed cultural,
9 economic, traffic, and community issues, allowing us
10 to move on to the issuance of a Decision and Order so
11 we might discuss the uses of the property.

12 Again, thank you very much and thank you
13 for your service. Aloha.

14 CHAIRPERSON ACZON: Any question for the
15 testifier? Parties?

16 MR. SAKUMOTO: No questions?

17 CHAIRPERSON ACZON: Commissioners?
18 Commissioner Cabral.

19 COMMISSIONER CABRAL: I counted 175
20 postcards. Is that what you have, that you
21 distributed?

22 THE WITNESS: We actually had 183. A
23 couple came in under the wire.

24 COMMISSIONER CABRAL: Thank you very much.

25 VICE CHAIR SCHEUER: Aloha. Thank you for

1 your service to the Maui Coastal Land Trust.

2 So you prepared these cards. Can I just
3 ask you about the line at the bottom? "Your
4 information is never shared or sold to third
5 parties."

6 THE WITNESS: That's correct, and that's
7 just because of the social media environment we live
8 in right now. People are concerned about their -- so
9 this is retained. It goes nowhere else.

10 VICE CHAIR SCHEUER: Just so you know,
11 right, this is now a public record.

12 THE WITNESS: With the exception, of
13 course, people knowing that when they sent that in.
14 But we will not market it. We will not share with
15 third parties, and will not make any money off of
16 this. Thank you.

17 CHAIRPERSON ACZON: Anybody else? Thank
18 you. Next testifier.

19 EXECUTIVE DIRECTOR: Next Kaena followed by
20 Amanda Tabon.

21 CHAIRPERSON ACZON: Can I swear you in
22 first?

23 Do you swear the testimony that you're
24 about to give is the truth?

25 THE WITNESS: I am.

1 CHAIRPERSON ACZON: Please state your name
2 and address for record.

3 THE WITNESS: Wao Kaena Elima Eha Elua
4 Makealanui O Kai Wahine Makihei (phonetic).

5 CHAIRPERSON ACZON: Your address.

6 THE WITNESS: I just said my address.

7 CHAIRPERSON ACZON: Please proceed.

8 KAENA ELIMA

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

11 DIRECT EXAMINATION

12 THE WITNESS: First of all, I know this is
13 kind of offhand. He's my keiki who's been sleeping
14 in the back of the room, just to let you know as
15 well.

16 I hear people talking about having to drive
17 to grab socks. I drive all the way across the island
18 to take my kids to school. How about building one
19 school instead of one mega mall? I drive from Kihei
20 every day to Paia and then to Wailuku to take my son
21 and daughter to Hawaiian Emergent School. Why not
22 build us one Hawaiian Emergent school?

23 Anyways, I'm here to deny the EIS. If you
24 guys haven't noticed -- you know, I hear all these
25 things about the rules and regulations that you guys

1 pass for water quality and stuff, but sometimes you
2 got to get out of the books and get down there and
3 look for yourself.

4 Because when you get there, this last storm
5 that we had, had one car that went into the ocean,
6 had one dumpster that was left on top the beach for
7 weeks.

8 And the water quality, you go down there,
9 you can't even swim in the water. These guys, scared
10 to let them go swim in the water. And that's after
11 the rain already came. This is weeks after the rain
12 already came, and the waves come in, and they mix up
13 the silt again, and make the water all dirty again.

14 You guys are wanting to put more water from
15 where you guys are going to build into Ka'ono'ulu
16 River which already has massive water flow when these
17 big rains come. You ask the people in the condos
18 that are next to these rivers flows, they going to
19 tell you, because the river came right through their
20 garage door last time. Came right through their
21 cars, their whole apartment building was flooded.
22 And you guys want to send more water down that way.

23 I don't think so. I don't think so.

24 Killing the reef more. You guys smothering
25 the reef. Back in the day you could find limu all

1 over the beach. What happened to the limu? People
2 was gobbling. People that move on top that beach,
3 from far away, they came over here. They move on top
4 of that beach.

5 And then they said the limu was something
6 that doesn't belong there, all the older things. So
7 they went with their tractor, and they pick up all
8 the limu off of the beach, and now no more limu. No
9 limu, food for the fish, once there's no food for the
10 fish, the fish disappear. That's the cleaners of the
11 reef. Once the fish disappear, the reef is smothered
12 by the silt of the these projects that are uphill
13 that don't take care of the water quality.

14 I just want to say I'm against this. You
15 guys have better things to build. Everything that
16 you say is for the public. It's not for the public.
17 This is for the tourist industry. Enough with them.

18 Take care of our ohana. That's the first
19 thing. Going to take care of you guys to make sure
20 that in the coming years when we're gone, and these
21 guys are gone, that the next guys get what we have.

22 That's all I got to say. Mahalo.

23 CHAIRPERSON ACZON: Thank you. Any
24 questions?

25 MR. SAKUMOTO: No questions.

1 CHAIRPERSON ACZON: Commissioners? Thank
2 you.

3 EXECUTIVE DIRECTOR: Next Amanda Tabon
4 followed by Ke'eaumoku Kapu.

5 CHAIRPERSON ACZON: Next one.

6 EXECUTIVE DIRECTOR: Ke'eaumoku Kapu.

7 CHAIRPERSON ACZON: May I swear you in
8 first?

9 Do you swear the testimony that you're
10 about to give is the truth?

11 THE WITNESS: Yep.

12 CHAIRPERSON ACZON: Please state your name
13 and address for the record.

14 THE WITNESS: My name is Ke'eaumoku Kapu.
15 I live in Kauaula Valley, Lahaina.

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

19 DIRECT EXAMINATION

20 THE WITNESS: And I think this thing kind
21 of going little bit too sideways.

22 I sit in the back and I listen to lot of
23 the issues and discussions on the EIS basically
24 claiming there is no cultural practices that are
25 being done in the area. You know, that's like saying

1 that a lot of Hawaiians are on reserve.

2 So I wanted to leave everybody with this,
3 and has a lot to do with that river. Kulanihakoi,
4 that's a very important place. And I'm going to
5 leave you with this. (Hawaiian spoken.)

6 That kahea was written for that specific
7 place, Kulanihakoi.

8 Now, for people of foreign intuition,
9 starts to make up so-called mana'o that this place
10 has no cultural practices. Has no mo'olelo. Has
11 none of those things that is really important to our
12 people. Then they talking to the wrong people.

13 I'm appalled to this, based on this
14 so-called environmental impact statement on whether
15 or not we as kanaka maoli of this aina even qualify
16 to be a part of this environmental impact statement.
17 It's appalling.

18 Then the surrounding development, how many
19 royal patents are in that area? And what gives this
20 Land Commission, as well as these developers, the
21 right to even take royal patents that was awarded
22 from the kingdom? The pre-government existed from
23 this so-called over-throw government, yeah? Where is
24 the jurisdiction? Where is -- I like see the
25 palapala on how all of a sudden warranty title deed

1 just trumps one royal patent. The hewa hewa.

2 My ohana is from that area too. I'm from
3 the Kawawao (phonetic) genealogy. My kupuna is from
4 that area. My great grandmother is Julia Keanai
5 Namaunu (phonetic). She is also a royal patent of
6 that area as well. We have other families that have
7 royal patent there, the Konahea Ohana (phonetic).
8 They're here today too. They here present. We heard
9 the call. We had to come to figure out what
10 happened. What is going on over here? How come all
11 of a sudden everybody see no more tradition, no more
12 culture, no mo'olelo in this area?

13 I just gave you one. Not just all of a
14 sudden today, this is something that went passed down
15 from generation to generation and still being passed
16 down today through my roots, through my children's
17 roots. So this EIS is missing a lot.

18 CHAIRPERSON ACZON: Please summarize.

19 THE WITNESS: I am summarizing.

20 This EIS is missing a lot, and we coming to
21 you guys, the Land Use Commission, to look at what
22 you have in front of you. You have commodity, and
23 you have kanaka, you have ohana. What is more
24 important?

25 CHAIRPERSON ACZON: Thank you, Mr. --

1 THE WITNESS: The life of the land, or the
2 people here to make money and reap our resources
3 every day? So mahalo.

4 CHAIRPERSON ACZON: Any questions,
5 Commissioners?

6 COMMISSIONER CHANG: Aloha, Ke'eamoku, were
7 you contacted? Did anybody contact you when they
8 prepared the Cultural Impact Assessment?

9 THE WITNESS: I kind of hold like a
10 position, part of the 'Aha Moku system. So my
11 kuleana is when there's projects in different mokus,
12 if it cues to me, then what I do, I respond to the
13 moku representative like Basil Oshiro.

14 COMMISSIONER CHANG: Did they send you a
15 letter or did they call you?

16 THE WITNESS: No. It's just correspondence
17 that just comes from like the departments, and it's
18 kind of a wide correspondence that's sent. So my job
19 is literally to help with the process and trying to
20 get lineal descendants, cultural descendants
21 together.

22 COMMISSIONER CHANG: Did anybody personally
23 call you to ask you if you have any ohana in this
24 area?

25 THE WITNESS: No. I got involved because I

1 knew that the project was pending. Tried to get
2 involved. Tried to get a lot of other families that
3 are rooted.

4 But if you talking about maybe the moku in
5 perspective, you get families that live there, but
6 then you also get families that have ties to the area
7 that doesn't live there. Like I already mentioned,
8 like the Konahea (phonetic) family. The Namao,
9 (phonetic) they actually from Wailuku, some even
10 Lahaina, but very rooted to that place is what I
11 basically trying to say.

12 Just because we are not from that area
13 doesn't mean it doesn't affect us. Affects us
14 greatly.

15 COMMISSIONER CHANG: Do you know whether
16 those family members were contacted for their mana'o
17 regarding Cultural Impact Assessment?

18 THE WITNESS: I haven't viewed the list,
19 but I know there are a lot of people missing in the
20 EIS that should be a part of the discussion,
21 especially for like the Hewahewa, myself as well as,
22 you know. And it's hard. It's hard because we all
23 kind of bombarded by a time frame.

24 Once this thing starts, sometime you get
25 30 days, 45 days. If you not involved, then poof,

1 there it goes. So we not a part of the process all
2 because of a time factor, and I think that's really
3 wrong. Something needs to be done with that. I like
4 to say, you know what? This should go back to the
5 drawing board and start all over to get the right
6 people to the table.

7 COMMISSIONER CHANG: The Cultural Impact
8 Assessment concluded that there were no traditional
9 customary practices in this area. Is it your
10 statement today that there are, they just didn't talk
11 to the right people?

12 THE WITNESS: Oh, yes. There is
13 definitely. If you talking about mauka versus makai,
14 you know, whatever is done mauka basically similar
15 what is done on makai side. Some people made mention
16 about the heavy impacts that happens along
17 Kulanihakoi, that whole riverbed. So the cultural
18 practices that are being done today, you know, which
19 has a lot of to do with fishing. A lot of the mauka
20 sites have a lot to do with the koas. When you get
21 fishermen going outside, they got to look at the lay
22 of the land, that's the most important thing. Where
23 are those koas on the land versus the koas that are
24 in the ocean.

25 COMMISSIONER CHANG: Do you know when this

1 project was originally started?

2 THE WITNESS: No.

3 COMMISSIONER CHANG: So they only may have
4 sent you something like the last 30 days, or you just
5 got something recently?

6 THE WITNESS: Normally, if I don't get
7 anything, then normally I got a call from a lot of
8 the moku representatives for some kind of assistance,
9 and I try to assist in any way I can.

10 COMMISSIONER CHANG: I appreciate your
11 testimony. Mahalo.

12 CHAIRPERSON ACZON: Anybody else?
13 Commissioner Okuda.

14 COMMISSIONER OKUDA: Thank you for your
15 testimony.

16 We operate under what they call
17 quasi-judicial rules, and so to some extent we have
18 to be aware that in the end somebody else, like
19 Hawaii Supreme Court, is going to look over our
20 shoulder and determine whether the decision here was
21 correct or not. And the Supreme Court justices
22 aren't going to be here, they're going to be looking
23 at the transcript that our court reporter has
24 prepared.

25 And many of us are not bilingual. Can you

1 please explain or summarize what you spoke in
2 Hawaiian?

3 THE WITNESS: It was a chant about growth.
4 But it was specifically a chant was identifying that
5 specific area Kulanihakoi.

6 COMMISSIONER OKUDA: So the chant was
7 specific to the project area; is that correct?

8 THE WITNESS: Yeah.

9 COMMISSIONER OKUDA: And how did you learn
10 this chant? And I apologize for inquiring but --

11 THE WITNESS: Generational knowledge passed
12 down from one kumu to the next, to the next
13 generation.

14 You know, being affiliated to certain
15 areas. I'm from Lahaina, but then my whole ohana is
16 like all the way from Kipahulu all the way to
17 Honokohau, yeah. So based on genealogy, as well as
18 traditional resource management, as well as
19 generational knowledge is passed down through our
20 families till today.

21 COMMISSIONER OKUDA: Again, we don't meant
22 to be prying about family or cultural practices, but
23 there is a Hawaii Supreme Court that mandates us to
24 do this inquiry, and that's why we're asking. So
25 thank you very much for your testimony.

1 CHAIRPERSON ACZON: Vice Chair Scheuer.

2 VICE CHAIR SCHEUER: You testified about --
3 questioned whether the warranty deed was -- excuse
4 me -- a warranty deed was sufficient to establish
5 title.

6 Do you have some personal familiarity with
7 that particular issue either here or --

8 THE WITNESS: Yes. I have a lot of
9 personal know abouts because my case just came
10 through the Second Circuit Court through a jury trial
11 and I was successful. This just happened about maybe
12 three weeks ago.

13 VICE CHAIR SCHEUER: Could you briefly
14 elaborate for the Commission?

15 THE WITNESS: Yeah. I've been fighting a
16 court case for about 15 years with a land company on
17 the west side. Well, let's say total 17 years, and
18 the work involved in staying the course in being
19 challenged by quiet title adverse possession claims.

20 After 17 years you come to understand a lot
21 about the color of title. And when Pioneer Mill
22 basically sold these properties with a warranty title
23 deed, I challenged that 15 years ago. And within the
24 past three weeks, I was successful on winning that.
25 It was a jury trial.

1 So the reason why I bring up the issue,
2 it's not a Land Commission Award, but -- although
3 it's a Land Commission Award but with a Royal Patent
4 number, this one is similar too. There's a Land
5 Commission Award on the Hewahewa, also Royal Patent.

6 I don't know if the Commission understands
7 how the royal patent works. Once the kingdom signs
8 over the royal patent, he actually secures the Land
9 Commission Award of those heirs from the time of the
10 Mahele.

11 So basically, what I'm saying is, the royal
12 patent is already secured. If anything the Office of
13 Hawaiian Affairs should be the one here in answering
14 for the interest of the royal patent in protecting
15 the heirs like Hewahewa, Konahea, as well as the
16 families.

17 So kind of touchy situation when I talk
18 about that, but when you have a Land Commission Award
19 and one royal patent, it even strengthens it more,
20 whether existing government today has to protect the
21 interest of the heirs' Land Commission Award because
22 it was followed by royal patent.

23 That's kind of what I learned, and within
24 the past I've been in land litigation for over
25 20 years now, so I know little bit.

1 VICE CHAIR SCHEUER: Thank you, Mr. Kapu.

2 CHAIRPERSON ACZON: Thank you. The next
3 testifier.

4 EXECUTIVE DIRECTOR: Deborah Mader.

5 CHAIRPERSON ACZON: Before we take her
6 testimony, we will take a five-minute break.

7 (Recess taken.)

8 CHAIRPERSON ACZON: We are back on record.

9 Mr. Orodenker, please call the next
10 witness.

11 EXECUTIVE DIRECTOR: Thank you, Mr. Chair,
12 the next witness is Deborah Mader, followed by Matt
13 Cearny.

14 MR. CEARNY: I saw that Deborah had stepped
15 out.

16 CHAIRPERSON ACZON: May I swear you in
17 first?

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

20 THE WITNESS: I do.

21 CHAIRPERSON ACZON: Please state your name
22 and address for the record.

23 THE WITNESS: Matthew Cearny, 748 Aulike
24 Street.

25 -o0o-

MATTHEW CEARNY

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

DIRECT EXAMINATION

THE WITNESS: I wanted to thank everybody here today who educated me. I learned a lot being here. I'm 11 years on Maui, and six years at you Aulike Street. So there are about ten homes on Aulike Street whose property goes into the that Kulanihakoi Gulch, it's an average of 40 feet. I'm one of the those properties. I'm a homeowner there.

And in its current state I feel like this project would endanger our property. Based on the fact that, just simple observation, of the frequency and increasing intensity of storms that are being generated.

And I'm there to stay. I'm a high school teacher, I'm not going anywhere. And I feel like as climate change sets in, if this project goes in as it is, it will bring water damage to our houses.

The recent winter was extraordinary one by my measure as six years, but also by the measure of long-time residents who have been in the Kulanihakoi Estate subdivision since it was built.

Our properties go about 40 feet into the

1 gulch, and we have about a ten-foot embankment that
2 drops down. It was back in December -- I don't know
3 the exact day -- but whatever, the storm was like
4 December 6th or so, I think that was a bigger deal
5 than the one that was previously mentioned in March
6 for us.

7 The water came within about four feet of
8 jumping the embankment on the magic river. It was a
9 powerful and terrifying storm. It was already
10 discussed how it brought cars and dumpsters. In my
11 part of the gulch we had like a concert speaker, you
12 know, like one of those things that has handles on
13 both sides. It just got washed there.

14 And then I went out of town, and I think
15 another storm came and took it away. I have no idea
16 where it went.

17 And, you know, so this is before 500,000
18 acres get paved over before us with a very vague
19 statement suggesting how they are going to guarantee
20 that predevelopment drainage flow will not exceed
21 post-development flow.

22 I've worked a little bit on top of being a
23 high school English teacher, as a historic
24 preservationist, so I've looked at EISs and I can't
25 see how this one would protect our properties. And I

1 would like to go on record in the event that
2 something does go in and our properties are damaged
3 by the development.

4 Just a side note to put on my teacher hat,
5 I don't see how putting in 200 properties is going to
6 solve our teacher shortage. It's much more systemic.
7 Actually, the recent DOE initiative to home grow
8 teachers is a much better way to stabilize our
9 teacher population. And this is Mac right here.

10 CHAIRPERSON ACZON: Any questions?

11 MR. SAKUMOTO: No questions.

12 MS. APUNA: No questions.

13 MR. HOPPER: No.

14 CHAIRPERSON ACZON: Commissioners?

15 COMMISSIONER CHANG: Just one question.

16 Mr. Cearny, were you contacted by the
17 Petitioner?

18 THE WITNESS: I am on the homeowners
19 association, and we do follow these events very
20 closely. I'm a very busy dad, and English department
21 head and Kekaulike High school, so I try to check
22 those emails regularly.

23 I cannot recall any contact. If you would
24 like to contact our president, he's more on top of
25 it. He's a former fire chief and has a little more

1 time, he's retired.

2 COMMISSIONER CHANG: You adjoin the
3 property?

4 THE WITNESS: Yes. I do talk to Eric who
5 owns -- the owner of the property quite a bit. And,
6 you know, he's helpful. But, no, this -- the
7 Pi'ilani Promenade has not contacted me. And
8 honestly, I don't think it contacted our association.
9 I'm not certain though.

10 COMMISSIONER CHANG: Thank you.

11 CHAIRPERSON ACZON: Anybody else? Thank
12 you. Next testifier.

13 EXECUTIVE OFFICER: Next testifier is
14 Deborah Mader. Jill Engledow, followed by Allison
15 Miller.

16 CHAIRPERSON ACZON: May I swear you in
17 first?

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

20 THE WITNESS: Yes.

21 CHAIRPERSON ACZON: Please state your name
22 and address for the record.

23 THE WITNESS: My name is Jill Engledow. I
24 live at 80 Halili Lane, Kihei, Apartment 8H.

25 -o0o-

JILL ENGLEADOW

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

DIRECT EXAMINATION

THE WITNESS: I live I think just below where the previous testifier lives. I live in the Villas at Kenolio, which is a residential apartment complex right on Kulanihakoi Gulch, and I am concerned about the overall impact of a lot of development that's planned for the mauka area.

When we -- as others have said, we already have a really serious flooding issue. Every time it rains heavily Upcountry, it doesn't have to be raining in Kihei, but it's the mauka drainage that's causing us problems.

And we already have, in addition to this project, we have a high school, low income apartments, and probably a few other things -- other things next door, the Maui Lu Development. But there is a lot of development planned for this area in the near future.

What happens is Kulanihakoi Gulch has been so silted in, that however deep it was made when they did these housing developments along its edges, it's now several feet higher. And when these big rains

1 come, we have like a chocolate river flowing by.

2 And last time there was a big one, I stood
3 on the edge of the gulch near my neighbor's condo,
4 and there was maybe a foot or two between that river
5 and the edge where it would have flooded into their
6 condos. And some of the condos on the other side of
7 the gulch were flooded by that rain.

8 That was the one that washed the dumpster
9 down not just to the beach, it was in the water until
10 somebody could drag it out of there.

11 There were deer and pigs caught in the
12 flood. There is, at the bottom of the road at
13 Kaonoulu Road where it meets off Kihei Road, there is
14 what I believe muliwai that used to be much bigger,
15 and I think it's silted in too.

16 It's like the whole system needs to be
17 dealt with. I'm concerned that this project is not
18 looking at the whole system, not integrated with
19 other developments within that area.

20 The water goes through that old muliwai
21 area, under the bridge, which has pretty much been
22 washed out a few times. Every time it rains that
23 intersection is completely flooded. There is no
24 passage on South Kihei Road from Kaonoulu onto South
25 Kihei Road, forget it. You can't go there. Cars

1 were washed all over the place in that last storm.

2 And then, of course, the water goes right
3 into the ocean which is where the ancient fishpond
4 is. As people have said, there's no more limu.
5 There's no more fish. The reefs are all dying. And
6 I think the silt has a lot to do with it.

7 This is my biggest concern, although I've
8 other concerns about this development. This is the
9 big one for me.

10 CHAIRPERSON ACZON: Any questions, parties?

11 MR. SAKUMOTO: No questions.

12 CHAIRPERSON ACZON: Commissioners? Thank
13 you.

14 EXECUTIVE DIRECTOR: Allison Miller
15 followed by K. Hewahewa.

16 CHAIRPERSON ACZON: May I swear you in?

17 Do you swear that the testimony you're
18 about to give is the truth?

19 THE WITNESS: Yes.

20 CHAIRPERSON ACZON: State your name and
21 address for the record.

22 THE WITNESS: Allison Miller. My address
23 is South Kihei Road, Kihei.

24 ALLISON MILLER

25 Was called as a public witness, was sworn to tell the

1 truth, was examined and testified as follows:

2 DIRECT EXAMINATION

3 THE WITNESS: So I work in marine education
4 as a marine naturalist. And I'm a student here at
5 UHMC studying sustainable science management.

6 I spent my first three semesters here
7 studying Hawaiian ecology, and recently earned my
8 certificate for the UH Marine Option Program.

9 I ask that you reject this EIS because it
10 does not address all necessary concerns. As I live
11 on South Kihei Road, I have many concerns about this
12 EIS, including impacts from the flooding, increased
13 traffic, and the need for low impact development on
14 Maui moving forward.

15 But I am here today to speak on behalf of
16 Maui's coral reefs. Hawai'i's economy largely based
17 on tourism, and it is coral reefs and beautiful
18 beaches that bring those tourists here. A couple
19 years ago we experienced a mass coral bleaching event
20 as the water temperature around Maui reached 84
21 degrees. The current Save Our Reefs is dismal, and
22 entire sections of reef have died off in some areas.
23 In the face of climate change, our coral reef
24 ecosystems are suffering from global sectors like
25 rising ocean temperatures and ocean acidification.

1 Hawai'i is home to many endemic species
2 that are found nowhere else on the planet. It is
3 estimated that 25 percent of our reef fish are
4 endemic. It is important as an island community that
5 relies heavily on our coral reefs for fishing and
6 tourism revenue to do everything that we can in order
7 to mitigate impacts from local stressors.

8 Sedimentation from the development process
9 alone is a threat to nearby reefs. Runoff is another
10 huge concern. The more roads and parking lots we
11 build, the more fertilizers and chemicals and
12 everything else that gets washed onto our reefs.
13 Excess wastewater and nitrates are also a threat to
14 the health of our coral.

15 There are many things that we can do on a
16 local level to help ensure our reefs are resilient to
17 global threats from climate change, and building a
18 commercial development this close to our coastline
19 is not one of them.

20 CHAIRPERSON ACZON: Any questions for the
21 testifier?

22 MR. SAKUMOTO: No questions.

23 CHAIRPERSON ACZON: Commissioners?

24 COMMISSIONER CABRAL: I could have asked
25 any number of people this. Were you notified? Were

1 there any community meetings about this project
2 coming up, or of that nature that you've been made
3 aware, been invited to come and given input into the
4 community at all?

5 THE WITNESS: Not about this, no.

6 COMMISSIONER CABRAL: Thank you very much.

7 CHAIRPERSON ACZON: Anybody else? Thank
8 you. Next testifier, please.

9 EXECUTIVE DIRECTOR: K. Hewahewa followed
10 by Mark Sheehan.

11 CHAIRPERSON ACZON: May I swear you in?

12 Do you swear that the testimony that you're
13 about to give is the truth?

14 THE WITNESS: Yes.

15 CHAIRPERSON ACZON: Please state your name
16 and address for the record.

17 THE WITNESS: Aloha everyone in attendance,
18 aloha to the LUC. My name Ko Hewahewa.

19 KO HEWAHEWA

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

22 DIRECT EXAMINATION

23 THE WITNESS: I'm here with my family,
24 parents, brother, my children.

25 I'm a direct lineal descendant of the

1 Hapakuka Hewahewa, the recipient of Royal Patent
2 7447, and recipient of Land Commission Award 3237.

3 It's hard to find the genesis to begin with
4 for there is so much to say, so bear with me. I
5 first address the project and its developers.

6 For many moons foreigners been coming
7 ashore with foreign terms, concepts, terminologies
8 and ideas to not contribute to our community but to
9 take advantage of it.

10 For over 200 years these foreigners, not
11 all of them are bad, but been coming here to develop,
12 deplete and take advantage of our people and its
13 natural resources for personal interest and personal
14 gain. I see this as an act of colonialism.

15 So let me define colonialism. It's the
16 policy or practice of acquiring food or partial
17 political power and control over another country
18 occupying it with settlers, and exploiting it
19 economically, socially and environmentally.

20 Another term came to mind. Gentrification.
21 It's the process of renovating or improving the
22 district so that it conforms to middle class taste.
23 Is this not you? Middle class or other any classes
24 here are far different from the mainland. You're
25 trying to improve what's best for you and where you

1 come from, but changing our landscapes to make a
2 selected few feel comfortable. And to make it feel
3 like the mainland does not fit here. Here we take
4 care and serve our land and our resources.

5 I see in no way this plan of a mega mall
6 serving the land and its resources and/or
7 contributing to our community. What I mean by
8 community is I'm talking about the flora, fauna and
9 minerals as well.

10 I hope the developers, investors, and all
11 participating business partners and parties are here
12 not to just hear but to listen.

13 Where is your water going to come from?
14 Sticking straws in wells in our land, or running
15 pipes from the watersheds all into dryland areas
16 doesn't make sense environmentally, and is not
17 sensible under any circumstance.

18 It doesn't matter how much money you put
19 into this environmental impact study or environmental
20 assessment, there will never be a right way. So
21 shame on the companies writing these studies, because
22 you know that there is no right way.

23 Many of the cultural sites have been
24 destroyed and obliterated by foreigners in the past
25 who came here trying to improve something that was so

1 purchase, to capitalize on out land and resources for
2 personal gain and interest.

3 I like to turn my attention to the LUC and
4 our community. One of the major cultural impacts
5 from this project will be the final destruction of
6 one of our main cultural sites of celestial
7 observation.

8 A surveyor's eye may easily miss the value
9 of these places, and may only see dried up dead
10 lands, land overran by cattle. It may look at those
11 it may have absolutely no cultural significance, but
12 through an eye of a descendant with passed down
13 generational knowledge.

14 I see its advantage point for one of the
15 most important aspects of our culture. I'm talking
16 about the importance of our moon, our stars and our
17 sky. This ahupua'a of Ka'ono'ulu is in a direct
18 alignment with Kealaikahiki. This channel is a
19 direct path to Tahiti, hence the name of the channel,
20 Kealaikahiki.

21 CHAIRPERSON ACZON: Please summarize.

22 THE WITNESS: The path to Tahiti.

23 So why was the Hawaiians the best
24 navigators on the planet? Because of their keen
25 observations and brilliance and knowledge of

1 celestials.

2 This place where the project wants to
3 develop is a place that for many generations has been
4 a university, a place of higher education and
5 observation that developed our most prominent
6 navigators. I stand here a testament of one with the
7 knowledge of kilo, and observer, a kilo can stand
8 here and explain to you how the colors of the sky to
9 determine the weather to come. A kilo could stand
10 here and tell you how the moon dictates the action of
11 the flora and fauna.

12 CHAIRPERSON ACZON: Please summarize.

13 THE WITNESS: My genealogy doesn't just
14 connect to the royal patent award, but it connects to
15 the stars. I didn't come here to just argue and
16 complain, but I want to state the facts and suggest
17 that you please refute the FEIS for it does not
18 adequately address --

19 CHAIRPERSON ACZON: Thank you. Any
20 questions? Commissioners?

21 COMMISSIONER CHANG: I'm sorry. Mr.
22 Hewahewa, were you contacted at all by the
23 consultants who prepared the Cultural Impact
24 Assessment for this project?

25 THE WITNESS: For the record, no, sir.

1 COMMISSIONER CHANG: And you -- what I
2 understand from your testimony your family, or this
3 land has cultural significance?

4 THE WITNESS: Absolutely.

5 COMMISSIONER CHANG: Are you aware of --
6 has there been practice, has families continued, or
7 have they practiced in the past this celestial
8 connection between the navigation and the land?

9 THE WITNESS: Practice, very much so in the
10 past, and currently practicing right now, that's
11 myself.

12 COMMISSIONER CHANG: Is this land critical
13 to that ongoing practice?

14 THE WITNESS: Definitely. Like testimony
15 before, a lot of these pohaku or these places, if
16 disturbed, will lose some of that -- we'll lose a
17 place to practice this.

18 COMMISSIONER CHANG: Are you aware that
19 there was a petroglyph on this site?

20 THE WITNESS: I am.

21 COMMISSIONER CHANG: Do you know what the
22 significance of that petroglyph may have been?

23 THE WITNESS: Not at the moment.

24 COMMISSIONER CHANG: So the conclusion of
25 the Cultural Impact Assessment was no traditional

1 cultural practice of this site.

2 THE WITNESS: I stand here to challenge
3 that.

4 COMMISSIONER CHANG: Thank you so much. I
5 appreciate your testimony.

6 CHAIRPERSON ACZON: Any more questions?

7 VICE CHAIR SCHEUER: Hewahewa, your
8 ancestor, this is the same Hewahewa who is Kahunanui
9 to Kamehameha?

10 THE WITNESS: Aye.

11 VICE CHAIR SCHEUER: I'm familiar with his
12 residency in Waimea, Oahu where he passed, about are
13 you aware at all of why this aina was awarded to him?

14 THE WITNESS: You might not be talking
15 about the same Hewahewa, but we're family. This
16 Hewahewa passed in 1837.

17 VICE CHAIR SCHEUER: Are you aware of the
18 reason for the selection or award of this aina?

19 THE WITNESS: You know, a lot of this stuff
20 was hidden from us. It's stuff that we got to dig
21 out, and they made it so hard for us to go and
22 find -- and I just want to share with everybody the
23 challenges of us to find our generational knowledge.
24 We got to go and seek it. Without money, it's hard.
25 But this stuff was passed down through generational

1 knowledge to seek and then finding.

2 Could you repeat that last question you
3 had?

4 VICE CHAIR SCHEUER: If you were aware --

5 THE WITNESS: The significance --

6 VICE CHAIR SCHEUER: Could share -- yes,
7 because when certain chiefs or other people were
8 awarded they had reasons, ties or other reasons for
9 securing awards that sometimes pointed to the
10 significance of a place.

11 THE WITNESS: The significance of the
12 place, like I stayed had earlier in my testimony, was
13 some of the celestial studies and also the fisheries.
14 But looking mauka is all kind of destroyed already,
15 but this place has the most bio diverse dryland
16 forest in the entire world. It was all destroyed by
17 cattle from the previous owners. A lot of resources
18 in there.

19 VICE CHAIR SCHEUER: Mahalo.

20 CHAIRPERSON ACZON: Commissioner Okuda.

21 COMMISSIONER OKUDA: Mr. Hewahewa, if I can
22 just ask this question.

23 Since the Hawai'i Supreme Court recognizes
24 in certain cases what they call a kama'aina witness
25 is an exception to the hearsay rule, but being more

1 specific here.

2 Have, in your family, were you told by your
3 elders that on this specific site, this specific
4 site, that in your family cultural practices actually
5 took place?

6 THE WITNESS: I was told by family members.

7 COMMISSIONER OKUDA: Would you mind sharing
8 so that our record is complete what family members --
9 you don't have to give the names, but if you can
10 describe where in your family tree these family
11 members told you that specific cultural practices
12 were taking place on this specific site.

13 THE WITNESS: If you look around me, saw my
14 family members. We all have generational knowledge
15 passed to us through kupuna.

16 COMMISSIONER OKUDA: Okay, so your
17 grandparents told you?

18 THE WITNESS: Friends, family, kupuna,
19 kumu.

20 COMMISSIONER OKUDA: Thank you very much.

21 CHAIRPERSON ACZON: Anybody else? Thank
22 you Mr. Hewahewa.

23 EXECUTIVE DIRECTOR: Mark Sheehan followed
24 by Kelly King.

25 CHAIRPERSON ACZON: Do you swear that the

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

2 THE WITNESS: Yes.

3 CHAIRPERSON ACZON: Please state your name
4 and address for the record.

5 THE WITNESS: My name is Mark Sheehan, 588
6 East Kuiaha Road in Haiku.

7 CHAIRPERSON ACZON: Please proceed.

8 MARK SHEEHAN

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

11 DIRECT EXAMINATION

12 THE WITNESS: I would like too invite the
13 members of the Land Use Commission, while they're
14 here to please take a look at the vacant malls on the
15 way to the airport.

16 The Maui Market Place there on Dairy Road
17 has only a couple of stores remaining there, Office
18 Max and a pet shop, and Old Navy, but the big tenants
19 have already moved on. They will also see the Kmart
20 is another ghost mall. And that we have a very high
21 vacancy rate here.

22 I can't understand why the developers want
23 to build another gigantic mall and ignore the
24 community plan. The traffic impacts will be far
25 greater than I think has been considered in this EIS

1 because of all the other developments that are
2 happening between North Kihei and Makena. And that
3 should be taken into consideration.

4 One of the things that is never considered
5 is the social impacts, and I don't really have any
6 specific information for you about social impacts,
7 other than to say that when I look at what is
8 happening to this society, it seems to me that this
9 will have an impact. As a former school principal, I
10 would never put a mall right next to a school.

11 I want to speak specifically though to how
12 this violates the community plan. There was a
13 decision by the Intermediate Court of Appeals that
14 was decided on June 22nd, 2012, that basically says
15 that the community plans have the force of law.

16 The county, some people in the county
17 Planning Department don't believe so, but this was a
18 decision by the Intermediate Court of Appeals and
19 I'll leave this with the recording secretary if
20 anybody would like to look into it.

21 But it violates the specific language of
22 the community plan which calls for light industrial
23 use. While there is some light industrial use in
24 this particular plan, the amount of retail is a way
25 of basically bending the rules and is in violation of

1 the community plan.

2 Mostly warehousing and distribution
3 facilities are really what is called for in light
4 industrial, and yet less than half of the project is
5 planned for light industrial. So this project would
6 contribute to sprawl, and draw business away from the
7 core of Kihei that the community plan is trying to
8 create.

9 So for that reason alone, I think that you
10 should reject this Environmental Impact Statement
11 because it doesn't really conform with the community
12 plan.

13 CHAIRPERSON ACZON: Any questions for the
14 testifier?

15 MR. SAKUMOTO: No questions.

16 CHAIRPERSON ACZON: Commissioners? Thank
17 you. Next witness.

18 EXECUTIVE DIRECTOR: Kelly King followed by
19 Jeremy Konohia.

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

22 THE WITNESS: I do.

23 CHAIRPERSON ACZON: Please state your name
24 and address for the record.

25 THE WITNESS: My name is Kelly King. I

1 live at 72 Kalolo Place in North Kihei.

2 CHAIRPERSON ACZON: Please proceed.

3 THE WITNESS: Thank you.

4 KELLY KING

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

7 DIRECT EXAMINATION

8 THE WITNESS: I am here as both an
9 individual who's been a long time resident of Kihei.
10 I've been in Kihei for over 35 years in the same
11 house that my husband and I built and raised two
12 children in for over 31 years. And I also serve as
13 the Kihei resident representative to the Maui County
14 Council.

15 I also sit on the board of the Hawai'i
16 Technology Development Corporation, which is a state
17 organization that has a site in the R and T park in
18 Kihei that we try to rent out. It's been about
19 50 percent occupancy for many years, because of the
20 vacancies throughout Kihei in retail commercial.
21 There's not a huge demand for that right now.

22 I do want to say that I've been intensely
23 involved in Kihei for many, many years, starting with
24 the birth of my child who is now 31; and in the
25 schools, in the parks, in local governance with the

1 Kihei Community Association back then. Some of you
2 may remember Jean Thompson, who was a beloved figure
3 as the President of the Kihei Community Association
4 back then.

5 And I've gotten involved because of the
6 need for things to happen, for stuff to get done and
7 for our community to be represented.

8 So I've been in the fight for
9 air-conditioning for our schools, in the fight for
10 second elementary school, which we eventually got.
11 Got so involved in the school system, that I ran for
12 the State Board of Education and got myself on that
13 board, back when it was an elected position.

14 So being involved in the community it
15 becomes very frustrating when these projects come up
16 without collaboration with our community. I watched
17 the original rendition of this project that was
18 matriculated into the Kihei Community Plan, flipped
19 drastically, and change into something else without
20 going through the same process that it originally
21 went through. It's changed again, but it's still not
22 the original project that it was accepted by the
23 Kihei-Makena Plan.

24 On the Maui County Council, I chaired the
25 planning committee, and so we are going through the

1 process of community plan reviews, which was woefully
2 slow up until this year, and we're finishing up the
3 Molokai Community Plan which is the entire Island of
4 Molokai right now. The next will be West Maui. The
5 next will be South Maui.

6 I met with the Kihei Community Association
7 yesterday, and Mr. Spence, and some of the folks from
8 planning were there, and I'm encouraging all
9 communities to not wait until we get around to doing
10 their plan, but to start the engagement now.

11 It really worries me and bothers me, and
12 it's sort of a "throw up your hands" situation when
13 you see a project like this come this far without
14 community engagement.

15 I'm trying to, as chair planning committee,
16 encourage all developers I talk to, to before you
17 even get to myself or County Council or talk to other
18 councilmembers to engage your community, and so I
19 haven't seen that.

20 CHAIRPERSON ACZON: Please summarize e.

21 THE WITNESS: I would urge this board TO
22 send the EIS back. Ask the developers to engage with
23 the community, because the EIS addresses a plan that
24 is really not acceptable.

25 CHAIRPERSON ACZON: Thank you. Any

1 question for the testifier?

2 MR. SAKUMOTO: No questions.

3 MS. APUNA: No.

4 MR. PIERCE: I have a question.

5 CHAIRPERSON ACZON: Go ahead.

6 CROSS-EXAMINATION

7 BY MR. PIERCE:

8 Q My name is Tom Pierce representing
9 Intervenors Maui Tomorrow and South Maui Citizens.
10 My question is as a councilmember, could
11 you explain why the Kihei Community Plan is one of
12 the plans that's important -- an important planning
13 document?

14 A It's important because we have a framework
15 called the Maui Island Plan, which kind of gives
16 growth boundaries. The growth boundaries are a
17 general guideline to me, and they do say where we
18 intend to eventually have growth.

19 But that doesn't mean that growth is going,
20 to happen this year, or even in the next five years
21 or the next ten years. It's up to the community,
22 within that framework, to look at our own
23 communities, community by community, and say where
24 the next growth should be. What is good for our
25 community. We have a lot of stuff happening in

1 Kihei. The high school probably being one of the
2 biggest thing. So that's going to impact our
3 community hugely.

4 As a person who's been working on that for
5 25 years when I actually thought my own kids might go
6 there some day, it's been a long haul. Nobody
7 doesn't want the high school. But all the projects
8 I've looked at since the high school has been funded,
9 have given impact statements that don't even include
10 the high school, and don't look at all of the other
11 developments that are coming down the pike.

12 So we need to look at our community
13 holistically. We're getting to a point -- and
14 personally for myself, I'm working with the community
15 on many projects having to do with drainage, with
16 signage, with cultural heritage, with mapping those
17 things out. And we're starting to come together
18 around this idea of Downtown Kihei, which is in our
19 community plan, starting to come together about an
20 idea of identity for Kihei, and having these other
21 things thrown at us by outside entities doesn't help.

22 So if I can, I wanted to read to you
23 straight from Chapter 280(b) which is entitled Code
24 of Ordinances. It says: This is the purpose and
25 intent of General Plan and Community Plans. This

1 chapter is designed to provide plans, clearly
2 identify provisions that are meant to be policy
3 guidelines and provisions that are intended to have
4 the force and effect of law.

5 So when our community puts hundreds of
6 hours -- and there were thousands of hours put into
7 Maui Island Plan -- and develops a plan for our
8 growth that we feel good about. We feel like it will
9 serve our next generations well, we do want it to
10 have force and effect of law.

11 So it's important that the projects that
12 come before bodies like this, match up with our
13 community plan, or at least come before the council
14 for an amendment so that the representative of the
15 people can decide if that an amendment should be
16 given.

17 CHAIRPERSON ACZON: Go ahead, Mr. Pierce.

18 MR. PIERCE: Yes, Mr. Chair, if I can ask
19 another question.

20 Q Ms. King, have you had a chance to review
21 any portions of the EIS?

22 A Just the overviews.

23 Q So one of the things that is said in there
24 is that it appears to be the position of the drafters
25 of the EIS that there's no consistency issue because

1 there is M-1, the area zoned M-1, light industrial.

2 Now, you as a County Council member are in
3 charge of -- the County Council is in charge of
4 zoning. So do you agree that because it is zoned M-1
5 industrial, light industrial, and apparently,
6 according to the drafters of the EIS, all the uses
7 that they're proposing are consistent with it, that
8 because of that, that ameliorates any problems or any
9 inconsistencies that may or might be in the community
10 plan?

11 A No, I don't. And I don't think the
12 community plan is just a zoning map. I think there
13 are a lot of other issues that we deal with as a
14 community besides just land use and zoning. And in
15 order to get to that end goal of having a whole,
16 healthy environmentally happy community, we have to
17 be able to look within those parameters, what land
18 use do we want to have there.

19 So the community designated, and the
20 original developer agreed to have that light
21 industrial development there. Somehow new people got
22 ahold of the property, and it's changed.

23 So, no, I think that the healthy thing to
24 do, and the smart thing to do, and I think the legal
25 thing to do is come back to the community and work

1 out a plan that works for everybody.

2 Q Mr. Chair, one more question.

3 Ms. King, as I understand it, I think I've
4 heard Director Spence talk about this before, is that
5 the growth boundary has moved mauka of Pi'ilani
6 Highway. Are you familiar with that?

7 A Right.

8 Q And you, as representative of Kihei, would
9 you see that because the growth boundary has moved,
10 that that should mean that the core urban usage
11 should be moved mauka of the highway?

12 A That might happen at some point, but when
13 you look at our infrastructure in Kihei, we cannot
14 support that now. Those growth boundaries are there,
15 that's fine, but it doesn't mean we have to fill in
16 all the growth boundaries immediately.

17 Q Do you believe that that type of
18 information needs to be addressed in the EIS?

19 A Absolutely. I think the infrastructural
20 information has to be addressed.

21 COMMISSIONER CABRAL: Since you're clearly
22 involved in the community, were you aware of, or have
23 you been invited to any community meetings that have
24 discussed this project?

25 THE WITNESS: Not before it's come before

1 this body. No, I haven't. I've had one meeting with
2 will the developer's representative in my office.

3 COMMISSIONER CABRAL: That wasn't a
4 community meeting. Thank you.

5 CHAIRPERSON ACZON: Commissioners? Anybody
6 else?

7 EXECUTIVE DIRECTOR: Next witness is Jeremy
8 Konohia followed by Hannibal Starbuck.

9 CHAIRPERSON ACZON: Do you swear that the
10 testimony that you're about to give is the truth?

11 THE WITNESS: Yes.

12 CHAIRPERSON ACZON: Please state your name
13 and address for the record.

14 THE WITNESS: Aloha, my name is Hannibal
15 Starbuck. I live at 294 Elilani Street in Pukalani.

16 HANNIBAL STARBUCK

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

19 DIRECT EXAMINATION

20 THE WITNESS: I'm a lifelong resident of
21 Maui, and I've lived all over. I lived in Kihei from
22 '87 to '91 when I was finishing high school. Right
23 now I'm in Pukalani renting, and acknowledge the need
24 for affordable housing because we're renting and have
25 two working members in our ohana. Still hard to find

1 a house.

2 So I started looking at the FEIS at the
3 beginning of the meeting, but it's been a long time.
4 So I was able to find a couple things that stood out
5 to me. And the one thing is the drinking water. It
6 says that they need 171,000 gallons per day of
7 drinking water for this project, and it says that
8 there is .421 million gallons per day allocated from
9 the Iao Aquifer. Iao is up here. Kihei is way over
10 there (indicating).

11 And they also going to take some water from
12 Kamaole Aquifer, 81,000 gallons per day of
13 nondrinkable water.

14 So it doesn't list any alternatives. Yet
15 it does say that there is all these other projects,
16 and if you look on page 323, Table 16B in the
17 Appendix, a lot of them are residential, Maui Lu
18 Resort, Kihei High School, Kinalea Apartments
19 (phonetic), Downtown Kihei, Maui Research Technology
20 Park, Honua'ula Affordable Housing Development.

21 The total that they need is 2.3 million,
22 right? And that's not available, obviously, for all
23 these projects.

24 And this just took me, you know, just in
25 this time skimming this over, it lists no

1 alternatives. It does say as noted .421 million
2 gallons per day, which is 421,000, if you're not
3 current in your metric conversion, basically asking
4 for 40 percent of what is available.

5 Kihei High School wants 185,000 per day,
6 and the -- well, Kihei residential is the one that's
7 currently on the table. They want more than is
8 available, and they're already in construction, I
9 think.

10 So it says here:

11 As noted in the FEIS .421 mgd of
12 groundwater can be allocated from the Iao Aquifer
13 System, therefore, all proposed projects in Table No.
14 16B will not be able to utilize drinking water from
15 the Iao Aquifer System. It is noted that only the
16 Kihei residential project has begun construction of
17 those listed in the table. And as development
18 occurs, each individual project will need to provide
19 a viable water source. Alternatives considered by
20 the projects in Table No. 16B include, but are not
21 limited to drilling wells within the Kamaole Aquifer
22 as a new water source, but as was noted, the Kamaole
23 water was going to be nondrinkable.

24 So the 2.3 million was drinking water. So
25 the water doesn't add up, and there is no

1 alternatives listed. It doesn't list anything about
2 priorities.

3 Is the project that's already under
4 construction going to get all of the .42 million and
5 there's none leftover?

6 So I'm just concerned about that, as
7 everybody on Maui is concerned about our water.

8 And that's all I'll say about that.

9 I do want to mention that if you go to Maui
10 Mall lots of commercial space open. Kaahumanu is
11 never full capacity that I've seen in any time
12 recently, not even at Christmastime.

13 CHAIRPERSON ACZON: Please summarize.

14 THE WITNESS: And that's all, thank you.

15 MR. SAKUMOTO: No questions.

16 MS. APUNA: No.

17 CHAIRPERSON ACZON: Commissioners? Thank
18 you, Mr. Starbuck.

19 EXECUTIVE DIRECTOR: Captain Jon Jon Tabon.

20 CHAIRPERSON ACZON: May I swear you in
21 first?

22 Do you swear that the testimony that you're
23 about to give is the truth?

24 THE WITNESS: Yes.

25 CHAIRPERSON ACZON: Please state your name

1 and address for the record.

2 THE WITNESS: My name is Jon Jon, a lot of
3 people know me as Captain Jon Jon. Kihei boy. My
4 address is 100 Honuea on the other side of Ali'i Lani
5 where I grew up.

6 JON JON TABON

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

9 DIRECT EXAMINATION

10 THE WITNESS: I'll let everybody know that
11 I'm on the water, on the shores, and I see every
12 morning for the past 40 years. I have seen the
13 decline of limu from one area to another, and it
14 always starts when the development starts.

15 We have so many problems right now and we
16 creating more. I don't understand. I'm not sure if
17 everyone notices how many trees has gone from our
18 shores because of the corals are dying. Dead coral
19 turns into sand. People say, oh, the water level is
20 rising, it's not, it's the ocean floor from all the
21 excess sand.

22 Now you don't have limu coming up on top,
23 being pulled from the rocks naturally from the waves
24 and currents. That's what used to stop the high tide
25 water from reaching land and uprooting all these

1 trees.

2 Now, we have this development on a major
3 gulch. I've seen it. Maui Lu, I've seen all that
4 area. The reef is dead. It's not dead, there is
5 always going to be some species that's going to
6 thrive. But what we have right now is, I mean Kihei,
7 if you look at it from aerial map, it was made up of
8 many, many fishponds, after fishponds, after
9 fishponds.

10 I'm assuming, you know, all allocated to
11 the ahupua'a of the island. Each one has their own.
12 I'm here speaking on behalf of the reefs that we have
13 here. I have four children. I was fortunate enough
14 to see all the fish that we used to see. You don't
15 see colors any more along the shore. I mean, you
16 don't see yellow. You don't see the manini,
17 aholehole. You don't see the kulas any more. That
18 tells you a lot, when the nocturnal fish don't even
19 come out, or you can't even see them, that tells you
20 a lot about what's going on.

21 You know, I just got back from the
22 Philippine Islands, and there is a very
23 high-pressured fishing, where dynamite fishing was
24 used and small ice. They band it. It's been a
25 little over a year. What they do have, however, is

1 the bottom of the food chain which is the limu.

2 In my understanding, and I don't have no
3 fancy marine biology paper to say I'm a marine
4 biologist, but what I do have is 40 years of being
5 watching these shores, fishing these shores every
6 single day -- well, not every single day, but, you
7 know, my wife won't let me. But almost every single
8 day.

9 But what they do have in the amount of
10 time, and how it relates my trip to the Philippines
11 Islands --

12 CHAIRPERSON ACZON: Please summarize.

13 THE WITNESS: I was there for three weeks
14 and what I have seen is in that short amount of time,
15 because they have the bottom of the food chain, there
16 was a lot of fish that I seen come back in that
17 short -- in that short amount of time.

18 One of the biggest impacts of every
19 development, and before so, for one, is I'm note sure
20 if everybody knows, I know, I notice, there is always
21 a fire before a development. It's the fastest way to
22 clear land.

23 CHAIRPERSON ACZON: Thank you.

24 THE WITNESS: So my concern is how is that
25 going to play out for one?

1 Secondly, how is it going to impact -- or
2 are you going to be -- is there going to be any
3 measures taken to protect the reef and assure that
4 there's no more --

5 CHAIRPERSON ACZON: Thank you, Mr. Tabon.
6 Any questions for Mr. Tabon?

7 MR. SAKUMOTO: No questions.

8 THE WITNESS: Thank you so much.

9 CHAIRPERSON ACZON: Commissioners? Mr.
10 Tabon, we have a question for you.

11 VICE CHAIR SCHEUER: Aloha. Just briefly.

12 You testified, if I understood you
13 correctly, that you've seen the decline of marine
14 species makai of particular developments; is that
15 correct?

16 THE WITNESS: Yes, absolutely.

17 VICE CHAIR SCHEUER: I don't know if you
18 are aware -- are you aware whether any of those
19 particular developments had best management practices
20 in place to control runoff?

21 THE WITNESS: No, I don't. I'm not aware
22 of that.

23 VICE CHAIR SCHEUER: Thank you very much.

24 COMMISSIONER CABRAL: Not just to yourself,
25 but to many people here, I really want to thank you

1 folks for taking the time, because it's all your time
2 too, and coming out and being willing to talk to us,
3 because we don't live here, yet we're burdened with a
4 really important decision in a lot of ways as things
5 happen. So I do appreciate the fact that that's
6 probably not a comfort level to sit here and look at
7 this whole row of people, so I do want to thank, not
8 just you, but everyone who's testified. So thank you
9 for your testimony.

10 COMMISSIONER CHANG: One more question.
11 Are you a commercial fisherman?

12 THE WITNESS: No, ma'am.

13 COMMISSIONER CHANG: So you fish for
14 pleasure, recreational fishing?

15 THE WITNESS: I'm a pro angler. Believe it
16 or not, I actually get paid to fish, and it's mostly
17 catch and release.

18 COMMISSIONER CHANG: You fish right in
19 front of this area?

20 THE WITNESS: I fish all of Kihei. I could
21 tell you where every rock is.

22 COMMISSIONER CHANG: Are there fishes makai
23 of this project area? Or is --

24 THE WITNESS: No, there is fish, okay. The
25 fish hasn't disappeared. None of the species has

1 gone extinct, it's just gone out of reach. They have
2 gone further out.

3 COMMISSIONER CHANG: Thank you very much.

4 CHAIRPERSON ACZON: Thank you. Anybody
5 else? Next testifier.

6 EXECUTIVE DIRECTOR: Judith Levy, Judith
7 Levy. Rose Reilley, Rose Reilley.

8 CHAIRPERSON ACZON: Do you swear that the
9 testimony that you're about to give is the truth?

10 THE WITNESS: I do.

11 CHAIRPERSON ACZON: Please state your name
12 and address for the record.

13 THE WITNESS: My name is Cecilia Rose
14 Reilley, legally, and I live at 100 Kane Road in
15 Haiku.

16 CECILIA ROSE REILLEY
17 Was called as a public witness, was sworn to tell the
18 truth, was examined and testified as follow:

19 DIRECT EXAMINATION

20 THE WITNESS: So I first moved to Hawai'i
21 when I was ten, and have moved back and forth. And
22 I've, you know, been -- I lived in New York. I lived
23 in Florida, Texas, Colorado, California, and then
24 back over here. So I've been -- and I was born in
25 Ohio.

1 And so, you know, I'm talking with my
2 co-worker the other day, and she is from Ohio. And
3 she's -- so I was asking her, what's it like over
4 there? And I've had a lot of stories, you know, over
5 the years waiting stories and stuff, and getting to
6 talk to people. And they're like, oh, they lit the
7 river on fire.

8 There is like all these things. And she is
9 like, there's nothing really to do there because all
10 they have is shopping, and then -- so it's like
11 commercial development and then residential
12 development and everything is developed.

13 I'm also a massage therapist now. So I get
14 to go to a lot of different homes. And like, a lot
15 of these homes are filled with illegal vacation
16 rentals. Like, I swear, like, I look at Kihei, and
17 I'm like empty in so many places, those people are
18 just coming in. And they're like, you know, buy the
19 house for, you know, third, fourth home, make money.

20 Also, you know, the resources of really
21 beautiful people. So I would say that, you know,
22 everybody has brought it up, our commercial
23 development is really quite empty. And that we don't
24 want it and need it. You know, we are all set up.
25 We want to live sustainably.

1 And people come here for beauty of nature.
2 And we should provide that for them and give them
3 that sustainable experience of what it's like to be
4 in nature. They want to eat the fresh food, see all
5 the trees, and we can do things with that that would
6 be sustainably profitable for people, you know, that
7 we have things that we can really offer.

8 And so I would just like to say that I
9 consider a mega mall to be completely ridiculous.
10 And that I would say that we need to be innovative
11 and use technology that is way different than has
12 been used.

13 Everyone has seen the change and, you know,
14 like my mom lived here for 20 years. I've been
15 coming here. I lived on Kaua'i, and Kaua'i is so
16 nice with the protect the beach, actually like trees,
17 and then you have like development farther from the
18 beach. So when you're in the water and look over,
19 you see a beach and trees, instead of looking over
20 and seeing hotels. Thank you.

21 CHAIRPERSON ACZON: Thank you. Any
22 questions?

23 MR. SAKUMOTO: No questions.

24 MS. APUNA: No.

25 CHAIRPERSON ACZON: Commissioners? Thank

1 you.

2 EXECUTIVE DIRECTOR: I'll recall some of
3 the witnesses who didn't appear. Deborah Mader.
4 Amanda Tabon. Jeremy Konohia.

5 CHAIRPERSON ACZON: Anybody else from the
6 audience that wishes to testify?

7 MR. PIERCE: Dick Mayer was our expert
8 witness in the contested case, the Order to Show
9 Cause, which it's our position this is part of that.

10 What we've asked to do is Mr. Mayer is
11 prepared to give public testimony. If he's not
12 provided the opportunity, what we would like to do,
13 since you have given us the opportunity to call some
14 witnesses, we are going to keep that limited, keep it
15 as efficient as possible. We would like to call Mr.
16 Mayer since he was an expert.

17 CHAIRPERSON ACZON: That would be fine.

18 MR. PIERCE: Thank you. I think he won't
19 have to testify as a public person today.

20 CHAIRPERSON ACZON: Who else wants to
21 testify? Just go to the witness box. May I swear
22 you in?

23 Do you swear that the testimony that you're
24 about to give is the truth?

25 THE WITNESS: Yes.

1 CHAIRPERSON ACZON: Please state your name
2 and address for the record.

3 THE WITNESS: My name is Heali'i Kauhane,
4 (phonetic) and my address is 585 Linakon, or Second
5 Lane, Linakon Street.

6 CHAIRPERSON ACZON: Please proceed.

7 HEALI'I KAUHANE

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

10 DIRECT EXAMINATION

11 THE WITNESS: So I would like to ask that
12 the Commission reject the EIS. You know, one of the
13 questions that comes to my mind is why does the water
14 come from. And I think that was already addressed.

15 So does the Environmental Impact Statement
16 address where the water is coming from? And how the
17 farmers who practice their cultural heritage in Iao
18 Valley are not able to get enough water while water
19 is being piped to a mall somewhere else?

20 I also know that when they built the
21 drainage system for the Wailuku River -- now what you
22 have is a funnel that takes all of the silt down into
23 the ocean. I live right on the ocean, and the ocean
24 continues to be brown down there. And I don't know
25 anything about Kihei, except when I go to the ocean

1 in Kihei, I cannot see the vibrant colors of limu
2 that I used to see as a boy, and I'm not even from
3 this island. I'm from Oahu, and same thing going
4 there now.

5 Captain Jon Jon, he said -- what he said
6 is, yeah, it's the bottom of the food chain, but you
7 need water for it to grow. And if sediment is
8 filling that reef, then you're not having any limu
9 growing, then not having any small fish eat, then not
10 having big fish eat the small fish, then you don't
11 have the humans practicing the cultural practice of
12 eating, but now they can go to the mall to go buy
13 clothes so that they can go to 808 Bistro or Cafe Ole
14 to buy food from somewhere else.

15 And then when the funnel effect, I know
16 that there is some engineer who went to school
17 somewhere, got a degree in engineering, past a bunch
18 of tests, got a job with an engineering firm, and
19 drew -- planned a waterway aside from the water's
20 natural path.

21 I don't know how many of you guys were
22 around during Hurricane Iwa. You guys all remember
23 Haione Valley? I don't know anybody knows where that
24 is. That's on Oahu. Big place for development.
25 Haione Valley, they moved the river to the side.

1 They caused the water to go over to the side. Right
2 after Hurricane Iwa destroyed, you know, 40 percent
3 of the island, there was a tropical storm behind it.
4 That wasn't a 50-year storm. That was a once in a
5 lifetime storm, but it happened twice.

6 I don't know who does the math with the
7 50-year storm, so --

8 CHAIRPERSON ACZON: Please summarize.

9 THE WITNESS: In that second storm the
10 water took its natural path. The natural path was
11 under the houses that were built on the development
12 that moved the river. Nobody knew it, because they
13 were all at work until their houses started caving
14 in.

15 I don't know if you remember the news,
16 there were cars, there were playground sets, there
17 were people's dogs and cats all getting washed into
18 the ocean. And it's not a 50-year storm.

19 CHAIRPERSON ACZON: Thank you. Any
20 questions?

21 MR. SAKUMOTO: No questions.

22 THE WITNESS: What, no questions?

23 CHAIRPERSON ACZON: Commissioners, any
24 questions? Thank you. Next testifier.

25 Do you swear that the testimony you're

1 about to give is the truth?

2 THE WITNESS: Yes.

3 CHAIRPERSON ACZON: Please state your name
4 and address for the record.

5 THE WITNESS: My name is Kapono
6 Makahanaloa-Antonez, and my address is 28 Laupapa
7 Place, Haiku.

8 KAPONO MAKAHANALOA-ANTONEZ
9 Was called as a public witness, was sworn to tell the
10 truth, was examined and testified as follows:

11 DIRECT EXAMINATION

12 THE WITNESS: I just wanted to talk about
13 the cultural side of it all.

14 I wanted to speak about like my life
15 growing up a kanaka. I have native blood, and
16 growing up in this school system where I kind of
17 didn't really know my culture and identity too well.
18 You know, at the ending of my schooling I'm only now
19 starting to figure out my cultural and identity that
20 my ancestors have left behind for me. And if you
21 guys build this mall here -- I would love to go visit
22 this spot. I would love to go visit this place and
23 practice with everyone here. Doesn't matter who you
24 are, as long as you share that aloha.

25 And aloha is -- my definition -- not my

1 definition, but a lot of Hawaiians' definition of
2 aloha is the essence of relationships in which each
3 person is important to every other person for a
4 collective existence.

5 So if we're not collectively existing on a
6 pono scale where everything is right, there's no
7 aloha by definition. So I just wanted to bring that
8 to everyone's awareness, because we do live in
9 Hawai'i, and we do want to practice aloha.

10 And I just feel like the EIS isn't
11 following that protocol here. And that's pretty much
12 all. We don't need another Oahu here, that's another
13 thing as well.

14 And seems like everyone has done their
15 homework, and they can tell you that it's going to
16 impact the environment majorly.

17 So, yeah, I'm opposed. Definitely don't go
18 with the EIS on this one. Mahalo.

19 CHAIRPERSON ACZON: Thank you. Any
20 questions?

21 MR. SAKUMOTO: No questions.

22 CHAIRPERSON ACZON: Commissioners? Thank
23 you.

24 Just to let everybody know that we are
25 going to finish the public testimony today and recess

1 and continue tomorrow. So next testifier, please.

2 Do you swear that the testimony that you're
3 about to give is the truth?

4 THE WITNESS: Yes.

5 CHAIRPERSON ACZON: Please state your name
6 and address for the record.

7 THE WITNESS: I'm Deborah Mader, live
8 Moolio Place in Kihei. This is part of my family.

9 DEBORAH MADER

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

12 DIRECT EXAMINATION

13 THE WITNESS: Boys, you recognize this
14 video?

15 MADER BOY 1: Yes.

16 THE WITNESS: What's happening that day
17 when we shot this video? Do you remember anything?

18 MADER BOY 1: It was like all these -- it
19 was like after a flood when there was like all these
20 like rocks like washed away, like.

21 THE WITNESS: Is the land normally dry
22 where you had seen the water come through?

23 MADER BOY 1: Yes.

24 THE WITNESS: Would you call the area a
25 gulch?

1 MADER BOY 1: I would.

2 THE WITNESS: That's fair.

3 So on the day after the rain, it rained a
4 lot of Upcountry, right? It poured some in Kihei,
5 but not like for days, right?

6 MADER BOY 1: Yeah. No.

7 THE WITNESS: So when the water rushed
8 through this whole area, was the water able to flow
9 from the mountains to the ocean in its proper path,
10 or was there stuff in the way? Was it rerouted?

11 MADER BOY 1: Rerouted.

12 THE WITNESS: What rerouted it?

13 MADER BOY 1: Stuff.

14 THE WITNESS: Like cement and like poles
15 and stuff?

16 MADER BOY 1: Yes.

17 THE WITNESS: And like fences and things?
18 Okay, so this is part of the Kulanikai (phonetic)
19 Gulch, and developers in the past in Kihei said best
20 practice management. We're going to help control the
21 water. It doesn't work. And this happened in
22 December, and it's not the first time, and it won't
23 be the last, and it's still not fixed. And damage is
24 still there.

25 But a car actually got swept off the road

1 and pushed up against this barrier (indicating)
2 because the water couldn't flow properly.

3 So my concern about the project and EIS
4 being that you cannot control water all the time with
5 manmade solutions such as this. And I don't think
6 the EIS has taken this into consideration at all.

7 The flooding we have had in North Kihei
8 year after year -- we used to live on Kulanihakoi
9 Street in South Kihei. So that road flooded several
10 times and still continues to do so, because of
11 Environmental Impact Studies in the past didn't take
12 certain things into account.

13 We live it. We see it. The road has
14 become impassable. And not even if there's a drop of
15 rain in Kihei, it's from what's happening up the
16 mauna.

17 So I hope that you deny this Final EIS
18 study, as lengthy as it is, and challenge them to put
19 a lot more thought and consideration into what
20 they're doing.

21 And also to kanaka out there, I hope to
22 look up and see some of you on this board, because I
23 think it's important for kanaka maoli to be part of
24 land making decisions on Maui.

25 CHAIRPERSON ACZON: Commissioners? Thank

1 you. Next testifier. Anybody else?

2 EXECUTIVE DIRECTOR: Albert Perez.

3 CHAIRPERSON ACZON: May I swear you in
4 first? Do you swear that the testimony that you're
5 about to give is the truth?

6 THE WITNESS: Yes.

7 CHAIRPERSON ACZON: Please state your name
8 and address for the record.

9 THE WITNESS: Albert Perez, 55 North Church
10 Street, Wailuku.

11 CHAIRPERSON ACZON: Please proceed.

12 ALBERT PEREZ

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

15 DIRECT EXAMINATION

16 THE WITNESS: I'm director of Maui Tomorrow
17 Foundation. My background is master's in planning
18 from UH, and I have previously worked for Office of
19 Planning for the state and Maui County Planning
20 Department.

21 I have reviewed many EISs, and I have never
22 seen one that is so large with so little useful
23 content. Rather than describing the impacts, it's
24 largely is a self-serving recitation of the benefits
25 of the project, which is specifically prohibited in

1 Hawai'i Administrative Rules 11-200-14.

2 An EIS draws its meaning from the
3 conscientious application of the EIS, and shall not
4 be merely a self-serving recitation of benefits and
5 rationalization of the proposed action.

6 Unfortunately, that is exactly what they
7 have done with this EIS. The Applicant does not use
8 the incredible length of this EIS to fully describe
9 the impact of this largely undefined project, or to
10 discuss the clear conflict of this proposal with
11 Kihei-Makena Community Plan.

12 For example, the EIS's treatment of the
13 land use plans, it picks and chooses items that
14 support the project, but ignores or minimizes
15 conflicting policies. A good EIS would consider
16 both.

17 The other section of those Hawai'i
18 Administrative Rules talks about EIS style. It says:

19 Preparer shall make every effort to convey
20 the required information succinctly in a form that's
21 easily understood.

22 This is over 4,000 pages long, and it was
23 preceded by -- a couple weeks prior -- by something
24 else that I haven't heard of called a pre-Final EIS.
25 That was another 4,000 pages. We had to go through

1 over 8000 pages.

2 It's certainly not succinct, instead it
3 presents an undue burden to people who would like to
4 thoroughly review it. If it's accepted by the LUC,
5 then in the future it will not be a useful tool for
6 decision-makers to understand the impacts of the
7 proposed order because of its length.

8 Also the conceptual bubble map that is the
9 only idea of what we have is what the project is
10 going to be like is not adequate to determine the
11 impacts. To claim that they have evaluated the
12 maximum build-out of the most intensive possible use
13 within the bubble, doesn't allow us to determine
14 appropriate mitigation.

15 We don't know what they're doing. One
16 bubble says, light industrial, business, commercial.
17 Which is it? Light industrial uses have very
18 different impacts than business commercial uses.
19 They need to evaluate specific uses so we can
20 determine their impacts.

21 With regard to flooding, you've heard South
22 Kihei Road is one of the worst flooding areas on
23 Maui. County drainage standards do not prevent
24 flooding when we get greater than 50-year storms.

25 The EIS needs to talk about flooding and

1 offshore sedimentation impacts when we get bigger
2 storms than that, 100-year storms. Just because
3 you're using best management practices doesn't mean
4 there will never be any impact.

5 CHAIRPERSON ACZON: Please summarize.

6 THE WITNESS: I would just like to say one
7 more thing, and that there is a Hallstrom Group
8 economic study cited in the EIS about commercial
9 space. It was done 2013 and it showed a Kihei floor
10 area vacancy rate of 10 percent, but conditions have
11 changed. There was a 2016 Collier study that shows
12 rate of 31 percent. So that information needs to be
13 updated in the EIS.

14 We urge you to reject this EIS to its many
15 inadequacies and do a better job.

16 CHAIRPERSON ACZON: Thank you. Any
17 questions?

18 MR. SAKUMOTO: No questions.

19 CHAIRPERSON ACZON: Commissioners? Vice
20 Chair Scheuer.

21 VICE CHAIR SCHEUER: I asked a
22 representative from the Maui Chamber of Commerce
23 whether they had ever opposed a development.

24 Has Maui Tomorrow ever supported a
25 development?

1 THE WITNESS: Actually, we have. We have
2 supported the Waikapu Country Town, which came before
3 this Commission fairly recently.

4 We feel that that EIS was done in full
5 spirit of compliance with the EIS law.

6 VICE CHAIR SCHEUER: Thank you.

7 CHAIRPERSON ACZON: Anybody else? Thank
8 you. Next testifier. Anybody else? Last call.

9 If not, this concludes the public testimony
10 portion for this docket.

11 I want to thank everybody for their
12 patience and for committing to the time limit that we
13 imposed.

14 Tomorrow we will start with Petitioner's
15 presentation at 8:30. We are in recess for the day
16 and see you tomorrow.

17 (The proceedings adjourned at 5:30 p.m.)
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CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on July 19, 2017, at 2:00 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 19th day of July, 2017, in Honolulu,
Hawaii.

/S/ Jean Marie McManus
JEAN MARIE McMANUS, CSR #156