

LAND USE COMMISSION
STATE OF HAWAII

Hearing held on September 25, 2019
Commencing at 9:30 a.m.

Maui Arts & Cultural Center
Alexander Higashi Meeting Room
One Cameron Way
Kahului, Maui, Hawaii'i 96732

AGENDA

I. Call to Order

II. Adoption of Minutes

III. Tentative Meeting Schedule

IV. ACTION

A19-809 Lana'i Resorts, LLC dba Pulama Lana'i
Consider Petitioner's Motion Requesting the
Land Use Commission to be the Approving Agency
for an Environmental Assessment

V. ACTION

A04-751 Maui Land & Pineapple Company, Inc.
(Maui)

Consider Petitioner Maui Oceanview LP's Motion
to Amend Decision and Order dated June 30, 2006

VI. Recess

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 JONATHAN SCHEUER, Chair
3 NANCY CABRAL, Vice Chair
4 AARON MAHI, Vice Chair
5 DAWN N.S. CHANG
6 EDMUND ACZON
7 DAN GIOVANNI
8 GARY OKUDA
9 LEE OHIGASHI

10 STAFF:

11 LORI TANIGAWA, ESQ.
12 Deputy Attorney General

13 DANIEL ORODENKER, Executive Officer
14 RILEY K. HAKODA, Planner/Chief Clerk
15 SCOTT DERRICKSON, AICP/Planner
16 BERT SARUWATARI, Planner
17 RASMI AGRAHARI, Planner

18 DAWN APUNA, Deputy Attorney General
19 AARON SETOGAWA, Planner
20 For State Office of Planning

21 MICHAEL HOPPER, Deputy Corporation Counsel
22 MICHELE McLEAN, Planning Director
23 ANN CUA, Planner
24 For Maui County Department of Planning

25 YVONNE IZU, ESQ.
LINDA McCORRY
For A19-809 Lanai Resorts, Inc.

GILBERT KEITH-AGARAN, ESQ.
PAUL CHENG
For A04-751 Maui Land & Pineapple Company, Inc.

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1 CHAIRPERSON SCHEUER: Aloha mai
2 kakou. Good morning. This is the September 25th,
3 2019 Land Use Commission meeting.

4 Our first order of business is the adoption
5 of our August 29, 2018 minutes. Anybody wishing to
6 provide public testimony on this agenda item, the
7 adoption of the minutes? Seeing none, is there a
8 motion to adopt?

9 VICE CHAIR MAHI: Moved.

10 COMMISSIONER OHIGASHI: Second.

11 CHAIRPERSON SCHEUER: Moved by Commissioner
12 Mahi, seconded by Commissioner Ohigashi.

13 Any discussion on the motion? If not, all
14 in favor say "aye". Anybody opposed? The minutes
15 are unanimously adopted.

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

18 EXECUTIVE OFFICER: Thank you, Mr. Chair.

19 Tomorrow we will be here for a continuation
20 of the matters before us today, and for status
21 reports on Pulelehua, Kaonoulu Ranch, Brewer and
22 Makena.

23 October 9th, we will be on Oahu for the
24 Waimanalo Gulch matter. October 10th also reserved
25 for hearings on that matter.

1 October 24th and 25th we will be in Hilo
2 for the Kanahele matter.

3 October 28th is also reserved for that in
4 case we need additional time.

5 October 31st will be the adoption of the
6 order in the Kanahele matter in Hilo.

7 November 6th we will be taking up Sacred
8 Earth matter on Maui.

9 November 7 is also reserved for that
10 matter.

11 On November 20th we will take up Poma'ikai
12 Partners and Waiawa at Honolulu National Airport on
13 Oahu.

14 November 21st we will also be in Honolulu
15 for the Hawaiian Memorial Life.

16 On December 4th we will be on Kaua'i for
17 the Hokua matter. That's also scheduled for
18 December 5th.

19 December 18th and 19 are currently open.

20 January 8th we will be in Kona for U of N
21 and HHFDC.

22 January 9th we do not have anything
23 scheduled.

24 January 22nd we will back on Oahu for
25 Hawaiian Memorial Life.

1 January 23rd is also designated for that
2 matter.

3 That brings us up to February.

4 CHAIRPERSON SCHEUER: Thank you very much,
5 Dan.

6 Commissioners, are there any questions for
7 Mr. Orodenker?

8 Commissioner Giovanni.

9 COMMISSIONER GIOVANNI: Just to clarify,
10 Dan, October 31st you said Hilo, but I think that's a
11 videoconference.

12 EXECUTIVE OFFICER: October 31st is a
13 videoconference. It's still designated as being in
14 Hilo.

15 CHAIRPERSON SCHEUER: Thank you. Any
16 further questions for the Executive Officer? Seeing
17 none.

18 A19-809 Lanai Resorts, LLC, dba Pulama
19 Lana'i

20 Our next agenda item is an action meeting
21 on Docket A19-807, a Petition of Lana'i Resorts,
22 LLC's Amended Motion Requesting the Land Use
23 Commission to be the approving agency for an
24 Environmental Assessment and for Issuance of
25 Anticipated Negative Declaration or Anticipated

1 Finding of No Significance in the matter of its
2 Petition to Amend the Land Use District Boundaries of
3 certain land situated at Lana'i City, Island of
4 Lana'i, consisting of approximately 200 acres from
5 the Agricultural District to the Urban District. Tax
6 Map Key No. (2) 4-9-02:01(por.)

7 Will the parties please identify themselves
8 for the record?

9 MS. IZU: Good morning, Chair and
10 Commissioners. Yvonne Izu, counsel for Pulama
11 Lana'i, the Petitioner.

12 MS. MCCORRY: Linda McCorry, Pulama Lana'i.

13 MR. HOPPER: Michael Hopper, Deputy
14 Corporation Counsel with the Maui County Department
15 of Planning. With me is Planning Director Michele
16 McLean and Ann Cua, Planner and Kurt Wollenhaupt,
17 planner, is here.

18 MS. APUNA: Good morning. Deputy Attorney
19 General, Dawn Apuna on behalf of State Office of
20 Planning. Here with me today is Aaron Setogawa.

21 CHAIRPERSON SCHEUER: Mahalo. Let me now
22 update the record.

23 On August 23rd of this year the Commission
24 received Petitioner's Motion Requesting the Land Use
25 Commission to be the approving agency for an

1 Environmental Assessment.

2 On September 4th, 2019, the Commission
3 received Errata to Petitioner's Motion Requesting the
4 Land Use Commission to be the approving agency to an
5 Environmental Assessment.

6 On September 6, the Commission received the
7 Petitioner's Amended Motion Requesting the Land Use
8 Commission to be the approving agency for an
9 Environmental Assessment, and for Issuance of
10 Anticipated Negative Declaration or Anticipated
11 Finding of No Significant Impact.

12 On September 16th, a Land Use Commission
13 meeting agenda for the September 25th through 26
14 meeting was sent to the Parties and Statewide, email
15 and Maui mailing lists.

16 On September 18th, an amended Land Use
17 Commission meeting agenda notice for those meetings
18 were sent to the Parties and the Statewide, email and
19 Maui mailing lists and the Commission received OP's
20 response to the Petitioner's Amended Motion.

21 Also on that day, the Commission received
22 the County of Maui Planning Department's emailed
23 Response to Petitioner's Amended Motion. The hard
24 copy of the filing was received on September 20th.

25 Let me go over our procedures today.

1 First, I will call for anybody who wishes
2 to provide public testimony in this matter to
3 identify themselves.

4 Quickly, anybody here to testify on the
5 Lana'i docket?

6 In case anybody comes in, we will deal with
7 the testimony, then we will proceed on the Amended
8 Motion starting with presentation by the Petitioner,
9 followed by Maui County.

10 Petitioner, you may reserve a portion of
11 your time to respond to any comments made by the
12 County and the Office of Planning.

13 I'll also note for everybody in the room
14 that from time to time I will call for a short break,
15 including perhaps if we all need to cool off, given
16 this extremely warm room today.

17 Last check, anybody desiring to give public
18 testimony on this matter?

19 Seeing none, the Petitioner may proceed.

20 MS. IZU: Thank you very much, Chair and
21 Commissioners.

22 I will reserve some time for responding to
23 any comments that might arise.

24 Pulama Lana'i is proposing the development
25 of a 200-acre industrial park in Miki Basin, about

1 three miles southwest of Lana'i City in conformance
2 with the 2016 Lana'i Community Plan. The first
3 discretionary approval needed for this development to
4 move forward is a district boundary amendment to
5 reclassify the 200 acres from its current Agriculture
6 classification to Urban.

7 A reclassification from Ag to Urban is not
8 a trigger for a 343 environmental disclosure
9 document. However, the development of the Miki Basin
10 Industrial Park may, at some point down the line,
11 require modification of a State highway. In other
12 words, require the use of State lands, which is a 343
13 trigger.

14 Pursuant to the Hawai'i supreme court's
15 decision in the Koa Ridge case, the 343 document
16 needs to be prepared at the earliest practicable
17 time. Thus, Pulama Lana'i is asking the Commission,
18 as the body that will be rendering the first
19 discretionary decision for this project, to be the
20 approving agency for the environmental assessment.

21 The Miki Basin Industrial Park will be
22 situated on 200 acres of land that had been in
23 pineapple cultivation until 1992, and has lain fallow
24 since then. No current uses will be displaced.

25 Moreover, the site of the proposed

1 industrial park is adjacent to two of the major
2 industrial uses on the island, namely the airport and
3 the MECO generating and the MECO generating station,
4 which makes this a suitable location for an
5 industrial park.

6 The following studies have been completed
7 and are appended to Exhibit A, which is the Draft
8 Environmental Assessment: an archaeological and
9 cultural study; study of flora and fauna;
10 agricultural impact study; Drainage Study' Economic
11 and Fiscal Impact study; Phase I environmental Site
12 Assessment; and traffic, water and wastewater
13 studies.

14 All of these studies indicate that the
15 development of the Miki Basin Industrial Park at this
16 location will not have significant adverse
17 environmental, social or cultural impacts.

18 Therefore, Pulama Lana'i respectfully asks that this
19 Commission determine that a Finding of No Significant
20 Impact is anticipated and allow for such a filing
21 with the Office of Environmental Quality Control.
22 Thank you.

23 CHAIRPERSON SCHEUER: Thank you, Ms. Izu.

24 Commissioners, are there any questions for
25 the Petitioner? Commissioner Okuda.

1 COMMISSIONER OKUDA: Thank you, Mr. Chair.

2 Is this proposed development part of a
3 larger plan that Pulama Lana'i has regarding or with
4 respect to the Island of Lana'i?

5 MS. IZU: Pulama Lana'i has a lot of plans
6 for the Island of Lana'i, but this is really a
7 standalone. There are hardly any Urban lands
8 suitable for industrial development on Lana'i. And
9 therefore, and this is, as I mentioned in my
10 statement, the 2016 Lana'i Community Plan
11 specifically identified the need for additional
12 industrial land so that the economy on Lana'i can be
13 diversified, and the Lana'i Community Plan actually
14 designated these specific 200 acres for that purpose.

15 COMMISSIONER OKUDA: I understand that, but
16 is this proposed development part of a larger master
17 plan that Pulama Lana'i has for the Island of Lana'i?

18 MS. IZU: I'm going to defer to my client.

19 CHAIRPERSON SCHEUER: I'm going to have to
20 swear you in first.

21 Do you swear or the affirm that the
22 testimony that you're about to give is the truth?

23 THE WITNESS: Yes.

24 LINDA MCCORRY

25 Was called as a witness by and on behalf of the

1 Petitioner, was sworn to tell the truth, was examined
2 and testified as follows:

3 DIRECT EXAMINATION

4 I think at this point in time we are
5 looking only at the 200 acres as being for industrial
6 light and heavy.

7 We need to move some things out of the
8 central city in order to move forward on having land
9 available. We have no other industrial land
10 available.

11 It's not part, as was indicated in the Star
12 Advertiser article the other day. That is not
13 correct. What the reporter did was listed 200 acres
14 then expanded it to say we're doing all of what is in
15 the community. We are not.

16 We are doing a housing project, which will
17 be the other piece of the industrial land, because
18 you have to have housing.

19 COMMISSIONER OKUDA: Well, let me try to
20 ask the question this way. Help me try to understand
21 what the facts and evidence are right here.

22 Does Pulama Lana'i have an overall vision
23 for what Lana'i as a whole is in intended to look
24 like, you know, going into the future, whatever that
25 future timeframe is?

1 THE WITNESS: If there is an overall
2 vision, there isn't one that is clearly articulated
3 to specific pieces of land to what will be there.

4 The overall vision is one of sustainability
5 to have the island not be solely depending on
6 tourism, that we have to have other industries in.

7 It is also to look forward to what else can
8 we do with the environment. We have huge runoff
9 issues. A number of other areas where rampant
10 overpopulation of deer that we have to address and
11 deal with.

12 So there's very specific projects that are
13 dealing with very specific goals. If you roll all
14 those up into an overall plan, you could you call it
15 that, but each one is taken individually.

16 COMMISSIONER OKUDA: I understand that.
17 But this proposed industrial park is one piece of
18 some type of overall vision Pulama Lana'i has for the
19 Island of Lana'i. Is that a fair statement?

20 THE WITNESS: That's a fair statement.

21 COMMISSIONER OKUDA: Maybe your counsel can
22 help you with this.

23 Let me just say, vision is a good thing to
24 have. And just so that you know where my head is at,
25 I don't necessarily have nostalgia for old plantation

1 days. As I told the senate at my confirmation, the
2 plantation days were full of discrimination, lack of
3 opportunity and two world wars. Believe me, I'm not
4 there. But I want to make sure this is done, you
5 know, we do it in a way that doesn't create further
6 delays in the future.

7 Was there any consideration that Pulama
8 Lana'i gave to administrative regulation 11-200.1-2
9 which defines the term "program"; and regulation
10 section 11-200.1-10, which deals with multiple or
11 phased actions, because these sections of the HAR
12 seem to suggest that if an action is part of like a
13 piece in some type of bigger plan, we've got to
14 evaluate the enforcement of 343 looking at the bigger
15 picture, not looking at just things in isolation.

16 MS. IZU: Yes. I think I believe you're
17 referring to the issue of segmentation, and my
18 understanding of these is that segmentation is not
19 allowed if a decision on this particular matter will
20 make the decision on the next matter pretty much a
21 foregone conclusion or, you know, leave the
22 Commission with little discretion to make the
23 decision on the next matter.

24 This is not case here. I mean, if, you
25 know, you approve this Miki Basin Industrial Park and

1 disapprove everything else, I mean, that's -- it
2 doesn't affect this project at all.

3 COMMISSIONER OKUDA: Final question just so
4 that we're clear what was considered, because
5 11-200.1-10 which is titled **multiple or phased**
6 **action**, it states here, and I quote:

7 A group of actions shall be treated as a
8 single act when:

9 No. 1, the component actions are phases or
10 increments of a larger total program.

11 And then there is the earlier definition of
12 program.

13 I mean it seems like -- or tell me, would
14 it be unreasonable to have a finding that says this
15 proposed industrial park is really just a part of a
16 bigger program which is the overall vision that
17 Pulama Lana'i has for the Island of Lana'i.

18 And this is the practical and policy reason
19 why I'm asking that question, because if we're really
20 talking about vision that deals with the entire
21 island, wouldn't it be, policy-wise, better to have
22 larger community involvement that the 343 process
23 contemplates and requires?

24 MS. IZU: I think if you're going -- I
25 don't agree with that. I think the definition of

1 "program" does not expand so far as to say -- and we
2 have a unique situation. We have a single landowner
3 that owns 90 percent of the land. So that's a unique
4 situation. But I think it's unreasonable to say that
5 whatever this landowner may have for the entire
6 island should all be taken up at once, because, you
7 know, just in the years that I've been involved with
8 Pulama Lana'i plans have changed, and that's why I
9 say, you know, if this particular project can stand
10 on its own without implicating any other planned
11 projects down the road, then I don't think we're
12 segmenting for 343 purposes.

13 If we're going to have to wait for Pulama
14 Lana'i to decide what it's going to do with the
15 entire island before it even moves forward on one
16 part of it, move forward on the Environmental
17 Assessment on one part of it, we'll never get
18 anywhere.

19 COMMISSIONER OKUDA: One final followup
20 question.

21 So does Pulama Lana'i have, in writing
22 anywhere, even a draft long-range plan for Lana'i, or
23 there's been no discussion or no documentation of any
24 kind of long-range plan for Lana'i?

25 MS. IZU: Let me try, then I'll probably

1 have to punt to my client.

2 What I've seen, quote/unquote, plans or
3 vision for Pulama Lana'i have been really vision
4 statements and mission statements.

5 There are, as Ms. McCorry has stated, there
6 are some specific type projects that are in-line with
7 those vision or those mission statements, but it's
8 not where, like a proposed multi-use development type
9 of thing, where they've kind of like plotted out
10 everything for the entire island.

11 COMMISSIONER OKUDA: Thank you.

12 CHAIRPERSON SCHEUER: Thank you,
13 Commissioner Okuda. Commissioner Cabral.

14 VICE CHAIR CABRAL: I read a lot of
15 information, and I cannot -- do not recall reading
16 any of the details, and I think actually my question
17 is probably premature, but since we are not deciding
18 the entire island.

19 I just kept picturing that land, having
20 flown into Lana'i several times, you know, the
21 airport is like you already feel like you're, wow,
22 there's just nothing else around you already.

23 And I kind of thought, I mean, I'm in favor
24 of having business, because you need business to
25 survive. At the same time I hated the thought of

1 seeing just chain-link fences everywhere.

2 As you move forward, I wanted to comment
3 that the idea of bushes help camouflage chain-link
4 fences would please my heart. That's all. Thank
5 you.

6 CHAIRPERSON SCHEUER: Commissioner Cabral,
7 we're not on the merits of the project. We're very
8 early in the stage, simply whether or not to be the
9 accepting agency.

10 VICE CHAIR CABRAL: I understand that, but
11 I thought I'll give them hints for the future.

12 CHAIRPERSON SCHEUER: Commissioners, any
13 further questions or comments? If not, I have a
14 question for Ms. Izu or you client.

15 Regarding water resources on the Island of
16 Lana'i from the draft Environmental Assessment it
17 looked like, if I understood correctly, and correct
18 me if I am wrong, but the demand on this portion of
19 the island's water system would more than double at
20 full buildout of the industrial area.

21 So how is, somewhat in light of knowing
22 that there are very long term, very encoded plans for
23 the future of the island, how does the very
24 significant increase in potable water demand work
25 into your decision to believe that there's not going

1 to be a significant adverse affect on the island?

2 MS. IZU: You may be correct on that, yes.
3 I don't recall the exact numbers.

4 CHAIRPERSON SCHEUER: So how is somewhat in
5 light of knowing that there are very long term, very
6 encoded plans for the future of the island, how does
7 the very significant increase in potable water demand
8 work into your decision to believe that there's not
9 going to be a significant adverse impact to the water
10 resources?

11 MS. IZU: There is a water resources
12 assessment included in the Environmental Assessment
13 and they talked about, you know, the various --
14 actually three different alternatives, I believe, and
15 how to provide for those water resources.

16 But in addition to those alternatives that
17 are recommended in the Water Assessment Report that
18 is appended to the Environmental Assessment, there
19 are a number of things that Pulama Lana'i is doing
20 generally with respect to potable water resources.

21 Just since Pulama Lana'i has been there,
22 they have done smart meters, they fixed leaks and
23 whatnot, which I think the number that you see for
24 the current potable water use is probably half of
25 what it used to be, just because they've done these

1 fixes to conserve water.

2 Part of their mission and vision statement
3 are to have Lana'i be sustainable as far as resources
4 are concerned, and they are working towards that.

5 Just one more thing, maybe a plug, but
6 there is a -- USGS is doing a groundwater recharge
7 study across the state, and Pulama Lana'i is involved
8 with that study to look at ways in which, one thing,
9 how climate change will affect groundwater resources
10 and potentially mitigation measures to increase
11 groundwater.

12 CHAIRPERSON SCHEUER: If I may, as a
13 disclosure, I know Joy Gannon, who runs the water
14 system on Lana'i, and the work that's been done.

15 My question is more narrow. How would you
16 determine whether or not there would be a significant
17 adverse impact to the water resources from the island
18 based on the full buildout of this project?

19 MS. IZU: I think if you look at the
20 sustainable yield, what the current usage is, and the
21 alternatives that were talked about as to where they
22 get water from, how they develop that groundwater,
23 you're still within the sustainable yield.

24 CHAIRPERSON SCHEUER: So you believe that
25 short of nearing or exceeding the sustainable yield

1 there would be no significant adverse impact on the
2 island's water resources?

3 MS. IZU: Groundwater resources, correct.

4 CHAIRPERSON SCHEUER: Thank you.

5 Maui County.

6 MR. HOPPER: I thank you, Mr. Chair. The
7 County did file a Position Statement and does believe
8 that the Commission is the appropriate accepting
9 authority given the district boundary amendments
10 going to be because of the community plan has already
11 been amended to reflect this project, the first
12 entitlement that is going to be needed for this
13 project.

14 With respect to the negative determination,
15 we would defer to the Land Use Commission on that
16 issue at this stage, but the pleading that the County
17 filed did basically take the position that you're the
18 appropriate accepting authority in this case. Thank
19 you.

20 CHAIRPERSON SCHEUER: Commissioners, are
21 there any questions for Maui County?

22 Office of Planning.

23 MS. APUNA: Thank you, Chair. Office of
24 Planning has no objections to Petitioner's Amended
25 Motion.

1 CHAIRPERSON SCHEUER: And you actually beat
2 Michael Hopper for brevity.

3 Commissioners, any questions for the Office
4 of Planning?

5 Did you want to use your reserved time for
6 further comments, Ms. Izu?

7 MS. IZU: No, given the comments from the
8 County and the Office of Planning, I don't have
9 anything further.

10 CHAIRPERSON SCHEUER: Commissioners, do you
11 have any further questions for any of the parties?

12 Seeing none, Commissioners, what is your
13 pleasure? Commissioner Ohigashi.

14 COMMISSIONER OHIGASHI: I'm going to move
15 that the Commission be the accepting authority for
16 Petitioner's HRS 343 compliance, and that the
17 Commission accept Petitioner's submittals showing
18 that there be no significant impact, or impact affect
19 or impact to the environment, and direct Petitioner
20 to prepare an EIS -- no, no --

21 CHAIRPERSON SCHEUER: Environmental
22 assessment.

23 COMMISSIONER OHIGASHI: Environmental
24 assessment.

25 CHAIRPERSON SCHEUER: Is there a second?

1 COMMISSIONER ACZON: Second.

2 CHAIRPERSON SCHEUER: Seconded by
3 Commissioner Aczon.

4 There's a motion on the floor if we wish to
5 have discussion on the motion, Commissioners. If
6 not, I have something to say.

7 Commissioner Aczon, please.

8 COMMISSIONER ACZON: I would be voting in
9 favor of the motion. And I believe the Petitioner's
10 submittals and reviews by the experts describe
11 proposed actions that do not appear to have a
12 significant impact on the environment.

13 And I'll be looking forward to discussing
14 the merits of the project when the time comes. Thank
15 you.

16 CHAIRPERSON SCHEUER: Commissioners,
17 anything further? Commissioner Okuda.

18 COMMISSIONER OKUDA: If I could ask for
19 clarification. Is this motion simply to be the
20 accepting authority, or is it also to make additional
21 findings?

22 CHAIRPERSON SCHEUER: The motion is to be
23 the accepting authority, and that we believe that
24 there -- we anticipate that there will be no
25 significant impact found in the document.

1 Now, what can procedurally occur is after
2 the Environmental Assessment is presented to us as
3 the accepting authority, we can accept it; we can
4 agree with the findings; we can disagree with the
5 findings and say no, we actually believe that some of
6 these impacts are significant and adverse, and we can
7 require them to move towards full EIS.

8 The Petitioner themselves could go through
9 the study process, and say, you know what, we've
10 decided that we believe that there is a significant
11 impact from this process.

12 But at this time we are saying, based on
13 the information in front of us, we want to be the
14 accepting authority. And we believe, based on what
15 is in front of us, that there's not likely to be a
16 significant impact identified from the project.

17 Is that helpful, Commissioner Okuda?

18 COMMISSIONER OKUDA: Yes. Thank you,
19 Chair. I'm inclined not to vote in favor of the
20 motion, and it's for this reason.

21 It's not that there isn't a lack of vision
22 here. I believe that this type of vision and these,
23 what I preliminarily see in the pleadings that are
24 filed is very good as far as getting discussions
25 going not only for Lana'i, but Statewide.

1 Number two, and I hope this is not beyond
2 the record. I believe the Matsumoto family has shown
3 deep commitment to the State, and I know they're from
4 Lana'i.

5 And I have no doubt about good faith
6 efforts, about trying to move the State forward.

7 The concern I have is that if this turns
8 out to be a very good vision, which is something that
9 might serve in part or whole as a model for the rest
10 of the State, if there's inadvertent noncompliance
11 which could be solved by spending a little bit more
12 time, I would really hate to see a good idea be lost
13 just because we tried to do something a little bit
14 more quicker instead of spending the deliberative
15 time.

16 And that's my concern. So my inclination
17 has nothing to do with vision, commitment or looking
18 into the future and trying to move us into a better
19 place. So it's not that. It's my concern that
20 sometimes we might lose that if what I see as the
21 plain English or plain language of the regulation is
22 not complied with. Thank you.

23 CHAIRPERSON SCHEUER: Commissioner Chang.

24 COMMISSIONER CHANG: Thank you.

25 I greatly appreciate Commissioner Okuda's

1 concerns. I guess I am inclined to vote in favor of
2 this and a finding and also the FONSI, because I do
3 see this as a new unique situation where you have one
4 landowner. And I think for me what is really
5 important is the vetting process on this whether this
6 is an acceptable use was by the community through the
7 community planning process, and that this particular
8 land has been designated and is consistent with the
9 Lana'i Community Plan, which to me I find compelling
10 to support.

11 And as the Chair said, this does not
12 preclude us from subsequently requiring an EIS, but
13 it does provide opportunity to move forward on this.

14 And I think you've heard some of the
15 concerns raised by the Commission that I think I am
16 optimistic that you would take that into
17 consideration.

18 For those reasons I am inclined to vote in
19 favor of the motion.

20 CHAIRPERSON SCHEUER: Commissioner Cabral.

21 VICE CHAIR CABRAL: I share Commissioner
22 Chang's sentiment in that regard. This is step one,
23 and we know that in the event we have more details,
24 that we can ask for a full EIS.

25 I think our group is fairly cautious in

1 this regard because you're really taking an island
2 that has so little going on that it's going to have a
3 huge impact on Lana'i where that land mass and change
4 might not have as much of an impact as somewhere
5 else. That may not be fair, but that's kind of the
6 world we are living in.

7 I want to again caution that you do a
8 really good job for us. Thank you.

9 CHAIRPERSON SCHEUER: Other further
10 comments from the Commission?

11 I will share that I'm inclined to also vote
12 in favor of the motion, but I will just highlight
13 that I do not share the opinion that there could be
14 no significant adverse impact on the groundwater
15 resources at pumping levels only near or at the
16 sustainable yield.

17 Sustainable yield is calculated based on a
18 large number of assumptions, including that wells are
19 evenly spaced, and that geology or hydrology of the
20 area in question is uniform, which we know not to be
21 the case on the Island of Lana'i.

22 I'm not suggesting that there is -- I do
23 not believe -- I cannot see that there is a
24 significant adverse impact resulting from this, but I
25 believe there is a possibility at pumping levels well

1 below. We know there are other areas of Hawai'i
2 where we are pumping at levels well below sustainable
3 yields, but because of concentration of pumping, and
4 the geology and hydrology of the area, we're getting
5 high chlorides in wells and other kinds of
6 significant impacts.

7 But with that information in front of us
8 now, I'm happy to do this. If it was a business
9 decision I was making, I might choose to go directly
10 to the EIS, but my role is not to make a business
11 decision for Pulama Lana'i.

12 Anything further? If not, Mr. Orodenker
13 please poll the Commission.

14 EXECUTIVE OFFICER: Thank you, Mr. Chair.
15 The motion is that the Land Use Commission be the
16 accepting authority for 343 compliance, and that the
17 Commission make the finding of -- an anticipated
18 finding of no significant impact and direct the
19 Petitioner to prepare an Environmental Assessment.

20 Commissioner Ohigashi?

21 COMMISSIONER OHIGASHI: Aye.

22 EXECUTIVE OFFICER: Commissioner Aczon?

23 COMMISSIONER ACZON: Yes.

24 EXECUTIVE OFFICER: Commissioner Mahi?

25 VICE CHAIR MAHI: Aye.

1 EXECUTIVE OFFICER: Commissioner Okuda?

2 COMMISSIONER OKUDA: No.

3 EXECUTIVE OFFICER: Commissioner Chang?

4 COMMISSIONER CHANG: Aye.

5 EXECUTIVE OFFICER: Commissioner Cabral?

6 VICE CHAIR CABRAL: Yes.

7 EXECUTIVE OFFICER: Commissioner Giovanni?

8 COMMISSIONER GIOVANNI: Aye.

9 EXECUTIVE OFFICER: Chair Scheuer?

10 CHAIRPERSON SCHEUER: Aye.

11 EXECUTIVE OFFICER: Thank you, Mr. Chair.

12 The motion carries with seven affirmative votes and
13 one no.

14 CHAIRPERSON: It is now 10:06. We are
15 going to take a five-minute recess, meaning at 10:11
16 promptly we will restart when the parties have traded
17 places.

18 (Recess taken.)

19 A04-751 Maui Land & Pineapple Company, Inc.

20 CHAIRPERSON SCHEUER: We're back on the
21 record.

22 Our next agenda item is an action meeting
23 on Docket A04-751 Maui Land & Pineapple Company, Inc.
24 (Maui) to Consider Petitioner Maui Oceanview LP's
25 Motion to Amend Decision and Order dated June 30,

1 2006.

2 Will the parties please identify themselves
3 for the record?

4 MR. KEITH-AGARAN: Thank you, Mr. Chairman.
5 I'm Gil Agaran and I'm representing Maui Oceanview.
6 With me at this table is Tom Coppin, Kimley-Horn
7 consultant, as well as Paul Cheng, and a number of
8 other consultants with us today and they will be
9 available to answer questions.

10 CHAIRPERSON SCHEUER: Thank you very much.
11 Maui County?

12 MR. HOPPER: Michael Hopper, Deputy
13 Corporation Counsel representing the Maui County
14 Department of Planning. With me is the Planning
15 Director Michele McLean, and Ann Cua, Planner.

16 MS. APUNA: Deputy Attorney General Dawn
17 Apuna. With me today is Aaron Setogawa.

18 CHAIRPERSON SCHEUER: Let me now update the
19 record.

20 On November 22nd, 2017, the Commission
21 received Petitioner's Motion to Amend the 2006
22 Decision and Order, with Exhibits A-G with a \$1000
23 filing fee.

24 On November 22, 2017, the Commission
25 received a Stipulation by the Parties to Extend Time

1 to Respond to Motion of Petitioner.

2 On November 29, 2017, the Commission
3 received a Stipulation by the Parties to Extend Time
4 to Respond to Motion of Petitioner.

5 On December 13, 2017, the Land Use
6 Commission mailed a letter to Petitioner
7 acknowledging receipt of Motion with comments.

8 On December 19, 2017, a Second Stipulation
9 to Extend Time to Respond to Motion was received.
10 Issues regarding the Certificate of Service to the
11 Maui Department of Public Works were resolved on
12 December 26, 2017.

13 On February 23, 2018, a Third Stipulation
14 to Extend Time to Respond to Motion was received.

15 On August 28, 2018, the Commission received
16 Petitioner's Supplemental memorandum in support of
17 Petitioner's Motion.

18 On October 15, 2018, the Commission
19 received a Fourth Stipulation to Extend time to
20 Respond to Motion.

21 On November 8, 2018, the Commission
22 received a Fifth Stipulation to Extend time to
23 Respond to Motion.

24 On June 21, 2019, the Commission received
25 Petitioner's Second Supplemental Memorandum in

1 support of Petitioner's Motion.

2 From August 1, 2019 to August 20, 2019,
3 there was an exchange of emails and correspondence
4 between the Commission and Petitioner to clarify
5 issues about the Petition; and Petitioner's response
6 to Land Use Commission comments and the final draft
7 of the TIAR were received.

8 On August 27, 2019, the Commission received
9 Petitioner's Third Supplemental memorandum in support
10 of Petitioner's Motion.

11 On September 6, 2019, the Commission
12 received Petitioner's response to Land Use Commission
13 comments regarding the Third Supplement.

14 On September 9, 2019, the Commission
15 received Petitioner's Fourth Supplement.

16 On September 16, 2019, a Land Use
17 Commission meeting agenda notice for the September
18 25-26, 2019 meeting was sent to the Parties and the
19 Statewide, email and Maui mailing lists. Also on the
20 same day, the Commission received Petitioner's Fourth
21 Supplemental memorandum in support of Petitioner's
22 Motion and Maui County's Position Statement.

23 On September 18, 2019, an amended Land Use
24 Commission meeting agenda notice for the September
25 25-26, 2019 meeting was sent to the Parties and the

1 Statewide, email and Maui mailing lists.

2 On September 19, 2019, the Commission
3 received Petitioner's Fifth Supplemental memorandum
4 in support of Petitioner's Motion.

5 On September 24th, 2019, the Commission
6 received the Office of Planning's response to the
7 Petitioner's motion.

8 And today in a hard copy form the
9 Commission received from the Department of Planning
10 of the County of Maui a list of deficiencies in the
11 Amended Decision and Order.

12 Let me first -- we will also call on those
13 desiring to give public testimony on the matter
14 today. When I call your name, you'll come up to the
15 witness box, you'll turn the microphone on, move the
16 microphone very close to your mouth. I will swear
17 you in, and you will you have, given the number of
18 people I'm seeing, I'm going to set a timer for three
19 minutes for each testifier.

20 A note to all those who are testifying. At
21 this point testimony is really focused on this motion
22 requesting the Land Use Commission --

23 Pardon me, strike what I just said.

24 You will come and testify. We will then
25 begin proceedings on the motion starting with the

1 presentation by the Petitioner, followed by Maui
2 County, and then the Office of Planning, and
3 Petitioner may reserve a portion of their time to
4 respond to any comments from the County and Office of
5 Planning.

6 Are there any questions on our procedures
7 from the parties today? Any questions, Petitioner?

8 MR. KEITH-AGARAN: No.

9 MR. HOPPER: No.

10 MS. APUNA: No questions.

11 CHAIRPERSON SCHEUER: From time to time I
12 will be calling for short breaks.

13 COMMISSIONER OHIGASHI: Mr. Chairman, just
14 to be clear, I'm a practicing lawyer on Maui for many
15 years. I have to disclose that I know Mr. Agaran as
16 a fellow lawyer. I haven't engaged in any cases
17 together with him, however, I have an occasion to
18 have networking. I have had the opportunity to meet
19 him in social settings, and consider him as a friend.
20 However, I do not believe that it would impede any of
21 or affect any of my decision-making today.

22 CHAIRPERSON SCHEUER: Thank you,
23 Commissioner Ohigashi.

24 Commissioners, are there any other
25 disclosures to be made?

1 I want to note for the record, in my
2 private consulting practice on water rights issues, I
3 represent three different parties who have an
4 interest in receiving water from the Honokohau Ditch
5 System, which this project has also considered as
6 potential source of water.

7 But the outcome of these proceedings today
8 makes no difference in my engagement in those
9 matters.

10 Are there any other disclosures?

11 If not, we can proceed to public testimony.
12 Do we have the list?

13 EXECUTIVE OFFICER: Yes, Mr. Chair, thank
14 you.

15 The first testifier is Kai Nishiki,
16 followed by Tiare Lawrence.

17 CHAIRPERSON SCHEUER: Good mooring.

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

20 THE WITNESS: Yes.

21 CHAIRPERSON SCHEUER: State your name and
22 address for the record and proceed.

23 THE WITNESS: Aloha, my name is Kai
24 Nishiki, 1676 A'a Street, Lahaina, Hawai'i 96761.
25 Mahalo.

KAI NISHIKI

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

DIRECT EXAMINATION

THE WITNESS: Good morning, Chair and Commission members. I am member of the West Maui Community Association and the current chair of the West Maui Community Plan Advisory Committee. However, today I'm speaking on my own behalf.

I'm very glad that this meeting is being held on Maui. However, I do wish that it was being held in West Maui. I feel like it should be in West Maui, that's where this project is going to be and we are going to feel the impacts most clearly.

And I appreciate the long list of communications to the various agencies, but there's been very little outreach and communication with the community that will be most affected. So that's a little bit disappointing.

As volunteer members yourself you understand how much time and effort is put into your role as Commissioners unpaid. Currently as Chair of the Community Plan Advisory Committee we are at the very beginning of the West Maui Community Plan

1 update.

2 I believe that we should respect and value
3 the many hours that volunteers have put into
4 developing for the planning of -- planning for the
5 needs of our community and not approve this until
6 we've had a chance to do our work and actually adopt
7 the West Maui Community Plan.

8 During outreach done by the planning
9 department, our community came out very strong
10 opposing development of any more market rate and
11 luxury homes. At this time we are at a crisis level
12 of meeting affordable housing and rentals as I'm sure
13 understand.

14 In their original proposal there was more
15 affordable and market rate homes and a huge park
16 which our community, and especially our keiki,
17 desperately need.

18 This proposal is significantly different
19 from previous proposals, and I would argue it should
20 that undergo further environmental review as well as
21 reducing the number of market rate homes. There are
22 also additional concerns about water.

23 The Land Use Commission should not approve
24 this project until the community plan process and
25 IIFS are set at levels that meet public trust

1 purposes.

2 Additionally the only highway into West
3 Maui, which is overburdened and traffic is
4 horrendous, it's actually falling into the ocean
5 threatening the health and safety of our residents
6 and visitors. We cannot handle any more
7 accommodations that will attract additional new
8 residents to this area. We are seriously at
9 overcapacity and have been for awhile.

10 Finally, I find it just a little bit
11 concerning that a member of the senate, which is
12 responsible for the confirmation of this very
13 Commission, and representing the public's best
14 interest, is representing the Applicant. I've heard
15 it said that just because you can doesn't mean that
16 you should. I would think that a little more thought
17 should have been put into that.

18 In closing, I ask you to please honor the
19 voices of our community and deny this proposal.
20 Mahalo.

21 CHAIRPERSON SCHEUER: Thank you. And I
22 should have noted for everybody who is coming to give
23 testimony, there will now be the opportunity for the
24 Petitioner, the County, the State or the members of
25 the Commission to ask you any questions about your

1 testimony.

2 Petitioner?

3 MR. KEITH-AGARAN: (Shakes head from side
4 to side.)

5 CHAIRPERSON SCHEUER: County?

6 MR. HOPPER: No questions.

7 MS. APUNA: No questions.

8 CHAIRPERSON SCHEUER: Commissioners, any
9 questions for the testifier?

10 Thank you very much.

11 THE WITNESS: Thank you. Mahalo.

12 EXECUTIVE OFFICER: Tiara Lawrence followed
13 by Dick Mayer.

14 MS. LAWRENCE: Tiara Lawrence, lifelong
15 resident --

16 CHAIRPERSON SCHEUER: Do you affirm --

17 MS. LAWRENCE: I swear to tell the truth.

18 CHAIRPERSON SCHEUER: -- that the testimony
19 you're about to give is the truth?

20 MS. LAWRENCE: Yes, absolutely.

21 TIARA LAWRENCE

22 Was called as a witness by and on behalf of the
23 Public, was sworn to tell the truth, was examined and
24 testified as follows:

25 DIRECT EXAMINATION

1 THE WITNESS: My name is Tiara Lawrence,
2 born and bred, girl from Lahaina, care deeply about
3 West Maui's future.

4 I'm here opposing this plan as it is
5 currently presented to you for many reasons.

6 Yesterday I went out to Lahaina to visit my
7 mom who's got stage four cancer. And I left around
8 4:30, sat in traffic for 40 minutes, then quickly
9 turned around, had a drink at Star Noodle, went back
10 into traffic at 6:30 and sat there for 45 minutes
11 just to pass from Lahaina to Olowalu.

12 That's the reality on the west side every
13 day when you're trying to leave. When you're trying
14 to come in in the evening, it's horrific and traffic
15 can be backed up all the way to Kahului junction.

16 So we are at a tipping point on the west
17 side where, yes, we have a housing crisis, but we
18 have severe traffic issue and water issues as well.

19 In terms of water, yesterday the County of
20 Maui put out a notice to all residents in West Maui
21 asking them to conserve water because of low stream
22 flow.

23 I want to state for the record today that
24 the Commission on Water Resource Management is
25 currently going through their IIFS process where

1 they're going to determine if streamflow would be
2 restored for streams like Honokowai and Honokohau,
3 where, in this proposed project, the water would come
4 from.

5 The sentiment from the Commission lately is
6 the restoration of streams is providing mauka to
7 makai connectivity, and so I'm very confident in
8 saying today that the Commission will restore water
9 especially to Honokohau where there is a lot of
10 traditional and customary concerns.

11 So I wanted to share that with you today.
12 I know there is talk about the possibility of putting
13 in a well in this area. I want to state for the
14 record today too that Department of Hawaiian
15 Homelands is also building a well where the County
16 will be dependent on this water. I believe there is
17 water that's going to be possibly sent to addressing
18 some of the water shortages that we currently have in
19 West Maui. So I have some concerns around
20 groundwater use in that region.

21 Also we are going through community
22 planning process and it's happening, I believe
23 they're like a year from it being completed.
24 However, I do appreciate the developer's proposal for
25 affordable rentals, but I see the issue that I have

1 is that it only be 31 percent affordable. 31
2 percent. We're in a severe housing crisis, and that
3 to me is severely troubling.

4 On the west side we are in critical housing
5 shortage, and in 2015 80 percent of the homes on the
6 west side was sold to out-of-state buyers. That's
7 becoming a common trend.

8 CHAIRPERSON SCHEUER: Summarize your
9 testimony.

10 THE WITNESS: Okay, sorry.

11 In summarizing I just want to state
12 although this development will offer 31 percent
13 affordable, this project will barely make a dent in
14 our crisis.

15 Secondly the rest of the rentals will only
16 exacerbate the current issue by allowing more
17 out-of-state residents to move here, and we clearly
18 are at capacity.

19 And I just want to share a quote today that
20 was in a press release by Council Member Mike Molina
21 where he stated:

22 The need for affordable housing has
23 achieved crisis levels; therefore, any action that
24 can help increase the focus for affordable housing is
25 essential. Enough with the talk, it's time to call

1 for action. The time for action is now.

2 This development will not address the
3 severe affordable housing crisis we have on the west
4 side. Mahalo.

5 CHAIRPERSON SCHEUER: Please remain seated.
6 Petitioner?

7 MR. KEITH-AGARAN: No questions.

8 MR. HOPPER: No.

9 MS. APUNA: No questions.

10 CHAIRPERSON SCHEUER: Commissioners?
11 Commissioner Chang.

12 COMMISSIONER CHANG: You stated that there
13 are traditional and customary practices from the
14 Honokowai.

15 THE WITNESS: Yeah, in the northern end of
16 West Maui, that's the only valley that is still in
17 lo'i kalo production. And for years the families
18 have advocated for more water being restored.

19 Also I don't think Maui Land & Pine is in a
20 position to really negotiate water right now. Their
21 intake is broken. And the gentleman that you used to
22 run it, he passed away a few months ago.

23 And with the IIFS process happening, Maui
24 Land & Pine is clearly not in a position to be
25 negotiating water right now.

1 COMMISSIONER CHANG: But you are aware
2 there are existing practitioners who use the water,
3 and it's your belief that this project will impact
4 their ability to continue to exercise those rights?

5 THE WITNESS: Absolutely. They depend on
6 this water, and also the County has had issues. They
7 have been cut off from County water supply several
8 times this year alone with issues with the piping, so
9 when the County shuts off water, they have to truck
10 in water to the residents. And they go and collect
11 water at the bottom of the road, and so in the
12 interim they're dependent on stream water just to
13 flush their toilets.

14 COMMISSIONER CHANG: Mahalo.

15 CHAIRPERSON SCHEUER: Are there any other
16 questions for this witness? Thank you very much.

17 Next witness is Dick Mayer followed by Etan
18 Krupnick.

19 Good morning, Mr. Mayer.

20 Do you swear or affirm the testimony you're
21 about to give is the truth?

22 MR. MAYER: I do.

23 CHAIRPERSON SCHEUER: State your name and
24 address for the record and proceed.

25 RICHARD MAYER

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

4 DIRECT EXAMINATION

5 THE WITNESS: Richard Mayer, Dick Mayer is
6 the name I usually go by. 1111 Lower Kimo Drive,
7 Kula.

8 What I've given you is the outline of my
9 testimony. I suspect it will take more than three
10 minutes. I do want to say that it was not until the
11 planning conference last week that I even found out
12 that this was even coming up. The public has in no
13 way been notified on Maui that this is pending, and
14 it was a sudden surprise to go through all those
15 documents.

16 The County notes, and I agree that the
17 application is incomplete and there needs to be a
18 postponement before you take any action. I feel this
19 is a bait and switch proposal because Maui Land &
20 Pine gave you a long list of things they were going
21 to do. It was a very contentious discussion and you
22 finally agreed, and I would like to read down at the
23 bottom, that first page.

24 Your own final EIS -- from the Final EIS
25 document, and I'm going to read the bold print:

1 Pulelehua community will consist of 882
2 multi-family and single family homes, et cetera.

3 At least 51 percent of the homes will be
4 made available for sale or rent for low, low income
5 groups.

6 This project is now switching and asking
7 that only 280 units be put into that category out of
8 1,000 -- and I say 1,000 because they have 900,
9 they're listing, plus 100 ohanas. It will be a total
10 of 1,000 units there. Only 280, 28 percent, not
11 31 percent cited a few minutes ago.

12 I think this is a major problem and I think
13 it needs to be corrected that they go back to the
14 51 percent of the units be affordable, that is the
15 need on West Maui.

16 On the application page 71 of their own
17 application it said they were going to provide --
18 it's clear that there were 450 affordable units in
19 the original proposal. That was a compromise from
20 those who had asked for many, many more.

21 Turn to the next page.

22 The Final EIS for this project is totally
23 out of date. It was done in 2005. An example of why
24 it's relevant is that there's almost no mention at
25 all about the school enrollment in Lahaina. The four

1 schools in Lahaina for the most part are overcrowded
2 already. And the document that you'll see as you go
3 through it says the first school will be built
4 probably in 2035, 90 years after they're saying that
5 they will complete this project.

6 So I would urge you to make sure the school
7 is built soon. Donating the land is the trivial
8 part, the cost of construction and having the DOE put
9 that money up, or the state put that money up is the
10 main concern.

11 They make no mention of school buses and
12 the cost of school buses, who will run them? How
13 often will they go? Will they be able to take all
14 these children?

15 The project is going to have somewhere
16 between 400 to 600 children will need to be
17 transported. That's a cost that's not mentioned.

18 Water was mentioned by previous speakers
19 and is a considerable problem. And the ditch up in
20 that area that was damaged by the big storms, stream
21 intakes were damaged, that needs to be taken care of.

22 CHAIRPERSON SCHEUER: That's three minutes,
23 if you can come summarize.

24 THE WITNESS: I think I would like you to
25 stop me at any time if you think any of this is

1 irrelevant. If I could ask for the indulgence. I've
2 gone through this. I don't think anybody else in the
3 community has had a chance.

4 Wastewater, they claim that initially they
5 will go to the Lahaina plan, and then only after they
6 build it, I think that needs to be put in place.

7 This 50-acre park that was supposed to
8 be -- that needs to be made certain and provided for.
9 Maui Land & Pine was negligent in not doing that.

10 The housing should be at least 30 years in
11 perpetuity or in perpetuity.

12 I would urge you to limit any expansion.
13 They have a large amount of vacant land on this
14 project. At some point they may come back and say we
15 want to put even more housing on that property.

16 The project map, it was unclear for us to
17 be able to make comments on the project map, because
18 there are several maps included on the website.

19 The West Maui Community Plan, they're
20 working on that.

21 Drainage, they only are talking about a
22 50-year one-hour storm. We had a hurricane that came
23 through here last year that caused much more than one
24 hour worth of rain. There needs to be much better
25 consideration of drainage requirements instead of

1 one-hour storm.

2 Will the intersections and signals all be
3 provided for by the developer? Solid waste, will
4 that be paid for by the residents of the area and
5 that leads to a major concern. These are supposed to
6 be for affordable housing, and the homeowner
7 association cost, do those include the water, the
8 wastewater, the solid waste disposal, road
9 improvements, et cetera?

10 Will that be even affordable for affordable
11 housing owner, renter to be able to pay those costs.
12 And who will pay for those costs if they're renting?

13 Medical, there's no mention -- and that's
14 why an EIS is important. There's no mention at all
15 of medical facilities which are over an hour away.
16 They even cite HHFC is running the hospital as we all
17 know now for the last two years Kaiser has been
18 running the hospital.

19 CHAIRPERSON SCHEUER: I'm going to ask you
20 now to move to the conclusion of your testimony,
21 keeping in mind that any of the parties or any of us
22 can ask you questions which would allow you to
23 further expand on your thoughts.

24 THE WITNESS: Thank you.

25 On the last page I've listed things based

1 on the proposed Decision and Order. You can go
2 through it. I'm giving you some recommendations that
3 you may want to consider as you go through each of
4 those items.

5 Lastly, I would urge -- at the very bottom
6 of that page, Kapalua Mauka was supposed to provide
7 125 units of housing, and a 50-acre park area. I
8 would like to call into question what Maui Land &
9 Pine is doing and why you've not gone after them by
10 not complying with their representation.

11 CHAIRPERSON SCHEUER: Thank you.

12 Petitioner?

13 MR. KEITH-AGARAN: No.

14 MR. HOPPER: No.

15 MS. APUNA: No, Mr. Chair.

16 CHAIRPERSON SCHEUER: Commissioners?

17 Nothing further?

18 Can you, Mr. Mayer, just briefly, the top
19 of your decision and order page. You say as your
20 first point, we should not double count the 125
21 housing units sold by Kapalua Mauka.

22 What are you trying to convey?

23 THE WITNESS: The County signed an
24 agreement with the proposer or the developer to
25 double count the 125 as part of the Kapalua

1 requirement, and then now putting it into this
2 project. That should be in addition to as it was
3 clearly stated in the original D&O, that the
4 affordable housing requirement for this project in
5 addition to that 125 units should have been added in.
6 The fact that the County has said that there is an
7 agreement, that should be a minimum what the County
8 is saying. But what the Land Use Commission said was
9 there should be 450 units in this project that are
10 225 for the project itself, that's 25 percent of the
11 1,000, and 125 additional. Do not allow them to go
12 to 280.

13 They also say in there that half of the
14 units are going to be bought by out-of-state
15 residents, people coming in. That's what this
16 project is going to be built as an affordable housing
17 project, but they diminished it and that's why I said
18 bait and switch.

19 CHAIRPERSON SCHEUER: Thank you. Is there
20 anything further? Thank you very much for your
21 testimony.

22 Our next testifier is Etan Krupnick,
23 followed by Lucienne deNaie.

24 As a note to everybody we have asked the
25 facilities folks to check on the very warm condition

1 of this room.

2 Do you swear or affirm the testimony you're
3 about to give is the truth?

4 THE WITNESS: Yes.

5 ETAN KRUPNICK

6 Was called as a witness by and on behalf of the
7 public, was sworn to tell the truth, was examined and
8 testified as follows:

9 DIRECT EXAMINATION

10 THE WITNESS: My name is Etan Krupnick. I
11 grew up in Lahaina. My mother and grandmother,
12 they're all from Lahaina as well, so I have a deep
13 pride for West Maui, let alone Maui, you know.

14 I guess as a full-time resident and just
15 seeing what I saw growing up, so much change when it
16 comes to like more hotels. As a kid I already knew
17 what that was going to be the wrong road for West
18 Maui.

19 We are at a time that we need housing, so
20 now is it going to be favoring the outside people,
21 not even from or live here full-time, which it's
22 starting to look that way, or are we going to start
23 looking to our community and start to think about
24 them more?

25 I like that some of these developers are

1 bringing in the affordable housing thought process,
2 but it's just -- I don't want to sound selfish --
3 it's not enough. There's a lot of us who have the
4 money saved up, who have the job, and are qualified
5 to get the loans but there's nothing to buy if it's
6 not over \$600,000.

7 You know, when you start to own your own
8 property, which I've seen my friends owning because
9 they got chosen for affordable housing, and it's just
10 life-changing.

11 So they can pass something down now. They
12 can go to their own sanctuary and it's there. I
13 would like that for myself and my community but we
14 need more community opportunity.

15 The percentage that they're offering is not
16 enough. I remember when they were proposing it, I
17 was working for Maui Land & Pine, was excited first
18 time I ever heard of affordable housing. I think my
19 uncle guys got that when they used to work for the
20 golf course and stuff, so there's a great opportunity
21 for them too, like in the \$300,000 range or
22 something.

23 Anyways to see what the project is now, it
24 can't even be a question to even think about passing
25 it. Water, I see my friends like other testimonies,

1 people that just came up here. The water is just not
2 enough right now in the West Maui. I've got friends
3 at Honokohau like I said, like they said that have no
4 water to even flush the toilets, wash their face in
5 the morning. And they got keikis too, so they got to
6 get them ready, and they live already 30 minutes from
7 Lahaina. So it just like -- it disrupts their
8 routine from the get-go. And it will last a week or
9 two until they even get water. That's just a huge
10 issue right now.

11 Traffic, of course, everybody knows about
12 Lahaina traffic. Whether any you guys have lived in
13 Lahaina, Lahaina has a strong community, we have
14 always had each others' back and we are going to
15 continue. If you put another community or
16 neighborhood that is in Lahaina that none of us are
17 really for, or at least like 50, 100 percent on
18 board, I mean this meeting should be in Lahaina
19 because we would have hundreds if not thousands of
20 people right now standing outside right now ready
21 to -- you know.

22 I'll wrap it up. I don't think this plan
23 is ready for Lahaina. It needs to be switched, we
24 need 70 to 90 percent affordable easily, and that's
25 like giving you guys little bit, honestly should be

1 100. We need to start thinking about our full-time
2 Maui residents, not just like kanaka, this is
3 everybody here, this is all the community.

4 Now like if this passes, this is going to
5 give other developers a chance to use this as an
6 example well. Well, they passed it, so we don't have
7 to if give that much affordable housing any more.
8 It's taken away from all you guys. Whether you own a
9 house or not, your keikis are going to affect this
10 too. And you can actually drive past, and your
11 keikis when they're older can be like my
12 grandparents, my grandma, my grandpa started this
13 revolution of affordable housing for us.

14 CHAIRPERSON SCHEUER: Thank you very much.
15 Questions for the witness?

16 MR. KEITH-AGARAN: No questions.

17 MR. HOPPER: No questions.

18 MS. APUNA: No questions.

19 CHAIRPERSON SCHEUER: Commissioners? Thank
20 you very much.

21 Lucienne deNaie, followed by -- I can't
22 read their writing, I believe it is Steven Franco,
23 Stan Franco perhaps. Forgive me because --

24 Do you swear or affirm that the testimony
25 you're about to give is the truth?

1 THE WITNESS: I do.

2 LUCIENNE deNAIE

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

6 DIRECT EXAMINATION

7 THE WITNESS: My name is Lucienne deNaie.
8 I'm the Conservation Chair for Sierra Club Maui.
9 Sierra Club has waited on this project since 2004,
10 the charrettes 2005, the hearing gets to the Land Use
11 Commission, the hearing to the Planning Commission.

12 Sierra Club has waited on this project for
13 15, 16 years or more attending many hearings. Every
14 proposal promises everything and that's what we have
15 heard, but how much can really be believed. The
16 approval Land Use Commission gave in 2004 to 2006,
17 deliberations was worth money to the landowner. And
18 the benefits that were supposed to come out of that
19 exchange are really needed by the public.

20 So what we're getting with this proposed
21 plan is the entitlements go on to the new owners, and
22 the benefits to the public are being slashed or
23 eliminated, like the 50-acre park. This land was a
24 50-acre park in our community plan. That was a
25 tradeoff. We were going to get affordable housing,

1 450 units. I listen to people who shared their
2 dreams of buying a house, just like that young man
3 there. Now what do we have? Rental apartments. No
4 houses people can buy. It is like a bait and switch.

5 I served on the General Plan Advisory
6 Committee for three years. We heard the hopes and
7 dreams of people of West Maui. We met in West Maui.
8 And this doesn't fulfill those hopes and dreams.

9 So the Land Use Commission should really
10 not vote today to accept the amendment. As the OP
11 stated, and as we heard today, this information is
12 being rushed to you. It's not enough time to really
13 consider what is or isn't being planned.

14 There are key components that the impacts
15 remain unknown. A new wastewater plant is being
16 discussed. That would be a trigger for an
17 Environmental Assessment. The last Environmental
18 Assessment was in 2006, maybe 2005, and it didn't
19 include this wastewater plant.

20 The Honokohau Stream, some of you may not
21 know, but Honokohau Stream is a stream that has a
22 very robust flow all the way to the top of the
23 mountain, 25 million gallons a day flow. The people
24 who live in Honokohau for years had to have water
25 trucked in by the County, so little flow was left in

1 the stream after Maui Land & Pine had diverted it for
2 over 100 years to use for ag. Well, the ag is gone,
3 and now the new plan is to keep selling the water to
4 developments, when there are people in Honokohau
5 Valley that really deserve the use of this water for
6 traditional kalo growing, for gathering native
7 species.

8 There are cultural impacts to using that
9 water. And Ms. Nishiki is right -- Ms. Lawrence is
10 right. The IIFS process should be complete before
11 any decision is made on a project where that is their
12 water source.

13 Also the drainage problem is really not
14 being discussed. The person who did the drainage
15 report, Mr. Dollar, always says there is no impact.
16 Guess what? We see impacts on every West Maui
17 project that he says there's no impact on.

18 They need a new ethical consultant for
19 drainage, because those are cultural impacts to our
20 fisheries.

21 Thank you for your consideration and get
22 the information you need.

23 CHAIRPERSON SCHEUER: Thank you. Questions
24 for the witness?

25 MR. KEITH-AGARAN: No questions.

1 MS. APUNA: No questions.

2 MR. HOPPER: No question.

3 CHAIRPERSON SCHEUER: For the benefit of
4 those who do not follow water commission proceedings,
5 what does the IIFS stand for?

6 THE WITNESS: That's the interim instream
7 flow standards where we decide how much water needs
8 to legally remain in the stream to have it be a
9 healthy stream, and how much can do go offstream and
10 serve other development projects like this.

11 CHAIRPERSON SCHEUER: We have Mr. Franco,
12 followed by Council Member Tamara Paltin.

13 Aloha, good morning.

14 Do you swear or affirm that the testimony
15 that you're about to give is the truth?

16 THE WITNESS: Yes.

17 CHAIRPERSON SCHEUER: Please state your
18 name and address for the record.

19 THE WITNESS: Stan Franco. My address is
20 48 O'neil Circle, Wailuku.

21 STAN FRANCO

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

25 DIRECT EXAMINATION

1 THE WITNESS: I'm very concerned as a
2 housing advocate, I've been a housing advocate on
3 Maui for 30 years, and I was part of the General Plan
4 Advisory Committee along with Dick and Lucienne. And
5 we were told that this is going to be a project that
6 is going to be affordable for people on Maui.

7 I just want to read from the Affordable
8 Housing Policy Plan Final Report August 15, 2018.
9 And this was a County generated report. SMS did the
10 research. This is one of their conclusions.

11 There are two kinds of affordable housing.
12 Housing intended for households with annual incomes
13 less than 80 percent of the AMI, and workforce
14 housing intended for households with annual incomes
15 between 80 and 140 percent of AMI.

16 There is a need for about 12,480 -- 448
17 housing units intended for those two groups between
18 2015 and 2025. Among those units 9,529, 75 percent
19 of low income housing units, and 3,119 units are
20 workforce housing units.

21 I had the opportunity to attend an
22 affordable housing summit in Honolulu. And one of
23 the guest speakers was Peter Ho from Bank of Hawaii.
24 And he says that we don't have security in our
25 community. Our people don't have security in our

1 community, and 70 percent of them are concerned about
2 what life is going to mean for them because of the
3 cost of living, with the major cost being the
4 housing.

5 And he sees this as a critical challenge
6 for our community. He quoted Harve Vonan (phonetic)
7 from UH, and it was said that we have had two
8 straight years of population decline, 12,000 people
9 each year have out-migrated from Hawai'i. And he
10 claims that we need to have a radical change in how
11 we take care of the housing needs of our people.

12 And as I quoted from the Affordable Housing
13 Policy Plan Final Report, those needs are for low
14 income and workforce housing, and this development
15 does not seem to meet that need.

16 If we are going to be discussing public
17 need here, because I think that's what we should be
18 doing, we got to build, as others have said, housing
19 for the people that need the housing, or we continue
20 the problem of having housing deficiency, or housing
21 crisis as people have called it on this island.

22 CHAIRPERSON SCHEUER: Thank you very much
23 for your testimony. Are there questions for the
24 witness?

25 MR. KEITH-AGARAN: No.

1 MR. HOPPER: No.

2 MS. APUNA: No.

3 CHAIRPERSON SCHEUER: Commissioners? Thank
4 you very much.

5 Council member Tamara Paltin. Is there
6 anybody else in the audience wishing to give public
7 testimony on this matter?

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

10 THE WITNESS: Yes.

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

13 THE WITNESS: My name is Tamara Paltin. My
14 address is 110 Pualu Place, Lahaina, Hawai'i 96761.

15 TAMARA PALTIN

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

19 DIRECT EXAMINATION

20 THE WITNESS: I got so much things to say
21 in so little time. Originally I was not -- I
22 testified against Kapalua Mauka in 2004, and you know
23 that testimony in hindsight makes me feel like a
24 psychic, you know, everything went wrong.

25 And then when this foreign developer

1 purchased the Pulelehua, everyone said, oh, it's
2 okay, it's going to be okay because entitlements run
3 with the land and, you know, he's still going to have
4 to meet the requirements. And now like not even two,
5 three years later after him purchasing the land, he's
6 trying get out of promises made.

7 Originally the Planning Commission had this
8 as a 65 percent affordable housing project. Now it's
9 down to 51 percent. Now it's going down even lower.
10 And you know Kapalua Mauka had severe adverse affects
11 on West Maui. It was the first ever housing project
12 to get a seven-month stop work order from the County
13 Public Works DSA division, and that would have never
14 happened if it wasn't for the clean water group and
15 us calling every single time when it rains, even just
16 a light misty rain there was brown water coming down
17 the river.

18 I got no degrees in science or archeology
19 or any topography, geology, but from watching the
20 river for over a decade, I can tell when it's not how
21 it usually is. Usually the river runs brown the
22 first time it rains of the season, and then
23 subsequently less each time. This is not how it was
24 when they started construction on Mahana Ridge, which
25 was successor of Kapalua Mauka.

1 So I mean, the part here to that, we have a
2 state senator representing these guys. No community
3 outreach to our community. I would imagine that he
4 knows the climate; he knows the situation.

5 We don't have an excess of jobs, people
6 moving to the mainland to get. We don't have an
7 excess of housing for people that live here to get.
8 And we have this foreign occupier continent developer
9 coming here saying that 50 percent of the Pulelehua
10 resident household will be in-migrating from the U.S.
11 Where are they going to work? Where are they going
12 to live? This is like telling us that they're going
13 to be doing their marketing in Texas for more people
14 to move over here.

15 We have enough people to buy these houses,
16 buy these rentals. It's so insulting that this huge
17 story that we are told with the charrettes and all
18 that newspaper ads, and you can own your own house.
19 There will be a variety of types. There will be
20 rentals, all these things. And then secretly, no
21 newspaper story, oh, we're going to try and amend the
22 2006 Decision and Order to make it less and only
23 rentals available.

24 I can understand why you wouldn't want
25 everyone to know what you're doing, and it's just

1 shady.

2 If the developer knew full and well, if he
3 didn't know he should have done his due diligence of
4 what the requirements were when purchasing this
5 property. And if you're going to shaft somebody,
6 shaft the \$50 million purchase price.

7 In closing, I think you know the previous
8 people said it all. The only recommendation I can
9 make is no short-term rental homes, no TVR's, no
10 B&B's and, you know, if they want to monkey around
11 and give less than what was promised, then revert it
12 back like Hale Mua and let the County buy it, you
13 know, at ag land rates, condemn the land and let us
14 do it, because this is ridiculous.

15 CHAIRPERSON SCHEUER: Thank you. Other
16 questions?

17 MR. KEITH-AGARAN: No.

18 MR. HOPPER: No.

19 MS. APUNA: No questions.

20 CHAIRPERSON SCHEUER: Commissioners?
21 Commissioner Okuda.

22 COMMISSIONER OKUDA: Have you personally
23 looked at the land in question? You've seen it with
24 your own eyes?

25 THE WITNESS: Every single day.

1 COMMISSIONER OKUDA: So you have firsthand
2 information on what is going on with the land and
3 what's not happening with the land?

4 THE WITNESS: (Witness nods head up and
5 down.)

6 CHAIRPERSON SCHEUER: Because of the audio
7 record and the court reporter, verbal responses,
8 rather than nodding your head.

9 THE WITNESS: Yes, I pass by every day. On
10 occasion I leave the airport up there.

11 COMMISSIONER OKUDA: Have you seen any
12 evidence that the land is being used in accordance or
13 along the lines of the earlier Decision and Order?

14 In other words, is there anything being
15 built, or land being used consistent with the earlier
16 Decision and Order?

17 THE WITNESS: No. As far as parks, I
18 always see folks walking up and down, taking their
19 dog up and going up the hill to the Kapalua Airport,
20 doing a little work out, walking back down. There's
21 a side road before you go all the way up that leads
22 you to like Department of Hawaiian Homelands, but
23 nothing building, no, nothing in compliance with the
24 2006 Decision and Order to build anything.

25 COMMISSIONER OKUDA: And this testimony you

1 have just given is based your personal knowledge,
2 seeing the land on a regular basis with your own
3 eyeballs, correct?

4 THE WITNESS: Correct.

5 COMMISSIONER OKUDA: Thank you. No further
6 questions, Mr. Chair.

7 CHAIRPERSON SCHEUER: Commissioners, are
8 there other questions for this witness?

9 Councilmember, there is, on this docket --
10 I'm going to state this incorrectly -- but an
11 agreement from Maui County through the Housing and
12 Community Concerns Office agreeing to what is being
13 proposed on this matter.

14 Did that agreement to these revisions come
15 through the Maui County Council, or is that an
16 executive action under the County?

17 THE WITNESS: I believe it's through the
18 administration only. We today didn't take any vote
19 on it. Although we were semi-informed in their
20 housing plan update. They gave us spread sheet with
21 a nexus. And under the Pulelehua portion of it they
22 did mention pending a Land Use Commission decision,
23 that it was going to be 900 units, 280 of which was
24 affordable.

25 And I did kind of notice that. And I

1 thought the numbers were off, but, you know, kind of
2 being new to this job, I got a lot on my plate almost
3 every day. So it went to the back of the list of
4 things I was dealing with.

5 The only reason I found out was from Mr.
6 Dick Mayer about this. So all the people that I've
7 spoken to in the short amount of time and have sent
8 in late email testimony, totally opposed of this, you
9 know, what the story was told to us originally. And
10 throughout the years, this is complete about-face of
11 what it was and, you know, when you buy a property,
12 property when you invest \$15 million, you got to do
13 your homework. If you cannot do what was obligated
14 under that agreement, why would you pay \$15 million
15 for it? You know, 5 million, whatever. When the
16 article came out in the Maui News, I was like, wow,
17 going to do 15 million and then still build all of
18 that, but apparently there was other plans even back
19 then.

20 CHAIRPERSON SCHEUER: Can you summarize
21 what your request to us is?

22 THE WITNESS: My request is hold them
23 accountable for the promises made since 2006. If
24 they can't do it, then revert it back to agriculture
25 and they can sell it at ag land rates to somebody

1 that can make 100 percent affordable housing. We're
2 dealing with folks that do that all the time. The
3 Kihuni project (phonetic), big lease.

4 We cannot be the mainland, the continent's
5 investment opportunities any more. We have been
6 doing that far long enough, and that's what led us to
7 where we are now, where nobody can afford a place to
8 live. People are paying \$5,000 a month for
9 three-bedroom, two-bathroom in Kanaapali. It's not
10 sustainable.

11 You know, everybody wants to come here from
12 vacation, but who's going to change the sheets?
13 Who's going bring you your drink? Who's going to
14 cook your food? People are getting over the drive in
15 and out every day? It's one of those self-fulfilling
16 prophecies where you're going to kill it, you're
17 going to kill the whole economic driver of the entire
18 state by continuing to let these people with their
19 greed, and their investment to take over what was
20 promised to the community as affordable housing.

21 We made our compromise from 65 percent to
22 51 percent. Don't go any lower.

23 CHAIRPERSON SCHEUER: Any further
24 questions? Commissioner Cabral.

25 VICE CHAIR CABRAL: In reference to these

1 percentages, and you reference that you have people
2 doing projects that are 100 percent affordable
3 housing. Is that private citizens, or is that
4 government subsidized housing?

5 THE WITNESS: So there is a government
6 subsidized one specifically for the 30 to 60 percent
7 AMI that you guys, ohana, I think they're also doing
8 work on the Big Island as well. The Kihuni project,
9 the Kaiaulu (phonetic) project or the one by the
10 sewage treatment plant is 100 percent affordable. I
11 think that might have been a credit from another
12 development that fell through the for-profit side,
13 fell through, but the affordable side is still going
14 forward and people are moving in. But it's like
15 they're fulfilling the credits for nonaffordable
16 projects.

17 VICE CHAIR CABRAL: I just love to have
18 affordable housing, and I deal with affordable
19 housing. I just don't know who's going to pay for
20 it, either the tax dollars or the developer has to
21 make the money someplace. It becomes a math problem.

22 I'm just wondering if you had some
23 developer wonderful enough to make 100 percent
24 affordable housing, where are they? Thank you very
25 much.

1 CHAIRPERSON SCHEUER: Commissioner Chang.

2 COMMISSIONER CHANG: Thank you.

3 So I just want to be really clear. Can you
4 tell me what is the current condition of the land?

5 THE WITNESS: It's fallow fields. It's a
6 big sloping parcel, and then there is kind of gulches
7 on either side of it.

8 COMMISSIONER CHANG: Has there been any use
9 of the land? I know Commissioner Okuda asked you,
10 but has there been any use of the land that is
11 consistent with the land use approvals?

12 THE WITNESS: Not to my -- what I could see
13 driving by the property and going up to the airport
14 and looking down, there's been no activity that I can
15 see on a day-to-day basis just from driving by and
16 using the Kapalua Airport.

17 COMMISSIONER CHANG: So there's been no
18 building of roads?

19 THE WITNESS: Not that I've seen, no

20 COMMISSIONER CHANG: No buildings of any
21 kind of structures?

22 THE WITNESS: No.

23 COMMISSIONER CHANG: Do you know whether
24 there's been any expenditure of funds for this
25 project?

1 THE WITNESS: Well, I mean, and I imagine
2 in the planning, because there was an original plan
3 for 882, and then looking on the website at one point
4 it looked like it was 1200 homes and 450 affordables,
5 and now it's like 900 units and 450, and I see the
6 planning, so I guess there was some paperworks done,
7 the communication back and forth, but nothing
8 physical that I've seen, being expenditures, I'm
9 sure. Flying in from the continent is an expenditure
10 of funds.

11 COMMISSIONER CHANG: Has there been any
12 community meetings with this new proposed plan?

13 THE WITNESS: Not to my knowledge, no.
14 Community meetings. Like Etan said, if they brought
15 this project to the community scaled down from 450 to
16 280, and increasing density by 12 units, there would
17 be a line out the door? All the people that -- I
18 still run into folks on a regular basis that asks
19 what is going on with Pulelehua. They had their name
20 on the list. They thought they would be able to
21 build a house.

22 Now it's reverted to rentals, which if
23 that's all they can do is 450 rentals, it's not good,
24 but its better than 280.

25 I know a lot of people will be

1 heart-broken, because they had their heart set in
2 buying a property at affordable rate. But that is a
3 compromise that we can talk about is 450 rentals as
4 opposed to purchase homes. But it's got to be the
5 same numbers.

6 You can't buy the property and then get a
7 free pass with all these entitlements. It's ag lands
8 and it wouldn't have been worth as much. You got to
9 know what you're getting into if you're going to
10 spend \$15 million.

11 COMMISSIONER CHANG: Have you seen what the
12 proposed plan is?

13 THE WITNESS: Yes.

14 COMMISSIONER CHANG: Based upon that, what
15 else is inconsistent with the original? If you can
16 just briefly -- is there anything else that's majorly
17 inconsistent with the original D&O?

18 THE WITNESS: Well, I have full trust in
19 what Mr. Mayer and Ms. Lucienne deNaie said, but one
20 of the major things in my community was the variety
21 of types of homes that you could have, the mix use
22 community, like livable walkable types of -- when
23 they did their charrettes and they made their
24 representations to the community prior to this
25 developer purchasing the property, people were stoked

1 about it, you know. It's like, you know, you can
2 have your single-family homes, estate homes, your
3 rentals all in one area.

4 And it's like a little mini community
5 representative of West Maui, because we have such a
6 range of residents and we all get along for the most
7 part. It doesn't matter what your income is, you're
8 going to see somebody down the beach.

9 But this is 800 rentals, 100 single-family
10 homes, and it totally changes the project, which
11 despite the infrastructure lapse and whatnot, I can
12 live with, but the percentage of affordable housing
13 dropping so much is just not negotiable to me.

14 COMMISSIONER CHANG: Thank you.

15 CHAIRPERSON SCHEUER: Anything further for
16 this witness? Commissioner Cabral.

17 VICE CHAIR CABRAL: Since you're so
18 knowledgeable of the area, you made a statement
19 earlier in your main statement that you wish that the
20 land could go back to agriculture, then the County
21 could buy it and put in affordable housing.

22 Is there vacant land around it that's
23 agriculture that the County could do that and fund an
24 affordable housing project on their own, a different
25 piece of property?

1 THE WITNESS: Just north of, I believe,
2 Kahana Ridge there's 1413-acre TMK, and because we're
3 going forward with the community plan update process,
4 and that was the time when the County could purchase
5 the 50 acres for a community park, a few of us were
6 looking into that 1413 acres, it's ag pasture land,
7 as possibly a location for a park.

8 If it's going to be not a park, and we need
9 to provide our own affordable housing on that
10 property, you know, I mean that would be another
11 option. But I don't think that folks should be
12 allowed to just come in and take advantage of the
13 entitlements and all the benefits without providing
14 what was promised, similar to like how Ms. DeNaie
15 said. It's just not a good precedent to set.

16 VICE CHAIR CABRAL: All right, thank you.

17 CHAIRPERSON SCHEUER: Thank you very much,
18 Councilmember. We are now at the hour mark. I take
19 breaks about every hour, in addition to the heat in
20 this room, we have a court reporter who needs to
21 remain fresh or fresher.

22 I want to ask before we break. There's
23 three testifiers remaining, Albert Perez, Melissa
24 Harding, Aggie England. Are any of you like
25 seriously stressed for time?

1 Okay, so it is 11:10. We will reconvene at
2 11:20.

3 (Recess taken.)

4 CHAIRPERSON SCHEUER: We have three more
5 witnesses. There'll be an opportunity if there's any
6 other witnesses who wish to testify. Following that
7 I will close public testimony, and I will allow the
8 Petitioner the chance to present, who's indicated
9 they have about a half hour roughly of presentations
10 to make, after which we will probably at that point
11 then take a break for lunch.

12 Just so everybody knows, we go and buy our
13 own lunches. And then we will resume. I'll set the
14 exact time for that break when we get closer to that
15 time.

16 Our next witness is Albert Perez, followed
17 by Melissa Harding.

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

20 THE WITNESS: I do.

21 ALBERT PEREZ
22 Was called as a witness by and on behalf of the
23 public, was sworn to tell the truth, was examined and
24 testified as follows:

25 DIRECT EXAMINATION

1 THE WITNESS: Good morning,
2 Commissioners. My name is Albert Perez with Maui
3 Tomorrow Foundation, 55 North Church Street, Suite A4
4 in Wailuku.

5 I would just like to say at the outset that
6 I agree with those people who are experts in this
7 that have testified previously, including
8 Councilmember Paltin, Dick Mayer, Lucienne deNaie,
9 and Stan Franco, Kai Nishiki and Tiare Lawrence.

10 So I'm not going to repeat what they have
11 said, but there are some things I noticed that I
12 thought I would bring to the attention of the
13 Commission.

14 One is, I was looking at the qualifications
15 for rental, and they seem to be impossible to meet.
16 And I looked six times for the word "or", so I don't
17 think that you could be retired from employment in
18 Maui County, be a full-time student, be disabled, and
19 be a parent of a disabled person. I think there is
20 supposed to be "or" in those conditions. Just kind
21 of technical.

22 More importantly, I was reading through
23 some of the statements by the Petitioner. They're
24 asking the Commission to clarify whether they need to
25 provide 125 rental units that were required for the

1 Kapalua Mauka project in addition to the reduced
2 amount of 180 units that are now required under the
3 workforce --

4 CHAIRPERSON SCHEUER: You're pretty
5 audible, but when you turn to look at your computer
6 you're --

7 THE WITNESS: Okay.

8 -- under the Workforce Housing Ordinance.

9 So I'm just here to say that the answer
10 should be, yes, they should be responsible for that.

11 They bought the project. They should buy
12 the obligation. The Land Use Commission's decision
13 was originally made in consideration of the promise
14 for those additional homes that were previously
15 required by the County under the Workforce Housing
16 Ordinance.

17 Petitioner also states that they're
18 negotiating with the Maui County Housing and Human
19 Concerns Department to be able to add the above
20 moderate category of 120 to 140 percent of median
21 income, which was not the case when this District
22 Boundary Amendment was originally approved.

23 This will increase the profits of the
24 developer, but it will decrease the degree to which
25 this project addresses the need for truly affordable

1 housing in Lahaina.

2 Finally, I want to address the phasing of
3 the project. I'm looking at -- this is the
4 Amended -- Proposed Amendment Findings of Fact,
5 Conclusions of Law, Decision and Order.

6 On page 17 it talks about the phasing. And
7 it seems to me that there is a lot of single-family
8 lots and market rental -- sorry, market rental
9 housing units that are being proposed early on. And
10 so I would just like to suggest that it be more
11 concurrent, or even better, that all of the truly
12 affordables be built prior to the market ones, if
13 possible.

14 So in summary, I would like to urge you to
15 deny the proposed amendments, or at least defer
16 decision until after the Community Plan Advisory
17 Committee has completed its updated West Maui
18 Community Plan, which is now 23 year's old. And the
19 issues raised today are also fully discussed by the
20 Commission. Thank you

21 CHAIRPERSON SCHEUER: Are there questions
22 for this witness, Petitioner?

23 MR. KEITH-AGARAN: No questions.

24 MR. HOPPER: No questions.

25 MS. APUNA: No questions.

1 CHAIRPERSON SCHEUER: Commissioners?
2 Commissioner Chang.

3 COMMISSIONER CHANG: Good morning. You
4 just said you like it -- your recommendation is to
5 have it delayed until the Community Advisory -- what
6 was the name of the committee again, and when will
7 they make their decision?

8 THE WITNESS: So it's the West Maui
9 Community Plan Advisory Committee that is now
10 updating the West Maui Community Plan. They are
11 scheduled to complete their work in January.

12 COMMISSIONER CHANG: January 2020?

13 THE WITNESS: January 2020, after which it
14 will go to the Planning Commission and then to the
15 Council. But at least by January 2020 we will
16 know -- the West Maui Community will have had a
17 chance to express its desires with regard to this
18 project and the rest of the community plan area.

19 But to answer the first part of your
20 question, I would prefer that you just deny the
21 amendment.

22 COMMISSIONER CHANG: Do you know whether
23 the West Maui Community Plan Advisory, are they
24 looking -- which plan are they reviewing? The
25 existing Land Use Commission approved plan, or are

1 they looking at the proposed plan?

2 THE WITNESS: I am going to defer the
3 answer to that to the Community Plan Advisory
4 Committee. The chair is standing over there, if you
5 want to ask her. She would be the best to answer
6 that question. Thank you.

7 CHAIRPERSON SCHEUER: I have a very brief
8 question. I hear what you're saying, that you would
9 prefer to have all the affordable housing built at
10 the front end, and then the market rate housing built
11 at the back end.

12 Oftentimes -- I don't know the particular
13 financing of this project, but generally if you are
14 building affordable housing at the front end, you
15 have to seek outside financing for that and there is
16 a cost to that financing.

17 So there is a benefit that can accrue to
18 the public for having affordable on the front end,
19 but it can sometimes result in other trade-offs such
20 as other fewer units or other aspects of the
21 development not being to the standards that other
22 people might like.

23 For a body such as the Land Use Commission,
24 to the degree that we have any influence on those
25 kinds of issues, how would you suggest we try and

1 balance those trade-offs involved in the phasing
2 versus the number of units or kinds of other benefits
3 that might accrue from a development?

4 THE WITNESS: Thank you, Commissioner
5 Scheuer.

6 Not knowing the financing of the developer,
7 I don't feel like I can answer that question.

8 However, I would express my preference to
9 at least have it be concurrent, if not all up front.
10 And as Councilmember Tamara Paltin said, all of this
11 should have been baked into the original purchase
12 decision.

13 CHAIRPERSON SCHEUER: Thank you.

14 Our next witness is Melissa Harding,
15 followed by Aggie England.

16 Do you swear or affirm that the testimony
17 you're about to give is the truth?

18 THE WITNESS: I do.

19 CHAIRPERSON SCHEUER: State your name and
20 address.

21 THE WITNESS: My name is Melissa Harding.
22 My address is 430 Aki Street, Lahaina.

23 MELISSA HARDING

24 Was called as a witness by and on behalf of the
25 public, was sworn to tell the truth, was examined and

1 testified as follows:

2 DIRECT EXAMINATION

3 THE WITNESS: I come here today as someone
4 who has moved to Lahaina seven years ago. My
5 husband, Eton Krupnick, previously spoke for both
6 residents of Lahaina. I come here also representing
7 someone who would be qualified for the affordable
8 housing within this project.

9 Currently my husband and I have been denied
10 one of the affordable housing. There is always a
11 limited amount, and we're on the waitlist for another
12 project.

13 I'm not sure how many of you have bought a
14 home site unseen, but that's pretty much what it
15 comes down to for affordable housing, because you
16 just get what you get, if you're lucky to get
17 something.

18 I know enough -- I don't know a lot, but I
19 know enough about compound interest to know what
20 homeownership does for people in this country. What
21 it does to create generational wealth within a
22 family, and to bridge the gap between wealth in our
23 country. That's part of the reason that my husband
24 and I would like to own a home as well as so many
25 other people so that we have something to pass down

1 through our generation.

2 I know what it's like to be a member of
3 this community, being married to my husband. I can
4 go to the grocery store to have -- give a kiss on the
5 cheek. His daughter goes to school here. We work
6 here. We're very involved. That's what it's like to
7 be a member of this community, everyone is friends,
8 everyone is family.

9 I live with my mother-in-law Ethel Haulani,
10 (phonetic) she's an owner there. I know what it's
11 like to hear stories from her to say what it used to
12 be like for her kids there when there was neighbor
13 kids to play with. There isn't neighbor kids to play
14 with any more because it's all vacation rentals. She
15 was one of the last owners aside from, I think the
16 property manager, to live at that specific site.

17 Communities become ghost towns when there
18 is no affordable housing for the residents. So that
19 was kind of lost out of the community. Just people
20 coming and going.

21 You don't say "hi" to your neighbor. You
22 don't go next door to ask for cup of sugar, because
23 you don't know your neighbor. That's the issue when
24 you're looking at this project being for outside
25 residents over Maui residents.

1 Looking around this room, I thought I'm 29,
2 I'm probably a whole generation apart from most
3 people in this room. My generation is one where you
4 don't create a project and then ask how it's going to
5 benefit, or is it going to have an adverse affect on
6 the land or the people that live there.

7 From the onset, it should be coming to
8 create benefit for the community, for the land we
9 live in 2019. That shouldn't even be a question. If
10 it is a question, then you should ask, is the project
11 even successful, because is it bringing life to the
12 community?

13 So the thought I want to end on is this.
14 My final statement is, I also believe in your life
15 you need to have people around you who speak into
16 your life. But you can't have those people be people
17 that you are not in relationship with. So I would
18 just ask this project how in relationship are you
19 with the community of Lahaina and the West side? Are
20 you having the West side speak into your life? Into
21 this project? Otherwise how is it fair for you to
22 speak into this community and put this project there?

23 That's just not how it works. That's all I
24 would like to say.

25 CHAIRPERSON SCHEUER: Thank you very much.

1 Are there questions for the testifier?

2 MR. KEITH-AGARAN: No.

3 MR. HOPPER: No.

4 MS. APUNA: No questions.

5 CHAIRPERSON SCHEUER: Commissioners?

6 Aggie England.

7 Aloha good morning.

8 THE WITNESS: Good morning, Commissioner.

9 CHAIRPERSON SCHEUER: Do you swear or
10 affirm that the testimony you're about to give is the
11 truth?

12 THE WITNESS: I do. My name is Aggie
13 England of Hawaiian Airlines, and the corporate
14 address is 3375 Koapaka Street, Honolulu, Hawai'i
15 96819.

16 AGGIE ENGLAND
17 Was called as a witness by and on behalf of the
18 public, was sworn to tell the truth, was examined and
19 testified as follows:

20 DIRECT EXAMINATION

21 THE WITNESS: Hawaiian Airlines owns a
22 commuter airline Ohana by Hawaiian and it operates
23 its ATR aircraft flying into Kapalua Airport
24 transporting passengers and cargo.

25 I'm not here in favor or to oppose any

1 decision here or the development because like some of
2 the other witnesses here, I just recently received
3 voluminous documents which I've not thoroughly gone
4 through. I realized that there are some plans in
5 there, but I did review some of the content.

6 I'm actually here just to request to defer
7 any decisions made here today to allow Hawaiian
8 Airlines more time to review any information or any
9 fact finding by the Petitioners regarding -- and the
10 Department of Transportation regarding the air space
11 surrounding the project, the flight route restriction
12 and the aircraft noise restrictions, because this may
13 somehow affect the operation of Hawaiian Airlines and
14 Ohana by Hawaiian.

15 There's a lot involved in having to look at
16 the flight planning and bringing up proposals, so we
17 would like the opportunity in the future to be able
18 to bring some of our concerns to the table.

19 Thank you.

20 CHAIRPERSON SCHEUER: Thank you, Ms.
21 England. Are there questions for the witness?

22 MR. KEITH-AGARAN: No.

23 MR. HOPPER: No.

24 MS. APUNA: No questions.

25 CHAIRPERSON SCHEUER: Commissioner, Pualani

1 Platinum member, Commissioner Chang.

2 COMMISSIONER CHANG: Thank you for that.

3 I just want to ask when did you get the
4 information and how did you get the information about
5 the amendment?

6 THE WITNESS: The amendment, I will have to
7 admit that I did get it on April 19, however, because
8 it said it was a motion to amend the Decision and
9 Order, and I looked briefly through the decisions, I
10 thought that this was already a done deal. So there
11 was really nothing that I had brought to the table
12 when I spoke to my executive.

13 But as I started to receive a lot more
14 documents through our service of process starting in
15 September, then I realized that it's still open. So
16 we wanted to have this opportunity to come here and
17 not waive our rights.

18 And I did speak to someone from the Land
19 Use Commission, and I realized that this is something
20 that we should get involved in and find out more
21 information.

22 COMMISSIONER CHANG: Thank you.

23 THE WITNESS: You're welcome.

24 CHAIRPERSON SCHEUER: Thank you very much.

25 Our next testifier, the last person on the

1 list is Michaellyn Burke.

2 Do you swear or affirm the testimony you're
3 about to give is the truth?

4 THE WITNESS: Yes.

5 CHAIRPERSON SCHEUER: Please state name and
6 address.

7 THE WITNESS: Michaellyn Burke, 365 Komomai
8 Street, Lahaina.

9 MICHAELLYN BURKE

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

13 DIRECT EXAMINATION

14 THE WITNESS: I need to read this because
15 I'm terrible off script.

16 My name is Michaellyn Burke. I am a
17 resident of Lahaina and I come from one of the
18 families that foolishly hung our hopes on Pulelehua
19 being built all those years ago.

20 It took a while to read through all the
21 legalese of this proposed amendment, but after
22 digesting it, I see some major red flags that are
23 cause for concern.

24 The proposed amendment lowers the
25 percentage of affordable units from 51 to 31 percent

1 while increasing density by 18 units. They are
2 proposing to go from 450 affordable, out of 882, to
3 280 workforce -- there's a difference -- out of 900.
4 This is highly offensive to me as a Lahaina resident.
5 Best case scenario, the developer is disturbingly
6 naive to the housing crisis here in West Maui.

7 The likely reality, the developer's
8 arrogance and archaic entitlements provide them with
9 the necessary "balls" to but forth such a ridiculous
10 request. The community has been screaming at the top
11 of our lungs that we need more affordable and
12 attainable housing in West Maui and the developer
13 thinks we are going to be okay with proposing less.
14 Not today.

15 The proposed amendment effectively
16 eliminates the accountability for Kapalua Mauka's
17 required 125 affordable units. I'm not understanding
18 the logic behind the D&O requiring 450 affordable
19 units but the proposed amendment eliminates 170 units
20 yet still includes the 125 units committed by Maui
21 Land & Pine's Kapalua Mauka.

22 I am familiar with the regulatory process
23 in my profession and I understand how much it takes
24 to get from an initial filing to a D&O. The decision
25 to require 450 affordable units was not made lightly

1 or without cause. We should not be negating the work
2 behind legitimizing the 450 units in the D&O by
3 entertaining this proposal to cut affordable and
4 attainable units.

5 The proposed amendment limits the housing
6 types which goes from various housing types to 800
7 rental and 100 single family homes. Furthermore, the
8 workforce units will only be rentals, with no
9 timeframe on how long they would be affordable.

10 We have a mix of housing needs in West
11 Maui. While workforce rentals are great, there still
12 is a need for workforce housing as home ownership
13 opportunities. Do not deny these local families the
14 ability to own a home here while making it easier for
15 transplants to come in and scoop up the single family
16 homes in this development.

17 It's noted at least twice in the amendment
18 paperwork in Section 105 and 212 that 50% of
19 Pulelehua residents and households will be new
20 in-migrating residents.

21 We are in a housing crisis. We don't even
22 have enough affordable and attainable homes for the
23 residents we have now and this developer wants to
24 plan for half the development being for the malahini.
25 And the developer expects you and I to be okay with

1 that. No way.

2 That's one of the reasons we are in the
3 housing mess in the first place. We cannot cater to
4 the newcomers anymore. At this point we need to
5 rectify the damage already done and build for the
6 residents that are here and are desperate for housing
7 relief. Entertaining anything less would be
8 extremely negligent.

9 Here's the bottom line. Our current
10 housing crisis demands affordable housing. We
11 critically need affordable housing in West Maui. The
12 wealthy had the last two decades of housing catered
13 to them. No more. I'm requesting that the already
14 entitled Pulelehua project be 100% affordable
15 residential units in a mix of rentals and home
16 ownership. All 900 units. Anything less would be
17 irresponsible.

18 CHAIRPERSON SCHEUER: Thank you for your
19 testimony. Questions for the testifier?

20 MR. KEITH-AGARAN: No.

21 MR. HOPPER: No.

22 MS. APUNA: No.

23 CHAIRPERSON SCHEUER: Commissioners?
24 Commissioner Okuda.

25 COMMISSIONER OKUDA: Thank you, Mr. Chair.

1 In your testimony you made mention about
2 pinning your hopes on this development. I'm
3 paraphrasing.

4 What did you mean by that?

5 THE WITNESS: You had to pick the emotional
6 point, yeah?

7 So when Pulelehua was first announced, I
8 was young and my parents had hoped to buy into it.
9 My mom worked for Maui Land & Pine. My father is
10 dead now. My mom can't afford a home on her own.
11 And I'm an adult now.

12 I can buy my own house. Actually I did buy
13 my own house. I live in workforce housing, which was
14 not easy to do by any means. And I suspect that my
15 mom will probably die before Pulelehua gets built.
16 That's what I meant.

17 COMMISSIONER OKUDA: Thank you.

18 CHAIRPERSON SCHEUER: Any further
19 questions, Commissioners? Thank you very much.

20 Anybody else desiring to give public
21 testimony on this matter? You've been observing, you
22 know the drill.

23 THE WITNESS: Yes, and I appreciate and
24 respect --

25 CHAIRPERSON SCHEUER: Do you swear or

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

3 THE WITNESS: Yes. Mike Wildberger, 2710
4 Kaohale Street, Kihei.

5 MICHAEL WILDBERGER

6 Was called as a witness by and on behalf of the
7 public, was sworn to tell the truth, was examined and
8 testified as follows:

9 DIRECT EXAMINATION

10 THE WITNESS: I'll be quick. I didn't put
11 my name on the list because I didn't think I was
12 really qualified compared to the testifiers and I'm
13 not.

14 But hearing everyone talk, and actually
15 looking through the filing, I feel there wasn't a lot
16 of outreach. I'm a civic enthusiast. I follow
17 everything. I get the Land Use Commission emails,
18 other stuff. And it really didn't hit me on the head
19 or didn't get to see it until I came here and really
20 started hearing what they were trying do.

21 I would ask you to defer or deny the
22 amendment. More people need to hear about it and
23 speak. It's a big change that is reducing everything
24 that people want.

25 If you could have a meeting on the West

1 side, I know that's hard for a volunteer Commission
2 to do one more meeting, you could probably fill the
3 civic center with people who have strong opinions and
4 who it affects, people who can't give up their job
5 and come and testify. So I really think it needs a
6 little more stretch on that.

7 And I personally feel like only affordable
8 housing, just like the previous testifier, should be
9 built until infrastructure needs are met.

10 It doesn't seem responsible to keep
11 building more for more new people and to have a way
12 to get them on and off the island.

13 It's just time. Certainly people have good
14 developments. There's a few great developments
15 happening. We've got entirely affordable
16 developments that are making money in Kihei. Thank
17 you.

18 CHAIRPERSON SCHEUER: Thank you very much.
19 Questions for the testifier?

20 MR. KEITH-AGARAN: No.

21 MR. HOPPER: No.

22 MS. APUNA: No.

23 CHAIRPERSON SCHEUER: Commissioners? Thank
24 you very much.

25 Last call. Anybody desiring to give public

1 testimony on this matter? Going once, going twice.
2 I'm closing the public testimony portion of this
3 hearing.

4 We will now proceed with presentation by
5 the Petitioner, Mr. Gil Coloma-Agaran.

6 MR. KEITH-AGARAN: I got married. It's now
7 Keith-Agaran.

8 Now, let me -- the way we're going to
9 present this I think is I'm going to do a quick overview
10 what we are requesting, and then I'm going to ask a
11 number of consultants to go ahead and make brief
12 presentations, and they will be available for
13 questions.

14 There are a number of other members of the
15 project team that are here that will also be
16 available to respond to questions from the
17 Commissioners as well.

18 I guess before I forget, I do want to
19 reserve some time to respond to the County and State.

20 CHAIRPERSON SCHEUER: We will just swear in
21 your witnesses as they come forward.

22 MR. KEITH-AGARAN: Now, Maui Oceanview did
23 purchase the Pulelehua property from the original
24 Petitioner Maui Land & Pineapple. Since that 2006
25 Land Use Commission decision, the property has been

1 zoned by the County of Maui, West Maui Project
2 District No. 5, and has been included within the
3 present Urban Growth Boundaries in West Maui.

4 Maui Oceanview request is amendment to
5 three conditions of the 2006 Land Use Commission
6 Decision and Order to align with the current land and
7 unit mix, mainly to allow development of rental units
8 as well as the sale of single family lots to align
9 the number of workforce units required within the
10 County's current workforce ordinance, and the housing
11 agreement that Maui Oceanview has entered into with
12 the County, and to reflect that Maui Oceanview will
13 be constructing private wastewater treatment plant
14 and a private water treatment plant to serve this
15 community.

16 And a new condition requested by the Maui
17 Public Works Department clarifying that the
18 development conditions on this Project District do
19 not apply to the County, just by virtue of the County
20 owned drainage basin being included in the Project
21 District.

22 With that, I'm going to ask Mr. Tom Coppin
23 from Kimley-Horn to provide you an overview of the
24 proposed project.

25 Kimley-Horn is an engineering firm who

1 coordinated much of the planning and design work on
2 the project.

3 CHAIRPERSON SCHEUER: Do you swear or
4 affirm that the testimony you're about to give is the
5 truth?

6 THE WITNESS: I do.

7 THOMAS COPPIN

8 Was called as a witness by and on behalf of the
9 Petitioner, was sworn to tell the truth, was examined
10 and testified as follows:

11 DIRECT EXAMINATION

12 THE WITNESS: As Gil said, my name is Tom
13 Coppin. I'm with Kimley-Horn and Associates.
14 Kimley-Horn for the past couple of years has been the
15 project engineer and planner for Maui Oceanview
16 working closely with the owner to plan the plan as we
17 see it today.

18 My comments today are intended to provide
19 some project information, talk about what we're
20 proposing to do and some of the things that we are
21 not proposing to do.

22 CHAIRPERSON SCHEUER: If I may interrupt
23 for one minute.

24 To the Petitioner, to the degree that your
25 witnesses or you are referring to any documents on

1 the screen, if you can tie that back into something
2 that's in the written record so that when we read the
3 transcript we know what it's referred to on the
4 screen.

5 THE WITNESS: Sure.

6 CHAIRPERSON SCHEUER: Sorry for the
7 interruption. Please proceed.

8 THE WITNESS: The graphic that I have up on
9 the screen right now is the proposed site plan for
10 Pulelehua as currently proposed.

11 It consists of 310 acres. It is surrounded
12 by development, as our attorney just noted. It's in
13 keeping with the zoning cases that were approved back
14 in 2011 creating the West Maui Project District No.
15 5, or Pulelehua.

16 The project is located between Kapalua
17 Airport and the highway. It is bounded on the north
18 side by existing development, and on the south side
19 by Hawaiian Homeland's property.

20 This property is part of the West Maui
21 Kaanapali Urban Growth Boundary as currently
22 identified in the Maui Island Plan.

23 The project as proposed, as has been said a
24 number of times today, but does propose 900 units.
25 An additional 100 ohana units would be possible with

1 the development of single-family housing.

2 Of the 900 units, 800 are proposed as
3 multi-family units. 520 of those units are intended
4 as market rate. 280 are proposed as affordable
5 units, and that is in keeping with the County
6 agreement that we've entered into with the County of
7 Maui.

8 CHAIRPERSON SCHEUER: Just to be clear, the
9 map that you have on the screen is the same map
10 entitled Conceptual Site Plan March 15, 2019 that's
11 part of the record in this docket?

12 THE WITNESS: Correct.

13 CHAIRPERSON SCHEUER: Thank you.

14 THE WITNESS: Part of the plan, as I
15 mentioned, there are 900 total units proposed for
16 this plan. 800 are multi-family units, and 100 are
17 single-family units.

18 There's an additional 70,000 square feet of
19 commercial retail space located in various locations
20 throughout the project. They're shown here on the
21 graphic in gray shading. One is a smaller footprint
22 near the north end of the project. The bulk of the
23 commercial retail is proposed near the heart of the
24 project along Akahele Street, the south side of
25 Akahele Street. And the remainder of the commercial

1 retail is located on the south side of the project
2 adjacent to community park that's proposed.

3 The project does propose ten acres for a
4 community park we intend to buildout and dedicate to
5 the County of Maui. It also includes 13 acres for a
6 proposed school site that we intend to donate to the
7 Department of Education for the construction of a new
8 school.

9 We have had some discussion in the last
10 several weeks with the Department of Education,
11 talking about that footprint and possible site plan
12 options that they're considering for that piece of
13 property.

14 The last element of the plan that I would
15 like to mention are these red units that are shown on
16 the site plan. These units are designated with work
17 units. The intent of these units -- there are 70 of
18 them altogether -- the intent of these units is to
19 provide local folks with the opportunity to open a
20 small business in their home; things like nail
21 salons, hairdressing parlors, things of that nature
22 that you can operate out of your home, so you live
23 and work in the same unit.

24 They're located near the heart of the
25 community where they can provide easy access for all

1 of the residents of Pulelehua.

2 The project will be accessed primarily by
3 Akahele Street in the center of the property. It
4 runs a mauka-makai direction up towards the Kapalua
5 Airport.

6 The right-of-way for Akahele Street is
7 currently owned and controlled by the DOT. It will
8 remain that way. We have had extensive discussions
9 with DOT Air about the use of that roadway to
10 facilitate access into the project. Part of those
11 agreements they have placed conditions for our use of
12 that roadway, which we have agreed to and we're in
13 discussions with DOT Air to ensure that we will
14 follow through on those agreements.

15 They consist of widening, improving the
16 roadway, improved access, maintenance of roadway, as
17 well as legal liability for the future upkeep and
18 maintenance of that roadway.

19 In addition to the Akahele Street, we're
20 proposing a right-in/right-out access on the north
21 side of the property, as well as the full access on
22 the south side of the project near the community
23 park.

24 The multiple access points will improve
25 access to the park, the school, as well as to the

1 airport. These are access points that do not exist
2 today. It will also be available to provide access
3 in emergency situations for residents to get higher
4 on the hill if need be.

5 Switch graphics here.

6 CHAIRPERSON SCHEUER: Please refer to where
7 in the record the graphic is that you're referring
8 to.

9 MR. KEITH-AGARAN: Mr. Chair, the sheets
10 that he will be showing are all from the site plan
11 sheets which are attached as Volume 2 of the Second
12 Supplemental Memo in Support.

13 CHAIRPERSON SCHEUER: Thank you very much.

14 THE WITNESS: So the graphic we are looking
15 at now is the District Land Use Allocation map that
16 Gil mentioned is in our current application. It
17 shows the proposed zoning district throughout the
18 community, how they're proportioned.

19 The thing I wanted to note on this
20 particular graphic is the fact that the density -- it
21 is fairly dense. We are keeping the residential
22 units in close proximity to each other, but that also
23 allows us the opportunity to dedicate over 40 percent
24 of the project is open space and natural area space.
25 And you see that in the green areas currently shown

1 on this graphic.

2 I think our computer is suffering from heat
3 stroke just like the rest of us are.

4 So the third graphic that I brought up is a
5 copy of the preliminary phasing plan as currently
6 included in the documents.

7 The project is intended to be built out
8 currently in five different phases. We have heard
9 some testimony today about the phasing of those units
10 and what's included in each of those phases.

11 Phase I, II and III as you see on the
12 exhibit are multi-family units. It includes a
13 mixture of both market rate and affordable units. So
14 from day one we are building both types of units that
15 would be available to the public.

16 In the first phase you'll notice that we
17 have 150 market rate units and another 90 affordable
18 units will be built currently with each other.

19 In Phase II we have 230 market rate units
20 and another 120 affordable units.

21 In Phase III, the final 140 market rate
22 units, and 70 affordable units. They are intermixed
23 with each other, side by side. The affordable units
24 are not relegated to one part of the project versus
25 another.

1 The intent is truly to make this a cohesive
2 community. For example, units where you have
3 multiple housing types, multiple affordability
4 brackets intermixed with each other to try to
5 encourage a cohesive community.

6 In everything that we have been trying to
7 lay out, we have consciously provided community that
8 will meet the needs of the West Maui residents. And
9 that includes providing the market rate. It includes
10 providing the affordable that we have heard so much
11 testimony here about. And it does include also a
12 single family component.

13 We have entered into an agreement with Maui
14 County for affordable units. That document does
15 require us to provide 280 affordable units, 125 of
16 those are part of the Kapalua Mauka units.

17 The document itself does have a life span
18 of 30 years. And at the termination of those 30
19 years, Maui County does have the ability for right of
20 first refusal to take over those units.

21 So at no point, based on our current
22 agreement, at no point in the next 30 years do we
23 have the ability to find other renters or other
24 tenants that would take the place of those affordable
25 units.

1 As I mentioned, the idea is we really do
2 want to provide units because we provided mixture of
3 housing types for local residents.

4 The project, being in the development zone,
5 is approximate to employment centers. The intent is
6 that people that work, live Lahaina, Kaanapali, they
7 can live here. They can easily get to work.

8 We will switch exhibits again. I'll bring
9 up -- the exhibit that I have now on the screen is a
10 copy of our site plan package. It's the trail
11 system, connectivity plan.

12 There are a couple of elements here that I
13 wanted to point out as part of the proposed project.

14 No. 1, you'll see the green lines on the
15 exhibit are a system of multi-use trails that connect
16 various parts of the community to each other.

17 The bike trails, walking trails are
18 intended to provide a means for residents to get not
19 only between their residents, but down the hill to
20 commercial, to education and recreational
21 opportunities.

22 There are about two miles of trail, these
23 multi-use trails located throughout project. In
24 addition to those trails, we have yellow lines that
25 are a series of sidewalks and interconnecting

1 walkways. About four miles of sidewalks and
2 interconnected walkways. Again, with the intent of
3 providing neighbors access to each other, providing
4 them opportunities to circulate throughout the
5 community without the need to use their vehicles.

6 We have looked at the walking patterns laid
7 out in the site plan. Generally, 80-plus percent of
8 all residents can access commercial, education and
9 recreational opportunities within a five-minute walk
10 of their homes.

11 Again, we are trying to make this as good
12 of a livable community as we can.

13 Certainly topography limits what we can
14 physically do, but we are trying to provide
15 opportunities for residents to use alternative forms
16 of transportation to get up and down the hill and
17 back and forth between school, commercial and
18 recreational opportunities.

19 The yellow dots you see on this graphic,
20 there are approximately 30 of those dots. Those are
21 pocket parks. So in addition to the 10-acre
22 community park that's located at the south end of the
23 project, we're intending to provide pocket parks for
24 residents to use on a daily basis. They will be
25 intermixed among the units. That would include

1 benches, picnic benches, barbecue pits, things of
2 that nature that would allow people to get out and
3 use the outdoor and interact with it.

4 Again, these are all connected by sidewalks
5 and trail systems.

6 We have bus stops proposed within the
7 project that would provide alternative forms of
8 transportation for residents to actually leave the
9 project and use the bus system to get to employment
10 or other commercial locations.

11 Again, those are within a five to
12 ten-minute walk of all residents housing units.

13 There were two other things that came up in
14 testimony earlier that I would like to touch on. And
15 you can see them on this slide. The green -- first
16 one is water quality.

17 We understand and we're cognizant of the
18 fact that during construction, or during just like a
19 project, there is going to be lane disturbance. We
20 are trying to make every effort to make sure that
21 that soil, that topsoil does not leave this site.

22 The green areas that you see on this
23 exhibit are doing two things for us. Number one,
24 they are little recreational areas intermixed
25 throughout the project. They also double as

1 retention, bioretention basins throughout the projet.

2 The stormwater from our site is intended to
3 be conveyed through the streets and to these pocket
4 parks, to these areas that are highlighted in green.
5 You would have the opportunity -- these are
6 consistent with Hawai'i water treatment best
7 management practices. Water would have the chance to
8 be treated, retained for silts and sediments and
9 trash to be filtered out in those basins. And then
10 the water would be discharged to the two gulches
11 within the project. And depending on where we are in
12 the project, it would go to one or the other.

13 The County of Maui also has treatment
14 basins created in both of these gulches and at the
15 downstream of these there are urns in those gulches.
16 Again, they allow stormwater to be captured, settle
17 out the debris before it makes its way to the ocean.

18 So we in essence are providing double
19 treatment as far as Hawai'i requirements are
20 concerned. We will treat it once on the private
21 property, then just discharge it into the gulches
22 where it will be treated again, or have the
23 opportunity to be treated in the existing basins.
24 And only at that point would it discharge out to the
25 ocean.

1 The other comment that just was brought up
2 is the fact of light and noise related to the
3 airport. There have been studies conducted detailing
4 the noise boundaries. We have been cognizant of
5 those boundaries and we have laid out the residential
6 units. So in essence, the upper line of units that
7 you see here coincides with the 65 decibel noise
8 range as indicated in that study. We're keeping the
9 residents out of that zone contour.

10 The other thing we have been cognizant
11 about is we have worked with Department of
12 Transportation, the Air group, we want to keep both
13 ends of the runway free and clear of residential
14 units or commercial units, so that we are not
15 obstructing the flight paths or the possible
16 operations at the Kapalua Airport.

17 Mr. Cheng indicates, they also have the
18 right to buy that land from us if they so choose in
19 the future.

20 I'm going to switch to a final graphic.
21 The graphic I have here on the screen is our off-site
22 water and wastewater infrastructure map. And it
23 gives a graphical overview of the water and
24 wastewater system that we propose to construct for
25 Pulelehua.

1 We have had numerous discussions over the
2 last several years with Department of Water and
3 Sanitation. We do intend to build our own water and
4 wastewater treatment plants. Water for the project
5 would come from the Honokohau Ditch up the hill. It
6 would be treated, and then it would provide domestic
7 fire and irrigation water for the project.

8 The wastewater treatment plant that is
9 proposed for the project will treat that water. It
10 will recycle that water. Pump it back up the hill
11 where it will be combined in a tank for use in fire
12 and irrigation needs for the project, drastically
13 reducing the domestic water that Pulelehua needs to
14 pull out for domestic needs.

15 Again, we try to be conscious about being
16 wise stewards of the water sources and only using
17 what we need.

18 The other component about our system is we
19 are treating the water and recycling it as R-1 water.
20 We are not relying on injection wells to discharge
21 that water. It will all be pumped back up the hill
22 and used throughout the community for irrigation and
23 fire needs.

24 One last item. We have agreed with DOT Air
25 that we will actually provide water. We will connect

1 the existing airport to the proposed Pulelehua water
2 system. The system that is out there serving the
3 airport right now is dated. I think they have some
4 maintenance operation problems.

5 We have agreed to connect them to our new
6 system and provide them with water.

7 The last item I want to touch on. The
8 graphic you see in front of you are architectural
9 renderings for the live-work units, as well as the
10 proposed multi-family units.

11 As you can see, they're relying on
12 traditional Hawaiian architectural style. There's
13 also -- the exhibit in the top right corner is an
14 example of the live-work units. You would reside
15 either upstairs or down below, conduct business in
16 the other floor of your apartment.

17 The units there in the bottom left corner
18 is a typical rental unit. They're all single family
19 -- excuse me, single story. We have tried to be
20 cognizant of terracing this project into the hillside
21 and maintaining the views both mauka and makai, up to
22 the mountains or down to the ocean.

23 Being on a ten percent slope does not make
24 it easy to develop infrastructure both roadways and
25 utilities, but we have tried to incorporate these

1 units. Kept them low with the intent that everybody
2 will have a view out to the ocean. That views from
3 the highway down below would not be obstructed
4 because of tall or multi-storage units. So we
5 intentionally kept them low, and kept them integrated
6 with the topography.

7 MR. KEITH-AGARAN: Mr. Chair, if I can, I
8 would like to have other presentations done, and then
9 we can take a break.

10 CHAIRPERSON SCHEUER: I was just thinking
11 about that. Honestly, due to the heat in this room,
12 being a little bit excessive --

13 MR. KEITH-AGARAN: You want to take the
14 break now?

15 CHAIRPERSON SCHEUER: Would that work for
16 the Petitioner? To the degree that you benefit from
17 our presence, you'll benefit more from our presence
18 if we are not passing out. Thank you for that
19 flexibility.

20 It's 12:13 right now. If we can reconvene
21 at 1:15 p.m. in this room. Thank you very much.

22 (Noon recess taken.)

23 CHAIRPERSON SCHEUER: Aloha. We are back
24 on the record at 1:18 p.m. I'm going to repeat a
25 couple of announcements I made informally during the

1 break.

2 Tomorrow we will be in the Haynes Room,
3 which presumably has working air-conditioning. We
4 will post, of course, a sign outside of this room
5 indicating the change in venue, but please let
6 anybody who you're in touch with know of the change
7 of location.

8 In addition, because we have the fans here,
9 which will mean that we don't completely expire,
10 everybody is going to have speak close to the
11 microphone and clearly and fairly loud so our court
12 reporter can capture everything.

13 We're going to go possibly today with very,
14 very brief stops until about 4:15 when I lose two of
15 my Commissioners and my Deputy Attorney General.

16 With that, would you like to continue with
17 your presentation?

18 MR. KEITH-AGARAN: We will round out the
19 presentation with three of our consultants, first
20 Tyler Fujiwara from ATA, followed by Ray Montoya from
21 Kimley-Horn who worked on the wastewater plant and
22 the water plant design; and then end with Mr. Tom
23 Holliday market study.

24 Are other consultants, our other
25 consultants are here today and will also be available

1 for questions from the Commissioners.

2 CHAIRPERSON SCHEUER: I think the way that
3 we will handle this is the way we discussed. We'll
4 go through the presentation and then open it up for
5 questions from the parties and Commission.

6 Aloha.

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

9 THE WITNESS: Yes.

10 TYLER FUJIWARA

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

14 DIRECT EXAMINATION

15 THE WITNESS: Good afternoon,
16 Commissioners. My name is Tyler Fujiwara with Austin
17 Tsutsumi & Associates, the traffic engineer. And we
18 prepared the traffic study which is referred to as
19 Exhibit N-2.

20 So as part of the traffic study we included
21 all major intersections along Honoapiilani Highway
22 from north Napili Hau Street and all the way down
23 south to Keawe Street.

24 Fronting the project site is the
25 anticipated Honoapiilani Highway at Kahili Street.

1 The intersection currently services the Kapalua
2 Airport.

3 Now, as part of the project upon full
4 buildout, we are looking at lengthening the left-turn
5 lanes back to the intersection, and will probably be
6 doing reoccurring signal optimization to accommodate
7 the increased in-turning, the traffic going in and
8 out of the site.

9 In addition, we will be providing
10 (indecipherable) the north access for the right-in
11 and the right-out access, servicing the first
12 increment of the residential component.

13 We will be providing a right-turn
14 deceleration in, or the entering right-turn traffic
15 to that site.

16 At the south end we are going to provide
17 initially an unsignalized intersection that will be
18 full movement, so that will be left turn and left
19 turn out. But as the south area gets developed, we
20 are recommending that the intersection continue to be
21 monitored to determine if or when a signal would be
22 warranted.

23 Internal to the site, Tom had mentioned
24 earlier in his presentation, we will be doing
25 widening improvements along Akahuele Street.

1 So we have discussed this a number of times
2 with the DOT Airports Division. So we will be
3 providing two mauka-bound lanes, and one makai-bound
4 lane along the entire corridor.

5 Lastly, within the site we are providing a
6 road connection crossing Mahinahina Gulch. So it
7 will potentially provide full connectivity between
8 the greater northern area of the site with our south
9 site.

10 That is the general overview of the
11 improvements the internal site and along the project
12 frontage.

13 In addition to that, we are going to be
14 working with DOT as far as the Land Use Commission
15 condition to contribute a fair share for regional or
16 roadway improvements, whatever DOT has deemed as the
17 next capacity improvement in the area.

18 Lastly, touching on regional traffic. The
19 Maui MPO has suggested that about 30 percent of the
20 West Maui workforce commutes to and from West Maui
21 from the central, south and East Maui areas.

22 And the project's proposing residential --
23 apartment residences as well as signal-family
24 residences, so although our traffic studies didn't
25 explicitly account for any reduction, there is a

1 likelihood that commuter traffic may decrease or at
2 least will have less impacts than what our traffic
3 study suggest, assuming that residences within the
4 site will be living and working within the West Maui
5 region.

6 Again, we didn't account for any of this
7 because we can't quantify and we don't know who is
8 going to be renting or purchasing these lots.

9 Qualitatively speaking, that would be a
10 result that would help to reduce commuter traffic in
11 the area.

12 That would conclude my traffic discussion.
13 Turning it back over.

14 MR. KEITH-AGARAN: Now I think we're going
15 to have Ray Montoya make his presentation.

16 CHAIRPERSON SCHEUER: Good afternoon, Mr.
17 Montoya.

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

20 THE WITNESS: I do.

21 RAY MONTOYA

22 Was called as a witness by and on behalf of the
23 Petitioner, was sworn to tell the truth, was examined
24 and testified as follows:

25 DIRECT EXAMINATION

1 THE WITNESS: Good afternoon, Mr. Chair,
2 Commissioners.

3 Supporting and talking about some of the
4 work that Tom Coppin presented before our break, I'm
5 the project manager on the water treatment and on the
6 wastewater treatment systems to support the project.

7 Because of the state of the art reuse
8 system that we have on the wastewater side, we are
9 going to be able to develop R-1 reused water to
10 offset any water, potable water demands that a
11 typical site would need.

12 Now, we're estimating approximately
13 45 percent savings in the actual water we would need
14 to support this development.

15 On the water treatment side, if you use the
16 County of Maui standards, we would typically need
17 about 130,000 gallons per day for Phase 1. With the
18 reuse water that we will have as another source,
19 we'll use that for irrigation. We'll use that for
20 fire flow. So it will reduce that first demand in
21 Phase I to about 70,000 gallons per day.

22 The fire flow element is another component
23 because there is a school and there's commercial
24 property, the amount of water that you need for a
25 fire flow event is 240,000 gallons of stored water

1 for a fire flow event. That will be supplied by the
2 wastewater treatment system as well, instead of being
3 used from a drinking or potable water source. So
4 again, reduce the amount of water used on the site.

5 Mr. Coppin talked about open space, talked
6 about the park and talked about the green space.
7 That's vital for us. We actually need that because
8 we need to put R-1 treated reused water on that
9 landscape area to irrigate it.

10 Any further questions that anyone might
11 have on the this, specifics of the treatment and the
12 technology, I'm open to talk about.

13 We're following the State of Hawaii code
14 for reuse standards, for reuse quality water, and for
15 drinking water standards as well.

16 CHAIRPERSON SCHEUER: Thank you.

17 MR. KEITH-AGARAN: Finally, we have Mr. Tom
18 Holliday to provide some comments.

19 CHAIRPERSON SCHEUER: Welcome back in front
20 of us, Mr. Holliday.

21 THE WITNESS: It's good to see you all
22 again. I hope I don't put you to sleep, hot room,
23 after lunch.

24 CHAIRPERSON SCHEUER: I'm more concerned
25 that you're going to make cracks about people who

1 drive a Prius.

2 Do you swear or affirm that the testimony
3 you're about to give is the truth?

4 THE WITNESS: Yes, I'll tell the truth.

5 TOM HOLLIDAY

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

9 DIRECT EXAMINATION

10 My name is Tom Holliday. I'm a director
11 with CBRE Hallstrom out of Honolulu. And my job is
12 to, between market studies, economic impact analysis,
13 and public fiscal assessments regarding the proposed
14 project.

15 I think it goes without saying everybody
16 knows there is a severe housing shortage on Maui,
17 particularly for affordable workforce priced and low
18 market units.

19 We estimate that that there will be a need
20 for up to 8000 units in West Maui by 2030, which is
21 below some of the numbers that were quoted here
22 earlier, and that a significant portion of them will
23 be needed to be affordable and workforce priced and
24 rentals.

25 So I wanted to just cover a couple of

1 points that we heard in the public testimony today
2 that I hope I can provide enlightenment on.

3 First of all, I've been associated with
4 this project from way back. I remember working with
5 Bob McNatt at Maui Land & Pine when first we thought
6 of 20 years ago.

7 I think a couple of points I would like to
8 make is one reason it wasn't built was because the
9 plan was not really economically viable. One reason
10 why, it was the type of units that were promised.
11 The infrastructure that was going to be put in.
12 That's why it wasn't built,

13 And secondly -- this is just pure gossip --
14 was the cynicism in the community that Maui Land &
15 Pine was forwarding this project in order to get
16 support for Kapalua Mauka, and other upscale projects
17 they were doing in the area.

18 But it evolved to what it is today, and
19 there is no doubt there is demand for apartment
20 units. Our study showed 100 percent of them in
21 projects, apartment projects in Maui, West Maui are
22 full. They have waiting lists. And apartments
23 rarely sit vacant even as much as 30 days.

24 But a couple of points were brought up
25 today. People kept talking about 50 percent of the

1 people being in-migrants. That number is for
2 calculation purposes only on some of the attributes
3 on it.

4 The fact is that between 2010, according to
5 the U.S. Census, 59 percent of the population
6 increase on Maui came from in-migrants. And it's
7 been about that level since 1980. And so by
8 projecting, let's say, demands created by population,
9 if half the population growth is going to be
10 in-migrants, you better account for it when doing
11 calculations.

12 But it's not the goal of the developer to
13 bring people from Texas to move in there. It's not
14 the goal that this project will bring anybody over
15 here.

16 The fact is, if they pulled up the bridge
17 and never allowed anybody else to move from outside
18 to Maui, 100 percent of the units would be rented by
19 local households in no time at all. The absorption
20 trend would be about the same because the demand is
21 so great.

22 It's just that naturally population growth,
23 there's going to be some in-migrants who take those
24 units. But again, it wasn't a goal of the project.
25 It was taken out of context, just a number to use to

1 do public fiscal analytical calculations.

2 So all of the units will be used by
3 residents. It's anticipated the developer would put
4 in a restriction that you have to occupy the units,
5 can't sublet it or leave it empty. And to the extent
6 it's possible to gear them all towards Maui residents
7 would be a goal I think of a developer in the
8 community.

9 But there are limitations on fair equal
10 housing laws that limit how you can put people in the
11 units.

12 Secondly, as we have been talking about for
13 purposes of this discussion, we kind of striate
14 demand among affordable units for households with
15 80 percent or less median income. Workforce housing
16 units which are between 80 percent and 140 percent of
17 median income, and then market units which are priced
18 above that.

19 In rentals we are finding on this island on
20 a study that we are publishing today for the Kaua'i
21 Housing Division over there and on Oahu that at about
22 110 percent of median income, market and
23 affordability rental prices begin to sink.

24 So if you look at -- and we have in our
25 report the HUD County affordable rental structure,

1 once you start getting above about 110 percent of
2 median household income anticipated rents, you're at
3 the market levels. And rental markets are inherently
4 limited on how high the rents can be, because if
5 rents start moving too high, people say, let's buy a
6 house.

7 So on West Maui we are finding that number
8 is about \$3,000 for a three-bedroom unit. On Kaua'i
9 it's like \$2800. But the idea that just because
10 something is called market, unlike single-family
11 homes, which can be hugely diverse in price, in the
12 apartment rental market the pricing moves towards
13 synchronicity between workforce and affordable
14 housing.

15 Significant portion, even though a certain
16 percentage is being designated for affordable
17 housing, a significant number of, quote, the market
18 units in the subject will in fact be priced to
19 service the workforce housing or gap group household
20 incomes. And that number may be as much as 50,
21 60 percent of the workforce housing.

22 Secondly, it would be great if everybody
23 could own a home, but the reality is that
24 homeownership behooves many households across the
25 country, and therefore seems to be richer. So

1 including people who rent at different times in their
2 movement through life, including people who rent at
3 various times in their movement through life.

4 In Lahaina about 50 percent of the occupied
5 full-time residential units are renter-occupied, and
6 50 percent owner-occupied residential use.

7 In Napili, Honokowai, about 60 percent of
8 the units are renter-occupied, and only 40 percent
9 are owned by owner-occupants.

10 So that's part of the structure of the
11 market. So you have to provide lots of affordable
12 and lower market price rental units and apartments in
13 order just to meet basic demand in the community.
14 Not everybody can afford or wants a single-family
15 house.

16 Also importantly, and it's kind of
17 interesting when you go to a lot of these hearings on
18 different levels, how everybody, why can't you build
19 apartment buildings? Why always building houses?
20 Then somebody wants to build an apartment project and
21 they start getting slammed for it because affordable
22 single-family homes only stay affordable until
23 they're sold the first time or on a covenant, some
24 are covenant. But eventually it becomes a market
25 priced unit.

1 An affordable single family home does not
2 stay affordable through the generations. And it
3 allows someone to profiteer, and we all know that
4 affordability single family homes is a huge gap
5 before market. So not do they just move out of the
6 affordability segment in the market, they jump way up
7 because the prices of market homes have such a
8 division from affordable homes.

9 That's not true for apartment. They seem
10 to be apartments forever. And from what I
11 understand, there are covenants from being converted
12 from being converted to CPR, and they will remain
13 even as market moves, it's not going to be that big
14 of a price difference. So where single family units
15 profit somebody who buys them first, and they convert
16 them to market, these apartments units will continue
17 to be sustainable to service the affordable and
18 workforce and lower market community for the next
19 several generations.

20 One of the things is in regards to a
21 different project, I had the opportunity several
22 months ago to attend several sessions of the
23 affordable housing committee by County Council that
24 were held in the Council chambers here. And they had
25 60-plus public testifiers from West Maui. Everyone

1 talked about the need for affordable housing, housing
2 of any type that residents could do. But one of the
3 things consistently brought up is how, hey, let's
4 stop talking about these units and let's build them.

5 The tendency on Maui is to talk, talk,
6 talk. Well, let's wait until this plan gets done and
7 let's wait until this piece of infrastructure gets
8 over there. And let's do this, and this is
9 insufficient. And that the result is no units get
10 built.

11 So the problem is not addressed. Here you
12 have a developer who's looking to move forward and
13 build the type of inventory that the market is
14 begging for, and it needs to be done in a judicious
15 and reasonable manner.

16 But I think there is some crisis of timing.
17 You can't just go over everything and study it to
18 death. That sometimes you have to say, hey, we have
19 to support things and have them built.

20 Anyway, those were the points I was making
21 relative to today. I'm open to any questions.

22 MR. KEITH-AGARAN: We also have a number of
23 other consultants in the audience available -- we
24 have a number of other consultants in the audience
25 who will also be available for questions, including

1 two consultants who prepared the cultural inventory
2 update and two architects who worked on the
3 architectural design rendering.

4 And if I may, I think Mr. Cheng would like
5 to make a few comments before we go into questions.

6 CHAIRPERSON SCHEUER: That's fine, if you
7 can come over here, please. Then we will go into
8 questions after Mr. Cheng's testimony.

9 MR. KEITH-AGARAN: Yes, sir.

10 CHAIRPERSON SCHEUER: Do you swear or
11 affirm the testimony you're about to give is the
12 truth?

13 THE WITNESS: Yes.

14 PAUL CHENG

15 Was called as a witness by and on behalf of the
16 Petitioner, was sworn to tell the truth, was examined
17 and testified as follows:

18 DIRECT EXAMINATION

19 THE WITNESS: Good afternoon, Chair
20 Scheuer and all the Commissioners. Thank you for
21 giving us an opportunity to speak before you today.

22 I think a lot of the points have been
23 covered, but I just have a few main points I want to
24 speak to.

25 First thing is that we have negotiated

1 extensively with the County. In coming to this
2 point, not only is the plan, every element has been
3 discussed again and again and revised and revised,
4 but also we have a signed fully executed housing
5 agreement.

6 There was a gentleman, Perez, earlier that
7 said, what, I cannot be a retired person and a
8 student and all that. No, the actual agreement says
9 "one of" multiple categories. So it's very clear
10 that they will be qualified residents.

11 And the whole project is designed basically
12 to service the huge shortage of affordable and rental
13 housing on the west side.

14 I've been developing in this country across
15 24 states since I began my career in 1978. And that
16 property, the lots that we have designed are even
17 small lots, they're not luxury mansions, they're
18 60-footers by 110. They're the smallest I can make
19 it, plus the alley that the County wanted, so they're
20 alley served, and they're basically at the lowest
21 market rate housing you can buy. They're not \$3
22 million vacation homes by any stretch of the
23 imagination.

24 So why did we pick rentals? Precisely what
25 Mr. Holliday discussed. I was told early when I

1 discussed with various people in the community that
2 we have a problem. We have a problem because
3 everybody wants to make a quick buck. They line up
4 to get the affordable lotto. Seven years later, ten
5 years later, thank you very much, \$300,000 in their
6 pocket and the home disappears from the affordable
7 housing stock.

8 And the County recognizes that. And so do
9 I, because one of the main development activities
10 that was done in my career 40 years is apartments.
11 I've done over 20,000 units of apartments across the
12 country, and I know that to be a fact.

13 And so we said, well, what's the solution?
14 The solution is that you do apartments that are
15 designed for rental, that will stay affordable. And
16 so we entered into a 30-year agreement with the
17 County. Not only is it 30 years. If I want to sell
18 it during the 30 years, they have a first shot. If
19 at the 30-year point, they have a shot.

20 In other words, very likely they will just
21 be affordable rental forever instead of a seven-year
22 merry-go-round and the housing stock disappears and
23 there's no more affordable again.

24 Another thing is I found, I could be wrong
25 by little bit. I was astounded when I researched the

1 market. Why are there no apartments? Why is there
2 such a shortage on the west side of Maui? Because
3 the developers that were here that did the project,
4 wanted to get in, get out. Build something, sell it,
5 be done.

6 I took the opposite approach. I'm more
7 than willing to rent these out and be a good steward
8 of the housing stock for the long term. So it's a
9 very different approach that I'm taking.

10 By the way I have lots of family in
11 Hawai'i. I have family in Honolulu. I have family
12 living on the Big Island. I'm not a mainlander that
13 just landed from American Airlines. I've been
14 visiting the island since early '80s. I love Maui,
15 and that's why I chose Maui to develop.

16 I also own a shopping center at Ma'alaea
17 Harbor shops next to the Maui Ocean Center. I've
18 been owning it for years. I resuscitated that center
19 from pretty dead, 65 percent occupied. Now it's 90
20 percent full and beautiful and everything. So I love
21 the people of Maui.

22 So a very interesting point that Mr.
23 Holliday also brought is the interesting economic
24 structure of apartments.

25 What happens to an apartment if not only --

1 you cannot charge too much, because people just buy,
2 of course. But guess what? As an apartment ages,
3 they also get less rent and become more affordable
4 naturally. You don't find apartments 20 years old
5 renting for more than one year.

6 So that means you have a double benefit
7 that when you have an apartment, it becomes more and
8 more affordable through all spectrum of society
9 rather than climbing higher and higher as in a single
10 family home for sale. And finally completely out of
11 the reach of the residents that want and needs
12 housing so bad. So that is another interesting
13 aspect of it.

14 There was a gentleman that said, well, I
15 want you to build all the affordable units first. We
16 have, as Mr. Coppin noted, that at least one third of
17 each phase is affordable.

18 But we had a discussion with the County.
19 The County had very good thoughts. They're very
20 competent and smart and really with it. They said
21 look, we don't want you to congregate affordable
22 units in a far corner of this department, and then it
23 becomes a problem area like a lot of others have
24 done.

25 In fact, I am not aware, I could be wrong,

1 of any rule on affordable component of a mixed
2 development on the island today that says you have to
3 mix them.

4 We did. And that's what I'm trying to say.
5 So Mr. Coppin said, their buildings interweave
6 amongst other buildings that are affordable.

7 So that means that when I build each phase,
8 they're naturally mixed. They're neighborhoods.
9 They're good people.

10 So the affordable part is not something
11 different, they're just one of us. And I'm okay with
12 that, totally okay with that.

13 And then when it comes to view, I did what
14 I thought was best. I have done high-rises, I've
15 done three story, four story elevators. I've done
16 them all. But I chose the most difficult and most
17 expensive kind, which is one story. Why? Because I
18 want to preserve the beautiful views for the
19 residents, not for me, for residents. Uphill,
20 downhill, and even if you're driving on the highway
21 looking up. Originally that plan had all kinds of
22 three story, two story clusters, it would look
23 horrible. This way each building in my plan is no
24 more than ten units. The only two-story project, a
25 part of this is the live-work units, because by

1 necessity they live upstairs and work downstairs.

2 So the one story completely blends into the
3 hillside. By the time landscape grows, you won't
4 even know they're there. And they're one story. So
5 therefore they're not ugly. They won't detract from
6 the scenery, and everyone when they step out of their
7 house has something to look at outside of the view.

8 So then a major point about the
9 affordability, the ratio. The County has changed
10 since this was passed. This is Project District 5.
11 No longer is the requirement 50 percent, it's 25.
12 And nothing was built for a long, long time because
13 of the 50 percent rule, economics don't work. You
14 lose money every time you do affordable if there is
15 no subsidies. There is no subsidy in this, not one
16 dollar.

17 And I have done tax credit yields. I have.
18 And actually I know completely how that works, but
19 there is a limit, and what was not said was the tax
20 credit program is a federal program first and state
21 program second.

22 The federal program is limited by the
23 number of people, citizens of the state. They give
24 you a certain amount, so therefore there is a finite
25 amount of tax credit that can used each year to build

1 new projects. It's not an infinite river. It's not
2 by need. It's not by the governor's whim. It's a
3 federal limit.

4 So therefore, you can't just say, okay, I'm
5 going to go build 100 percent affordable unless the
6 government is willing to put up 50 million, hundred
7 million every time you do a project, because you
8 won't make it. There's no economics in it. You
9 wouldn't get past the ground breaking.

10 In this particular project, we have to
11 provide for our own water; our own wastewater.
12 Everything is brand new, state of the art. And I've
13 done every step that I know, talking to my
14 consultants who are very competent engineers, to get
15 the most and best sufficient system that I can buy
16 and still within my economics.

17 And I can assure you, that they'll be no
18 worse, and much, much better than anything right now.

19 I appreciate, and I will end my statement
20 here. And then any questions, please ask.

21 CHAIRPERSON SCHEUER: Thank you, Mr. Cheng.
22 The first opportunity for questions of the Applicant
23 is for the County of Maui of the Petitioner of any of
24 Petitioner's witnesses.

25 MR. HOPPER: No questions.

1 CHAIRPERSON SCHEUER: Office of Planning.

2 MS. APUNA: Thank you, Chair.

3 CROSS-EXAMINATION

4 BY MS. APUNA:

5 Q I was just curious if you had any community
6 outreach.

7 A Yes, ma'am. Actually, I met Professor
8 Mayer and Ms. Kai Nishiki. When I first bought
9 property within six, eight months, I held a town hall
10 all by myself. I rented a room in the hotel. And it
11 was after hours where they could come. I handled all
12 that by myself two, 300 residents in West Maui, in
13 the Hyatt there. I answered every one of their
14 questions.

15 A lot of people that came, came from the
16 multi-million dollar homeowners in Kahana Ridge near
17 my property and Kapalua. And they asked their
18 questions and I fully answered them, including I
19 believe questions from Ms. Nishiki and I believe some
20 questions from Professor Mayer.

21 And, of course, the property, the design
22 has gotten much better, in my opinion.
23 Two-and-a-half years of working with planning in
24 Maui, they have educated me properly as to what
25 really matters, and I really appreciate that. And I

1 did the best I can to adjust my plan.

2 I spent probably \$2 million in planning
3 fees already, adjusting it, adjusting it time and
4 again to every desire that they can think of.

5 Q So this meeting was back in 2017?

6 A I believe so. It was Preston Cheng, that's
7 my son. It was within six, nine months after I
8 bought the property.

9 Q Prior to the Second Amendment of the Motion
10 to Amend, or prior to the filing of the Motion to
11 Amend?

12 A Yes, ma'am. It was prior to absolutely,
13 yes.

14 Q How did you notify the community of this
15 meeting?

16 A I advertised. Like I said two, 300 people
17 showed up, so everybody knew.

18 Q And was that the only meeting that you had
19 of the community?

20 A I believe that's the only meeting I
21 personally had. Then when I was asked to update the
22 cultural inventory of the EIS, I believe -- we hired
23 two consultants, and I believe that they went around
24 the community and spoke.

25 Oh, another thing, during that early time I

1 met with then Council person Elle Cochran of West
2 Maui, my district. And I remember this incident
3 very, very well. She told me that she wanted to meet
4 me at Cannery Mall. I said okay. I know where that
5 is, West Kaanapali, near that. I said sure, I'll
6 meet you there.

7 I met her at the door and she walked inside
8 and she goes, you see, these are my people. And I
9 said, oh, you mean the patrons of the mall? She said
10 no, no, all the vendors, all the little stall
11 vendors, stores, employees. She walked me around the
12 whole mall.

13 Then we sat down in the middle of the mall
14 restaurant area and the little table, and she
15 explained to me. She said, Paul, don't build these
16 six, \$800,000 affordable homes. First, my people, as
17 you saw, can't afford it, can't. It's ludicrous to
18 think they can come up with \$150,000 down payment and
19 buy one of these \$600,000 affordable homes. She
20 said, what we need is rental, Paul. Please build
21 rental.

22 So, yes, I did reach out to -- and I went
23 down that road and I discussed it with planning
24 numerous times, and they agree. And that's why we
25 have a fully executed housing agreement that's rental

1 based. The 30-year is locked down, and I'm very
2 satisfied with that. I want to provide this housing.
3 People need it. People need it.

4 And the one story, there's another lesson
5 there. When I build my low income tax credit project
6 in Texas, I built 80 units in Boerne, Texas, which is
7 a suburb of Dallas. I actually won a \$500,000 cash
8 award from the federal home loan bank of being one of
9 the best senior lifetime project built for that year
10 in America. I built that with one story. That was
11 the first time I built a one-story apartment.

12 And the reason why that works is there are
13 a number of good things about one story that people
14 have long forgotten because of density and price of
15 land and so forth. And that's safety and access.
16 Everybody can drive up to this project. Drive right
17 up to their unit. Walk 15 steps and they're inside
18 their unit. Very good.

19 Second, for older folks, even better. Then
20 for fire. One time as I went to one of the city's
21 development and I had chance to chat with the fire
22 marshall, and he said, Paul, a one story project is
23 good. Why, I said. He said, because with sprinklers
24 which we will have sprinklers in the unit, and for
25 the handicap, flashers, so that they know there is a

1 fire. Very, very, very few. Less than two percent
2 of any fire with one story project has casualties,
3 because they just walk out. They just walk out of
4 their unit and they're safe. They can get into their
5 car and drive away, and they're safe.

6 But if you are in two, three, four story
7 unit you have to walk down a hallway, go down stairs,
8 people trip, get hurt, cannot get into the elevator
9 because the power is cut off. No.

10 So that's also why I also chose one story
11 design, because it's a good thing to do. And it's
12 also more accessible to neighbors. They all know
13 each other. Not like a stranger living in building
14 19 way in the back.

15 Everybody can walk up and back. We've got
16 six miles of trail. Lots of pocket parks all over
17 the place which the Planning Department made sure
18 that I have. Barbecue pits and so forth. It's going
19 to be a nice community.

20 Q So there was a 2017 community meeting and
21 then you had a couple more meetings for the cultural
22 impact update.

23 But was the plan currently proposed in that
24 Motion to Amend and Supplement, was that provided to
25 the community through a hearing?

1 A Well, I did whatever I was told to do.

2 MR. KEITH-AGARAN: If I could. No, the
3 current plan you see up there has been developed over
4 the last couple of months after discussions. So in
5 the meetings that you're discussing, it would have
6 been previous to that.

7 THE WITNESS: Well, hold on. To me the
8 only difference is the 100 lots that was on the plan
9 currently today. It was 900 apartments before, all
10 apartments. And then, because there was a concern
11 that there might not be enough diversity of housing,
12 so we added the element of 100 lots that are more
13 single family, and also allowed it to have ohana,
14 Ohana to be available because the County wanted to
15 preserve as many affordable housing units as
16 possible.

17 MS. APUNA: Thank you, Mr. Cheng. No
18 further questions.

19 CHAIRPERSON SCHEUER: Thank you.
20 Commissioners, questions for Mr. Cheng, or other
21 witnesses of the Petitioner?

22 Commissioner Cabral.

23 VICE CHAIR CABRAL: Thank you, Mr. Cheng.

24 In reading the information for today's
25 hearing, I understand I read something that you do

1 have a program available, that had you sold some of
2 your properties in an affordable basis, you could do
3 restrictions to -- that buyer would be restricted in
4 their ability to resale at a profit for a limited
5 number of years.

6 Are there not programs that would allow you
7 to sell some of your affordable properties and still
8 keep them in affordable?

9 THE WITNESS: No, it's deed restricted.
10 The document that we have signed with the Housing
11 Department of Maui County, they will be deed
12 restricted, so no one can do that.

13 The agreement -- we have an agreement
14 signed, and it will be filed on the title, so you
15 can't do it.

16 VICE CHAIR CABRAL: Thank you very much.

17 CHAIRPERSON SCHEUER: Commissioner
18 Ohigashi.

19 COMMISSIONER OHIGASHI: Did you provide a
20 copy of that agreement as part of your motion?

21 MR. KEITH-AGARAN: It's attached as Exhibit
22 T in the documentation.

23 COMMISSIONER OHIGASHI: That's the only
24 question I have, but I've been looking for it. I
25 couldn't find it.

1 THE WITNESS: Also there is no 120 to 140.
2 All affordable categories are below that. We have
3 agreed to that specifically with the County.

4 MR. KEITH-AGARAN: Sorry, it was jumbled.
5 It's Exhibit T which was attached to the Second
6 Supplemental memo.

7 CHAIRPERSON SCHEUER: I had also the same
8 question. Mr. Ohigashi, were you --

9 COMMISSIONER OHIGASHI: Yeah, I just
10 wanted --

11 CHAIRPERSON SCHEUER: Okay. Commissioners?
12 Commissioner Chang.

13 COMMISSIONER CHANG: Thank you, Mr. Cheng,
14 for your presentation and explaining to us your
15 thoughts and what you wanted out of this project.
16 Quite frankly I was -- you helped me to better
17 understand this concept that it was not very clear.
18 So let me ask you, because I think your concept makes
19 a lot of sense.

20 I like the one story. It seems like you
21 are reaching a lot of the needs of the community.

22 One, would you be adverse to having a
23 community meeting where this -- your plan can be
24 presented and discussed perhaps on the west end where
25 this -- well, let me ask you.

1 Were you surprised by the testimony you
2 received today?

3 THE WITNESS: You know, we have a website
4 that's been up for three years. We have a website
5 that showed various iterations of the plans as we
6 adjusted it for three years.

7 We even had people that signed up on some
8 waiting list for units. So I have been very
9 transparent. And it wasn't just a couple of months
10 this was agreed to. I think the last substantive
11 meeting was just before Christmas when the last
12 conceptual adjustment of adding 100 lots instead of
13 reducing multi-family by 100, and putting back 100
14 lots was really the last -- and alleys, everything
15 was the last major substantive to adjustment. And we
16 shook hands and said, okay. Then planning is
17 satisfied with what we're doing, and then that was
18 the last one.

19 COMMISSIONER CHANG: Those are meetings
20 just with the County. So they were not necessarily
21 meetings that you had with the larger community
22 regarding the different adjustments that were made to
23 your plan?

24 THE WITNESS: Well, only through the
25 internet and website and all that.

1 COMMISSIONER CHANG: Let me ask you.

2 Would you be adverse to meeting with the
3 community? I mean obviously the people who are here
4 who testified, they weren't, at least to my
5 knowledge, they weren't aware of what you're
6 proposing and why you're proposing it.

7 THE WITNESS: Yeah, I mean, you know, if it
8 doesn't unduly delay this process for months and
9 months. I've had this property for three years. And
10 one of the things that I'm chasing is nonstop cost
11 increase by the contractors.

12 And every six months the project goes up
13 three, four, five, six percent. It's a very big
14 number. And because I'm doing rentals, I'm already
15 at the very edge of affordability after three years.

16 So I'm more than happy to write up an
17 immediate very clear dissertation and post it and
18 advertise it and communicate it to all community
19 members. I can't please everyone, of course, but I
20 will be more than happy to give -- if the Commission
21 can say, subject to you doing, that would be great,
22 because I still have plenty of things to do with the
23 County, district approval and all that kind stuff.

24 COMMISSIONER CHANG: You can see the
25 position we're in. This is the first time it's come

1 to us. And this is the first time at least the
2 community, those that have attended, have had an
3 opportunity to, one, understand your proposal.

4 THE WITNESS: I -- Gil?

5 MR. KEITH-AGARAN: If that's going to be
6 the Commission's wish, I think I would echo what he
7 suggested. If there's some way to maybe allow it to
8 be part of the County process.

9 THE WITNESS: We still have many steps
10 before we can start with the County; design review
11 board, a public hearing, I believe, and also Phase II
12 District approval.

13 MR. KEITH-AGARAN: Just to clarify.

14 As part of the Phase II project district
15 approval, there is a hearing before the Planning
16 Commission, but the Planning Department will ask the
17 developer to go ahead, and also have separate public
18 meetings.

19 COMMISSIONER CHANG: Because what I'm
20 gathering, your discussions with the County have not
21 necessarily been public, it's just been with the
22 County. So I think you can appreciate that for the
23 community this has been the first time that they're
24 hearing it too.

25 So, I mean, other than your financing, the

1 urgency, is there another reason?

2 THE WITNESS: I defer to the County and
3 Gil.

4 MR. KEITH-AGARAN: Again, I think that
5 meeting you're talking about could be held in
6 conjunction with Phase II approval on the project
7 district.

8 THE WITNESS: What they do in Maui, and
9 correct me if I'm wrong, the experts sitting here.
10 Once this is accepted, they can then have what they
11 call Phase II district -- let's call it site plan
12 approval, features approval, amenities approval, the
13 design approval.

14 So that is an open forum, and where all the
15 public input can be given to the County and me during
16 those hearings.

17 MR. KEITH-AGARAN: As I understand it, that
18 Phase II approval goes to the Planning Commission,
19 but the Planning Department would also request that
20 the proponent also hold a public meeting.

21 COMMISSIONER CHANG: But that Phase II
22 process would occur, is that dependent upon the Land
23 Use Commission approving your amendment?

24 THE WITNESS: I believe so, yes, because we
25 don't have an approvable plan to even show the

1 public. It's a concept right now, just what's in my
2 head. Without your sign off, I'm just talking, I'm
3 not even --

4 COMMISSIONER CHANG: So that's kind of a
5 very different situation where we would, what I'm
6 hearing you ask, is we approve your amendment first
7 and then you proceed to Phase II.

8 THE WITNESS: I cannot change what is
9 approved obviously. Your word is the law. And then
10 her word (indicating) is the second law. And the
11 public is maybe the overall super law. So we have to
12 follow, we simply cannot play games. She is very,
13 very, very smart, the director.

14 CHAIRPERSON SCHEUER: Commissioner Okuda.

15 COMMISSIONER OKUDA: Thank you very much,
16 Mr. Chair, and thank you for everybody who testified.
17 And anyone can jump in and answer these questions,
18 whoever you think is most appropriate.

19 But I would like to back up a bit. The
20 reason I would like to back up a bit is because, one
21 thing I'm always concerned about is we are a
22 quasi-judicial body, meaning we have to operate based
23 on the law and the evidence which is admitted. And
24 the good thing about that is that restricts hopefully
25 our personal biases from getting into this.

1 But one reason why, just so that you kind
2 of get an idea why I'm asking these sets of
3 questions, is that there was an admonition from the
4 Hawai'i Supreme Court in the case of DW Aina Le'a
5 Development, LLC versus Bridge Aina Le'a, LLC, that
6 is found at 134 Hawaii 187, which is a 2014 Hawaii
7 Supreme Court case, where the Hawaii Supreme Court
8 said, hey, we better look at situations where land
9 use approvals or like district boundary amendments
10 are given with conditions and none of these
11 conditions are fulfilled.

12 But as the supreme court said, and I quote
13 here at Page 213 to 214 of 134 Hawai'i Reports, about
14 the concern of the legislature. And it says:

15 This is consistent with the concerns
16 identified by the legislature in the legislative
17 history of the statute, i.e., that it was trying to
18 deter speculators who obtain favorable land use
19 rulings and then sat on the land for speculative
20 purposes.

21 Now, I know we're not talking about you
22 folks, so let me ask these questions, because you
23 gave some testimony about Maui Land & Pine.

24 Before you purchased this property, did you
25 do any due diligence?

1 THE WITNESS: Yes, sir. As I remember the
2 sequence was the company, the seller, was under a
3 little bit of distress, financial distress, at that
4 time. Since recovered. And that's why this was
5 available. So, yes, sir.

6 COMMISSIONER OKUDA: And in doing this due
7 diligence, the due diligence that you performed
8 before purchasing this property was to be sure that
9 you would not suffer a loss and in most probability
10 after you purchased the property; correct?

11 THE WITNESS: I would hope that, yeah. I
12 mean you would have to have some hope in the deal to
13 make some money or forget it, you know.

14 COMMISSIONER OKUDA: Yeah, because
15 reasonable people normally will not buy a
16 multi-million dollar piece of property with
17 expectation of losing money, correct?

18 THE WITNESS: They try not to.

19 COMMISSIONER OKUDA: I agree.

20 And in evaluating, or during due diligence,
21 did you evaluate what type of restrictions or
22 requirements were attached and running with the land,
23 use that term, we real estate people or lawyers
24 sometimes use?

25 THE WITNESS: Yes. At the same time I felt

1 that what I believed in, which is what I testified,
2 that rental apartments were far more necessary than
3 affordable single-family homes that could turn around
4 merry-go-round, and then they're out the door as a
5 market rate unit.

6 So I made a calculation that the County
7 would agree with me to have more rentals than for
8 sale. And that was the reason why I have to come to
9 the Land Use Commission because the document -- I
10 went to see the Land Use Commission also very early
11 on. And I said, you know, I need to have this be for
12 rent as well.

13 And that was also the time when I met with
14 the council person and talked to the people on the
15 island. They said really, we need a bridge to
16 financial stability. The bridge is the rental. We
17 cannot keep driving back and forth through the pali
18 and risk our lives every day any more than we have
19 to. And if you built rentals here, it would really
20 change our lives.

21 So I took a calculation, sir, that that is
22 acceptable and good for the community.

23 COMMISSIONER OKUDA: And you have made a
24 very persuasive, and frankly have educated me about a
25 lot of things which I thank you for and it's really

1 opened my mind on these things.

2 But I'm trying to focus in, because we have
3 to make decisions based on what is in the record.

4 So before you purchased the property, you
5 knew that there were conditions that the Land Use
6 Commission in, what was that 2006, had placed as a
7 condition of the change in boundary designation for
8 Agriculture to Urban; correct?

9 THE WITNESS: Yes, sir.

10 COMMISSIONER OKUDA: And you knew before
11 you purchased the property, that these conditions
12 included the development of certain amount of units
13 of affordable housing as defined in those conditions.
14 Correct?

15 THE WITNESS: Yes, with one proviso.

16 I was counselled -- okay, the law for the
17 percentage of affordable units changed in the interim
18 between 2006 and when I showed up ten years later.

19 So what I was told that the County no
20 longer requires any project district that hasn't been
21 started, which this has not, which is still to this
22 day nothing has been done. And I remember you asked
23 that question, has anything been done? No, the
24 answer is no.

25 And so I was told that -- and I believe

1 it's the practice, it may not be the law, but it may
2 be the practice, that the County on all new deals, be
3 it entitled years ago, if it hasn't started, that
4 it's eligible for the 25 percent rate of affordable
5 units.

6 So I was not bound by the 51 or whatever
7 percentage that had been tossed around on the
8 original D&O.

9 And I believe that is true throughout. In
10 fact, I looked at a number of deals since that time,
11 and all the way to Wailea fancy condos, and same
12 thing, that they were not built. A&B had done that
13 -- I don't know, decades ago, and now they just say,
14 oh, well, you only have to do 25 percent.

15 COMMISSIONER OKUDA: So is it your
16 testimony that before you purchased the property, you
17 believed that you would not be bound by the specific
18 conditions that are set forth in the 2006 Decision
19 and Order which provided for the boundary change or
20 the designation change from Agriculture to Urban?

21 THE WITNESS: Yes, sir. The answer is yes.
22 I believe that 25 percent was the applicable rule for
23 me, because at the time I bought it, the County's
24 practice and regulation is 25 percent.

25 COMMISSIONER OKUDA: So did you have an

1 intention when you purchased the property to abide by
2 the conditions that the Land Use Commission had
3 previously set regarding the number of affordable
4 housing units as described in the condition, or did
5 you not have any intention to follow that condition?

6 THE WITNESS: I believe that at that time I
7 thought that the County rule was the prevalent, I
8 mean, the predominant rule. So I followed the
9 County.

10 MR. KEITH-AGARAN: Mr. Chair, if I can just
11 clarify one point.

12 CHAIRPERSON SCHEUER: Go ahead.

13 MR. KEITH-AGARAN: The 51 percent we have
14 been talking about was something that the prior
15 landowner proposed to the Land Use Commission. It
16 wasn't something that was what the policy was at the
17 County. And I believe that the D&O that we're
18 talking about does provide a process where we can
19 change it.

20 And that's what we're going through right
21 now which is making a request to relook at some of
22 those conditions.

23 Again, the 51 percent that we've been
24 talking about was not something that was policy. It
25 was something that the prior developer did propose.

1 THE WITNESS: Actually I think one of the
2 main contributors of why this project was never built
3 was because 51 percent is not economic. And then
4 furthermore, I couldn't stress more important the
5 following.

6 The physical shape of this land is straight
7 downhill, straight down ten percent grade. So
8 imagine if you have a lot back to back, 200 feet, 250
9 feet, each lot is about 120 or so, you would have a
10 drop of 25 feet from one end of the two lot to the
11 other end. It's impossible to build. It's not
12 possible. And they had that in the plan.

13 So, yes, I don't want to mince words or
14 play games, I want to be soley straight forward.

15 CHAIRPERSON SCHEUER: How are you doing --
16 Commissioner Okuda, do you have questions to follow
17 up?

18 COMMISSIONER OKUDA: Yes, I do. We can
19 take a break.

20 CHAIRPERSON SCHEUER: We will take a break
21 and continue with Mr. Cheng. The time is 2:21.
22 Let's try and be back here at know 2:30.

23 (Recess taken.)

24 CHAIRPERSON SCHEUER: During the break we
25 were having a discussion over logistics, because it

1 seems that some of our participants who are returning
2 to Oahu tonight are leaving and coming back tomorrow,
3 have fairly early departures.

4 The Office of Planning -- we cannot hear
5 you.

6 MS. APUNA: At this point, if we cannot
7 move the flight, we have to break at essentially 3:45
8 at the latest. We might be able to push it. We will
9 try to get it changed.

10 CHAIRPERSON SCHEUER: I apologize to
11 everybody who have cleared your schedules to be here
12 for a longer period today.

13 We are back on the record questioning of
14 Mr. Cheng.

15 Commissioner Okuda, were you going to
16 continue? And I know we have other Commissioners
17 including myself who have questions for the witness
18 and other witnesses.

19 COMMISSIONER OKUDA: Thank you very much,
20 Mr. Chair.

21 The reason why I was asking about knowledge
22 of the conditions before your purchase is the fact
23 that I'm looking at the limited warranty deed with
24 reservation and covenant that's recorded at the
25 Bureau of Conveyances on June 3, 2016, with a

1 Document No. 59980844. Looking at that deed in what
2 we call the subject two section of the deed which
3 list encumbrances, covenants, things like that.

4 I don't see a reference to the Land Use
5 Commission's Decision and Order. Do you know why the
6 deed doesn't have it in there? Because normally,
7 those of us when we prepare deeds, we usually rely on
8 a title report. And I don't want to conclude that
9 the conditions weren't recorded, but it doesn't seem
10 to be listed on the deed.

11 THE WITNESS: It's a question beyond my
12 competence. I'm not a lawyer.

13 COMMISSIONER OKUDA: I was just wondering
14 if anybody knew why the deed did not contain the
15 conveyance or the property was now subject to the
16 LUC's requirements.

17 Let me ask you this. Since we as a
18 Commission, we're operating quasi-judicially. We
19 have to act or do things only based on the evidence.

20 Can anyone point to where in the evidence,
21 in the record, that shows or supports that people who
22 would qualify for the affordable housing as defined
23 in the original Land Use Commission Decision and
24 Order would be benefitted by reducing the number of
25 those affordable units?

1 In other words, where in the record does
2 the evidence show that people who would benefit by
3 affordable housing units would benefit by the
4 reduction of the number of those units in this
5 development?

6 THE WITNESS: Well, I think it's implied by
7 the fact that they're rentals. They're rentals
8 everyone can afford to rent and only a few people can
9 afford to buy, so by structure it's better.

10 COMMISSIONER OKUDA: But is there a
11 document, study or anything that concludes on its
12 face, plain English, that people who normally would
13 qualify or need affordable housing would benefit by
14 the reduction in the number of units?

15 If it is in the record, please point to me
16 where in the record that evidence is.

17 MR. KEITH-AGARAN: I don't think anyone in
18 the project can answer that question. I don't think
19 there is anything in the record that specifically
20 addresses that question.

21 COMMISSIONER OKUDA: There was testimony
22 from the public testifiers that the number of
23 affordable housing units which are reflected in the
24 Decision and Order from 2006 was the result of -- and
25 this is my words not necessarily their's -- community

1 participation, negotiations, the process which led to
2 the original Land Use Commission Decision and Order.

3 Is there any evidence in the record that
4 indicates that that public testimony is wrong or
5 erroneous?

6 THE WITNESS: I don't think they're wrong,
7 I think they're just 50 percent. That was the rule
8 at that time, and no project was going to get built
9 without 50 percent affordable. So what is the point
10 of approving something 32 or 49. It's 50 percent.
11 And so if you look at what the document says, it's
12 450 out of 900, 50 percent.

13 COMMISSIONER OKUDA: Can anyone point to
14 any evidence in the record which indicates or shows
15 that the community at large would benefit by reducing
16 the number of affordable units from the number that's
17 stated in the original 2006 Decision and Order?

18 MR. KEITH-AGARAN: I don't think you're
19 asking for a factual question as much as an argument,
20 Commissioner. Really, right now, we're another at
21 zero. We're not at 450.

22 So the fact that he is offering to build
23 280 gets you a lot more benefit than zero, not going
24 forward.

25 COMMISSIONER OKUDA: I'm just asking

1 whether there is evidence in the record. Because,
2 for example, you know, I haven't prejudged what
3 decision to make, but let's say we vote in favor of
4 this proposed amendment, and somebody intervenes or
5 takes us up to the supreme court that's going to
6 be -- the question the supreme court is going to ask
7 where in the record is our factual findings supported
8 in the record. It has nothing to do with what I
9 might prejudice or not.

10 Let me ask you this. Is it anyone's
11 contention here from the Petitioner's side that Maui
12 Land & Pine made a misrepresentation to the Land Use
13 Commission by suggesting or proposing these numbers
14 of affordable housing units?

15 In other words, did they mislead the Land
16 Use Commission by proposing something which they
17 should have known couldn't be done?

18 MR. KEITH-AGARAN: I don't think anyone's
19 saying that the proposal from Maui Land & Pineapple
20 was not made in good faith at that time. No one is
21 saying that.

22 THE COURT REPORTER: I can't hear you, Gil.
23 You need to speak up.

24 "No one is saying that" is as far as I got.

25 CHAIRPERSON SCHEUER: Get closer to the

1 microphone. Our court reporter is having a hard time
2 hearing you.

3 MR. KEITH-AGARAN: What we are talking
4 about here is the fact, the reason we're here before
5 the Commission is that although the Maui County
6 Workforce Housing Policy has changed to 25 percent of
7 the market unit, we still need Land Use Commission to
8 change the Decision and Order, which actually has
9 specific number of units that needed to be built.
10 And that's what we've been talking about.

11 The Decision and Order does allow for
12 amendments and waivers, and that's why we are here
13 today, and why the motion was filed, and why we are
14 seeking a change, but we are not saying anything
15 about what Maui Land & Pineapple, what their
16 intentions were, whether or not they were acting in
17 bad faith.

18 COMMISSIONER OKUDA: I've got one final
19 question and you can maybe help me.

20 Was the original -- was there an
21 Environmental Impact Statement prepared in connection
22 with the first, or the original 2006 Decision and
23 Order?

24 THE WITNESS: Yes.

25 COMMISSIONER OKUDA: Do you believe that --

1 and the project that's being proposed now is
2 different from the project that was proposed by Maui
3 Land & Pine; correct?

4 MR. KEITH-AGARAN: In the actual mix of
5 units, yes.

6 COMMISSIONER OKUDA: Do you think that
7 there's even a slight chance no matter how small or
8 manini the issue might be, that under the Unite Here
9 Local 5 versus City and County of Honolulu case,
10 better known as the Turtle Bay case which is 123
11 Hawai'i 150, that a Supplemental EIS needs to be
12 prepared?

13 MR. KEITH-AGARAN: We haven't looked at
14 that issue.

15 THE WITNESS: Commissioner Okuda, I think
16 that in the last two years that I've been working
17 with the staff at Land Use Commission, they have
18 suggested various sections of the EIS be updated.
19 And I did everything that was asked of me.

20 I'm not an expert at EIS sections, so I
21 only did whatever was asked of me.

22 COMMISSIONER OKUDA: I would like to make
23 something clear. Whatever information a government
24 agency provides, that may not be the final say. The
25 final say ultimately oftentimes is the Hawaii Supreme

1 Court, that's why I'm asking, citing to the specific
2 case, where because the scope of the project, the
3 type of the project has changed, whether or not there
4 needs to be a Supplemental EIS.

5 Anyway, thank you, Mr. Chair. No further
6 questions.

7 CHAIRPERSON SCHEUER: We can come back to
8 you later.

9 Commissioner Giovanni.

10 COMMISSIONER GIOVANNI: Thank you, Mr.
11 Chair.

12 So I just have a couple questions on
13 clarification at this time, and I'll reserve my time
14 after I hear a little more testimony in this matter.

15 First of all, can you confirm that in the
16 proposed project, that it's all of the units is
17 100 percent rental units?

18 THE WITNESS: Except for the 100 lots that
19 the County wanted me to have for the diversity of
20 housing purposes. It was originally 900 all rental,
21 and the last ten months --

22 COMMISSIONER GIOVANNI: Originally 2006?

23 THE WITNESS: No, no, as I proposed last
24 year. And then out of concern that the document does
25 call for a diversity of housing type, the County

1 suggested to me that it would be more appropriate to
2 have 100 lots as well.

3 COMMISSIONER GIOVANNI: It was clear to me
4 from the testimony of the citizens this morning that
5 there was confusion about what might be available in
6 terms of purchase versus rental. And it speaks to
7 the State's position that more outreach would have
8 been appropriate so that we could have communicated
9 exactly what you were proposing. Let me just echo
10 that point.

11 THE WITNESS: So our website -- so our
12 website has been up for three years, and everyone
13 that ever asked us, we referred to the website. And
14 it clearly says in fact 100 percent long-term rental.

15 MR. KEITH-AGARAN: Commissioner Giovanni, I
16 think we've heard both from you and Commissioner
17 Chang, and I understand your point.

18 COMMISSIONER GIOVANNI: The live-work
19 units. Could you clarify if those are market or
20 affordable?

21 THE WITNESS: Ten of them are affordable,
22 and 60 of them are market rent.

23 COMMISSIONER GIOVANNI: So about
24 15 percent?

25 THE WITNESS: Yes, sir.

1 COMMISSIONER GIOVANNI: We heard in the
2 testimony I think of Tom -- I can't say his last name
3 or I forget it --

4 THE WITNESS: Mr. Coppin?

5 COMMISSIONER GIOVANNI: Yeah. That there
6 were five phases. He described three of them which
7 sounded like full buildout. What stage is 4 and 5?

8 THE WITNESS: The retail after the people
9 are here, and then finally the single family.

10 And it's flexible, because I don't know
11 what the demand is on single-family housing, so
12 that's a flex. The first three is for rental and
13 apartment.

14 I can pledge to the Commission now that I
15 am ready to go. You can put it in your order that
16 upon issuance of building permits from the County, I
17 will start within six months or so. I'm more than
18 happy to do that. I'm sincere about it. I'm not a
19 flipper. I don't do that kind of stuff.

20 COMMISSIONER GIOVANNI: 100 ohana units
21 would be Phase V?

22 THE WITNESS: No, the ohana units is up to
23 the homeowner that bought the 100 lots. If they want
24 to build it, they build it. I can't make people
25 build --

1 COMMISSIONER GIOVANNI: What is the Phase
2 V?

3 MR. KEITH-AGARAN: Just to clarify,
4 Commissioner. Phase V is the development of lots for
5 sale, no homes. He's not building any single-family
6 home. He's selling single-family lots. Any ohana
7 would be up to the actual buyers of those lots to
8 build a home.

9 COMMISSIONER GIOVANNI: Is there any
10 distinguishing of the lots, market versus affordable
11 housing?

12 MR. KEITH-AGARAN: On the lots, no. All
13 the workforce housing requirements have been applied
14 only to the rentals.

15 THE WITNESS: That's why I said earlier the
16 lots are small lots, sir.

17 COMMISSIONER GIOVANNI: The last question,
18 Mr. Cheng.

19 It sounds to me that when you did your due
20 diligence, and you purchased the property, you knew
21 at that time that the approved project was not
22 economical. So and you had to reconfigure it.

23 So can you speak to your motivation and the
24 driving forces that led you to the proposed mix,
25 number and type of affordable housing?

1 THE WITNESS: It was -- because my
2 understanding that County's practice was 25 percent,
3 I was advised when I asked people, various
4 consultants and lawyers, that everyone on the island
5 that hasn't built out their deal yet, would go with
6 the new law. So I wasn't trying to invent my own
7 rules.

8 So how I came to that final mix is like
9 this. First 125 of them I believe is affordable
10 units. And that was for the Kapalua Mauka. So now
11 there is only 675 left that was really available.
12 And then the rule is, 25 percent of the market rate.
13 So that's a math thing that you go through. And then
14 it becomes 155. So 155 would be the formula for the
15 County rule, the 25 percent rule, so 155 plus 125
16 that was for Kapalua Mauka totaled 280. That's how
17 it came about.

18 It even said that in the housing agreement.

19 COMMISSIONER GIOVANNI: I understand.
20 Thank you. I'll hold my other questions until I hear
21 from the County.

22 CHAIRPERSON SCHEUER: Commissioners, I'll
23 encourage further questions for Mr. Cheng before
24 moving on to the other consultants, not that I can't
25 call him back up.

1 Commissioner Chang.

2 COMMISSIONER CHANG: Just one
3 clarification, Mr. Cheng.

4 Your testimony is that you understood that
5 because the County, they changed their 25 percent,
6 did anybody advise you that that would still require
7 coming back to the Land Use Commission to get an
8 amendment from the 51 percent?

9 That the Land Use Commission Decision and
10 Order trumped whatever the prevailing County's
11 practice may be, that while you could do that, it was
12 still subject to coming back to the Land Use
13 Commission for approval to do that; it was not
14 automatic. Did anyone advise you?

15 THE WITNESS: No.

16 COMMISSIONER CHANG: So you proceeded on
17 the assumption that notwithstanding the prevailing
18 practice was 25 percent by the County, that you could
19 just proceed automatically with doing a development
20 was only 25 percent affordable?

21 THE WITNESS: I thought what the County's
22 practice was at that time, what dictated the
23 actual -- because everybody that had approval that
24 hadn't started on the County -- and I don't know how
25 many of them have decisions and orders affecting

1 them, everyone of them said, like all the way to A&B
2 and everybody else, they just go with the new rule.
3 You haven't broken ground, if you haven't started a
4 particular phase within it, you go with the new rule.

5 So I just thought that was -- it could very
6 well be a terrible mistake, but honestly that was
7 what I was going by.

8 CHAIRPERSON SCHEUER: Commissioner
9 Giovanni.

10 COMMISSIONER GIOVANNI: That 25 percent
11 rule, to clarify, is the minimum requirement, isn't
12 it? If he chose to build more, you wouldn't have an
13 objection by the County.

14 So we heard testimony by Mr. Holliday that
15 basically says for rental apartments, the
16 synchronicity between market rate and what you can
17 charge them for, especially at the high end and the
18 workforce apartments, so if you do the math that said
19 if I fail to make the 51 percent in light of
20 synchronicity, I could still get the same result.

21 THE WITNESS: Very good point. There is an
22 interesting feature that we hadn't talked about
23 today, and that is that under the new housing
24 agreement that I have signed with the County,
25 originally in the old D&O I believe there were four

1 categories of affordable housing all the way up to
2 140, the standard steps.

3 But in the housing agreement that I signed
4 with the County, it stops at 120. It doesn't go to
5 120 to 140.

6 So your point, if you say, Paul, I let you
7 have back your original 120 to 140, then it's the
8 same thing, yes. If you want me to go higher, then
9 just give me back to the four. But the County had
10 good intentions in requesting, because the need is
11 down below, not up at the top.

12 So they said we will do a trade with you.
13 Keep it down to 120 and below, 60, 80, 100, 100 to
14 120 and it's okay. 120 to 140 might as well buy a
15 house. That kind of thing.

16 CHAIRPERSON SCHEUER: Commissioners, are
17 there questions for Mr. Cheng? Commissioner
18 Ohigashi.

19 COMMISSIONER OHIGASHI: I was wondering, we
20 received today a list of deficiencies and amended
21 Decision and Order from the Department of Planning.
22 Petitioner, did you obtain this? Do you have this?

23 MR. KEITH-AGARAN: I've seen it. And my
24 response is really that I would be happy to try to
25 address some of those things. I think the way we

1 approached the Decision and Order was to leave much
2 of the history of the prior boundary amendment in
3 place, and just add the changes that affected the
4 current application.

5 I think that the County thinks that we can
6 go further and should go further (indecipherable),
7 and distinguishing what was Maui Land & Pineapple
8 representations and what is being changed in the
9 Motion to Amend.

10 COMMISSIONER OHIGASHI: Would you be
11 responding to the County's proposals in writing?

12 MR. KEITH-AGARAN: We can certainly do
13 that.

14 CHAIRPERSON SCHEUER: Commissioners,
15 further questions at this time for Mr. Cheng?

16 Commissioner Cabral, then Commissioner
17 Mahi.

18 VICE CHAIR CABRAL: You reference that
19 you're going to have commercial space and referenced
20 70,000 square feet, and then you also reference 70
21 units. Ten of them two stories, and 90 -- and I know
22 from my map where some of those are located, but not
23 all of that is going to be live and work, right? A
24 certain limited number that had the live upstairs?

25 THE WITNESS: 70 is live-work. And they're

1 not retail. We didn't count it that way, live-work
2 is live-work, so 70 is out of the 800.

3 VICE CHAIR CABRAL: As rentals out of that?

4 THE WITNESS: Yes, ma'am.

5 VICE CHAIR CABRAL: And then as rentals,
6 there's all kinds of rentals. At one point I heard
7 you say long term, so you're absolutely not looking
8 at doing vacation rentals?

9 THE WITNESS: Yeah, it's crystal clear in
10 the housing agreement with the County. I cannot even
11 think of it.

12 VICE CHAIR CABRAL: Thank you very much.

13 CHAIRPERSON SCHEUER: Commissioner Mahi.

14 VICE CHAIR MAHI: I have a cultural
15 question, and maybe you may not be able to answer it,
16 maybe you will. But I'm sure someone in your group
17 of consultants may be able to answer that question.

18 The first question, part of the question,
19 who gave the name of the street of this community
20 area?

21 THE WITNESS: Akahеле?

22 VICE CHAIR MAHI: Pulelehua.

23 THE WITNESS: That was MLP, Maui Land &
24 Pine named it.

25 VICE CHAIR MAHI: Talking about the street,

1 because that was the street that went straight to the
2 airport.

3 MR. KEITH-AGARAN: Just to be clear,
4 Commissioner Mahi, the only existing street is
5 Akahele which is the road to the airport, and that's
6 been the name of that street for many years.

7 THE WITNESS: The State owns that street as
8 well.

9 MR. KEITH-AGARAN: There are no other
10 street names in this community.

11 VICE CHAIR MAHI: That is the source of all
12 of this pilikia. This problem is the name of that
13 street.

14 I'm the cultural person here, and this is
15 my final last set of meetings on the Commission as a
16 Commissioner.

17 But Akahele, that was named a long time
18 ago. Mr. Cheng, did your actual cultural people tell
19 you anything about what Akahele means?

20 THE WITNESS: No, sir.

21 VICE CHAIR MAHI: Cultural people here?

22 MR. KEITH-AGARAN: Both of them are here.

23 VICE CHAIR MAHI: (Speaking Hawaiian)
24 speaking in my mother tongue, which means why was the
25 name given Akahele?

1 CHAIRPERSON SCHEUER: Commissioner Mahi, I
2 just need to swear in the witness.

3 Do you swear or affirm that the testimony
4 you're about to give is the truth?

5 THE WITNESS: I do.

6 TANYA LEE GREGG
7 Was called as a witness by and on behalf of the
8 Petitioner, was sworn to tell the truth, was examined
9 and testified as follows:

10 THE WITNESS: I don't know.

11 VICE CHAIR MAHI: Akahale means be
12 cautious, be careful. It is a warning. And maybe
13 because of the terrain, maybe because of the way just
14 the physical geography of that particular pu'u, you
15 know, that's a warning, akahale. When you want to
16 say to somebody, give them a warning before they
17 fall, before they stumble, before they get into
18 trouble they say akahale. That's all.

19 THE WITNESS: I believe the State named it,
20 because they own the land. They own the road.

21 VICE CHAIR MAHI: That was the warning.

22 CHAIRPERSON SCHEUER: Commissioners,
23 further questions?

24 Can you state your name into the microphone
25 for the court reporter?

1 THE WITNESS: Tanya Lee Greg.

2 CHAIRPERSON SCHEUER: Commissioners, other
3 questions for Mr. Cheng?

4 If it is okay, I know the Chair usually
5 goes after all the questioning, but I have a couple
6 questions for this witness.

7 Mr. Cheng, this is going to sound like I'm
8 asking you a legal question, but I'm not.

9 I'm trying to get to the heart of what part
10 of our responsibility is. But I'm going to do that by
11 reading a portion of the Hawai'i Administrative Rules
12 that govern our kind of action in this case.

13 The Hawai'i Administrative Rule 15-15-94
14 covers how this Commission may modify or delete
15 conditions on decisions and order.

16 Part A describes the right of a Petitioner
17 to come before us. Part B describes when we're
18 allowed to do it, and it says, and I quote:

19 "For good cause shown, the Commission may
20 act to modify or delete any of the conditions imposed
21 or modify the Commission's order." End quote.

22 So I have a number of detailed questions
23 for you and other witnesses. But what I'm struggling
24 with at this point, and this is not necessarily at
25 all the last hearing on this matter.

1 What is the good cause shown? I've heard
2 descriptions of the new design of the project, and
3 why you feel the new design is good. But the good
4 cause shown to me refers to there is a reason why you
5 believe this needs to changed from what has already
6 entitled, and I would like an answer to that.

7 THE WITNESS: Sir, I believe that this is
8 better than the last one. For a number of reasons.

9 First, the old plan was not physically
10 buildable, as I explained the 220-foot drop by every
11 two lots.

12 Number two, I believe rental is a sorely
13 needed housing stock for the west side of Maui,
14 because it's a bridge to the next step when they can
15 finally afford a home.

16 Most people cannot afford a home, and
17 that's why you need rental. The rental housing stock
18 in Maui is severely depleted. Frankly on the west
19 side there hasn't been any material development
20 quantity-wise for 20 years. I don't think we could
21 find anything meaningful like let's say more than 100
22 units in Lahaina or anywhere in 20 years. So the
23 housing stock is very old, and they're in trouble.
24 They're not in good shape.

25 So the housing quality is bad for the

1 people that have to rent, yet they pay sky high rent.
2 So I feel that by providing brand new current
3 generation long-term rental apartments, absolutely
4 long-term rental, that I can improve the quality of
5 life of 800 families, 900 families. And take them
6 out of the 30-year old, 40-year old, 50-year old
7 housing stock that's, really, if you go in there with
8 a code inspector, you wouldn't even get past the
9 second door in places, not making it.

10 So to me that's a good humanitarian cause
11 as well as a community need that I'm trying to
12 fulfill.

13 And third, as I said earlier, I'm ready to
14 start. This is not an entitlement game that I'm
15 playing. I'm already entitled. I'm ready to start.
16 In fact, I've been ready to start for three years.
17 My whole team is here. We have working drawings. We
18 are in the State for permits for the wastewater and
19 water deep into the process. We already got comments
20 back from them. We know what they want and we're
21 answering them.

22 Yesterday one of my meetings was trying
23 price out pipes. I mean, I'm down to that level
24 detail. So I'm ready to start. A start is a real
25 thing. A plan that doesn't meet the community's

1 needs and is not economic is not real.

2 So I think for good cause this is doable at
3 this point, and I would very much appreciate
4 consideration to let me go ahead and increase the
5 housing stock on the rental side.

6 CHAIRPERSON SCHEUER: If I may follow up.

7 Is there -- forgive me if it's in the
8 record and you can just point to it -- is there in
9 the record description of why the previous project is
10 not economic?

11 THE WITNESS: I think it's because 16 years
12 later there's still fallow field. That's the record.
13 It wasn't even close. They've never even stepped
14 beyond the initial approval. And the agreement with
15 the DOE, and a tentative concept memorandum of
16 understanding with the DOT, that was it. Not an inch
17 further did they go.

18 CHAIRPERSON SCHEUER: I appreciate the
19 point. A number of things happened between 2004 and
20 2019, including 2008.

21 THE WITNESS: Yes, sir.

22 CHAIRPERSON SCHEUER: I think there might
23 be a variety of reasons. I was really asking
24 specifically, if it is the case that no developer
25 could pick up the parcel with its existing

1 entitlement and make the development work, that's the
2 kind of thing that if it were on the record, could
3 serve as the Land Use Commission basis for good cause
4 determination.

5 THE WITNESS: I believe when I negotiated
6 the property, I asked them, why is this available?
7 What's going on? Is there some problem with it?
8 They said, well, you know, just can't make the thing
9 work on 51 percent, just can't.

10 CHAIRPERSON SCHEUER: But there is nothing
11 on the record at this point.

12 THE WITNESS: I do not have a written
13 statement, if you need one.

14 CHAIRPERSON SCHEUER: I'm trying to
15 communicate in this discussion and questioning --

16 THE WITNESS: Yes, sir.

17 CHAIRPERSON SCHEUER: -- more than
18 statements, just that kind of information provides an
19 evidentiary basis for this Commission to take more
20 than just an individual's word for it. If you
21 understand what I'm trying explain.

22 Mr. Keith-Agaran, did you have something
23 that you want to --

24 MR. KEITH-AGARAN: No, I don't think
25 there's anything specific in the record other than

1 the comments that have been made previously by both
2 Mr. Cheng and Mr. Holliday.

3 CHAIRPERSON SCHEUER: So I guess to follow
4 up on that, I want to talk about the difference
5 between affordable rentals and affordable for
6 purchase, and the 450 number which was in the
7 previous agreement and the 280 number.

8 I understand conceptually the argument that
9 is being made that while 280 is certainly lower than
10 450, it's providing a different kind of product
11 that's needed for affordability.

12 I also think, although this was not
13 necessarily said directly on the record, that the
14 nature of rental housing is that if the 450 is not
15 permanently affordable, but is affordable once and
16 then sold into the market it's 450 families.

17 But if it's 280 permanently rentals, you
18 might have more than 280 families. Because people
19 move into affordable rental and move out into other
20 kinds of housing.

21 THE WITNESS: 100 percent.

22 CHAIRPERSON SCHEUER: Because I think
23 partly what hangs a kind of simple person like me,
24 you know what, 280 is a lot less than 450. I don't
25 have to be a wizard at math to think 280 is a lot

1 less than 450. But if there is factual based
2 information and analysis that shows that 280 actually
3 is a typical rental and other things actually leads
4 to 480 families being impacted, then again, that
5 gives this body good cause beyond the mere assertions
6 in testimony.

7 THE WITNESS: Tom, do you have --

8 MR. HOLLIDAY: Excuse me, do you mind if I
9 speak from here?

10 CHAIRPERSON SCHEUER: I'm going to ask you
11 to come to the microphone.

12 WITNESS HOLLIDAY: That's not simple
13 calculation, but I think if you are going look at
14 it --

15 CHAIRPERSON SCHEUER: You've got to come
16 right up to the mike.

17 WITNESS HOLLIDAY: The correct way to look
18 at it would be on a time basis. So 450, but you know
19 they're going to turn to market in three, five, no
20 more than ten years. You've only at best provided
21 900 to 1800 year's worth of affordable units. If you
22 have 280 that are that way for 30, 40, 50 years, you
23 provided more years of affordable units through those
24 apartments than you would through single family.

25 CHAIRPERSON SCHEUER: Thank you for the

1 point. But that analysis or any other kind of
2 analysis is not currently in the information before
3 us.

4 WITNESS HOLLIDAY: No, it's not in the
5 record. Once, since I'm here may I --

6 COURT REPORTER: You need to speak up.

7 CHAIRPERSON SCHEUER: You need to almost
8 kiss the mike, and you may do so briefly.

9 THE WITNESS: When you look at
10 affordability, single for sale units and rentals are
11 completely different. They cannot even be viewed in
12 the same context.

13 So when you talk about affordable single
14 family, and the difference from market, it's often a
15 magnitude of something, hundreds of hundreds of
16 thousands of dollars difference between a for sale
17 affordable and a market affordable nearby.

18 However, for apartments, the squeeze is
19 much closer. It's not like there is this incredible
20 gulf that are between the two of them. Like I said
21 between the rental apartments, there is very little
22 gulf, it's more like just a trend upwards where you
23 have these things. So it's pretty tough to compare
24 those two alternatives.

25 CHAIRPERSON SCHEUER: Thank you.

1 So I think a little bit more from me, Mr.
2 Cheng, before we move on. And this is based on your
3 due diligence and your understanding of the
4 entitlement existing on the project at this point.
5 And I seem to recall, but I may be disremembering
6 that to address the permanent affordability of
7 for-sale housing, fee simple for-sale units, there
8 was some representation by the previous owner that a
9 land trust or other kind of entity might be employed
10 to maintain permanent affordability.

11 THE WITNESS: No, I'm not aware of that. I
12 just know that in my agreement with the County as
13 currently executed there is a 30-year deed
14 restriction that says it must remain affordable
15 rental as they prescribed. It's a very straight --
16 in fact, they even break it down to per category,
17 that, let's say a unit is meant for 60 to 80 percent
18 income renters, it must be rented to a 60 to 80
19 percent rent. It doesn't even allow me to drift it
20 up and down. So that unit is locked in for 60 to 80,
21 80 to 100, so forth.

22 So I don't know what they had before, but I
23 know I signed an agreement that locks it down.

24 CHAIRPERSON SCHEUER: This is my last
25 question for you at this time. And this really has

1 to do with some of the, if you will, emotional
2 context of some of the testifiers we had.

3 I understand, it has been represented that
4 Maui Land & Pine, and perhaps you and your
5 organization as well, have maintained a waiting list
6 of sorts for people expecting, interested in purchase
7 or some other kind of participation in this project.
8 Is that correct?

9 I heard at least one testifier saying my
10 family went on the waiting list to buy a home.

11 THE WITNESS: That's probably true in the
12 MLP days when they owned it. Like I said, from let's
13 say six months after I owned it, I built a website,
14 put in a dot com, and fully stated it's for long-term
15 rental only. And we have had inquiries of people
16 interested in renting.

17 CHAIRPERSON SCHEUER: Was there any attempt
18 that you're aware of, not that putting your name on a
19 waiting list is necessarily legally binding in any
20 sense, but was there any attempt by you as the
21 successor Petitioner to communicate to these people
22 who have held out some level of hope, in their words,
23 that they would be able to purchase a home to say
24 things have changed?

25 THE WITNESS: Yes, my son handled that. So

1 he said yes.

2 CHAIRPERSON SCHEUER: Can you describe that
3 communication? I'll swear you in.

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

6 THE WITNESS: Yes.

7 CHAIRPERSON SCHEUER: State your name for
8 the record and answer the questions.

9 THE WITNESS: Preston Cheng on the Maui
10 Oceanview team.

11 PRESTON CHENG

12 Was called as a witness by and on behalf of the
13 Petitioner, was sworn to tell the truth, was examined
14 and testified as follows:

15 THE WITNESS: Yes. We received over 80
16 website inquiries where people will ask what is the
17 status of this project. Is it still homes or
18 whatever? And responses that I received, I tried my
19 best to be as timely as I can and I replied back
20 saying:

21 Hey, here's the latest. We're working with
22 the County on this project. Our first phase will be
23 rentals. We intend for it to be this way. It will
24 be mix of affordable and market rental. That's my
25 default response and I send that to pretty much every

1 person who inquires about the status of the project.
2 We submit their email into a list, that when we have
3 an update, say for a meeting or any other kind of,
4 you know, official, we will update community on this
5 email list. We have been waiting for a hearing like
6 this to update.

7 CHAIRPERSON SCHEUER: After your
8 acquisition, were you given, or did you otherwise
9 obtain any list that Maui Land & Pine had compiled of
10 people who believed they were going to be able to
11 purchase a home?

12 THE WITNESS: We received a website, but
13 I'm not sure about anything else.

14 CHAIRPERSON SCHEUER: Thank you very much.
15 I have nothing further. Let me, just
16 before Commissioner Ohigashi, Office of Planning was
17 able to change their flight to the same 5:30. Thank
18 you.

19 MS. APUNA: Yes, thank you.

20 CHAIRPERSON SCHEUER: So we will continue
21 until 4:00 o'clock. If it's okay. Can you power
22 through?

23 COURT REPORTER: Yes.

24 CHAIRPERSON SCHEUER: She's actually the
25 most important person in the room, is the court

1 reporter. In case you were not aware.

2 Mr. Ohigashi.

3 COMMISSIONER OHIGASHI: Mr. Cheng,
4 according to your testimony, I think that you
5 indicated that the agreement between you and the
6 County specifically limits you to less or to
7 100 percent affordability or 120 affordability?

8 THE WITNESS: 60 to 80, 80 to 100, and 100
9 to 120, so three categories.

10 COMMISSIONER OHIGASHI: If you added the
11 additional category to 140, how many more additional
12 units can you --

13 THE WITNESS: Yeah, because -- yeah, yes,
14 sir.

15 COMMISSIONER OHIGASHI: How much?

16 THE WITNESS: Make a total of 400 at 120
17 maybe.

18 COMMISSIONER OHIGASHI: So if you amend the
19 agreement with the County, you basically would be
20 asking for a 50 percent of the 800 units. Is that
21 right?

22 THE WITNESS: If that is acceptable to
23 everyone, yes.

24 COMMISSIONER OHIGASHI: If you amend that
25 agreement, then there would be no reason for this

1 Motion to Amend that portion of the agreement; is
2 that right?

3 THE WITNESS: Except it has to be rental.

4 MR. KEITH-AGARAN: I think there is a
5 specific number in the D&O, so we still need to --

6 THE WITNESS: Some cleanup to do.

7 COMMISSIONER OHIGASHI: So your amendment
8 would be requesting to use the term 50 percent rather
9 than a fixed number?

10 MR. KEITH-AGARAN: I think we probably look
11 at specific numbers, since he's only got 800 housing
12 units.

13 THE WITNESS: Yeah, 400, same thing.

14 COMMISSIONER OHIGASHI: I was just curious.

15 THE WITNESS: That's a very good thought,
16 sir. I can do that, if that would help doing that.

17 CHAIRPERSON SCHEUER: Commissioners, do we
18 have further questions for Mr. Cheng, or are we ready
19 to open it up?

20 COMMISSIONER CHANG: I just have one -- not
21 too many questions.

22 Mr. Cheng, and maybe someone else is going
23 to have to answer this question. But you mentioned
24 that the slope, you would have to do something to
25 mitigate the slope. So are you going to cut and

1 fill?

2 THE WITNESS: Yes, ma'am.

3 COMMISSIONER CHANG: Has there been an
4 archaeological inventory survey so that you know what
5 may be on that site?

6 THE WITNESS: I believe it's been done.

7 COMMISSIONER CHANG: That's been completed?

8 MR. KEITH-AGARAN: Just to be clear, I
9 think they're relying on the original archaeology
10 survey. Just to clarify what he's referring to is
11 the original survey that was done back 2005. There
12 hasn't been one recently. The property has been
13 essentially fallow since 2008 or so.

14 COMMISSIONER CHANG: So it should still be
15 valid, and SHPD approved that AIS back in 2006?

16 MR. KEITH-AGARAN: That's my understanding.

17 COMMISSIONER CHANG: So, Mr. Cheng, is it
18 your testimony today -- and maybe it's been changed
19 in light of what Commissioner Ohigashi said -- that
20 to stay with the existing D&O which is 50 percent,
21 that no developer would be able to do this?

22 THE WITNESS: It would be shocking to me if
23 they could.

24 COMMISSIONER CHANG: But in light of -- if
25 you just change and you add the numbers that

1 Commissioner Ohigashi added, you put up to 140,
2 that's about still 400, right?

3 THE WITNESS: Yes, the last 120, yeah.
4 Because I'm allowed to charge more. We have to abide
5 by the agreement. This is not just a piece of paper,
6 it's very serious. I expect the County to audit me
7 every year and check the files. It's the real deal.

8 So when you go from 120 to 140, you get
9 more rent, although not mathematically higher because
10 it falls off, like Tom Holliday sys, but it helps the
11 economics of it.

12 And actually what Tom Holliday said and
13 Commissioner Giovanni and I were conversing, at that
14 level you're blending into almost -- yeah, you're
15 talking about \$10 or \$20 difference. So, yes, ma'am.

16 COMMISSIONER CHANG: All right. Thank you.

17 CHAIRPERSON SCHEUER: Commissioners,
18 further questions for any of the Petitioner's
19 witnesses?

20 VICE CHAIR CABRAL: My question would be I
21 think probably for the Petitioner. I have yet --
22 I've got the documents here. I haven't yet been able
23 to identify this agreement that now has become a very
24 focal point of potentially the problem and/or
25 possibly the solution here.

1 Can you make sure we know how to find it?
2 You've given us a tremendous amount of documentation,
3 so if you can help guide me to it, I would appreciate
4 it.

5 MR. KEITH-AGARAN: It's marked as Exhibit T
6 attached to the Second Supplement, page 1000 --

7 CHAIRPERSON SCHEUER: If I can just
8 interject here. The way the documents were provided
9 as posted on the website, it crashes regularly. It's
10 very difficult for us as Commissioners to isolate and
11 read that document.

12 MR. KEITH-AGARAN: Let me do this, since we
13 are going to be back tomorrow. Let me make a copy of
14 that particular exhibit and bring copies in for all
15 members of the Commission.

16 CHAIRPERSON SCHEUER: On the subject of
17 additional records, it was not necessarily timely
18 filed, I believe the Land Use Commission office in
19 Honolulu has received an additional large number of
20 testimonies on this matter as information about this
21 hearing became more known.

22 So I know that the Land Use Commission
23 staff is going to try to post those, but due to our
24 location on Maui right now, exactly when those will
25 be posted or how it will be made available, but we

1 can discuss that at the start of the hearing tomorrow
2 morning.

3 Commissioner Okuda.

4 COMMISSIONER OKUDA: Thank you. I know I'm
5 not the teacher here, so I know it's not proper to
6 assign homework, but if I can ask all parties, if you
7 believe it's appropriate, if you don't think it's
8 appropriate, you don't have to do it.

9 Please don't prejudge this question
10 thinking I'm going to vote in favor of the Petition
11 or a modification. This is for background
12 information to help me make a decision.

13 But if any of us are intending to vote in
14 favor of this Petition or a modification, a modified
15 version of the Petition, is a Supplemental EIS
16 required before we take that action, or is it not
17 required? So that's the specific question.

18 In other words, you know, let's say we have
19 an inclination that we would like to vote in favor of
20 this Petition because, for example, we find Mr. Cheng
21 very credible, do we still need to have a
22 Supplemental EIS under the Local 5 case?

23 Thank you, Mr. Chair.

24 CHAIRPERSON SCHEUER: Thank you,
25 Commissioner Okuda.

1 I have a question for the -- and I
2 apologize I'm not pulling up the name -- the water
3 consultant.

4 MR. KEITH-AGARAN: Mr. Montoya.

5 CHAIRPERSON SCHEUER: Mr. Montoya, are you
6 familiar with the original Findings of Fact,
7 Conclusions of Law, Decision and Order in this case?

8 MR. MONTOKYA: I am not.

9 CHAIRPERSON SCHEUER: So the final
10 conclusion of law right before the Decision and Order
11 stated the following:

12 Development of the Petition area will not
13 adversely affect streamflow of Honokohau Stream.
14 There is presently sufficient water flowing through
15 Honolua Ditch to accommodate the additional 2.0
16 million gallons per day proposed to be treated by the
17 Department of Water Supply, including water
18 (indecipherable) potable with less water requirements
19 of Pulelehua without diverting additional water from
20 Honokohau Stream.

21 In the alternative, if Petitioner elects to
22 draw potable water from new wells, the potable water
23 requirements of Pulelehua will not adversely affect
24 recharge of the Honolua or Honokowai aquifer.

25 Are you familiar with the interim instream

1 flow standard amendment process that was referred to
2 by a number of testifiers?

3 MR. MONTTOYA: Yes, sir, I am.

4 CHAIRPERSON SCHEUER: Can you share with me
5 your understanding of that process?

6 MR. MONTTOYA: I understand it's a process
7 that happens over the course of a few years, and it
8 actually evaluates the amount of water that should
9 flow through stream. I use the word "should" but
10 it's evaluating on how much water should flow through
11 the stream versus how much water would be allowed to
12 flow through the ditch.

13 And I know that because of our location and
14 the location of the Mahinahina Wastewater Treatment
15 Plant, that that issue has come up before.

16 As Mr. Cheng has discussed, we work closely
17 with the County, and we work closely with the County
18 water as well in developing what we would propose as
19 a water treatment plant.

20 So they were very gracious to walk us
21 through a lot of issues, not only technical, but also
22 legal on the supply, of course, of the water through
23 the ditch.

24 CHAIRPERSON SCHEUER: What is your
25 understanding of the availability of water from

1 Honokohau Stream into ditch at this point?

2 MR. MONTROYA: Going back to last year in
3 the storm that had disrupted temporarily the
4 distribution system and the actual ditch, working
5 with Maui Land & Pineapple, and how that affected the
6 Mahinahina plan, the County, where I first started to
7 work down -- my understanding of the IIFS.

8 One of the things that we worked through,
9 Chair, is that because of the R-1 use, we are
10 reducing the amount of surface water that the
11 development would need. And if the County, for
12 example, were supplying this development with water,
13 the amount of water, the amount of water they would
14 typically plan for in their planning numbers is
15 560 gallons per day per unit, is much greater than
16 what we are proposing because of R-1, that's one of
17 the unique features of the project.

18 CHAIRPERSON SCHEUER: My questions are not
19 about the use of the water on site. My questions are
20 what your understanding of the actual availability of
21 that water in the ditch at this point in time.

22 THE WITNESS: I would leave that up to the
23 folks over at MLP for that, sir.

24 CHAIRPERSON SCHEUER: Are they with you,
25 here to speak on this matter?

1 THE WITNESS: Chair, my understanding on
2 that issue is as follows.

3 When that storm hit, there was debris that
4 broke from the trees and fauna are near by way
5 upstream, and that it had temporarily blocked them,
6 brought some of the streams, and that's why some of
7 the water issues cropped up after the storm.

8 And then they had to wait quite a number of
9 months to survey the issue and then assess the amount
10 of damage, and then finally they got insurance to pay
11 for the fixing of whatever they had to do in clearing of
12 the debris. And I believe that they are now in full
13 gear to restore the stream to flow to where it was
14 before.

15 The source of the stream is on the
16 backside. As someone said earlier -- well, maybe
17 not -- but originally there was as much as 25 million
18 gallons a day that was available from the backside
19 through this ditch. But since they no longer grow
20 pineapple, they have reduced that down to like less
21 than 20 percent of that maximum flow.

22 So the rest has been just going through the
23 streams and so forth. So that's all I know, sir.

24 MR. KEITH-AGARAN: Maybe if I could just
25 comment.

1 I think we are all aware that the IIFS
2 process is taking place. At this point Maui Land &
3 Pineapple still has an agreement with Maui Oceanview
4 to supply a certain amount of water -- deliver a
5 certain amount of water, but of course that would be
6 subject to the final decision on the IIFS.

7 CHAIRPERSON SCHEUER: Is that agreement
8 part of the record?

9 MR. KEITH-AGARAN: Yes.

10 CHAIRPERSON SCHEUER: Could you point to
11 where in the record it is? You could do it tomorrow,
12 if you can't readily on your iPad --

13 MR. KEITH-AGARAN: I'm having trouble with
14 the iPad.

15 CHAIRPERSON SCHEUER: I would suggest as an
16 observation, and as I disclosed earlier my personal
17 involvement on this, is at least, the statement of
18 some State officials at this point that there is
19 insufficient water for all the people who want to
20 have water from this ditch in addition to fulfilling
21 State constitution obligation for instream uses,
22 which would bring into question whether there would
23 be water availability whatsoever from surface water
24 for this project.

25 THE WITNESS: The comment that I can answer

1 that, is that Phase I requires only 75,000 gallons,
2 which is really a pittance in terms of this kind of
3 size facility. And the maximum is, you know, if 240
4 units is 75,000 gallons, the math works out to 3,
5 400,000 gallons for the whole property.

6 It could be that for the first phase,
7 there's no issue because the flow there is several
8 million gallons a day. As it is now, we're talking
9 about 75,000 out of 3, 4 million. And it could be
10 that we have to drill a well some day to service
11 ourselves if the study comes out and it severely
12 restricts additional taking from the ditch. And, in
13 fact, the County has suggested that we can work
14 together on that, and I'm more than happy to do so.

15 CHAIRPERSON SCHEUER: Just so you, again
16 appreciate, this Commission is generally obligated to
17 look at the availability for the entirety of a
18 project, rather than just simply the first increment.

19 THE WITNESS: We have a purchase agreement
20 for up to a million gallons a day, and we won't even
21 be close to half of that on buildout.

22 CHAIRPERSON SCHEUER: A purchase agreement
23 from MLP to purchase a million gallons of water a
24 day?

25 THE WITNESS: Yes, sir. That's in record.

1 CHAIRPERSON SCHEUER: I look forward to
2 seeing that in the record.

3 THE WITNESS: It started out at 750, then
4 we amended it to a million to make sure there is more
5 than enough.

6 CHAIRPERSON SCHEUER: Commissioners, any
7 questions for any of the other witnesses of the
8 Petitioner at this time?

9 COMMISSIONER CHANG: Chair, I would just
10 ask Gil, could you bring the archaeological inventory
11 survey? I couldn't find it in any of your documents,
12 so I just want to confirm that the archaeological
13 inventory survey was completed for the project back
14 in 2004, because it's not part of this existing
15 record.

16 MR. KEITH-AGARAN: I think that's true, it
17 wasn't submitted as part of the motion. So it would
18 have been part of the record from the original
19 boundary amendment.

20 COMMISSIONER CHANG: Can you get that? It
21 would be helpful.

22 MR. KEITH-AGARAN: I'll try my best. I'm
23 not sure. If it is not online, I'm not sure I can
24 get it.

25 THE WITNESS: We might have it in our

1 files.

2 MR. KEITH-AGARAN: One of our consultants
3 does say she has it. We will bring a copy tomorrow.

4 CHAIRPERSON SCHEUER: Thank you.

5 Commissioners, other question? I have a
6 last question for the traffic person that I'm not
7 taking the place of other Commissioners wanting to
8 ask.

9 I want to understand your oral testimony in
10 two respects. First, is that your service area that
11 you study changes and service were all within the
12 greater Lahaina area? You didn't look at anything
13 south of Lahaina towards Olowalu or beyond in terms
14 of impacts on the project?

15 WITNESS FUJIWARA: That's correct. Our
16 study intersection list was done so it was consistent
17 with the previously approved traffic study.

18 CHAIRPERSON SCHEUER: So the testifier's
19 concerns about the larger dilemma of traffic into and
20 out of Lahaina from Central Maui are not captured
21 with the exception of the particular intersections
22 that you looked at within Lahaina?

23 WITNESS FUJIWARA: Not necessarily. She
24 was probably talking about the southern terminus of
25 the bypass road. So as far south that we studied was

1 Keawe Street which is the northern terminus of the
2 bypass road.

3 CHAIRPERSON SCHEUER: Nothing south of
4 Keawe Street?

5 WITNESS FUJIWARA: Correct.

6 CHAIRPERSON SCHEUER: Second question I
7 had, if I understood you correctly, the
8 recommendation of this TIAR is for the southern entry
9 to the project to remain non-signalized, but that
10 studied until a signal might be required by some
11 unspecified need?

12 WITNESS FUJIWARA: Yes. So our analysis is
13 based on projections from the number of units of the
14 residences as well as the square footage of the
15 retail for the southern portion. Based on the
16 turning volumes indicated that the signal probably
17 wouldn't be warranted, but the -- were close in that,
18 with actual buildout, the turning movements may be
19 different than what we projected.

20 So we state in the traffic study that it
21 should be monitored, and if it is indeed warranted,
22 then it could be installed. But that is something
23 that would probably be coordinated with DOT.

24 CHAIRPERSON SCHEUER: State Department of
25 Transportation?

1 WITNESS FUJIWARA: Yes.

2 CHAIRPERSON SCHEUER: If I understood
3 correctly, correct me if I'm wrong, the intersection
4 we're talking about on the conceptual map had park on
5 the mauka side at one of the four corners of the
6 intersection, and has an ocean access on the makai
7 side?

8 WITNESS FUJIWARA: The southern access that
9 you're talking about, it has the park on the south
10 side of the proposed road, and north of the road
11 would be the retail site.

12 CHAIRPERSON SCHEUER: And across the
13 highway is what?

14 WITNESS FUJIWARA: Across the highway
15 there's no access. So it would essentially be a
16 T-intersection.

17 CHAIRPERSON SCHEUER: What is across the
18 highway? What is on the makai side of the highway at
19 that area?

20 WITNESS FUJIWARA: I believe it's
21 residential.

22 CHAIRPERSON SCHEUER: With coastal access,
23 coastal pedestrian access?

24 WITNESS FUJIWARA: I don't believe there is
25 any access there.

1 CHAIRPERSON SCHEUER: You don't believe,
2 but you don't know?

3 WITNESS FUJIWARA: There is definitely no
4 vehicular access.

5 CHAIRPERSON SCHEUER: My concern is not
6 about the vehicle, but pedestrian, particularly any
7 children who might be at the park trying get across
8 the highway to the ocean, which would seem like a
9 natural kind of thing that might occur in this
10 development.

11 Was any part of your study looked at the
12 flow of anything other than vehicle?

13 WITNESS FUJIWARA: Unfortunately, we can't
14 project pedestrian traffic through the project site
15 based on the land uses proposal. There is no
16 pedestrian access further makai of the highway.

17 CHAIRPERSON SCHEUER: I'm sorry, could you
18 repeat that?

19 WITNESS FUJIWARA: There is no pedestrian
20 access further makai of the highway.

21 CHAIRPERSON SCHEUER: I'm afraid I don't
22 understand that response you're giving me.

23 WITNESS FUJIWARA: You were asking me if
24 there was --

25 CHAIRPERSON SCHEUER: How will kids cross

1 the road?

2 WITNESS FUJIWARA: If --

3 CHAIRPERSON SCHEUER: Or other pedestrians?

4 WITNESS FUJIWARA: There would be no
5 pedestrian crossing at that southern access point.

6 CHAIRPERSON SCHEUER: Okay. Thank you.

7 WITNESS FUJIWARA: There are existing
8 crosswalks at the Honoapiilani Highway on Kahili
9 Street intersection, so crossings are permitted at
10 that existing signal light.

11 CHAIRPERSON SCHEUER: How far away is that
12 from --

13 WITNESS FUJIWARA: I don't know off the top
14 of my head. Maybe quarter mile.

15 CHAIRPERSON SCHEUER: Thank you.

16 I was advised by the Executive Officer,
17 given the large number of other presenters that have
18 come up, other witnesses, even though we opened it up
19 to questioning by the County and Office of Planning,
20 before we can open that again, if you have questions
21 of anybody who's appeared in front of us now, Mr.
22 Cheng, and the other experts starting with the
23 County, any questions for any of the people who have
24 come up on behalf of the Petitioner?

25 MR. HOPPER: No, Mr. Chair.

1 CHAIRPERSON SCHEUER: Office of Planning?

2 MS. APUNA: No questions.

3 CHAIRPERSON SCHEUER: If there are no
4 further questions from the Commissioners, we could
5 actually move on to the County if you can do it in
6 about -- well, no we're close -- what is the sense of
7 how much time you'll want to present?

8 MR. HOPPER: Maybe ten minutes, Mr. Chair,
9 but there may be questions, obviously.

10 CHAIRPERSON SCHEUER: We are going to be
11 here tomorrow for sure. What I'm going suggest is we
12 give the time for some people's departures, and then
13 if there's no further questions at this point, we
14 adjourn and start with the County tomorrow morning.

15 Thank you, Mr. Ohigashi, not adjourned,
16 recessed.

17 Anything further, Commissioners?
18 Commissioner Ohigashi.

19 COMMISSIONER OHIGASHI: Mr. Chair, perhaps
20 when Mr. Keith-Agaran does provide the additional
21 documents, that some of us are part of the record
22 that we may have additional questions. So are we
23 going take that up first? Or should we have the
24 County go first tomorrow? I'm just curious on that.

25 CHAIRPERSON SCHEUER: So the question, if I

1 understand it correctly, is will there -- if the
2 Commissioners have additional questions for the
3 Petitioner, will that come first, or will the County
4 go first.

5 I think what we are going do -- what our
6 normal procedure has been is that we'll let the
7 County go, we'll let the Office of Planning go, and
8 then there is always another round of availability
9 for questions from all the parties for the
10 Commissioners.

11 Does that make sense? If there's nothing
12 further, we are going to be in recess until 9:30
13 tomorrow morning, not in this room, but in the Haynes
14 room here.

15 (The proceedings were recessed at 3:50
16 p.m.)

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CERTIFICATE

STATE OF HAWAII)
) SS.
County OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on September 25, 2019, at 9:30 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 25th day of September, 2019, in Honolulu, Hawaii.

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