

LAND USE COMMISSION
STATE OF HAWAII

Hearing held on September 26, 2019
Commencing at 9:30 a.m.

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

AGENDA

VII Call to Reconvene

VIII. CONTINUED ACTION

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

IX. STATUS REPORT AND ACTION (If Necessary)
A94-706 Ka'ono'ulu Ranch (Maui)

X. STATUS AND ACTION (if Necessary)
A89-642 C. Brewer Co. (Maui)

XI. STATUS REPORT AND ACTION (If Necessary)
A97-721 ATC Makena (Maui)

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 (Maui Land & Pine)
24 JONATHAN HART, Deputy Planning Director (C. Brewer)
25 JENNIFER ARAKAWA, Planner (C. Brewer)
For Maui County Department of Planning

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

A94-706 Ka'ono'ulu Ranch (Maui)
RANDALL SAKAMOTO, ESQ.
For Pi'ilani Promenade North and South

CURTIS TABATA, ESQ.
For Honua'ula Partners

TOM PIERCE, ESQ.
For Maui Tomorrow Foundation, Inc.
South Maui Citizens for Responsible Growth

APPEARANCES CONTINUED

A89-642 C. Brewer Co. (Maui)

JASON McFARLIN

For Wailuku Plantation, LLC

Pi'ihana Project District

RANDALL SAKAMOTO, ESQ.

For Wailuku Project District

RCFC Kahalani

A97-721 ATC MAKENA (Maui)

JENNIFER LIM, ESQ.

KAIMI JUDD

For ATC Makena

RANDALL SAKAMOTO, ESQ.

LEILANI PUMANA

For H2R, LLC

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1 CHAIRPERSON SCHEUER: Aloha mai kakou.
2 Good morning. I apologize for the slight delay in
3 this morning's start. Our excellent staff remembered
4 everything necessary for this meeting except me. So
5 here I am. I apologize for the inconvenience.

6 This is the September 26, 2019 portion of
7 our Land Use Commission meeting.

8 The Commission will resume its action
9 meeting docket -- action meeting on Docket No.
10 A04-751 Maui Land & Pineapple Company, Inc. (Maui),
11 to Consider the Petitioner Maui Oceanview LP's Motion
12 to Amend the Decision and Order dated June 30th of
13 2006.

14 Will, once again, the parties please
15 identify themselves for the record?

16 MR. KEITH-AGARAN: I'm Gil Agaran
17 representing Maui Oceanview. And with me is my
18 client, Paul Cheng.

19 MR. HOPPER: Michael Hopper, Deputy
20 Corporation Counsel. I'm representing the Maui
21 County Department of Planning. With me is Planning
22 Director Michele McLean and Planner Ann Cua.

23 MS. APUNA: Good morning. Deputy Attorney
24 General Dawn Apuna on behalf of the State Office of
25 Planning. Here with me today is Aaron Setogawa.

1 CHAIRPERSON SCHEUER: Thank you very much.
2 Commissioner Cabral?

3 VICE CHAIR CABRAL: Completely out of
4 order, but I do want to thank Riley and the staff and
5 everybody, whoever helped provide air-conditioning
6 for today. It's already happening.

7 And also to remind people to really speak
8 up. I know we keep saying it, but I got to tell you
9 I'm getting old, and the hearing aids aren't as good
10 as they were or something, so please speak up and
11 speak clearly, because it is so important and it's so
12 hard when we're missing pieces.

13 And, of course, the room is not as full as
14 yesterday, but that makes a difference, too, when
15 there's all this background noise.

16 And I thought, Jean, our recording
17 secretary, I can't -- I cannot even believe she can
18 do the job she does because -- yeah.

19 So thank you to everybody for being part of
20 our hearing and help us to do a good job. Thank you.

21 CHAIRPERSON SCHEUER: Thank you, Vice
22 Chair, for the good reminders.

23 When we left off yesterday, the Petitioner
24 had finished presenting their witnesses and the other
25 parties and the Commissioners had had a chance to

1 answer -- ask additional questions of all the
2 witnesses.

3 We were going to continue with presentation
4 by the County.

5 Any questions for the County by the
6 Petitioner or OP or the Commissioners? Then sort of
7 the same process with Office of Planning, and finally
8 the chance for the Commissioners to ask any
9 additional questions of any of the parties.

10 The Petitioner also reserved time for any
11 concluding remarks and responses.

12 So, Mr. Hopper?

13 MR. HOPPER: Thank you, Mr. Chairman.

14 Please let me know if you have any trouble
15 hearing me or -- or if I'm going too fast.

16 The County of Maui Department of Planning
17 did file a position statement in this docket. The
18 County's position is that it is in support of the
19 Motion to Amend provided that the Decision and Order
20 can be corrected to reflect the -- the items raised
21 in its filing yesterday.

22 We believe that the Decision and Order has
23 some, in some cases, outdated references, in some
24 cases inconsistent references, and it should be
25 updated to reflect things such as the fact the

1 project is -- there is the Maui Island Plan adopted
2 that this project is consistent with. That the
3 project is consistent with the community plan and
4 zoning, and currently it still reflects that the
5 community plan and zoning are what they were prior to
6 the adoption of the Decision and Order. And so I --
7 we think that should be updated.

8 A note on timing on this docket. We did
9 file the statement on September 10th. It was
10 received by the Commission on the 16th and -- I'm
11 sorry. It was received on the 16th.

12 The background on this case is that there
13 were a variety of filings since the Motion to Amend.
14 What had happened was that the Land Use Commission
15 would oftentimes send back something saying, you need
16 to provide additional documents. Those were
17 provided, and there was a bit of a back and forth in
18 the County, OP and Petitioner had stipulated to
19 having 60 days from essentially the final filing to
20 file position statements. That would give time for
21 agency comments.

22 In this docket we were actually getting
23 filings as late as last week with the revised
24 Decision and Order, so we did note in our position
25 statement that it was based on the information

1 provided at the time. We didn't get agency comments
2 from the Department of Public Works. We did get
3 comments from other agencies. Those were provided to
4 you.

5 So I wanted to give a bit of a context and
6 explain essentially why we filed something yesterday
7 regarding the Decision and Order. So we apologize
8 for that late filing, but wanted to give a bit of
9 background as to why that happened and to go over
10 what the County's position statement was based upon,
11 and that was the information available at the time.

12 The County does note that when this Motion
13 to Amend was originally filed, the project plan
14 wasn't consistent with the community plan or the
15 zoning ordinance that had been adopted for the
16 project. After a lot of work with the Department of
17 Planning, including the current division and the
18 long-range division, the Department did say in its
19 statement that those plans are now consistent with
20 the community plan and the zoning for the project.

21 The project is also consistent with the
22 Maui Island Planned Urban Growth Boundaries, which
23 does show this project within those boundaries, and
24 we believe that those updates were important and took
25 place over a relatively long period of time.

1 Ann Cua was a part of those updates, and
2 she's here in case you have questions on what
3 happened there.

4 But in the Department's position statement,
5 it did state that the project is now consistent with
6 those documents.

7 A note on Phase II project district
8 approval. That was something that was mentioned
9 yesterday. That is something that should you grant
10 this Motion to Amend, the Applicant will still need
11 to go through. It involves essentially a plan being
12 submitted to the Maui Planning Commission, and the
13 Commission determination as to whether that plan is
14 consistent with the zoning ordinance for the project.

15 That process does require a public hearing
16 be held in the community plan area where that project
17 is situated. However, the issue for that is going to
18 be whether to grant Phase II approval, not what's
19 before you today, which is whether to amend your
20 condition.

21 So I would note, while there will be an
22 additional public hearing on this project, it's going
23 to be on a County zoning issue, and obviously not the
24 issue before you today. So that doesn't necessarily
25 substitute for this process, obviously.

1 And moving forward, the County did get a
2 variety of comments from agencies. Those were listed
3 in our position statement. The County did get
4 comments from the Department of Housing and Human
5 Concerns referencing that an affordable housing
6 agreement was reached with the affordable housing
7 agreement was reached with the Applicant.

8 Now, because there has been discussion on
9 the affordable housing agreement, I wanted to
10 reference that for the record. It has been provided
11 to you. It was provided previously, but it's also
12 been submitted to you by the Applicant today.

13 The affordable housing agreement deals with
14 Maui County zoning. That is Chapter 2.96 of the Maui
15 County Code. That is a County requirement for
16 affordable, or also known as workforce housing in the
17 County Code. It requires that certain projects,
18 including this project, provide a percentage of
19 workforce housing units, depending on the number of
20 market rate units that are in the project area.

21 So in this case, there are -- it requires
22 25 percent of the market rate unit constructed, that
23 there be an additional 25 percent workforce units of
24 the market rate units. So, for example, if there are
25 100 market rate units that are provided, the

1 Applicant needs to provide an additional 25
2 affordable units there. So they would have to
3 provide a total of 125 units.

4 In this case, there are provided 620 market
5 rate units. There are 520 rental units and 100
6 single-family lots. In that case, the County
7 considers that to be 620 --

8 CHAIRPERSON SCHEUER: Did you say 520
9 rental units?

10 MR. HOPPER: Yes.

11 CHAIRPERSON SCHEUER: Okay.

12 MR. HOPPER: I'm sorry, these are the
13 market units. These are the market rate units, and
14 that's a critical distinction. 520 market rate
15 rental units and 100 single-family rental lots -- or,
16 sorry, single-family lots.

17 And so that's a total of 620 market units
18 being provided within the project area. Based on
19 that, and this is in the affordable housing
20 agreement, the requirement for this project is 155
21 workforce housing units. That's the requirement for
22 this project. And that's how many are being proposed
23 to be built for this project's affordable housing
24 requirements.

25 There are an additional 125 units that are

1 going to be provided to fulfill the requirement of a
2 different project, Kapalua Mauka project. Those are
3 being built here, but they are not counted towards
4 the total requirements for this project.

5 So 155 workforce housing units are the
6 required units for the project.

7 And that is under 2.96 of the Maui County
8 Code and the Residential Workforce Housing Agreement.

9 Now, how does this relate to your
10 condition? Your condition is separate and apart from
11 that requirement. Your condition does not state, as
12 it has in other situations, that the Petitioner shall
13 comply with the County's workforce housing ordinance.
14 It actually provides a specific number of units.
15 That's why the Applicant's before you today are
16 asking for an amendment of the requirement.

17 Now, this is your decision as to whether or
18 not you want to allow that amendment, and the
19 execution of the Workforce Housing Agreement does not
20 affect your condition which is why the Applicant is
21 here today.

22 So we don't want to create a suggestion
23 that the County requirement would supersede the Land
24 Use Commission's requirement. It doesn't. The Land
25 Use Commission's condition still is -- is part of the

1 requirement, and it's part of the condition.

2 So we wanted to provide that information to
3 you from the Department of Housing and Human
4 Concerns.

5 Again, there are an additional 125 units
6 being provided. Those are from another project.
7 They don't fulfill this project's requirement, which
8 is 155 units.

9 Other agency comments received -- oh, one
10 other comment on the affordable housing issue. Mr.
11 Perez, yesterday in his testimony, did mention an
12 issue with the current draft condition. Your current
13 draft condition in your D&O.

14 One, No. 1, I believe it's D, goes over
15 various requirements for the eligibility for
16 workforce housing. It is missing the word "or".
17 There is a reference to retired person, student, or
18 disabled person, and then it should be "or", to make
19 sure that these are -- an applicant doesn't meet all
20 of these, it's an "or".

21 So we can work with the staff on making
22 that correction along with the other D&O corrections,
23 but that language does appear in the workforce
24 housing agreement, and there's an "or" there, so I
25 think that's important.

1 VICE CHAIR CABRAL: Can you give me that
2 again, sorry, that page on -- this is in that --

3 CHAIRPERSON SCHEUER: Commissioner Cabral,
4 please speak right into the microphone.

5 VICE CHAIR CABRAL: I am sorry, thank you.
6 Can you tell me what page again, so I can
7 make that correction right now for myself?

8 MR. HOPPER: This is the draft. It's
9 really hard to get you to the right document.

10 VICE CHAIR CABRAL: So it's not in this
11 Exhibit T then?

12 MR. HOPPER: The affordable housing
13 agreement, yeah, that's not something -- that's
14 executed.

15 I'm talking about your Decision and Order,
16 your D&O has as Condition 1, revisions to the
17 affordable housing conditions. Okay. If you're
18 going to grant those, I think the word "or" should be
19 in as referenced, because that's -- that would make
20 it clear that these are not -- you don't have to meet
21 all of these to be eligible.

22 VICE CHAIR CABRAL: Okay, great. Thank you
23 for clarification.

24 MR. HOPPER: And then moving on, there's --
25 the County did receive other comments from the

1 Department of Parks and Recreation that the park plan
2 in this -- on the site is adequate, but that Maui
3 Land & Pine, pursuant to a zoning condition, is also
4 required to dedicate a 50-acre park -- 50 acres of
5 land to the County for park purposes as part of the
6 West Maui Community Plan update process, the zoning
7 condition, but it was noted by the landowner.

8 In addition, the Department of Public Works
9 was unable to provide comment, so we do not have
10 those.

11 And we do have comments from the Department
12 of Water Supply. The Department of Water Supply
13 noted that there should be consistent statements in
14 the D&O that it's going to be a private water system,
15 not a County system at this point, but that it did
16 recommend that the landowner pursue groundwater
17 resources rather than relying only on surface water
18 resources because of not only the ongoing contested
19 case issues, but also because surface water, there
20 can be issues with climate change as well as weather
21 issues. That was a recommendation from the
22 Department of Water Supply, but they do acknowledge
23 that the system is going to be private and that's
24 something that ultimately would be decided by the
25 Applicant as well as the State Department of Health

1 in approving those systems.

2 So, again, the County does recommend
3 approval as long as the Decision and Order can be
4 adequately amended. We can either work with staff or
5 the landowner on that -- those issues, but that's
6 what the County had provided in its statement.

7 Again, sorry for the late filing yesterday,
8 but that was necessitated because the Decision and
9 Order wasn't up until last week. Thank you.

10 CHAIRPERSON SCHEUER: Before the Petitioner
11 has a chance to ask any questions, Mr. Hopper, I just
12 want to clarify that when you've been referring to
13 the Decision and Order, and when you're referring
14 here on your submittal yesterday to the deficiencies
15 in the amended Decision and Order, it is at least in
16 our filings, the proposed Decision and Order for the
17 Petitioner which you are referring to; correct?

18 MR. HOPPER: Yes. And I believe it's the
19 one that was filed -- the most recently filed one,
20 because there are several of them. That's correct.

21 CHAIRPERSON SCHEUER: Okay. Thank you.

22 Does the petitioner have questions for the
23 County?

24 MR. HOPPER: Mr. Chair, since this was
25 legal argument, we would object to questions to --

1 between counsel. If we had called a witness, we
2 understand that, but we don't generally have
3 questions of each other's counsel. I was referring
4 to that.

5 COMMISSIONER OHIGASHI: Mr. Chair.

6 CHAIRPERSON SCHEUER: Commissioner
7 Ohigashi.

8 CHAIRPERSON OHIGASHI: Permission to ask
9 counsel a question.

10 CHAIRPERSON SCHEUER: Sorry? You are --

11 COMMISSIONER OHIGASHI: For procedural
12 purposes. This is a procedural --

13 CHAIRPERSON SCHEUER: Yes.

14 COMMISSIONER OHIGASHI: Mr. Hopper, you
15 did not offer Ann Cua for cross-examination or
16 examination or answering questions, so I'm assuming
17 that the Chair, when asking if we have any questions,
18 and to -- it would be upon your presentation and the
19 witnesses that you have offered, and have brought
20 here. I'm just assuming that.

21 MR. HOPPER: Mr. Chair, I have no problems
22 answering Commission questions, but I don't -- I
23 didn't think we had cross-examination of opposing
24 counsel as part of this. Again, Ann Cua is here if
25 you want her as a witness to answer questions for

1 you, I'm happy to provide that. But I haven't been
2 in a proceeding yet where there have been questions
3 from counsel to counsel on the legal arguments.

4 CHAIRPERSON SCHEUER: If I may rephrase,
5 Mr. Hopper.

6 Does the Petitioner have questions for the
7 witness you offered.

8 MR. HOPPER: That's fine.

9 MR. KEITH-AGARAN: Yes, I do. Just a few.

10 CHAIRPERSON SCHEUER: Okay. So do you
11 swear or affirm that the testimony you're about to
12 give is the truth?

13 THE WITNESS: Yes.

14 ANN CUA

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

18 CROSS-EXAMINATION

19 BY MR. KEITH-AGARAN:

20 Q Now, Ms. Cua, you were present here
21 yesterday, correct?

22 A Yes, I was.

23 Q And there was a question from Commissioner
24 Ohigashi regarding the income that was 120 to
25 140 percent.

1 A Right.

2 Q And he asked if Maui Oceanview would be
3 amenable to allocating some of the multi-family units
4 towards that income level. Do you remember that?

5 A Yes, I do.

6 Q And would the County object to something
7 like that?

8 A No, we would not.

9 Q And in your work, the County's Residential
10 Workforce Housing Ordinance includes the above
11 moderate income level as one of the income levels for
12 workforce housing; is that correct?

13 A That's my understanding.

14 Q Thank you.

15 I also submitted something this morning. I
16 don't know if you have that in front of you. There
17 was a West Maui Community Plan. It was the Housing
18 Technical Plan. Do you have that in front of you?

19 A Yes, I do.

20 Q Do you recognize what that is?

21 A I'm sorry, I do not. I know -- I don't
22 work on the West Maui Community Plan Update process,
23 so I've not seen this before.

24 Q But are you aware that these technical
25 papers have been prepared?

1 A Yes. I understand that as part of the West
2 Maui Community Plan update process that, you know,
3 technical papers, reports are being prepared.

4 Q In the department, who monitors what
5 projects are moving forward?

6 A Through the community plan or just
7 through --

8 Q Just generally through planning, permit
9 approvals and the like?

10 A I would have to say the Maui Planning
11 Commission and the County Council ultimately because
12 they have the authority to approve land use changes
13 as well as developmental permits for the most part.
14 And then there is also administrative permits that
15 the department is able to approve.

16 So I guess it's a combination of the, you
17 know, the -- the Planning Director, the Maui
18 planning -- Maui Lana'i and Molokai Planning
19 Commission as well as the County Council.

20 CHAIRPERSON SCHEUER: Petitioner, sorry.
21 Procedurally, you introduced this today? You brought
22 this today?

23 MR. KEITH-AGARAN: Yes.

24 CHAIRPERSON SCHEUER: Is this being
25 introduced as an exhibit?

1 MR. KEITH-AGARAN: Yes. I would like to
2 have it introduced.

3 CHAIRPERSON SCHEUER: Okay. Do we know
4 what the sequential letter would be?

5 MR. KEITH-AGARAN: I think it would
6 probably be W.

7 CHAIRPERSON SCHEUER: Okay. So just to
8 check before you continue with your questioning of
9 Ms. Cua.

10 Is there any objection from the parties to
11 the introduction of this into the record as an
12 additional exhibit by the Petitioner?

13 MR. HOPPER: No objection.

14 MS. APUNA: No objection.

15 CHAIRPERSON SCHEUER: Okay. It will be
16 sequentially lettered after the last -- the last
17 exhibit from you.

18 MR. HOPPER: Mr. Chairperson?

19 CHAIRPERSON SCHEUER: Yes.

20 MR. HOPPER: I have been informed that
21 Michele McLean as Director may know a bit more about
22 this plan than Ms. Cua who's in her current
23 condition, so I'm okay with --

24 CHAIRPERSON SCHEUER: You're offering --

25 MR. HOPPER: For this item, it may be more

1 efficient for that purpose.

2 CHAIRPERSON SCHEUER: Okay.

3 MR. KEITH-AGARAN: If I may. You can swear
4 her in, please.

5 MR. HOPPER: Yes, again, like I said, Ann
6 has worked with the developer in making these
7 changes. Michele McLean would know more about this
8 particular document.

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

12 THE WITNESS: Yes.

13 MICHELE MCLEAN

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

17 CROSS-EXAMINATION

18 BY MR. KEITH-AGARAN:

19 Q For the benefit of the Commissioners, can
20 you give me some background how this paper was
21 drafted and prepared?

22 A It was prepared by the staff of our
23 long-range division, along with a number of other
24 technical resource papers for the West Maui Community
25 Plan Update. They consulted as referenced in the

1 document various housing studies and existing
2 entitled projects. It's a culmination of resources
3 available relating to housing in West Maui, compiled
4 by the Planning Department Long-Range Division staff.

5 Q Thank you.

6 Could you turn to Page 9 of that paper?
7 And there should be two graphs there, I mean, two
8 tables there.

9 Could you describe what the two tables are?

10 A Table 3 is labeled Existing West Maui
11 Affordable Housing Project; and Table 4 is labeled
12 Future West Maui Affordable Housing Project.

13 Q If you look at Table 4, can you tell me are
14 there any projects listed there that are offering
15 more than 100 affordable units?

16 A Yes.

17 Q And which projects are those?

18 A Kahoma Village is offering 102. Pulelehua
19 is offering 280. Villages of Leialii, 200.

20 Q Are any of the others that are offering
21 more than 100 of the projects listed?

22 A Yeah, I just read all the ones that are
23 offering 100 and more.

24 Q No. I think your technical paper, do you
25 know when it was prepared?

1 A On the front it's labeled October 15, 2018.

2 Q Are you aware of any others that may have
3 been proposed since the paper was prepared?

4 A There are others in West Maui that are in
5 various stages of proposal, but I wouldn't be in a
6 position to state the number of units or where they
7 are in their development plan at this time.

8 Q So in the technical paper in front of you
9 then, Pulelehua offers the largest number of
10 affordable units?

11 A In this table, yes.

12 Q Thank you.

13 CHAIRPERSON SCHEUER: Is that it for the
14 Petitioner?

15 MR. KEITH-AGARAN: Yes. One last question.

16 Q (By Mr. Keith-Agaran): On Page 11, Table
17 5, so total net -- do you see where total net demand
18 is?

19 A Yes.

20 Q And can you say what that figure is?

21 A Total net demand is a table entitled
22 Housing Demand to 2040, Compared to Existing Supply.
23 The total net demand is 6,923 units.

24 Q Thank you.

25 CHAIRPERSON SCHEUER: Okay. The document

1 that's being referred to will be admitted as --
2 admitted as Petitioner's Exhibit W, and will
3 subsequently, when the staff is able to be posted to
4 the LUC website.

5 (Petitioner's Exhibit W was marked and
6 received into evidence.)

7 Office of Planning?

8 MS. APUNA: No questions.

9 CHAIRPERSON SCHEUER: Okay. Commissioners,
10 questions for the County.

11 Commissioner Okuda.

12 COMMISSIONER OKUDA: Thank you very much,
13 Mr. Chair.

14 Whoever is qualified from the County,
15 including counsel, can answer this question.

16 What is the difference between the project
17 that the current applicant is proposing compared to
18 the concept or the project that Maui Land & Pine had
19 provided, which led to the existing Decision and
20 Order?

21 And you don't have to go detail by detail,
22 but if you can kind of give us basically maybe a
23 broad comparison as far as what's the difference
24 between the two?

25 WITNESS McLEAN: There are four general

1 areas of differences; I'll categorize them into four
2 different areas. The first is the affordable
3 percentage. The original percentage was in the range
4 of 50 or 51 percent. And the current proposal is in
5 the range of 31 percent if you include the 125 units
6 required for Kapalua Mauka.

7 The other area is that the original
8 proposal was a mix of sales and rentals, and the
9 proposal being presented is a majority of rentals,
10 800 rentals versus 100 sales. Related to that the
11 difference -- there are differences in the site plan,
12 and the types of housing. Before it was quite a bit
13 of single-family with some multi-family, and what is
14 being proposed is predominately multi-family.

15 800 multi-family units and 100,
16 single-family, also with a little less commercial
17 space than what was originally proposed. And where
18 those differences are located throughout the site, so
19 the site plan is different.

20 And then lastly this is one of the issues
21 we raised in our filing yesterday is clarifications
22 on water and wastewater, whether those will be public
23 or private or some sort of combination of the two.

24 COMMISSIONER OKUDA: And thank you for that
25 summary of the differences.

1 Looking at what Maui Land & Pine had
2 conceptualized or planned or represented which led to
3 the initial or the current Decision and Order, and
4 comparing that with what you have summarized as the
5 current proposal, using your collective expertise,
6 education and the knowledge you have as far as what
7 the County and the citizens of the County of Maui
8 need or want or desire, is the current plan that's
9 being proposed an improvement on what Maui Land &
10 Pine had earlier proposed or conceptualized, or is it
11 not an improvement, or we just don't know at this
12 point in time?

13 WITNESS McLEAN: If I could, I would demure
14 from you using the word "improvement". What I would
15 rather say is that the original plan and the proposed
16 plan both meet the important needs for West Maui. I
17 would say it's an eye of the beholder kind of thing.
18 Some people prefer single-family homes, others prefer
19 apartments, some people want to be able to buy.

20 We heard a lot of testimony yesterday about
21 people wanting to buy. We have heard overwhelmingly
22 through the West Maui Community Plan process that
23 there is a need for rentals in West Maui, so I
24 can't -- I wouldn't be in a position to say that
25 sales are better than rentals or that single-family

1 is a better way to provide housing than multi-family.
2 There is a need for both, so I would say
3 "improvement".

4 I would say both plans, the original plan
5 and the plan proposed today both meet important
6 needs.

7 COMMISSIONER OKUDA: Okay. But the reason
8 why I'm asking for an answer, and it's a hard
9 question, yeah, because I know you folks as
10 professional planners, you really don't want to act
11 like the deity telling everybody what to do, and I
12 respect the County of Maui that you really try to
13 take all things into consideration, but -- and I'll
14 tell you how my limited mind works here.

15 If there's no evidence, or if the County is
16 not going to present a position that this plan is an
17 improvement, the danger for me is I revert to my
18 narrow lawyer mind, which is, oh, wow, you know, we
19 got to respect the prior order that's been entered.

20 And as the chair pointed out, we got to see
21 good cause to change the prior order. Because if
22 there isn't good cause on the record, the prior order
23 which resulted from this long process and procedure
24 is something that we're just going to have to live
25 with.

1 And so, I mean, can you -- if you can think
2 -- you can answer the question based on your
3 professional expertise.

4 Is the present plan an improvement over
5 what Maui Land & Pine had proposed or conceptualized
6 before?

7 WITNESS McLEAN: Any plan that meets the
8 needs of that community that has a realistic chance
9 of being developed is an improvement over a plan that
10 would not move forward and provide housing.

11 COMMISSIONER OKUDA: Okay. And let me just
12 say, personally, I agree with that statement coming
13 from the private sector that a good idea that doesn't
14 make money is just going to be a terrible idea.

15 Let me ask this question then: In your
16 professional judgment -- or anyone can answer this
17 question -- how realistic is it to have compliance or
18 performance with the current affordable housing
19 conditions that are in the existing Decision and
20 Order?

21 WITNESS McLEAN: Speaking in generalities,
22 not to this project in particular, but it certainly
23 applies to this project. The County Council changed
24 the County's Workforce Housing Policy from a
25 50 percent requirement in most cases to 25 percent

1 because they found that projects were not being built
2 with that 50 percent requirement.

3 I don't have specific knowledge about this
4 project that would lead me to conclude that the
5 50 percent requirement is what led to it not being
6 built. I can say that in general terms, that
7 contributed greatly to the development slow down
8 after the County's similar policy was put into place
9 in 2006.

10 COMMISSIONER OKUDA: So to put it in plain
11 English, if you had to bet money, it's more likely by
12 betting money you would have a better chance of
13 greater return by betting on the proposal that's
14 being presented now as far as whether it's going to
15 really result in affordable housing as compared with
16 putting your money and betting that the original
17 requirements under the Decision and Order, whether
18 that higher amount will be really in fact yield to
19 the development, the building and ultimate occupancy
20 of affordable housing. Is that your testimony?

21 WITNESS McLEAN: I would take that bet,
22 yes.

23 COMMISSIONER OKUDA: You would take that
24 bet, okay.

25 And your office has dealt with Mr. Cheng

1 and members of his team; is that correct?

2 WITNESS McLEAN: Yes.

3 COMMISSIONER OKUDA: And in your dealings
4 with them, have they ever done anything which led you
5 to question their integrity, their honesty or their
6 good faith?

7 WITNESS McLEAN: No.

8 COMMISSIONER OKUDA: Okay. Now, you've
9 explained the differences or listed or summarized the
10 differences between the proposed changes and the
11 prior Maui Land & Pine concept or plan.

12 Do you believe that there might be even a
13 small chance that this new proposal might be found to
14 be, and I quote, essentially a different action as
15 that term is used in the unite five or -- I'm sorry,
16 Unite Here Local 5 versus City and County of Honolulu
17 case? That's the Hawaii supreme court case that
18 says, if you have like what essentially is a
19 different project, you got to come up with a
20 Supplemental Environmental Impact Statement?

21 Is that a potential issue here? I'm not
22 asking you to give the definitive of legal argument.
23 And I'm not even asking for you to give the County's
24 ultimate position on that, but is that a potential
25 issue?

1 MR. HOPPER: I do think -- I mean, actually
2 cited the case --

3 Sorry, Michael Hopper, with Deputy
4 Corporation Counsel.

5 CHAIRPERSON SCHEUER: Just go close to the
6 mic.

7 MR. HOPPER: Closer to the mic, okay.

8 I think you are asking a legal question
9 based on case law as to whether a Supplemental EIS
10 would be required in this case. I think that's
11 ultimately a determination of the Land Use
12 Commission.

13 The County has done a separate briefing on
14 that issue, but I think that's ultimately an issue up
15 to the LUC and for the Petitioner to show them what
16 is not required in this case.

17 COMMISSIONER OKUDA: But a risk is that if
18 ultimately the supreme court were to decide that a
19 Supplemental Environmental Impact Statement is
20 required, even if this is a good project, and we
21 don't have a supplemental EIS, everything could be
22 basically unwound or put a halt to and the
23 development of the project setback, correct?

24 MR. HOPPER: You mean, theoretically if any
25 project had any differences, became here for a Motion

1 to Amend without a Supplemental EIS, someone could
2 try to make that argument.

3 COMMISSIONER OKUDA: Yeah, okay. So that's
4 a potential risk.

5 A final question. It's based on your
6 collective experience and as public servants, do you
7 believe there's a benefit to the community and maybe
8 even to the project if there was a Supplemental
9 Environmental Impact Statement prepared in this case,
10 whether one is legally required or not?

11 MR. HOPPER: It's a difficult question I
12 think to answer if in theory a Supplemental EIS were
13 required, if that would be a community benefit. I
14 don't think that that's a question I can answer.

15 COMMISSIONER OKUDA: Okay. Thank you very
16 much, and thank you very much for your testimony.

17 CHAIRPERSON SCHEUER: Thank you.
18 Commissioners?

19 Commissioner Chang?

20 COMMISSIONER CHANG: Good morning. Thank
21 you so much for your being here and your testimony.

22 I just have several questions and let me
23 follow up on Commissioner Okuda's question. And
24 maybe this is for the Planning Director.

25 Has there been any project where the

1 50 percent affordable housing requirement has
2 proceeded forward that you are aware of?

3 WITNESS McLEAN: I'm not aware of any
4 project that was subject to the County's 50 percent
5 affordable requirement that moved forward; however,
6 there have been projects that provided 100 percent
7 affordable through their own initiative not subject
8 to the County's requirement.

9 COMMISSIONER CHANG: But in many instances
10 where there is like a portion of affordable housing
11 requirement, that's usually negotiated because you
12 have some -- they're also doing market, market homes?

13 WITNESS McLEAN: Correct.

14 COMMISSIONER CHANG: Okay.

15 WITNESS McLEAN: There is the 201H process
16 that has minimum 51 percent requirement, so those
17 have proceeded, but not subject to the County's
18 50 percent requirement, as far as I know.

19 COMMISSIONER CHANG: Okay. When the County
20 made its determination to reduce the 50 percent to
21 25 percent, was there -- was that a policy decision
22 that required community public hearings or community
23 participation in that determination?

24 WITNESS McLEAN: We refer to it as the
25 Workforce Housing Policy, but it is, in fact, in the

1 County code, so the change from 50 percent down to 25
2 percent required an amendment to the County code that
3 was enacted by the County Council.

4 COMMISSIONER CHANG: So that was subject to
5 these County public hearings before the County
6 Council?

7 WITNESS McLEAN: Correct.

8 COMMISSIONER CHANG: And under the
9 25 percent affordable housing requirement, have
10 projects proceeded to actual construction?

11 WITNESS McLEAN: My understanding is yes.
12 That's just a general belief, but I need to couch
13 that with saying I don't have specific examples.

14 COMMISSIONER CHANG: So the determination,
15 that policy to change the 25 percent reduction from
16 the original 50 percent, and when this -- when the
17 Land Use Commission made issued the D&O on this Maui
18 Land & Pine, that 50 percent was -- let me ask you
19 this.

20 Was that the existing County requirement?

21 WITNESS McLEAN: No, it was not. That was
22 actually pointed out to me yesterday. That change in
23 the County code that put in that 50 percent
24 requirement for the first time was enacted about five
25 months after the D&O was established.

1 COMMISSIONER CHANG: Was there -- I'm
2 sorry.

3 WITNESS McLEAN: And prior to that, it was
4 more in a case-by-case basis depending on the
5 project. Projects would be required to enter into an
6 agreement as a condition of approval -- enter into an
7 affordable housing agreement as a condition of
8 approval, but it was more on a case-by-case basis
9 depending on the need in the area.

10 COMMISSIONER CHANG: So it was subject to
11 negotiations between the developer and whether it
12 would be the County, but it was subject to
13 negotiation. It wasn't a County ordinance that
14 guided, or policy that guided the affordable housing
15 requirement?

16 WITNESS McLEAN: Correct. Although I would
17 say that agreements today are still, in fact,
18 negotiated, but there is a baseline in the County
19 code.

20 COMMISSIONER CHANG: So that's the minimum
21 is whatever is in the County code, and the proponent
22 can offer something in excess of that?

23 WITNESS McLEAN: Correct.

24 COMMISSIONER CHANG: And I may not have
25 been paying a lot of attention yesterday although I

1 thought I did, but in the report, the summary of the
2 housing breakdown that was provided by Mr. Hopper,
3 520 are market units, 100 single family, and 155 are
4 workforce housing units.

5 But I thought that this -- I thought the
6 Petitioner said there was going to be all affordable
7 rentals. Is there a distinction between affordable
8 rentals and market units, or did I miss -- did I
9 misread something?

10 CHAIRPERSON SCHEUER: Commissioner Chang,
11 is your question for the County, or is it for the
12 Petitioner?

13 COMMISSIONER CHANG: Well --

14 CHAIRPERSON SCHEUER: Because you're --
15 you're asking a question about something you believe
16 you heard the Petitioner say.

17 COMMISSIONER CHANG: Well, the County gave
18 me some numbers today. So I just want to make sure
19 they're consistent with what I heard yesterday.

20 MR. HOPPER: I think the 520 market rate
21 rental units is correct, I believe.

22 COMMISSIONER CHANG: And the affordable is
23 the 155?

24 MR. HOPPER: That's correct. Required by
25 this project. There's also 125 required by another

1 project that are being built here.

2 COMMISSIONER CHANG: So that's really, in
3 essence, that's really another project --

4 MR. HOPPER: That's correct.

5 COMMISSIONER CHANG: So the requirement is
6 really the 155?

7 MR. HOPPER: That's correct. For this
8 project, that's right.

9 COMMISSIONER CHANG: And the 520 are market
10 units?

11 MR. HOPPER: Rentals units, yes.

12 COMMISSIONER CHANG: Market rental units?

13 MR. HOPPER: Exactly I believe what's in
14 the filing. And the Petitioner can maybe clarify
15 what was stated yesterday, but that's our
16 understanding from the filings.

17 COMMISSIONER CHANG: Okay. And maybe this
18 is a question for Mr. Hopper.

19 You had asked at the beginning of your
20 presentation, you were explaining to the Commission
21 why there has been -- why you just filed it yesterday
22 because you got a late filing. And it appears as if
23 not all of your agencies had an opportunity to review
24 the revised D&O; is that correct?

25 MR. HOPPER: That's correct. And we did

1 not have comments in the record from the Department
2 of Public Works at the time we provided the filing,
3 and we did note that.

4 COMMISSIONER CHANG: Okay. And you were
5 willing to accept any action conditioned upon making
6 some amendments, but would you rather have more time
7 for your different departments to review the revised
8 D&O before it's subject to, would that be your
9 preference that you have more time to review that?

10 MR. HOPPER: I think that's ultimately the
11 Commission's decision. But if that's given, we
12 would take that to confirm that with the agencies
13 and provide you with additional information if we
14 would get it.

15 COMMISSIONER CHANG: Okay. This is my last
16 question, and may be this is for Ms. Cua.

17 Because it appears as if you had more
18 interactions with the Petitioner; is that correct?

19 WITNESS CUA: Both the Director and myself
20 had numerous meetings with the Petitioner.

21 COMMISSIONER CHANG: Okay. I will let --
22 both of you can decide. My question is, in
23 yesterday's -- Mr. Cheng had indicated that when he
24 purchased the property, he was assuming that this
25 25 percent reduction, that the County's new

1 affordable housing requirement would apply to
2 his project.

3 Did the County at any time indicate to him
4 that that still required LUC -- he had to go through
5 the LUC process to amend the D&O?

6 WITNESS CUA: I don't recall having that
7 particular conversation with him. Most of our
8 discussions with him dealt with the site plan. We
9 did, though, make it very clear that because the site
10 plan we were looking at was different, you know, it
11 was the not exact same plan. We said, you know,
12 we felt it needed to come back to the Commission for
13 them to look at it, for them to determine if they
14 felt the project could proceed, and then and only
15 then would we be in the position to accept project
16 district Phase II application, which is the next part
17 of the County process for this project to proceed.

18 COMMISSIONER CHANG: Okay. Thank you very
19 much.

20 CHAIRPERSON SCHEUER: Commissioner
21 Giovanni?

22 We are starting a collection of funds for
23 better and more microphones for the LUC. Please see
24 the committee clerk for donation forms.

25 COMMISSIONER GIOVANNI: Thank you all for

1 your testimony today. I still have a few confusing
2 questions I hope you can clear up, starting with the
3 numbers.

4 So the 51 percent from the original project
5 that you said went from 51 percent to 31 percent
6 which included the Kapalua 125. If I take the 125
7 out, it went from 51 percent to something on the
8 order of 20 percent; is that correct?

9 WITNESS McLEAN: That's correct.

10 COMMISSIONER GIOVANNI: What were the
11 original numbers for the Maui Land & Pine proposal
12 that gave you 51 percent; do you recall?

13 WITNESS McLEAN: The original D&O I believe
14 referenced 882 units. And then 50 percent,
15 51 percent of those --

16 COMMISSIONER GIOVANNI: And 51 percent of
17 those, did they include or not include the Kapalua?

18 WITNESS McLEAN: Our understanding is that
19 it did.

20 COMMISSIONER GIOVANNI: Similar to how
21 you're applying it now?

22 WITNESS McLEAN: Yes.

23 COMMISSIONER GIOVANNI: Okay.

24 We heard testimony yesterday from the
25 Petitioner and his consultant that the original

1 project was not economically feasible, and that the
2 Petitioner stated that he understood that by virtue
3 of due diligence when he actually made the purchase
4 decision for the property.

5 So I take away that he had an understanding
6 that he had to reconfigure and redesign the project.
7 Is that a fair statement, Mr. Cheng?

8 MR. CHENG: Yes. There were physical
9 problems with it.

10 COMMISSIONER GIOVANNI: And once that was
11 understood, you went to the County, and the County
12 participated in the negotiation of the affordable
13 housing agreement that basically defines the project
14 we have now. Is that correct?

15 MR. CHENG: Yes, sir.

16 COMMISSIONER GIOVANNI: So I kind of view
17 that process to be similar to a three-legged stool,
18 where you have the County's interest and you have the
19 developer's interest and you have the community's
20 interest. But I don't see where the community was
21 involved in that very important process to
22 reconfigure this project from what it was to what it
23 is now proposed to be.

24 Can you -- am I correct in that
25 observation? Or do you feel that you -- either the

1 County or the Petitioner adequately involved the
2 community in this reconfiguration? It not only
3 changed the numbers, but changed it from one of which
4 we could buy a lot more single house -- a lot more
5 purchases to basically a rental unit project, either
6 one or both?

7 WITNESS McLEAN: When we had our initial
8 discussion with the Petitioner, we did ask that he
9 conduct some community engagement. And from that
10 point, we left it to the Petitioner to inform and get
11 input from the community.

12 COMMISSIONER GIOVANNI: So the timing of
13 that request, was that before or after the meeting he
14 had at Grand Hyatt where he had -- he told me it
15 was -- that was before, so then you had the meeting
16 at Grand Hyatt.

17 MR. CHENG: So, sir, as Gil testified
18 earlier from the West Maui exhibit that you had,
19 there's a net 7,000 -- yes, it was before, yes.

20 COMMISSIONER GIOVANNI: What was before?
21 Which was first? The negotiations?

22 MR. CHENG: Yeah, we started negotiating,
23 and then they said, hold a town hall, and I did. And
24 that's --

25 COMMISSIONER GIOVANNI: Okay. That's all I

1 have right now. Thank you.

2 CHAIRPERSON SCHEUER: Thank you.

3 Other Commissioners?

4 I have a series of questions but one that
5 sort of gets to the procedural place that we're at,
6 so I'm very interested in some of my other questions.
7 But procedurally you filed this yesterday -- it was
8 yesterday. And I'm not commenting on why it was
9 filed late or your explanation about it, but a number
10 of the items seem to be more than just grammatical
11 changes, right, or changes of words?

12 For instance, on Page 2 of 5, Item No. 10,
13 it notes that on Page 16, ohana units should be
14 addressed, sort of an open-ended question.

15 So what the Commission has in front of us
16 today is this motion. We can do a number of things
17 on our own volition. We can deny. We can accept, we
18 can modify, we can defer.

19 Just to be honest, at this point in the
20 proceeding, it seems like there's a lot of open
21 questions including some of the things raised by your
22 own argument, so I want to clarify the County's
23 position.

24 You're saying you're fine with the D&O, but
25 you're also acknowledging that you haven't heard from

1 Public Works, and there's a bunch of things to be
2 worked out in terms of this document.

3 So how would you suggest we could possibly
4 take an action to approve today that would
5 incorporate the ability to address some of the known
6 and unknown County concerns?

7 MR. HOPPER: The County would note we
8 didn't suggest scheduling the meeting with this
9 timeframe. We presumed that the Commission was
10 interested in taking action today, yesterday or
11 today, and so we tried to get you the best documents
12 that we could and a position on action.

13 I agree with your statement. Those are all
14 good points. We prepared this in an effort to, if
15 you did take action, to at least try to get the D&O
16 in as good a position as we possibly could going
17 forward so that we weren't stuck with a D&O that we
18 have to come back to you and say, we need another
19 motion to amend, to fix the D&O.

20 But we didn't -- we in no way pressed for
21 this meeting schedule. In fact, we wanted to have
22 60 days from the final filing, which was last week,
23 to give to the agencies to give comments.

24 CHAIRPERSON SCHEUER: Mr. Hopper, I didn't
25 mean to suggest that you pressed for today's meeting

1 schedule. When the LUC -- as you know, we have to
2 juggle the schedules of nine volunteers, the
3 availability on their calendar, the demands of other
4 dockets, the 365-day deadline from the completion of
5 a full, you know, what is considered by the --
6 determined to be a full petition, to take action on
7 it. Those are all factors that we consider.

8 It wasn't suggesting that you were asking
9 for today's hearing. But thank you for the response
10 to the core part of the question, which was, you
11 would happily use more time before action was taken?

12 MR. HOPPER: That's correct.

13 CHAIRPERSON SCHEUER: Thank you.

14 Very briefly for the record, a few other
15 points. Does this -- I understand in your
16 calculations that you've gone over orally,
17 recently -- or this morning, you were considering the
18 125 units in Kapalua Mauka as separate from the
19 affordable housing requirements for here?

20 MR. HOPPER: They are separate; that's
21 correct.

22 CHAIRPERSON SCHEUER: In the Petitioner's
23 proposed language, it actually removes that statement
24 of being excluded and says it's being included.

25 MR. HOPPER: Well, Mr. Chair, you're

1 referring to the proposed Decision and Order?

2 CHAIRPERSON SCHEUER: Correct.

3 MR. HOPPER: Yes, I -- it is correct in
4 paragraph 1B of the condition, it's now saying 325 to
5 280, which total includes the 125 Kapalua Mauka
6 units. So I think in that paragraph, that's correct.

7 CHAIRPERSON SCHEUER: So are you proposing
8 language to clarify the County's take that the
9 Kapalua Mauka units are not -- are intentionally in a
10 separate from the pool of units?

11 MR. HOPPER: I believe that's something
12 that could be done. I think the statement is
13 correct. Currently it says 280 affordable housing
14 units, and then the underscored language which total
15 includes the 125 Kapalua Mauka units.

16 I do get your point that the word -- the
17 No. 155 doesn't appear here, and that's the actual
18 requirement for this project.

19 CHAIRPERSON SCHEUER: Thank you.

20 Is there anywhere -- and this could be for
21 any of you, but from the County. Is there anywhere
22 in the County code that differentiates between when
23 it says "developer," when it calculates how many
24 units a developer must produce that differentiates
25 between rental units and for sale units? Because we

1 had an interesting discussion in part of yesterday
2 that talked about, well, what is, you know, what is a
3 unit really, right?

4 Does the County unit actually measure the
5 impact on our families that we are trying to achieve.

6 MR. HOPPER: Mr. Chair, my understanding is
7 that a rental unit and a single-family unit are
8 considered to be one unit for market, for the
9 purposes of calculating the number of market units.
10 But I could go through the code and get a clearer
11 answer on that, or we could ask Housing and Human
12 Concerns first.

13 CHAIRPERSON SCHEUER: But for the
14 affordable units, so not counting the amount of
15 market units being produced, but for calculating the
16 number of affordable units that must be produced in
17 relationship to the number of market units being
18 produced, is a unit a unit whether it's for sale or
19 for rental?

20 MR. HOPPER: Yes, I believe so. There is a
21 variety of ways to satisfy the requirement, including
22 building. I believe that there can money
23 contributions as well, but I believe that it is -- a
24 rental unit is considered -- can be credits and other
25 units as well. The ordinance has as variety of

1 options, but I believe their statement is generally
2 correct, that the rental units can be affordable
3 units in the same way as housing units are.

4 CHAIRPERSON SCHEUER: Okay. And when you
5 calculated the number of market units that were the
6 basis for calculating the number of affordable units
7 required under current County ordinance, are ohana
8 units part of the calculation of market units?

9 MR. HOPPER: My understanding is that in
10 this case, because the ohana units were not being
11 constructed and that would be -- they would maybe or
12 maybe not be constructed. They were not counted in
13 the number of total market rate units as far as the
14 affordable housing agreement.

15 CHAIRPERSON SCHEUER: Even though it's
16 presumably like created over time, they will be
17 constructed?

18 MR. HOPPER: Well, it -- it's possible,
19 yes, that they would.

20 CHAIRPERSON SCHEUER: Okay. The last
21 thing -- and this is really a rephrasing of
22 Commissioner Okuda's very useful questions.

23 He asked whether this proposal is an
24 improvement over the last proposal. I would
25 rephrase, is this propose -- does the County believe

1 that there is good cause in this amendment for this
2 amendment to be put forward? And if you do, where in
3 the record do you believe there is good cause, which
4 is ultimately, right, what we have to -- we can't
5 take action unless on the record we believe there is
6 good cause to take action to change what was done
7 before, even if, you know, we might personally think
8 yeah, what was done before, you know, who were those
9 guys, you know, but it doesn't matter.

10 MR. HOPPER: I do think some of your
11 statements -- questions yesterday about more in the
12 record about economic hardship of the original
13 project. We do take that point. I think the
14 County's position was that this doesn't meet the
15 affordable housing requirements that the County
16 Council set forth in its agreement, and therefore,
17 that's why I believe the Motion to Amend could
18 proceed.

19 CHAIRPERSON SCHEUER: But there is nothing
20 specifically that you could point to on the record
21 that shows good cause for amending the previous
22 Decision & Order?

23 MR. HOPPER: We believe the project is in
24 compliance with the County code, and that's why the
25 County has taken a position that you can do the

1 amendment. Again, ultimately this decision is up to
2 you, but we don't have anything specific other than
3 our position statement to add to that.

4 CHAIRPERSON SCHEUER: Thank you, Mr.
5 Hopper.

6 Is there anything else from the
7 Commissioners? If not, the office of -- well, let's
8 see, time check. Let's take -- if there is nothing
9 else for the County, let's take a ten-minute recess
10 to 10:48, and then we will proceed with the Office of
11 Planning.

12 (Recess taken.)

13 CHAIRPERSON SCHEUER: 10:49, we are back on
14 the record.

15 We are going to proceed with the Office of
16 Planning. We had concluded questions for the County.
17 Office of Planning, Ms. Apuna.

18 MR. KEITH-AGARAN: Mr. Chair, before we do
19 that, given the concerns that have been expressed by
20 the Commissioners, and I think the filings by both
21 the County and by the Office of Planning, we would
22 request that maybe we defer this. That would allow a
23 couple of things.

24 That would allow us to work with the County
25 on the language of the proposed D&O, as well as allow

1 the agencies from both the County and the State to
2 take a look at the materials that have been filed,
3 and it would probably be more useful for the
4 Commission to hear from the Office of Planning after
5 we've had that opportunity.

6 CHAIRPERSON SCHEUER: I'm going leave it up
7 to the Office of Planning, whether they want to
8 present right now.

9 I would personally, just in the interest of
10 knowing where forks are right now, prefer to spend a
11 few minutes hearing from OP, knowing that we are
12 moving -- at least the Petitioner has gone.

13 The record is requesting a deferral for
14 certain reasons, and I'd like us to be, if we choose
15 to defer, be really clear about what we want to
16 accomplish by when.

17 What is the preference of the Office of
18 Planning?

19 MS. APUNA: That's fine. I don't have a
20 very long statement that I could add to the record.

21 CHAIRPERSON SCHEUER: Okay. Go ahead.

22 MS. APUNA: Thank you, Chair.

23 So the Office of Planning has reviewed
24 Petitioner's filing for its Motion to Amend.
25 However, like the County, due to time constraints and

1 the numerous Petitioner filings, OP and State
2 agencies that OP had asked for review were limited in
3 their review of the Motion. Some agencies were only
4 able to review up to and including Petitioner's
5 Second Supplemental Filing, and some did not respond.

6 For example, Department of Education, they
7 responded but only to the original motion. HHFDC
8 also only responded to the original motion. Office
9 of Hawaiian Affairs responded to this first -- to the
10 original motion, and they had some concerns about
11 less affordable housing and the potential or the
12 possible need for a new EIS, but we did not hear from
13 them on subsequent -- actually, we provided the
14 Second Supplemental filing to the agencies, and that
15 was all we were able to give the agencies.

16 Commission on Water Resources Management,
17 we did not receive a response. SHPD, no response.
18 U.S. Fish and Wildlife Service, no response, and
19 Civil Defense, no response.

20 Excuse me. We did receive a response from
21 DOT. And so I think at this point, the Office of
22 Planning, based on the information that we did have
23 available to us, we would recommend approval, but a
24 conditional approval based on some conditions that
25 DOT had offered.

1 It's in our position statement, but I can
2 provide the language that we were hoping to include
3 for those conditions.

4 So Condition No. 5, DOT is looking for
5 revisions which reads:

6 **Transportation Improvements.** Petitioner
7 shall submit an updated TIAR to DOT for the review
8 and acceptance prior to start of construction for
9 Scenario 3, which includes Phase 3, 4 and 5. The
10 updated TIAR shall also verify the validity of
11 recommended improvements related to the new
12 elementary school operation anticipated to be
13 completed by approximately year 2035. To the
14 satisfaction of DOT, as recommended or required in
15 the accepted TIAR, the Petitioner shall construct and
16 ensure operation of all improvements related to the
17 State Honoapiilani Highway for each phase or scenario
18 prior to the first Certificate of Occupancy for the
19 associated phases.

20 Petitioner shall coordinate with DOT to
21 provide any necessary roadway setbacks for future
22 roadway improvements on the State Honoapiilani
23 Highway.

24 And then DOT has also asked that a new
25 Condition be added. It's titled **Regional Highway**

1 **Contribution.** Petitioner shall apply its regional
2 highway pro-rata contributions to the nearby Lahaina
3 Bypass for the construction of Phase 1C, resulting
4 from the total calculation of Phase 1A, 1B-1, 1B-2
5 and 1C. The Petitioner shall meet with DOT to
6 determine the specific contribution amount and
7 timetable that is mutually agreeable to DOT.

8 So additionally, Office of Planning agrees
9 with the County and one of the testifiers that the
10 proposed Condition 1D with regard to the requirements
11 for the rentals, that there should be some
12 clarification. I think there needs to be an "or" and
13 an "and" inserted in there.

14 And also that, I think that Petitioner has
15 proposed switching out the term Petitioner for Maui
16 Oceanview LP, but we believe it should remain.
17 Quote, "Petitioner", so that it will -- the
18 conditions will run with the land not just to Maui
19 Oceanview LP.

20 CHAIRPERSON SCHEUER: Ms. Apuna, you're
21 reviewing your written submittal to this Commission,
22 correct?

23 MS. APUNA: I'm reviewing my -- yes.

24 CHAIRPERSON SCHEUER: Okay. So just to
25 clarify, where we are now, the Petitioner has

1 suggested deferral.

2 You indicated on one hand you'd be fine to
3 go forward conditionally. Do you object to a
4 deferral, or are you okay with a deferral?

5 MS. APUNA: No. I think we would
6 appreciate a deferral in order to receive more agency
7 comments if they should come in.

8 CHAIRPERSON SCHEUER: Okay. Commissioner
9 Ohigashi?

10 COMMISSIONER OHIGASHI: Is there a
11 relationship with DOT Airports and the existing
12 airports?

13 CHAIRPERSON SCHEUER: I'm so sorry.
14 Actually, procedurally, I didn't know -- I thought
15 you were asking more of a procedural question.

16 COMMISSIONER OHIGASHI: Yeah, I didn't --

17 CHAIRPERSON SCHEUER: There was no witness
18 called by OP. And you were planning to call --

19 MS. APUNA: I can call Aaron Setogawa.

20 CHAIRPERSON SCHEUER: Or do you want him
21 available for questioning by --

22 MS. APUNA: Sure.

23 CHAIRPERSON SCHEUER: Okay. So
24 procedurally what we'll do is I just wanted to ask a
25 quick question. We'll allow the Petitioner to ask

1 questions of OP when they're concluded. County if
2 there are any, and then we can go to questions if
3 that's okay.

4 Are you done for now?

5 MS. APUNA: Yes, I'm done for now.

6 Okay. Do you have any --

7 MR. KEITH-AGARON: No questions.

8 CHAIRPERSON SCHEUER: No questions by the
9 Petitioner.

10 County?

11 MR. HOPPER: No, not at this time. Thank
12 you, Mr. Chair.

13 CHAIRPERSON SCHEUER: Okay. Mr. Ohigashi?

14 COMMISSIONER OHIGASHI: I'm just curious
15 about -- because we had public testimony from the
16 Hawaiian Airlines representative. I wondered if
17 there's a relationship between the DOT Airports
18 Division and the airport that's located, what is it
19 called -- Kapalua Airport that is located I guess
20 north above mauka of the proposed project?

21 MS. APUNA: I'll have Mr. Setogawa answer.

22 CHAIRPERSON SCHEUER: Aloha.

23 MR. SETOGAWA: Aloha.

24 CHAIRPERSON SCHEUER: Speak right into the
25 microphone.

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

3 THE WITNESS: I do.

4 AARON SETOGAWA

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

8 THE WITNESS: Commissioner, in answer to
9 your question, Kapalua Airport is a State airport.
10 It's owned by the State of Hawai'i, and it's part of
11 the airport system.

12 COMMISSIONER OHIGASHI: Are you requesting
13 comments from the Airports Division? I only heard
14 the DOT'S traffic, Highway Division.

15 THE WITNESS: I understand.

16 We received -- the letter of comment we
17 received was from both airports and highways. The
18 reason we were talking about highways, those are the
19 only amendments we were suggesting to the conditions.
20 The existing conditions that affect airports are
21 still valid, and we don't expect that to change.

22 COMMISSIONER OHIGASHI: Given the testimony
23 from Hawaiian Airlines representative, public
24 testimony from Hawaiian Airlines representative,
25 would there be any type of Airport Division response

1 necessary to those comments?

2 THE WITNESS: I'm not sure what Hawaiian
3 Airlines -- I think her name was England, she said
4 yesterday, Ohana Airways, which operates out of
5 Kapalua Airport is owned by Hawaiian Airlines. They
6 are a tenant in the airport.

7 As far as Airports Division was concerned,
8 all of the operational and safety issues are being
9 addressed by the Petitioner and they're -- and the
10 runway safety zone also has access to the road,
11 airport through Akahale Road.

12 I'm not sure what Hawaiian Airlines'
13 concerns would be, but certainly I will convey the
14 fact that she testified back to the department so
15 that they can pursue it.

16 COMMISSIONER OHIGASHI: I hope so, so we
17 can see if there's any responses.

18 THE WITNESS: Yes.

19 COMMISSIONER OHIGASHI: Thank you.

20 CHAIRPERSON SCHEUER: Okay. Commissioners,
21 are there other questions for the Office of Planning?

22 Yes, Commissioner Giovanni.

23 COMMISSIONER GIOVANNI: Thank you for your
24 update and testimony today. I'd like to set the
25 context for my question.

1 I first became acquainted, very fondly
2 acquainted with West Maui in 1971 and visited many
3 times through 2004. 2004 was when the EIS was done,
4 if I'm not mistaken. Then I did not have the
5 occasion to return to West Maui until last week. And
6 when I got off the plane at Kapalua, I wasn't sure if
7 I was in West Maui or Waikiki. So that's the context
8 for my question.

9 Is it the Office of Planning's position
10 that the EIS that was done in 2004 is still
11 applicable? Or would a supplemental or some form of
12 an update be more appropriate?

13 MS. APUNA: Yeah, I think that, like the
14 County, I think we haven't vetted that particular
15 question. We would probably have to go back and do
16 further analysis to answer that.

17 COMMISSIONER GIOVANNI: So that would also
18 be helpful for the deferral if you have more time to
19 address that specific question.

20 MS. APUNA: Certainly, yes.

21 COMMISSIONER GIOVANNI: Thank you.

22 CHAIRPERSON SCHEUER: Commissioner Okuda?

23 COMMISSIONER OKUDA: Thank you, Chair, but
24 Commissioner Giovanni asked the question that I had
25 intended to ask, so thank you.

1 CHAIRPERSON SCHEUER: Okay.

2 Commissioner Cabral.

3 VICE CHAIR CABRAL: If we take a recess or
4 defer this to another hearing at a future date, I
5 would like to have the Petitioner and all parties
6 involved to really try and provide us really clear
7 road map of what's going on, the numbers, the changes
8 and that.

9 Based on the variety of information I read
10 beforehand and received yesterday and today, it's --
11 there has -- it's been a little muddy, so
12 clarification would really help me. Thank you very
13 much.

14 CHAIRPERSON SCHEUER: Okay. So I'm going
15 to look with one eye on my Executive Officer and one
16 eye on my Attorney General as I suggest what we
17 should do now.

18 I want to take a five-minute recess. And
19 in that recess, I want each of the parties and each
20 of the Commissioners to write down what they want to
21 see done during a deferral period.

22 We have a tentative window on our schedule
23 of December 4th and 5th where we could possibly be on
24 island again. That may or may not be sufficient to
25 actually achieve the things that we want to do during

1 a deferral period.

2 But if we take a five-minute recess, we
3 would then come back in, and then I would go one by
4 one to the Petitioner, the County, the Office of
5 Planning and the Commissioners for their suggestions
6 of things they'd like to see addressed during the
7 deferral period.

8 And then based on that, the Commission
9 could enter deliberations on a motion to defer.

10 Is that okay with the parties? Okay. Take
11 five minutes to talk amongst yourselves. We'll
12 reconvene at 11:08.

13 (Recess taken.)

14 CHAIRPERSON SCHEUER: It's 11:10 a.m., and
15 we are back on the record.

16 We're going to go through the order that I
17 described, and ask the parties and the Commissioners
18 to identify issues that they'd like to have addressed
19 in the deferral period.

20 MR. KEITH-AGARAN: Petitioner obviously
21 would like to work with the County on the proposed
22 D&O, and I think it was probably -- if the Office of
23 Planning also wants to participate, we'd be happy to
24 do that.

25 I believe that the deferral period would

1 also hopefully allow us an opportunity to hold a
2 community meeting in West Maui, which now that we
3 have a site plan that has been vetted with the County
4 that we can take that out.

5 CHAIRPERSON SCHEUER: Anything else at this
6 point?

7 MR. KEITH-AGARAN: No.

8 CHAIRPERSON SCHEUER: Okay. Maui County?

9 MR. HOPPER: We think first a revised
10 Decision and Order. We can perhaps do it as keeping
11 the existing findings, and then a new set of findings
12 for the update, and do it that way with the
13 Conclusions of Law as well rather than red lining the
14 whole document.

15 But, again, we can discuss the particulars
16 with the Applicant. We would like to have that, a
17 revised D&O to satisfy the County's issues.

18 In addition, a chance for additional agency
19 comments on the revised D&O would be appreciated.
20 The County wouldn't necessarily send to all agencies
21 but maybe ones that the revisions would affect, and
22 so we'd appreciate the time for those agencies to
23 comment.

24 And then also a form of -- some form of
25 community outreach we do believe is important prior

1 to action on this.

2 I think those are our main issues.

3 CHAIRPERSON SCHEUER: Okay. Gut check.

4 Are those achievable by December 4th or 5th?

5 MR. HOPPER: We believe that they are.

6 Some of it depends on when we get the D&O ready and
7 when we hear from agencies, but we believe that's
8 about 60 days from now. That should be achievable,
9 hopefully.

10 CHAIRPERSON SCHEUER: You need to leave
11 that in.

12 Office of Planning?

13 MS. APUNA: We agree with the Petitioner
14 and the County's request.

15 I think we would also request that the
16 Petitioner, some briefing on whether an EIS
17 supplemental is required, and some written response
18 on the good cause question.

19 But, yes, we could use more time to get
20 more comments from the agencies after we get a draft,
21 a cleaner draft of the proposed changes.

22 Yeah, community engagement early on, in the
23 next month or so would be preferable. It's tight for
24 us to get back for December 4th, but I think we can
25 -- we can try.

1 CHAIRPERSON SCHEUER: And I should have
2 asked this of the County as well.

3 Are you open to the idea of having, at
4 least a degree that there can be stipulation on our
5 D&O, on many points, maybe there would be points
6 where you can all stipulate, that you each will
7 present on, but are you hoping with working towards a
8 stipulated D&O?

9 MS. APUNA: Yes.

10 CHAIRPERSON SCHEUER: Okay. County?

11 MR. HOPPER: Yes, I think that's doable.

12 CHAIRPERSON SCHEUER: Great.

13 Commissioners, issues you'd like to have
14 addressed on deferral.

15 Commissioner Mahi.

16 COMMISSIONER MAHI: Having heard the --
17 both the testimony from the Petitioner and the County
18 and OP, State OP, that that's a real beginning for me
19 in terms of seeing this project moving forward.

20 I believe it's also important to include
21 the community, which was shared by the Petitioner.
22 And having them, as much as possible, because you --
23 I mean, you have the most recent person that
24 purchased the property, and having to deal with the
25 issues that preceded what was before you entered into

1 this situation.

2 And there is so much to get -- to get done.
3 I mean, I'm wow'd by how much you have to put
4 together, schools, a lot of systems, waste facilities
5 and so forth.

6 I don't quite -- you know, hearing the
7 testimony of our community yesterday, which was
8 emotional, the hopes and dreams of why you do what
9 you do, you know, is dependent upon that. And being
10 aware of what you're facing in there, you know, of
11 the whole concept of Akahale, that's a tough
12 situation. But with the warning, you know how to
13 prepare for it. So that's what I see happening in
14 terms of the future. Mahalo.

15 CHAIRPERSON SCHEUER: Commissioner
16 Ohigashi.

17 COMMISSIONER OHIGASHI: I want to stick to
18 what I was trying to get across. I'd like to see a
19 specific number you're going to propose of the
20 actual -- and a breakdown of the actual low cost, or
21 low cost housing, the numbers. I'd like to see a
22 breakdown.

23 I also like to see if there is any law.
24 Everybody is referring -- I think what was one of the
25 questions I was trying get at is, is there a required

1 percentage within the different categories, any
2 project is required this to take place?

3 In other words, do we have to make low-low?
4 Do we have to make a 20 percent requirement? Is
5 there any kind of -- and if there is any deviation
6 from that, the construction of this project.

7 The other thing I'm curious to know is, as
8 you know, is that I'm a little concerned when the
9 question was asked about good cause by the County,
10 and the response of the County.

11 I see the goal of everybody is trying to
12 get low cost housing in the forms that would be
13 beneficial for the community. So I think that the
14 agencies that have to review this matter would come
15 up with some kind of justification as to why they
16 would be supporting a particular project. And if --
17 if you don't have a justification, then it would
18 appear to me that the position of the County, from
19 the responses, is that you don't believe there's good
20 cause; it just meets the statute.

21 And if that is the case, then I'm sure that
22 it's the County's position that additional rental
23 housing in this form is not a good idea, then I -- I
24 would appreciate you putting that in writing and
25 explaining why you don't think there is good cause.

1 And the third thing is that I like specific
2 deadlines, because frankly speaking, I don't like to
3 receive documents up till the last day. And I would
4 hope that we can set at least a November 15th cutoff
5 date for all documents, filings that we are going to
6 have in here.

7 The other thing that I -- the last thing
8 that I would appreciate is that I'm not sure if our
9 staff can do it, or the Petitioner can do it, is put
10 a, rather than a comprehensive filing of all the
11 exhibits, if we can break it all up and put in here,
12 you know, in a matrix form or something that we
13 can access Exhibit 1, 2, 3, or Exhibit A, B, C,
14 rather than the -- attaching it to a long document
15 where we have to scroll down forever. I would
16 appreciate that. It'd probably make our review
17 easier. That's my concern.

18 CHAIRPERSON SCHEUER: Thank you very much,
19 Commissioner Ohigashi. I'm just going to mark that I
20 think -- I'm going to reiterate.

21 December 4th is an available date on our
22 schedule. The deadline we have in relationship to
23 accepting, I modify the motion in front of us is
24 365 days from the time it was complete. We certainly
25 have a desire to not be the entity blocking progress

1 on a critical need of affordable housing in West
2 Maui.

3 On the other hand, we have an obligation to
4 make sure all the issues are briefed appropriately,
5 and all the parties and interested entities have a
6 chance to participate.

7 And for us to get information in a
8 meaningful time, so I'm just saying that as we go
9 through this discussion now, we're going to have to
10 weigh those competing needs.

11 I hear November 15th, that would be really
12 good. That would very much crunch the ability to
13 actually get a stipulated D&O in front of us, and
14 have meaningful community engagement.

15 This is a personal reaction to the good
16 suggestion.

17 Commissioner Okuda.

18 COMMISSIONER OKUDA: Thank you, Mr. Chair.
19 And I join and agree with everyone else.

20 You know, this is not to prejudge anything,
21 and it's just an inclination, but my inclination is
22 right now the big impediment to moving forward is the
23 apparent need for a Supplemental Environmental Impact
24 Statement.

25 And the reason for me saying that, and just

1 so that the record is clear, is let me just read one
2 short paragraph from the case united -- I'm sorry,
3 Unite Here! Local 5 versus City and County of
4 Honolulu, which is found at 123 Hawai'i Reports, 158,
5 and I'm talking about a paragraph that comes from
6 at 180 or the Pacific 3d page is at 423 -- I'm sorry,
7 422, and the Hawai'i Reports pages is 188. And I
8 quote:

9 "Based on the foregoing, we believe the
10 plaintiffs have clearly presented 'new' evidence that
11 was not considered at the time of the 1985 EIS was
12 prepared and could likely have a significant impact
13 on the environment."

14 And then there is a citation to the Kepo'o
15 case, 106 Hawai'i at 289, and the citation continues
16 on. And the supreme court says, and I quote:

17 "Consequently, we hold that the project
18 constitutes an 'essentially different action under
19 consideration', and based on the plain language of
20 HAR Section 11-200-26, 'a supplemental statement
21 [should have been], prepared and reviewed'".

22 So based on this clear admonition and
23 statement of the Hawai'i supreme court, and based on
24 the existing record that has been presented at this
25 point in time, if I had to be called to a make a

1 decision in this case, my inclination, based on the
2 current record, would be to vote against this
3 proposal. Not because the underlying merits of the
4 case are good or bad, it's because the procedure
5 here, which the supreme court has said is very
6 important and very integral to the functioning of
7 democracy and decision-making hasn't been followed.

8 So I just put that out there as far as
9 going forward for consideration. I'm not saying I'm
10 the legal guru here. I'm not. And it's the
11 Petitioner and the different agencies, you know,
12 have the right to determine how they want to proceed.

13 But that is a specific concern I have,
14 because of the specific language and the specific
15 admonition the Hawai'i supreme court recently stated
16 in its opinion.

17 Thank you, Mr. Chair.

18 CHAIRPERSON SCHEUER: Thank you,
19 Commissioner Okuda.

20 Commissioner Cabral.

21 VICE CHAIR CABRAL: I want to follow up on
22 what my other Co-Commissioners have stated and
23 previously stated, and I absolutely appreciate your
24 desire to involve the community.

25 One of the other questions I have, and this

1 is really a math problem, and I can appreciate that
2 doing any development becomes that math problem.

3 When you're talking the 155 units, that
4 applies to your project then of 620 units. Then
5 you've put in this 125 units that now I understand is
6 really going to satisfy the 25 percent requirement,
7 Maui County requirement for a different project
8 somewhere else.

9 So does that mean that in this math formula
10 that there's 500 -- a 500-unit project planned at
11 some other time in the future somewhere else that
12 will have its satisfaction of housing requirements
13 for the County satisfied in this project?

14 That's the questions I'd like you to
15 address in the future.

16 And if so, I would like confirmation or
17 something that, you know, i.e., you could do 620,
18 then you do the 155, and you could potentially say
19 okay, now we're done for this project. But I wanted
20 to have verification of then the 125 additional
21 workforce housing project units would be done while
22 this project is still going on, this larger project,
23 subject project versus a future project.

24 I'm just unclear on where that's going,
25 okay. I mean, I'm not saying what's right or wrong.

1 I just want clarification on this math problem.

2 Thank you.

3 CHAIRPERSON SCHEUER: Thank you,
4 Commissioner Cabral.

5 Commissioner Chang.

6 COMMISSIONER CHANG: Thank you, Mr. Chair.

7 Maybe I might have a little different view
8 and expectation from my other Commissioners.

9 In my view, the burden is on the
10 Petitioner. The Petitioner is asking for an
11 amendment from the original D&O. In my view, the
12 burden to comply with Chapter 205 is on the
13 Petitioner to show good cause.

14 The burden is also on the Petitioner to be
15 in compliance with applicable laws, including Chapter
16 343, Chapter 205, as well as Chapter 6E.
17 Noncompliance is the risk that the Petitioner bears.

18 My concern is that the Commission, under
19 our rules, it says "good cause", so I'm expecting
20 that the Petitioner will satisfy that requirement.

21 But with respect to Chapter 343, Chapter
22 6E, archaeological inventory survey, cultural impact
23 assessment, any of the other requirements, in my view
24 that is the burden of the Petitioner to demonstrate
25 to the Commission that you have satisfied that.

1 Because the risk is your risk. You run the
2 risk of a lawsuit filed by the community for failure
3 to comply with that.

4 So because there is nothing in the rules or
5 in Chapter 205 that triggers a supplemental EIS or an
6 amendment. That is you have to determine that based
7 upon what is your project. What are you proposing?

8 And you have a very learned counsel working
9 with you. And I anticipate that you will make those
10 assessments. But because I also know affordable
11 housing is a crisis, we all know that. I don't want
12 to be a Land Use Commissioner being viewed as an
13 obstacle to meeting those affordable housing needs.

14 But at the same time, this particular
15 project was approved back in 2004, 2006 based upon
16 representations and agreements made by the previous
17 owner. And those agreements should be upheld unless
18 there is some showing according to the rules of good
19 cause.

20 I understand the County has changed their
21 ordinance, but -- and if there is, I urge you, if
22 there are economic conditions, if there is a -- you
23 know, if there is -- as I think the Commission was
24 asking, what are some of the facts in the record to
25 support this change? I think you have an opportunity

1 to reassess that now, because you know what we're
2 looking at, you know what our concerns are.

3 But, again, I don't want the Land Use
4 Commission to be viewed as an obstacle but one that
5 you understand what your requirements are.

6 I fully support and embrace the notion of
7 community engagement. Quite frankly, Mr. Cheng, at
8 the end of the day, you want to have a relationship
9 with this community. They need to feel they can
10 trust you. They need to feel that you understand
11 what their needs are. So you cannot merely check off
12 the box or have a website. And I think you heard
13 that as well.

14 I mean, I think you have come forward with
15 a very -- with a proposal that has merit. And I
16 would urge you to bring that back out to the
17 community, not just one meeting, but take this
18 opportunity to really engage this community and have
19 them understand what's your vision, how it meets
20 their needs, and how you can work together.

21 I would prefer that in December when we
22 reconvene, that rather than having 20 testifiers who
23 oppose your project, based upon the community
24 engagement, there is a sense of collaboration and
25 their support for the project.

1 So for me I hope you can, in this time, in
2 this 60, 70 days, use that to address the concerns
3 that you heard. But more importantly, to engage this
4 community. Because by doing that, you can
5 potentially avoid issues like environmental concerns,
6 archaeological cultural concerns. But it is really
7 in your best interest to do that good due diligence
8 that is genuine community engagement, and local
9 style.

10 We really don't do websites. It's that
11 person-to-person contact. If I can look you in the
12 eye, I know you know what I'm thinking. I know what
13 you're thinking.

14 So, again, I would encourage you to do a
15 lot more of that. We call it "talk story". You
16 know, really understand your community. And they can
17 be your greatest ally and your champion, or they can
18 be on the other side.

19 So, again, those are the things that I am
20 hoping will be accomplished, and I would like to see
21 addressed the next time that we come back on this
22 matter. Thank you.

23 CHAIRPERSON SCHEUER: Thank you,
24 Commissioner Chang.

25 Commissioner Giovanni.

1 COMMISSIONER GIOVANNI: I really would like
2 to see this project go forward. I think it could be
3 really important for the local people of West Maui.
4 They desperately need affordable housing. But the
5 project as proposed today on the books, I could not
6 support and would vote "no" on it.

7 But I think you have an opportunity to make
8 it really good. I also feel that I believe you, and
9 I believe the testimony that the original project was
10 not economically feasible. And I think you have
11 something now, especially going to the rental
12 formula, that is economically feasible.

13 But there are three things that I think
14 need to be addressed. I personally doubt they could
15 be fully addressed by December, but we'll leave that
16 to you folks.

17 The first is pretty simple, and that's the
18 demonstration of good cause. I think you've got a
19 straight forward way of doing that by demonstrating
20 and putting evidence in the record that the original
21 project was not economically feasible, and you need
22 to get a professional opinion or studies or something
23 that shows that that was not economically feasible,
24 and that the project you're proposing is economically
25 feasible and will be built, number one.

1 Number two, I'm going to echo my
2 Co-Commissioners on the Environmental Impact
3 Statement. I don't know if a supplemental is going
4 to be required or not, or would be advisable or not.
5 I think there's significant risk in not taking that
6 very seriously. And so when you come back, I'd be
7 asking both the Office of Planning and the Petitioner
8 in particular for their position to this -- to the
9 Commission whether a supplemental is or is not
10 required. And in particular, one of the reasons for
11 your position.

12 If you do conclude that a supplemental is
13 required, and that's the safest route, there's
14 time -- there's time there, and time is money as you
15 said. But you've got to take that seriously.

16 The third thing that is really the big one
17 for me. I think your involvement in the community in
18 this process since you've taken ownership has been
19 inadequate. And I fault not only you, but I fault
20 the County for that as well. The town hall meeting,
21 one town hall meeting to me was not sufficient. And
22 I would actually encourage you to reopen the
23 affordable housing agreement that you have with the
24 County. And in particular explore the possibility
25 that we talked about yesterday, which is, if I

1 understand correctly by the existing agreement,
2 you've got 93 units in very low income. You've got
3 93 units in below moderate income. You have 94 units
4 in moderate income. And I presume that that last
5 category takes us up to 120 percent.

6 I believe in the testimony, and I accept
7 the testimony that says if you can go to the
8 140 percent value, you get a synergistic effect where
9 you're actually providing critical housing for that
10 segment of the population, and yet it stays
11 economically feasible for the developer.

12 I would really encourage you to explore
13 that, not in a PowerPoint presentation to the
14 community, but to involve them, hear them, what's
15 important to them. Then reopen this agreement and
16 see if you can get to the 51 percent. If you can get
17 that, then we're on -- we're going to have a lot of
18 support for this project. So that's what I would be
19 looking for.

20 CHAIRPERSON SCHEUER: Thank you very much,
21 Commissioner Giovanni.

22 I will add, I have a couple of other things
23 that reflect comments and questions I've made during
24 the record.

25 I'm very interested in seeing substantial

1 information from the Petitioner on what steps are
2 being taken to secure a long-term and reliable source
3 of water. There just are very significant issues
4 around the water availability from Honokohau Stream.

5 From the County, I am actually very
6 interested in understanding to a greater level of
7 sophistication than we currently have of the impact
8 we are trying to achieve through units. We're trying
9 to understand rentals versus for sale, and they have
10 different impacts on our families. And it's not that
11 we want both on some measure, but they have different
12 impacts on wealth building, on the number of families
13 affected, on the way they're affected.

14 When we are reduced to comparing this
15 number versus that number, when they're really
16 talking about radically different things, we're
17 hampered. And you guys are housing experts, so I
18 would love to have some information about how we
19 think about this even if it's not exactly in code.
20 How we think about the impacts when we say this
21 number of units of this type are being required.

22 So I have in front of me my summary and
23 attempt at synthesis on what I've heard from people.
24 I'm going to read it as a potential basis of the
25 motion.

1 It would be that the Land Use Commission
2 request that in -- first of all, that the Land Use
3 Commission moves to defer action on the motion of the
4 Petitioner on Docket A04-751, and that we request the
5 deferral period, the Parties work on the following
6 five items:

7 First, all Parties work on the proposed
8 stipulated Decision and Order, specifically
9 addressing three things.

10 A. A specific description of the breakdown
11 on what affordable housing units are being produced,
12 including differentiating by different levels of
13 affordability as well as the relationship to
14 previously required affordable housing units that are
15 now being built in this project.

16 B. After significant community engagement,
17 reopened/renegotiated affordable housing agreement
18 between the County and the Applicant as was recently
19 described by Commissioner Giovanni.

20 3. What steps are being taken by the
21 Petitioner to secure a reliable long-term source of
22 water.

23 That's number one with three subparts.

24 Number 2. At least the Petitioner needs to
25 brief us on the need for a Supplemental EIS. If one

1 is required, though there is a strong desire for
2 County and the OP to also brief us on that.

3 3. All the Parties should be prepared to
4 brief us on whether or not there is good cause to
5 amend the previous Decision and Order. This is where
6 I would love to have the County's analysis of the
7 impact of rental versus purchase, which would give us
8 a basis for having a good cause determination for
9 reducing the number of units.

10 And from at least the Petitioner why the
11 proposed previous project is not financially
12 feasible, and how the new project is feasible and
13 will be built.

14 This deferral will, fourth, allow the
15 County and Office of Planning to have meaningful time
16 to get additional agency comments from their
17 respective State and County agencies.

18 5. This deferral will allow the Petitioner
19 to have meaningful community engagement in West Maui.
20 I did not say one more meeting.

21 We are shooting toward at least a briefing
22 on this issue on December 4th. We'd request that
23 documents are filed no later than November 15th. To
24 the degree we go down this road and we hear from the
25 Parties that, you know, we're not going to be able to

1 do meaningful review information that's coming in
2 from agencies or communities or other things, I think
3 it's still good to have a target date that we are
4 going to be briefing on December 4th or 5th on Maui
5 on this issue, though it might be the case that it
6 will not be an action meeting.

7 And finally, we want to make sure that all
8 the documents that are submitted to us, but
9 particularly from the Parties, are in a form that is
10 easily useable and postable to the website so that
11 the Commissioners and other stakeholders and members
12 of the public can easily find and identify and review
13 those documents.

14 Commissioners, did I leave out any key
15 points that you raised?

16 Commissioner Cabral.

17 VICE CHAIR CABRAL: I'd like to follow up a
18 little bit with kind of a message to the community.
19 I'm from Hilo, so I'm very sensitive to housing,
20 because it -- not only did we -- we have a lot more
21 what you would perceive as very affordable housing,
22 but that's a relative term, you know, when you make
23 half as much money per month it's not as affordable.

24 And we just last year lost 700 houses. So
25 you can imagine being a small community and going

1 into a negative. And I'm a property manager, and I
2 manage rentals in Hilo for 40 years. So I have this
3 huge feeling of, oh, my God, I could handle another
4 1,000 houses today and have -- and I'd make more
5 money.

6 But I want the community to be a part of
7 this in a really positive way, too, because that I
8 see the economics of it, and I would hate to have
9 this -- you know, we hear a lot of people saying they
10 want 100 percent. Well, I know the math of that.
11 That doesn't work.

12 So I really will hope the community and the
13 Petitioner and the County can all kind of work
14 together to understand what can we get that's best
15 for the community, and that we get something rather
16 than nothing, you know.

17 And so I just want to kind of put that out,
18 because I -- I totally get it. It's really hard, and
19 it's really expensive all at the same time. So
20 hopefully we can come together next time with a lot
21 more solid information and a lot more ability to hold
22 hands and move forward.

23 And I have to say in Maui several years
24 ago, we had the best hearing ever when everybody
25 showed up in favor of a really major housing project.

1 So we will look forward to that moment
2 again. Thank you.

3 COMMISSIONER OHIGASHI: Mr. Chair.

4 CHAIRPERSON SCHEUER: Commissioner
5 Ohigashi.

6 COMMISSIONER OHIGASHI: I move to defer
7 this matter to December 4th or a date that may be
8 determined by the Chair, and the request of the
9 Parties and the Parties address the specific issues
10 that has been raised by the Chair.

11 CHAIRPERSON SCHEUER: There's a motion on
12 the floor by Commissioner Ohigashi. It's been
13 seconded by Commissioner Mahi.

14 COMMISSIONER OHIGASHI: Mr. Chair, may I --
15 may I make a statement?

16 CHAIRPERSON SCHEUER: Please.

17 COMMISSIONER OHIGASHI: The reason why I'm
18 concerned about this project is that it seems that --
19 I'd like to see less muddling through and more
20 cooperation by everybody. We all acknowledge the
21 need for housing. I think if you put it in the
22 record of it -- that the existing D&O cannot be met,
23 cannot be met, that we are looking to expand our
24 housing opportunities.

25 And I think that it's in the best interest

1 of the State and the County and the Petitioner to get
2 together and establish that this is the reason why
3 we're going forward, and this is the reason; or if
4 you cannot do that, it's very difficult to afford,
5 and meet the needs.

6 And that was my comments earlier in regard
7 to the County and the State -- well, the State didn't
8 state a position on that, but that's my concern about
9 the County's responses. I don't have anything
10 further.

11 CHAIRPERSON SCHEUER: Thank you,
12 Commissioner Ohigashi.

13 Does anybody else want to discuss the
14 motion?

15 Commissioner Giovanni.

16 COMMISSIONER GIOVANNI: I think as you look
17 to review the opportunity, the most important thing
18 is to produce -- is to propose an economically
19 feasible project with a maximum amount of affordable
20 housing that the community buys into. That's what
21 you're after.

22 MR. CHENG: Yes.

23 COMMISSIONER GIOVANNI: So go get 'em.

24 MR. CHENG: Okay. I'm with you.

25 CHAIRPERSON SCHEUER: Is there further

1 discussion on the motion?

2 I'm inclined to vote in favor of the
3 motion. I just want to encourage us to always widen
4 the angle of our lens a little bit, right?

5 Affordable housing is currently a global problem.
6 It's a global problem for three main reasons:

7 We have increasing population. We have
8 increasing urbanization as well. And Sidney, Tokyo,
9 throughout Asia, major cities in Africa, Europe.
10 It's not just us here in Hawai'i; it's not just West
11 Maui. Growing population, growing urbanization and
12 the financialization of housing, right? When we rely
13 on the private sector, we get these things. When we
14 do it as government, we can get different things.
15 But this project is a private sector project, right?
16 This is what previous people have said, okay, we're
17 going to allow this private sector development to go
18 forward to try and achieve this end.

19 We have got to keep in mind that this is
20 much bigger than the narrow situation, and we have to
21 realize that we are trying to solve our problems of
22 really national and global proportion. And we, of
23 course, only have our hands on the levers right here,
24 not on all the big levers that are driving us.

25 Any further discussion?

1 If not, Mr. Orodenger, please poll the
2 Commission.

3 EXECUTIVE OFFICER: Thank you, Mr. Chair.

4 The motion is to defer this matter to
5 December or to a date thereafter to be determined,
6 and that the parties address the matters identified
7 by the Chair.

8 Commissioner Ohigashi?

9 COMMISSIONER OHIGASHI: Aye.

10 EXECUTIVE OFFICER: Commissioner Mahi?

11 COMMISSIONER MAHI: Aye.

12 EXECUTIVE OFFICER: Commissioner Chang?

13 COMMISSIONER CHANG: Aye.

14 EXECUTIVE OFFICER: Commissioner Aczon is
15 absent.

16 Commissioner Okuda?

17 COMMISSIONER OKUDA: Yes.

18 EXECUTIVE OFFICER: Commissioner Cabral?

19 VICE CHAIR CABRAL: Yes.

20 EXECUTIVE OFFICER: Commissioner Giovanni?

21 COMMISSIONER GIOVANNI: Yes.

22 Executive officer: Commissioner Wong is
23 absent.

24 Chair Scheuer?

25 CHAIRPERSON SCHEUER: Aye.

1 EXECUTIVE OFFICER: Thank you, Mr. Chair,
2 the motion passes with seven affirmative votes.

3 CHAIRPERSON SCHEUER: Okay. Thank you very
4 much to the Parties, including the Petitioner.

5 All right. Now, I have to sort through my
6 various papers in front of me.

7 Yeah, I'm trying to decide just so you can
8 be witness to my thinking aloud whether or not this
9 is just the time to break for lunch, and then go onto
10 the briefing on the other dockets, or whether we
11 might be so brief on Ka'ono'ulu, our next item, that
12 we could go through it quickly before lunch.

13 Okay. Let's take a five-minute recess to
14 switch parties out, and we'll take up Ka'ono'ulu
15 Ranch.

16 (Recess taken.)

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

18 CHAIRPERSON SCHEUER: We are back on the
19 record. It is 11:57 a.m. The Commission will now
20 address the Status Reports scheduled on Docket No.
21 A94-706 Ka'ono'ulu Ranch (Maui).

22 For any members of the public here, please
23 be reminded that the Commission is not considering
24 today the merits of any Petition in front of us, but
25 rather the Commission is interested in learning about

1 the current state of activities related to each
2 docket, including compliance with conditions.

3 There's two individuals have signed up,
4 Mike Moran and Lucienne deNaie. Are you here to
5 testify on Ka'ono'ulu Ranch docket?

6 Ms. Lucienne and Mike?

7 So first we'll ask you to identify
8 yourselves, we'll take public testimony. I'll swear
9 you in. I'm going to keep -- given our still very
10 long agenda in front of us -- I'm going to use my
11 discretion to ask testimony be limited to three
12 minutes.

13 And after the conclusion of the testimony
14 for each docket, we are just going to go through very
15 brief presentation from each of the parties on the
16 status of where we are on this docket.

17 Our first testifier is Mike Moran.

18 Mike, you know the drill well. Make sure
19 that the microphone is very close to your mouth, turn
20 on to high the volume. I will swear you in, and then
21 you can state your name and address for the record
22 and then provide your testimony.

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

25 THE WITNESS: Yes.

1 CHAIRPERSON SCHEUER: Okay. Please State
2 you name and address for the record and continue.

3 MIKE MORAN

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

7 DIRECT EXAMINATION

8 THE WITNESS: My name is Mike Moran, 167
9 Aha Aina Way in Kihei, Maui, Hawai'i.

10 And I'm part of the Kihei Community
11 Association, so we're speaking for them this morning.

12 Aloha, Chair and Commissioners. My name is
13 Mike Moran testifying today for the Kihei Community
14 Association.

15 We remain very concerned about proposed
16 development of this site identified as A94-706
17 Ka'ono'ulu Ranch. The numeric designation indicates
18 the 25-year time line, but it was only in the last
19 decade that we became aware of what was then proposed
20 a huge shopping mall.

21 At the time we were misled by some County
22 government officials who advised there was nothing to
23 prevent the construction that our community did not
24 want. We were told by representatives of the
25 owner/developer that they did not care what we

1 wanted. It was their money, and they would proceed.

2 As an unfunded totally volunteer non-profit
3 organization, we were not in any position to take
4 legal actions, but we continuously participated in
5 the LUC process by submitting testimony at almost all
6 meetings. Since we first trucked up to Kaanapali
7 before any of you volunteer Commissioners commenced
8 your volunteer service, and we offer our support to
9 those entities who -- we offered our support to those
10 entities who did take legal action.

11 So we are here today to express our
12 appreciation to this Commission as the entity who has
13 insured proper process and the procedure was
14 followed, and to learn what is the current situation
15 for this huge area in our community. Mahalo.

16 CHAIRPERSON SCHEUER: Thank you. I think I
17 skipped a step.

18 Can the parties please identify yourselves
19 for the record?

20 MR. TABATA: Good afternoon, Curtis Tabata
21 for Honua'ula Partners.

22 MR. SAKAMOTO: Randall Sakamoto for
23 Pi'ilana Promenade North and South.

24 MR. PIERCE: Tom Pierce for the Intervenors
25 Maui Tomorrow Foundation, Inc., South Maui Citizens

1 for Responsible Growth, and Daniel Kanahale.

2 MR. HOPPER: Michael Hopper, Deputy
3 Corporation Counsel representing the Maui County
4 Department of Planning, with Planning Director
5 Michelle McLean.

6 MS. APUNA: Dawn Apuna, Deputy Attorney
7 General on behalf of State Office of Planning.

8 CHAIRPERSON SCHEUER: Okay. Thank you.
9 Sorry to have gone out of order. I might have
10 overbaked my brain in the unairconditioned room
11 yesterday.

12 Are there any questions for Mr. Moran?

13 MR. SAKUMOTO: No questions.

14 MR. PIERCE: No questions.

15 MR. HOPPER: No questions.

16 MS. APUNA: No questions.

17 CHAIRPERSON SCHEUER: Commissioners? Thank
18 you, Mike.

19 MR. MORAN: Mahalo.

20 CHAIRPERSON SCHEUER: Ms. DeNaie followed
21 by Clare Apana.

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

24 THE WITNESS: I do.

25 CHAIRPERSON SCHEUER: Please proceed.

LUCIENNE deNAIE

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: Well, my name is Lucienne deNaie. I'm the Vice President of Maui Tomorrow Foundation, which is one of the Intervenors, but I'm speaking today just as a person who tracked this before I was on the Maui Tomorrow Board because of the concerns of folks in South Maui. And certainly have tracked the current phase of the project, and really want to express appreciation for this Commission for their patience and encouragement to have some sort of solution emerge.

That being said, I hope that what is still on the table is the Commission considering that this just may be a project that needs to, like many others we see, go back and actually get permission from the community for the project it wants to become.

It is not what was envisioned in 1994. They're sort of attempting to see what could be fit into that framework. It's a very frustrating process for us who watched back in 1994 the community association do their due diligence negotiations with

1 the original legacy landowner, Ka'ono'ulu Ranch, who
2 bargained in good faith for the community for
3 something that could fit them. I really think that
4 this process needs to happen again where there's
5 really a community outreach that is a good faith
6 process.

7 It's very difficult being a few people who
8 can't all attend the settlement talk meetings. One
9 of the individuals who was an Intervenor, Daniel
10 Kanahale. I do not believe he's been able to attend
11 any of the meetings where the settlement was
12 discussed because he's a working person and they're
13 held in working hours.

14 So that is kind of a -- it's an inherent
15 flaw in the process. And while we hope for the best,
16 I think that having this project actually do a
17 community plan amendment and state exactly what it
18 wants to do, and how many of this, and how many of
19 that, and get community support or community guidance
20 for it would really save all of us time and lead to a
21 better solution.

22 So thank you for your time and your effort.
23 And I have to say that the cultural protection part
24 of this has not come very far yet, and you may be
25 told it has, but it hasn't, so that's my opinion.

1 Aloha.

2 CHAIRPERSON SCHEUER: Thank you.

3 Are there any questions for Ms. DeNaie?

4 MR. SAKAMOTO: No questions, Mr. Chair.

5 MR. PIERCE: No questions.

6 MR. HOPPER: No questions.

7 MS. APUNA: No questions.

8 CHAIRPERSON SCHEUER: Commissioners?

9 Commissioner Chang.

10 COMMISSIONER CHANG: Ms. deNaie, could you
11 explain when you say the cultural protections are
12 still not covered?

13 THE WITNESS: Well, I don't know what I can
14 say because this is a confidential process. I was
15 advised by our attorney and, you know, my own good
16 sense that -- let's see. How can I --

17 CHAIRPERSON SCHEUER: Actually, I screwed
18 up in this process. I did not follow what I was
19 supposed to do. What I was supposed to first do was
20 update the record. And if I had updated the record,
21 which I can break and do right now, it will kind of
22 make clear where we are in the process, and why maybe
23 that question, while important, is not necessarily
24 timely in front of us right now due to the procedure
25 that we're in.

1 COMMISSIONER CHANG: I was just responding
2 to the witness.

3 CHAIRPERSON SCHEUER: I understand.

4 THE WITNESS: And thank you for your
5 interest.

6 Am I off the hook?

7 CHAIRPERSON SCHEUER: Yes. I'm on the hook
8 because I did not follow the steps I was supposed to
9 at the beginning, which was just to say that we're on
10 the status -- this was a Status Report on this
11 docket. I was then supposed to have the parties
12 identify themselves and then I was going to update
13 the record as follows:

14 On February 21st of 2019, the Commission
15 unanimously voted that it would set an evidentiary
16 hearing to hear issues presented for the Petitioner's
17 Motion to Dismiss. And also voted to grant the LUC
18 Chair authority to convene a settlement conference on
19 the Motion to Dismiss, and that the Parties Stipulate
20 to allow the LUC Chair to preside over subsequent
21 proceedings on the Motion to Dismiss and set the
22 details for the evidentiary hearing.

23 The LUC Chair also stated that due to the
24 motions affecting the Motion to Dismiss, the
25 Commission would suspend the hearing on the

1 Intervenor's Motions to conduct Phase II of Contested
2 Case Proceeding since 2012 and for Final Decision and
3 to strike portions of the Petitioner's Responses
4 attempting to improperly submit evidence.

5 From February 28, 2019, to September 18,
6 2019, the Parties exchanged correspondence and email
7 regarding the settlement conferences and met with the
8 LUC Chair and the Executive Officer in attendance on
9 March 20th and July 10th, 2019. During this period,
10 the Commission also mailed the Decision and Orders
11 for the action it took at the February 21st, 2019
12 meeting.

13 On September 16th of 2019, the Commission
14 mailed an LUC meeting agenda notice to the Parties
15 and the Statewide, email and Maui mailing lists.

16 And then On September 18th, we mailed an
17 amended agenda on the same.

18 So in other words, in February this
19 Commission authorized me as the Chair to convene
20 settlement conferences. We've been deeply engaged in
21 settlement conferences. The Parties have been
22 working very dutifully through a number of complex
23 issues.

24 Public testimony is provided for in this
25 process, but would encourage my fellow Commissioners

1 to not necessarily use the availability of public
2 testimony on this docket to try and open up things
3 that are really in settlement negotiations at this
4 time.

5 THE WITNESS: Thank you, Chair Scheuer.

6 I've been informed by our attorney that if
7 I wanted to speak to meetings that have been held
8 with the community that I attended that were not part
9 of the settlement discussions, that that would be
10 okay.

11 And if Commissioner Chang is interested, I
12 could make a brief statement from that perspective.

13 COMMISSIONER CHANG: Chair?

14 CHAIRPERSON SCHEUER: My preference is in
15 the interest of continuing the productive discussions
16 that we have, to simply take in the statements that
17 have been already made on the record.

18 THE WITNESS: Thank you.

19 CHAIRPERSON SCHEUER: Thank you, Ms.
20 deNaie.

21 Clare Apana.

22 And I apologize to all the parties for not
23 having correctly gone through the steps.

24 Ms. Apana, do you swear or affirm the
25 testimony you're about to give is the truth?

1 THE WITNESS: Yes, I do.

2 CHAIRPERSON SCHEUER: Okay. Please
3 proceed.

4 CLARE APANA

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

8 DIRECT EXAMINATION

9 THE WITNESS: Thank you. I am not an
10 intervenor, and I do not believe I've ever appeared
11 before this body. I have, however, had a cultural
12 practice, which I do traditional practices, and part
13 of that has gone onto this land. And for that
14 reason, I'm here in front of you today.

15 From where I sit, I see that they've hired
16 one of the very best archaeologists on Maui. We made
17 efforts to speak to people in the community, cultural
18 practitioners, had numerous meetings. I've been to
19 about half of them, but sometimes people just don't
20 get it. Sometimes it's impossible to get it when
21 you're in two systems that may collide.

22 It may not be possible to build a mega mall
23 or a light industrial area being here, and fulfill
24 what is our traditional practices. And I was -- I
25 made comments to the AIS or the EIS -- AIS, so at

1 that time it was about the water flowing to the limu
2 because we were doing limu classes there at the
3 historically recognized fishpond right at Kalepolepo.

4 In 2014 my practice here was radically
5 changed by our kupuna, and I've tried to explain this
6 to the development team in terms that they could
7 understand, and have done that several times. And
8 even gone on the land and demonstrated part of it. I
9 believe the owner walked away when I did that.

10 And just last night, we had a meeting with
11 their community liaison, Harry Lake, and he's a very
12 nice man, but I have to say I don't think he gets it.
13 He made a statement at one point saying that we can
14 do better than what is the plan that we -- they had
15 outlined before with the preservation of seven acres.
16 And I, being naive and thinking that this could
17 really work, said, well, Harry, how are you going to
18 protect the cultural sites on the south side where we
19 do our cultural practice? And he said, we're going
20 to do data recovery.

21 I know what that means. I don't know if
22 you know what that means. Data recovery, that's not
23 protection. That's not protection. So I show you
24 why I think it's so important. This is a map of the
25 surrounding area. This is -- the circle shows where

1 Ka'ono'ulu is. As you can see, the yellow --

2 CHAIRPERSON SCHEUER: Ms. Apana, move
3 closer towards the mic.

4 THE WITNESS: Okay.

5 The yellow are all the cultural sites, and
6 they come all the way down with the flow of the
7 stream. They come across this property here. That
8 is the side we do cultural practice. I have done my
9 cultural practice there; people have done cultural
10 practice all through there.

11 I do not believe that this is getting
12 anywhere as far as cultural practitioners. The
13 lineal descendants with the cultural practitioner
14 said, I didn't even want to come because it's too
15 late. You have not consulted me enough, and this is
16 not going to work. Nothing should be built here. We
17 have to bring this land back. We have to do what is
18 right for this land.

19 And I have to say that my cultural practice
20 in 2014 is just that, it was about bringing the life
21 back to the land. About doing our cultural
22 traditional practices to do this, and if we go
23 ahead --

24 CHAIRPERSON SCHEUER: Ms. Apana, I'd like
25 to ask you to summarize.

1 THE WITNESS: Yes. If we go ahead and keep
2 trying to make this fit, it just will not fit. The
3 land needs to come alive again. It needs to come
4 alive. It needs to be the dryland forest it was, and
5 the place where all the streams came through before
6 they went down into the fishponds, down to the ocean.

7 These things have not -- still not been
8 studied. It's been how many years. I think that
9 it's just not working -- it's not working for me, and
10 I have tried. And they're nice people and it just
11 has not come to a place where I can see that this
12 land will be what it needs to be and what has been
13 asked of me as a cultural practitioner of the
14 traditional practice. Thank you very much.

15 CHAIRPERSON SCHEUER: Thank you, Ms. Apana.
16 Are there questions for the witness or the
17 testifier?

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

19 MR. PIERCE: No questions.

20 MR. HOPPER: No questions.

21 MS. APUNA: No questions.

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

24 THE WITNESS: Thank you very much.

25 CHAIRPERSON SCHEUER: Is there anybody else

1 desiring to provide testimony on this matter? If
2 not, we will move on.

3 Mr. Sakamoto and Mr. Tabata, you're
4 separate representatives for different landowners in
5 the Petition area. Can you just advise on the record
6 for the Commission whether or not you'll be
7 presenting your Status Report separately or jointly
8 or as a combined presentation?

9 MR. SAKUMOTO: It's a joint presentation.
10 I'll be presenting for the two of us.

11 CHAIRPERSON SCHEUER: Great, thank you. So
12 please proceed.

13 MR. SAKUMOTO: Thank you, Mr. Chair.
14 Aloha, Commissioners.

15 I won't go through the procedural
16 background that the Chair already stated. But I can
17 tell you that in preparation for today's meeting, we
18 did prepare a short letter which was delivered to the
19 Commission last week basically intending to provide
20 the Commission with a chronological outline of some
21 of the things that have transpired since February
22 when the Chair had asked us whether we would consider
23 settlement.

24 And just to provide a little bit of, you
25 know, a summary of what my summary said, there have

1 been a good number of face-to-face meetings. All of
2 them have taken place here in Maui, in Kihei
3 specifically. Some of these meetings have included
4 involvement of Chair Scheuer, your Executive Officer
5 and one of your deputy AGs. Some of these meetings
6 have just involved some of the parties, mainly the
7 Petitioners and the Intervenors and the respective
8 attorneys. Some of these meetings have involved only
9 the parties without their counsel. Those meetings
10 primarily dealt with the cultural preserve.

11 And as you heard earlier, there have been
12 some meetings that have included individuals who are
13 not parties to the case but who have expressed an
14 interest in the property.

15 We've tried to hold the meetings, the
16 ones -- some of them anyway, for people who are not
17 able to attend, so some of these meetings have been
18 held during the evening. Some of them have been held
19 during business hours. There have been several site
20 visits to the property, and settlement documentation
21 has been exchanged between the parties.

22 Other than that, I apologize for not
23 providing more detail, you know, out of respect for
24 the confidential nature of the discussions. And in
25 the interest of trying to promote further open

1 dialogue, I'm keeping this very vague, just wanted to
2 assure you that, you know, I think all the parties
3 have taken the Commission's charge very seriously to,
4 you know, try and reach a settlement. We are not
5 there yet.

6 I think there are a number of issues that
7 we know that, you know, we still need to negotiate
8 further on. But at least I can assure you that the
9 process has been -- is underway, and we're continuing
10 to do our best to move forward.

11 CHAIRPERSON SCHEUER: Thank you very much.

12 Are there any questions for Mr. Sakamoto by
13 the Commission? Thank you.

14 Mr. Pierce.

15 MR. PIERCE: Mr. Chair and Commissioners,
16 Tom Pierce on behalf of the Intervenors.

17 I think Mr. Sakamoto did a good job of
18 summarizing the efforts. We have treated it
19 seriously the Commission's charge. We recognize that
20 the Commission would like to see if we can find a way
21 to reach a settlement. And I would say that we've
22 met together significantly enough to where we I think
23 we know each other on a personal level which is
24 always helpful.

25 We are digging into it in a very deep way,

1 and I think a very methodical way that is -- at every
2 step of the way, we're attempting to find compromises
3 not obstacles. So we are treating it very seriously,
4 and with the best of intentions to try to bring it to
5 a compromise.

6 And we've also had the assistance on
7 numerous occasions of the Chair, and we appreciate
8 his willingness to assist us with that as well. It's
9 been very helpful.

10 I would say that with the recent rounds of
11 the correspondence that we have on some of the
12 settlement discussions, that just having to assess
13 these, which you always have to do when you're going
14 through this and having done this for, you know,
15 many, many, many, years.

16 I would say at this stage I don't give it
17 the highest odds that we can settle. If I had to put
18 a percentage on it, I would put it at less than 40
19 percent. That doesn't mean that we won't continue to
20 try very diligently to do it over the next couple of
21 months; however, we do think that -- and I think Mr.
22 Sakamoto would agree that it would be helpful for the
23 Commission to go ahead and schedule the pending
24 motions for a hearing date perhaps in early 2020,
25 January or February, somewhere along in there.

1 We certainly can stay in contact with the
2 Chair to let him know where we are with that, and I
3 think you'll be apprised to note -- and, of course,
4 if there is an opportunity for us, if we feel like --
5 if there's a good shot at it, I think there would be
6 a reason to continue it, but we don't want to see it
7 continue on beyond that.

8 I guess for the sake of our new
9 Commissioner, and as a reminder to the other
10 Commissioners, I was here in 2012 when we initiated
11 this process with a Motion for an Order to Show
12 Cause. We prevailed, after many days of testimony at
13 that stage, and the Petitioners asked for a stay at
14 that point in time. We've been basically in a state
15 of limbo ever since.

16 So certainly at some point in time we all
17 need finality, and I know that's what the Commission
18 wants as well. We certainly will continue to give
19 this a good shot with this settlement, but that is a
20 fair assessment of where we are right now from our
21 perspective.

22 CHAIRPERSON SCHEUER: Thank you, Mr.
23 Pierce.

24 Commissioners, are there any questions?
25 Thank you very much.

1 County?

2 MR. HOPPER: The County has participated
3 with staff and counsel at the meetings where our
4 presence was requested and hopefully helpful, so we
5 would continue to do that going forward if there is
6 additional settlement discussion.

7 CHAIRPERSON SCHEUER: Any questions from
8 the County from the Commissioners?

9 Office of Planning.

10 MS. APUNA: Like the County, we have
11 participated in some discussions as well as
12 negotiations, and we'll continue to do so.

13 CHAIRPERSON SCHEUER: Any questions for the
14 Office of Planning on their voluminous report?

15 Okay. So are there any final questions or
16 comments for any of the parties from the
17 Commissioners?

18 Let me say this. I have been greatly
19 encouraged and impressed by all of the parties'
20 participation and dedication into trying to find a
21 solution, been very grateful for that.

22 One of the reasons why, in consultation
23 with the Executive Officer, I wanted to have this
24 status conference is that it's been awhile. It's
25 been since February that you asked me to take a roll

1 in this. I thought you deserved some kind of update.
2 But because of Sunshine Law and other issues and the
3 confidentiality nature of the discussions, there's a
4 very limited way in which I can inform my fellow
5 Commissioners of the progress that's been made, and
6 some sense of where things are going.

7 So I appreciate that it's always an extra
8 burden for the parties to show up in front of us.
9 But it was my determination that it was appropriate
10 to do at least a brief kind of check in on this and a
11 sense of things.

12 This is not an action item. We're not
13 required to take any action. It's just a Status
14 Report.

15 Is there anything further from the
16 Commission? If not, I'm going to suggest that as it
17 is 12:25, we will conclude this agenda item. We will
18 recess for a one-hour lunch period, and we will
19 reconvene at 1:25.

20 Thank you very much.

21 (Noon recess taken.)

22 A89-642 C. Brewer Co.

23 CHAIRPERSON SCHEUER: Aloha. Our next
24 Status Report is for item A49-642 C. Brewer Company
25 (Maui).

1 Will the Parties for this docket please
2 identify yourselves for the record?

3 MR. McFARLIN: I'm Jason McFarlin. I'm the
4 attorney representing Wailuku Plantation, LLC. And
5 this is in in regards to the Pi'ihana Project
6 District. This is Mr. Vernon Lindsay to my right.
7 He's the owner of the Wailuku Plantation, LLC.

8 CHAIRPERSON SCHEUER: Okay. Thank you.
9 All right. We seem to have another person perhaps.
10 No? No one else. Okay, got it. Okay, All right.

11 MR. HOPPER: I believe there is another
12 Petitioner.

13 MR. IGE: Commissioners, my name is Brian
14 Ige. I represent the Wailuku Project District.
15 There's two project districts involved in this D&O,
16 and we represent the other half of the project
17 district, district boundary amendment. Our attorney
18 Randall Sakamoto is here, but --

19 CHAIRPERSON SCHEUER: He left you hanging?

20 MR. IGE: So he should be here shortly. So
21 he's our representative.

22 CHAIRPERSON SCHEUER: A word of advice is
23 if you order the hamburger, go to the grill right
24 away. Because while it is very delicious, it does
25 actually take a while to cook that.

1 MR. HOPPER: Michael Hopper, Deputy
2 Corporation Counsel for Maui County Department of
3 Planning. With me are our Planning Director Michele
4 McLean, Deputy Planning Director Jordan Hart, and
5 Planner Jennifer Arakawa.

6 MS. APUNA: Deputy Attorney General Dawn
7 Apuna on behalf of the State Office of Planning.

8 CHAIRPERSON SCHEUER: Okay. Let me update
9 the record.

10 On May 25th of 2018, the Commission
11 received notification of an ownership change.

12 And on October 4th, 2018, the Commission
13 received respective annual reports for RCFC's
14 Kehalani and Pi'ihana projects.

15 On May 10, 2019, the Commission received
16 notice from the Dowling Company that an incorrect tax
17 map key had been provided to the Commission.

18 On July 24, 2019, the Commission received
19 correspondence from Wailuku Plantation LLC's
20 attorney, Jason McFarlin, that there had been a
21 transfer of ownership and a request for change of
22 status of Wailuku Plantation LLC to Sole Proprietor
23 for the Pi'ihana Project District, Wailuku, Maui.

24 On August 8, 2019, the Commission received
25 notice of Wailuku Plantation LLC's intent to develop

1 the Pi'ihana Project District, Wailuku, Maui, Hawaii
2 pursuant to Conditions set forth in the Findings of
3 Fact, Conclusions of Law, and Decision and Order
4 filed January 30, 1990.

5 On August 20, 2019, the Commission received
6 a copy of the notice of withdrawal of Wailuku
7 Plantation LLC's intent to develop the Pi'ihana
8 Project District.

9 On September 10th, the Commission received
10 the Pi'ihana Project District --

11 MR. McFARLIN: Excuse me, sir. Excuse me,
12 Chair.

13 With all due respect, that withdrawal was
14 pertaining specifically to a withdrawal of the Phase
15 III Project District Application. There was a Phase
16 III Application entered prior to my representation of
17 Mr. Lindsay that I withdrew. That's all we're
18 withdrawing.

19 CHAIRPERSON SCHEUER: Okay, good. Don't
20 worry, you'll have an abundant chance to address the
21 Commission.

22 MR. McFARLIN: Thank you.

23 CHAIRPERSON SCHEUER: On September 20,
24 2019 -- no.

25 On September 10, 2019, the Commission

1 received the Pi'ihana Project District annual report.

2 On September 16th, the Commission received
3 the Kehalani Project District annual report.

4 And as previously noted on other item
5 agendas an amended agenda was sent out for these
6 agendas to the Statewide and Maui mailing list.

7 Is there anybody wishing to provide public
8 testimony on this agenda item? Okay. So there are
9 none.

10 The two projects have separate
11 representatives for different landowners of the
12 Petition Area. Are you planning to present Status
13 Reports separately or jointly?

14 MR. McFARLIN: That currently is my
15 understanding here.

16 CHAIRPERSON SCHEUER: Okay.

17 MR. IGE: That's correct. We'll present
18 our report separately.

19 CHAIRPERSON SCHEUER: Okay. Do you know
20 where your counsel is?

21 MR. IGE: Can I step out to make a quick
22 call?

23 CHAIRPERSON SCHEUER: Two-minute recess.

24 (Recess taken.)

25 MR. IGE: Thank you. He's on his way.

1 He's coming in.

2 CHAIRPERSON SCHEUER: Okay. Well, we will
3 remain in recess until he joins us.

4 (Recess.)

5 CHAIRPERSON SCHEUER: So your client has
6 advised that you are going to separately present your
7 status update, you and Mr. McFarlin.

8 Is that your understanding, Mr. Sakamoto?

9 MR. SAKUMOTO: Yes, Mr. Chair.

10 CHAIRPERSON SCHEUER: Okay. So Mr.
11 McFarlin, do you want to go first?

12 MR. McFARLIN: Sure.

13 Thank you for giving us the opportunity to
14 be here today. As a preliminary matter and
15 housekeeping matter, we would just like to clarify
16 that we intend to go forward with the C. Brewer plan
17 as it has already been approved with the conditions
18 attached to that approval. And we don't have any
19 changes that we are going to propose.

20 And like I was saying before, there was a
21 Phase III project District Approval Application
22 submitted prior to my representation. We're only
23 withdrawing that part, just to clarify that.

24 We also did submit a 2019 annual report for
25 the Pi'ihana Project District, which isn't far from

1 here. There was a lot of discussion about affordable
2 housing earlier in the day. We'd just like to let
3 you, the Land Use Commission, know that we are going
4 forward with the affordable housing component as it
5 was approved by C. Brewer, which is 50 percent of the
6 units. This is a 600-unit development. We're going
7 forward with 300 units of affordable housing, and we
8 are in the application process for obtaining
9 financing from HUD, and that will be the first part
10 of the project that we will be developing.

11 This project has been hampered by -- in the
12 past before we came along, by the construction of a
13 bridge. This bridge will connect the Wailuku Post
14 Office to the Kahekili Highway. There is an existing
15 old bridge there which needs to be expanded. That's
16 been the holdup on this project.

17 I don't know if you guys have any authority
18 to give us any financial, you know, financial help on
19 constructing the bridge, but we would appreciate
20 that. But other than that, we can open it up to your
21 questions, whatever questions you may have for us.

22 CHAIRPERSON SCHEUER: Thank you.

23 Okay. Which one of my fellow members wants
24 to disabuse the Petitioner from the idea that we have
25 any money?

1 MR. McFARLIN: I figured that'd be the
2 answer.

3 CHAIRPERSON SCHEUER: Much less funding for
4 bridges.

5 Commissioners, are there questions for the
6 Petitioner?

7 Do you have a sense of your timeline?

8 MR. McFARLIN: As soon as we get the
9 financing approved and in our accounts. We're going
10 to break ground as soon as that happens.

11 We're already taking bids for materials and
12 contractor bids to make this project happen. We
13 would like to start at the soonest. I would imagine
14 three to six months away before we can break ground
15 when we get the financing approved and in our
16 account.

17 CHAIRPERSON SCHEUER: Any other questions,
18 Commissioners?

19 If not, Mr. Sakamoto are you ready?

20 MR. SAKUMOTO: Yes, Mr. Chair. And I
21 apologize for being late. No excuse.

22 CHAIRPERSON SCHEUER: Were you left behind
23 at the hotel? (Laughter.)

24 MR. SAKUMOTO: No. Panda Express was not
25 such an express.

1 CHAIRPERSON SCHEUER: When I looked around
2 the lobby, it's like, were they all raptured?

3 (Laughter.)

4 Please go ahead Mr. Sakamoto.

5 MR. SAKAMOTO: Thank you, Chair. Good
6 afternoon, Commissioners.

7 This docket involves a single Decision and
8 Order that covers two development sites. One is
9 roughly 547 acres and is referred to as the
10 Wailuku-Kahului Project District 3, and the other is
11 roughly 79 acres and is referred to as
12 Wailuku-Kahului Project District 2.

13 They're commonly referred to as the Wailuku
14 Project District and the Pi'ihana Project District
15 respectfully.

16 For your reference, I circulated a handout.
17 The first page marked Exhibit A is taken from the
18 Commission's Decision and Order. And essentially
19 what it shows, the smaller one on top in blue, it's
20 situated north of Wailuku Town extending from the
21 intersection of Kahekili Highway and Pi'ihana Road,
22 and extending north along the east side of Kahekili
23 Highway.

24 The larger one on the bottom in green is
25 the Wailuku Project District, also sometimes referred

1 to as Kehalani. That's situated at the base of the
2 West Maui mountains adjacent to and south of Wailuku
3 Town.

4 As you can see, there are two
5 Co-Petitioners here today, RCFC Kehalani, who I
6 represent, and Wailuku Plantation who is represented
7 by Mr. McFarlin.

8 The Exhibit B, the next page in the
9 handout, provides a more detailed information on the
10 status of the Wailuku Project District.

11 In short, I won't go over all of this
12 information, but approximately 1,723 units have
13 already been completed. Another 378 units are
14 pending or under construction.

15 And then you can see there are a couple of
16 areas outlined in red that are the remaining
17 undeveloped areas.

18 In terms of the status of the conditions
19 under the Commission's Decision and Order in this
20 docket, I would refer you to the most recent annual
21 report that was filed on September 12th, specifically
22 for our project in connection with RCFC's -- RCFC
23 Kehalani's satisfaction of conditions as they apply
24 with respect to the Wailuku Project District.

25 So that's my report. Thank you.

1 CHAIRPERSON SCHEUER: Thank you, Randall.
2 Are there any questions for Mr. Sakamoto
3 from the Commissioners?

4 I have a question. Since these are now --
5 and this could actually be for either or both of
6 you -- but since these are now bifurcated,
7 essentially, projects, is there going to be a motion
8 to bifurcate?

9 MR. SAKUMOTO: We have discussed it. Mr.
10 McFarlin and I have discussed it. There's been no
11 formal agreement to that effect yet.

12 But I've also discussed it briefly with
13 your staff to see logistically how we would do that.
14 And so I guess at this point it's fair to say it's
15 something we're discussing, and we're going to
16 explore it further.

17 MR. McFARLIN: That's my understanding as
18 well. We're working through that process with Mr.
19 Sakumoto right now.

20 CHAIRPERSON SCHEUER: I think an imperfect
21 analogy, based on my years now on the LUC, is that
22 when these projects separate but stay under a single
23 docket, it's a little bit like a legal partnership or
24 other kind of partnership where everything goes well
25 when it's going well. And then once it starts to not

1 go well, it goes stunningly not well when they're not
2 bifurcated. Because one project evolves in a
3 different direction, it is subject to all the
4 original conditions. Sometimes execution of those
5 conditions involve action by the other party who no
6 longer have any interest in seeing that that action
7 occurs. Just an observation.

8 Do you have a sense of how those
9 discussions are -- and then -- and why it matters to
10 me is then what happens is something happens that we
11 have to deal with, and we're trying to deal with
12 multiple parties who don't necessarily see eye to
13 eye.

14 Is there a sense of timing on these
15 discussions for bifurcation or any other action that
16 you're requesting from us, may be requesting from us?

17 MR. McFARLIN: We don't need to request
18 anything from the Land Use Commission at this time as
19 far as the bifurcation, but we are sensitive about
20 converging common interest and, you know, differing
21 interest in our discussion. But we're in the
22 preliminary stages of discussing bifurcation.

23 We haven't put a timeline on it yet but --
24 that's all I really have to say. Thank you.

25 MR. SAKUMOTO: Chair, I would agree. I

1 mean, there hasn't been a timeline put on it.

2 Although from the Kehalani standpoint, I don't know
3 that there is any reason to delay. So, you know,
4 we're prepared to discuss the process with Mr.
5 McFarlin.

6 CHAIRPERSON SCHEUER: Okay, thank you. Any
7 other questions?

8 County?

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

10 We wanted to raise just a few questions
11 based on our review of the record with respect to the
12 Pi'ihana Project District. It may be that the
13 landowners or the Commission can assist with.

14 As an initial matter, we just -- we kind of
15 wanted to know as you were talking about a detailed
16 schedule and financing plan for completion of this
17 project.

18 There is a different owner, and we don't
19 know if the -- I mean, part of the original approval
20 does deal with the financing of the project and
21 ability to complete, so that is something we think
22 should be provided to the Commission.

23 In addition, there is -- some interesting
24 items have come up on the 2019 Annual Report that was
25 filed with the Commission on September 9th. They're

1 not page numbers, but on Item No. 11, there is a
2 requirement to give the Commission notice of intent
3 to sell, and there are several deeds at the bottom of
4 that page and on to the next page where smaller lots
5 in the Pi'ihana Project District have been sold to
6 other owners.

7 Normally that wouldn't happen because you
8 require subdivision. But I think in this case, some
9 of these lots are already preexisting as smaller
10 lots. So this raises a variety of questions. One is
11 are these landowners all considered Petitioners now?

12 And another issue would be do they
13 understand, or what information was provided to them
14 with respect to fulfilling the Commission's
15 condition?

16 Hopefully they do not expect that if they
17 come in for building permit, they can start building
18 units without all the conditions being satisfied even
19 though these are individual landowners who have legal
20 title to their property.

21 In the interest of questions, and I think
22 hopefully the Commission can get addressed, there are
23 questions that the County had when they reviewed the
24 annual report and saw these sales and wondered if
25 Commission staff had maybe discussed this with the

1 landowner or what other information we could get.
2 But, though that actual development, to our
3 knowledge, hasn't happened.

4 Since there's individual smaller lot owners
5 for Pi'ihana only, let me specify that's the only
6 issue we have currently is with Pi'ihana with these
7 landowners. You know, whether -- how that affects
8 things and, you know, what the plan is for those
9 lots, because it's a bit unusual to have smaller lots
10 sold to individual owners before the conditions have
11 been fulfilled.

12 CHAIRPERSON SCHEUER: Does the Pi'ihana
13 project owner want to respond?

14 MR. LINDSAY: When I thought--

15 CHAIRPERSON SCHEUER: I'm going to swear
16 you in first.

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

19 THE WITNESS: I do.

20 VERNON LINDSAY

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

24 THE WITNESS: So the background was that I
25 was purchasing some remainder property from C.

1 Brewer, and I didn't know nothing about a project
2 district, and, you know, the nature of the
3 significance of such a change of zoning.

4 In the initial property that I purchased
5 from C. Brewer was referred to as the remainder
6 property. That was the property that was outside
7 of the project district in the first -- the project
8 district consists of four main areas.

9 Initially, I never thought that I would be
10 owning the entire project district. I just wanted to
11 raise my animals on a piece of property that was
12 always used as agriculture by C. Brewer.

13 Then I found out that 10 -- well, 9.5 acres
14 of this 34 acres was in the project district area.
15 That's where the concept of project district started
16 in my life, and that was about three years ago.

17 So only in April of this year did I
18 purchase the third phase of project district. When I
19 say "phase," the first phase is 34 acres, the second
20 phase was 28 -- about 40 acres, and then the third
21 phase was 25 acres.

22 So only as of April could I speak for the
23 project district because it was noncontiguous. I did
24 not own the whole thing. So in my 34-acre purchase,
25 there was -- it was determined that 45 lots was like

1 Land Commission Awards, was subject to separate lots,
2 therefore, being able to get separate tax map keys
3 and water meter appropriation. So therefore was able
4 to sustain a house basically, what I initially
5 considered a farm house, because it was on farm land.
6 You know, C. Brewer, Wailuku Sugar are farm land.

7 So that's where I made the mistake on my
8 Phase III application to call it a farm house,
9 because it was on kuleana farm land. That was
10 previous to me being able to purchase the entire
11 project district. It was very difficult for me to
12 get my arms around this whole concept project
13 district being that it was adopted in 1990, and there
14 was several owners after me.

15 But now I think got a pretty good grasp on
16 what the the procedure is in getting this project
17 district built. And now I can take the liberty of
18 speaking for the entire Pi'ihana Project District 2.

19 So that's a little bit of the background
20 that led me -- so some of the small lots that was
21 sold, was sold prior to the project district
22 knowledge that that existed.

23 CHAIRPERSON SCHEUER: So were you not aware
24 of it, but they -- you have sold off lots that were
25 part of the project district?

1 THE WITNESS: A very small portion, sir,
2 about two, three acres of 79 acres, yes.

3 CHAIRPERSON SCHEUER: Okay. So I got to
4 follow-up on the County's question. How are the new
5 owners --

6 MR. HOPPER: Sorry. A couple of the
7 parcels are over 20 acres. One of the parcels is
8 apparently based on review of the tax map key is over
9 20 acres. I think we should get clarification on how
10 much has actually been sold. How many acres have
11 actually been sold.

12 We have a list of TMKs and things on the
13 annual report but wanted to clarify that hopefully
14 for the record.

15 THE WITNESS: There is nothing to 20 acres
16 that I know of, so for the record there's no 20-acre
17 parcels that were sold to me currently. But when
18 RCFC sold to Wailuku Plantation, there was a 20-acre
19 parcel in that. So we got to go back to when I
20 purchased in -- to this.

21 There was no, I guess, formal request for
22 ownership transfer that this property ever endured.
23 It's to my knowledge. So Stanford Carr was one of
24 the previous owners as well.

25 CHAIRPERSON SCHEUER: Sorry, I -- you know,

1 we're still on the County's portion, and I offered
2 the opportunity for to you answer the question the
3 County raised. And I had to put you through a
4 follow-up on the question that the County raised.

5 There's some dispute over what the size was
6 of the parcel or parcels that may have been conveyed
7 to a party that were in the project district. But my
8 question remains:

9 Were the new owners informed of the
10 conditions that run with this land related to the
11 Decision and Order for this docket?

12 THE WITNESS: Yes, they have been.

13 CHAIRPERSON SCHEUER: When were they
14 informed?

15 THE WITNESS: At the purchase, there was a
16 due diligence period.

17 CHAIRPERSON SCHEUER: Okay. So you did
18 know when they sold it, you were selling land that
19 were part of the project district. I thought I had
20 understood you sold the lands because you had
21 misunderstood the noncompete part of the project
22 district?

23 THE WITNESS: No, I did understand there
24 was a thing lurking called project district. I said
25 I didn't understand what that was. That's what I

1 tried to say to you.

2 CHAIRPERSON SCHEUER: Okay.

3 THE WITNESS: I didn't say I was totally
4 unaware of that.

5 CHAIRPERSON SCHEUER: Okay. Thank you for
6 that clarification.

7 THE WITNESS: You're welcome.

8 CHAIRPERSON SCHEUER: County, do you want
9 to continue?

10 MR. HOPPER: Basically, there's a -- there
11 is a record of what was sold. One of the TMK parcels
12 says it's 20 acres is its size. That's the real
13 property tax records. So they can maybe clarify what
14 exactly was sold. But it's part of the annual report
15 of which properties were sold, there are different
16 owners.

17 There is, you know, multiple names of
18 parties that obviously aren't before the Commission
19 right now. So having that clarified would be good to
20 see if they're supposed to be petitioners here and
21 part of this.

22 But this has raised concerns from the
23 County that will be sort of overall infrastructure
24 improvements that run with the land and are generally
25 done by a master developer before selling off lots to

1 be done before these lots are going to be developed.
2 So that's what raised the flag for the County.

3 THE WITNESS: So to -- to outline which
4 ones we sold, it's Wailuku Plantation two that's new
5 owners, so there would be four lots of a total of,
6 you know, probably three acres.

7 CHAIRPERSON SCHEUER: If I may interject in
8 this matter. Everybody's time is so precious. We're
9 not going to work this out here in this room, but
10 there is this requirement, right, under this
11 obligation that ran with the land when you acquired
12 it, regardless of how broadly or narrowly aware you
13 were of the requirement that ran with the land.

14 So part of that obligation is reporting to
15 this Commission the status of sales. And because it
16 was a requirement of the Decision and Order, the
17 status of any deed restrictions that were placed on
18 these transferred parcels that ensure that the
19 requirements that the Commission placed on those
20 parcels continued to run with the land.

21 THE WITNESS: The deeds all have this
22 conditions running with the land.

23 CHAIRPERSON SCHEUER: So we will need to be
24 provided that information.

25 MR. McFARLIN: I'm wondering what TMK he's

1 referring -- what Corporation Counsel is referring to
2 that is 20 acres.

3 MR. HOPPER: On TMK (2)3-4-032:001 on real
4 property tax is 21.722 acres. I don't know if that
5 old TMK was sold, or if that's part of a smaller lot,
6 but that's what it says.

7 And then just for clarification, the total
8 number of sales, at least according to the annual
9 report, and I don't know if it's correct. There
10 appears to be one, two, three, four, five, six, seven
11 parcels that have been sold. The total acreage, we
12 can go by tax map key, but we're not sure what that
13 is.

14 But, again, clarification on this is what
15 we're seeking here.

16 CHAIRPERSON SCHEUER: We are seeking that
17 as well, and we are not going to seek it orally here
18 today.

19 Are there any further questions for the
20 County before we move onto OP and then discussion
21 among the Commissioners of what we might seek from
22 the parties?

23 OP.

24 MS. APUNA: I think OP's only comment or
25 request is, like the County, have Pi'ihana provide a

1 detailed scheduling and financing plan now that they
2 see that they're moving forward with the conditions
3 as currently written.

4 CHAIRPERSON SCHEUER: Are there questions
5 for OP from the Commissioners about the detailed
6 financial plan request?

7 Okay. Seeing none, Commissioners this
8 isn't necessarily an action item. But it is a status
9 report. We may take action required. If we take no
10 action, the requirement for annual reports remain.

11 However, I will observe that there seems to
12 be some considerable confusion about which lands have
13 been sold, whether they were properly reported to
14 this Commission, whether even if they have been sold
15 and properly reported to the owners and to this
16 Commission. I don't believe we have received annual
17 reports from the new owners, and that is a
18 requirement that runs with these lands.

19 MR. McFARLIN: We did submit it on
20 August 21st, 2019. We did submit a 2019 annual
21 report.

22 CHAIRPERSON SCHEUER: Are you aware of
23 whether any of the part land that your client sold,
24 the new owners have filed annual reports?

25 MR. McFARLIN: The new owners? Not to my

1 knowledge, no.

2 CHAIRPERSON SCHEUER: Were they told to
3 file annual reports?

4 MR. McFARLIN: No, I don't believe so.

5 CHAIRPERSON SCHEUER: It is a requirement
6 that runs with this land because indeed of the lack
7 of bifurcation, among other reasons.

8 MR. McFARLIN: Okay.

9 CHAIRPERSON SCHEUER: Commissioners,
10 anybody want to opine on where we're at?

11 Commissioner Chang.

12 COMMISSIONER CHANG: Please bear with my
13 ignorance. Thank you for being here.

14 Mr. Lindsay, so when you purchased the land
15 from C. Brewer, and how many acres did you purchase?

16 THE WITNESS: Initially 22 acres. It was
17 just a part of the TMK 3-4-32-1.

18 COMMISSIONER CHANG: Okay.

19 MR. McFARLIN: I think what corp counsel
20 referred to as the 20 acres, the remainder what we
21 call the parent, the parent is 3-4-32-1. When they
22 give a separate TMK, they subtract from that. The
23 parent was originally 34 acres, and it's now I guess
24 22 acres as the properties were given TMKs. That
25 doesn't mean it was sold.

1 The 20 acres was definitely not sold. We
2 still own it.

3 COMMISSIONER CHANG: So I'm trying to under
4 -- because I'm a little confused here. So and maybe
5 Mr. Sakamoto, if you might -- you can chime in, and
6 Mr. McFarlin.

7 So when the property so you bought a
8 portion of C. Brewer property, not all of this map
9 that Mr. Sakamoto -- that you provided us, this is
10 what -- this is your exhibit, right?

11 MR. SAKAMOTO: Yes, Commissioner Chang.

12 COMMISSIONER CHANG: Okay. So on this,
13 which is the property that you -- your client owns
14 and which is the one that Mr. Lindsay owns?

15 MR. SAKAMOTO: My client owns the green.

16 COMMISSIONER CHANG: The green, okay. And
17 then Mr. Lindsay, you own the blue?

18 THE WITNESS: Yes.

19 COMMISSIONER CHANG: Do you own all of the
20 blue or portions of the blue?

21 THE WITNESS: As of April, I own all of the
22 blue. April of '19, 2019.

23 COMMISSIONER CHANG: So I thought -- I
24 thought I heard someone say some lots were sold.

25 THE WITNESS: You see in the blue?

1 COMMISSIONER CHANG: Yes.

2 THE WITNESS: That first little section
3 right there.

4 COMMISSIONER CHANG: The middle of --

5 MR. LINDSAY: The bottom part.

6 COMMISSIONER CHANG: You mean the bottom
7 part?

8 THE WITNESS: Yeah, that's a 32-acre parcel
9 in total.

10 COMMISSIONER CHANG: Okay.

11 THE WITNESS: And the blue section that you
12 see represents nine acres inside of the 32 acres.

13 COMMISSIONER CHANG: So do you own
14 everything on there?

15 THE WITNESS: I own everything there.

16 COMMISSIONER CHANG: Everything?

17 THE WITNESS: Everything there, yeah.

18 COMMISSIONER CHANG: Did you sell anything
19 that's in blue?

20 THE WITNESS: That would be the question.
21 I sold two acres of this little section in the blue,
22 yes.

23 COMMISSIONER CHANG: Okay. And did you
24 sell anything else?

25 THE WITNESS: Not yet. Not yet.

1 COMMISSIONER CHANG: Okay. You plan on
2 selling more parcels?

3 THE WITNESS: It's possible. It's
4 possible. My future is open.

5 COMMISSIONER CHANG: Okay.

6 MR. LINDSAY: I'm not steadfast in
7 anything.

8 COMMISSIONER CHANG: Okay. So you
9 understood -- I think the questioning with the
10 Chairperson is that until one is bifurcated, the
11 conditions of the Land Use, the Decision and Order
12 run with the blue and the green.

13 THE WITNESS: I understand that, and I
14 would really like to bifurcate. There's no reason
15 not to.

16 COMMISSIONER CHANG: But even in addition
17 to the bifurcation, that would be bifurcating with
18 Wailuku-Kahului. But if you sell, those property
19 owners are still also subject to these conditions.

20 MR. LINDSAY: Now I understand that.

21 COMMISSIONER CHANG: Okay.

22 MR. LINDSAY: I did not understand that.
23 I'm going through a learning process, please pardon
24 my ignorance.

25 COMMISSIONER CHANG: No, no, no, no, no.

1 THE WITNESS: I never did this before.

2 COMMISSIONER CHANG: Okay. All right.

3 So what did you report on your status
4 report then?

5 MR. McFARLIN: Just to clarify, Mr. Lindsay
6 has bought the Pi'ihana Project District and what
7 I've determined to be seven different transactions.
8 So it's been bought over time piece by piece where he
9 now owns the entire Pi'ihana Project District.
10 That's what I reported.

11 COMMISSIONER CHANG: Okay.

12 CHAIRPERSON SCHEUER: I have a suggestion.
13 In the interest of everybody's time, look for some
14 nods or confirmation from my fellow Commissioners. I
15 appreciate that some of this appears to be new
16 information to you. There are duties when you enter
17 into a real estate transaction under due diligence to
18 be fully aware of your obligations.

19 I would like to direct that the staff work
20 with you and the County to try and resolve some of
21 these unclear and unknown issues as well as the
22 issues raised by OP on the viability of your
23 financing.

24 It so happens that it looks like we are
25 going to be back in Maui in December, and it would be

1 good to have very clear and concise answers to the
2 questions that have been raised here and other
3 information that the staff will be seeking. Can we
4 work with that? Commissioners?

5 COMMISSIONER CHANG: In addition, Chair,
6 perhaps Mr. McFarlin, as you -- when you go back, if
7 you have to update your annual report to provide more
8 updated information, please free to do so.

9 MR. McFARLIN: Yes, yes. I am reporting
10 the sales as they do occur, if there are any that
11 occur after the annual report was filed.

12 THE WITNESS: We're not in the process of
13 selling any more, if that's the -- if that's the
14 question. We did it initially because that was the
15 plan. We didn't know about project district.

16 CHAIRPERSON SCHEUER: Anything more on this
17 matter, Commissioners? If not, we look forward to
18 hearing an accurate and full update on December 4th
19 or 5th. And then --

20 Mr. Ohigashi.

21 COMMISSIONER OHIGASHI: And can we get an
22 update on status of the bifurcation?

23 CHAIRPERSON SCHEUER: That would be good,
24 yes, please.

25 COMMISSIONER OHIGASHI: Because it's a one

1 -- under one docket. Are both parties required to
2 attend?

3 CHAIRPERSON SCHEUER: I believe that it is
4 because they are tied at the hip inherently in the
5 interest of the other party to attend.

6 This is why bifurcation works until it
7 doesn't, or being on the same works until it doesn't
8 work.

9 Okay. Anything further? If not, we'll
10 allow the parties to switch out. Do a couple minutes
11 of recess and get the next agenda item up.

12 (Recess taken.)

13 A97-721 ATC Makena (Maui)

14 CHAIRPERSON SCHEUER: Aloha. We are back
15 on the record, and we are to our last substantive
16 agenda item of our two days of hearings.

17 Our next is a Status Report for A97-721 ATC
18 Makena (Maui).

19 Will the parties for the docket please
20 identify yourselves for the record?

21 MS. LIM: Good afternoon, Chair and members
22 of the Commission, this is Jennifer Lim, and I'm here
23 representing an entity called AREG AC Makena Propco
24 LLC doing business as -- it's a little bit easier to
25 say -- doing business as the Makena Golf and Beach

1 Resort -- I'm sorry, Makena Golf and Beach Club
2 owners.

3 This entity, although all of the real
4 property that is under the Commission's jurisdiction
5 is held by various entities with the name ATC Makena,
6 ATC Makena Golf, ATC Makena, et cetera. The
7 controlling interest in the ATC entities was acquired
8 by the Makena Golf and Beach Club owners toward the
9 end of this past year.

10 And with me is Mr. Ka'imi Judd who is the
11 Vice Present of Development at Makena Golf and Beach
12 Club owners.

13 MR. SAKUMOTO: Good afternoon,
14 Commissioners, Randall Sakamoto. And I'm here
15 representing H2R, LLC. And with me here this
16 afternoon is Leilani Pumana sitting right behind me.

17 MR. HOPPER: Michael Hopper, Deputy
18 Corporation Counsel representing the Maui County
19 Department of Planning, and with me is Planning
20 Director Michele McLean.

21 MS. APUNA: Good afternoon. Deputy
22 Attorney General Dawn Apuna on behalf of the State
23 Office of Planning.

24 CHAIRPERSON SCHEUER: Thank you.

25 Let me update the record.

1 On February 4th of this year, the
2 Commission received H2R, LLC's annual report for its
3 portion of the Petition Area.

4 On February 21st, the Commission received
5 ATC Makena Entities' annual report for its portion of
6 the Petition Area.

7 There is one person who's indicated they
8 wish to provide public testimony on this agenda item.
9 Are there any others? Okay.

10 So Mr. Mayer, followed by Ms. DeNaie.

11 Aloha.

12 Do you swear or affirm the testimony you're
13 about to give is the truth?

14 THE WITNESS: I do.

15 CHAIRPERSON SCHEUER: Please proceed.

16 RICHARD MAYER

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: I want to thank you for
22 giving me the extra two minutes --

23 CHAIRPERSON SCHEUER: Sorry, hold on.
24 Speak right into the microphone.

25 You need to lift the microphone. It is on.

1 THE WITNESS: Very good.

2 CHAIRPERSON SCHEUER: Okay. State your
3 name and address for the record and then proceed.

4 THE WITNESS: My name is Richard (Dick)
5 Mayer, address 1111 Lower Kimo Drive, Kula, Maui.

6 I want to thank you for giving me the extra
7 two minutes yesterday when I was testifying, and I'll
8 try to keep it to one minute today.

9 I'm urging that all the discussions on
10 Makena Resort reflect the fact that the Environmental
11 Impact Statement for this project was done 45 years
12 ago in 1974, and I was a witness and testified at
13 that time having been a member of the Maui Planning
14 Commission at that time. 45 years is too long to
15 allow an EIS to hold all this development.

16 They are now working on several projects
17 segmented out. I would urge you as a Commission to
18 recommend that they begin and give them a time
19 deadline for completing a Supplemental EIS. I think
20 it's absolutely necessary for this huge project which
21 will have great impacts, et cetera. That's it.

22 CHAIRPERSON SCHEUER: Thank you.

23 Are there any questions for Mr. Mayer?

24 MS. LIM: No questions.

25 MR. SAKUMOTO: No questions.

1 MR. HOPPER: No questions.

2 MS. APUNA: No questions.

3 CHAIRPERSON SCHEUER: Commissioners?

4 Thank you very much.

5 THE WITNESS: Thank you.

6 CHAIRPERSON SCHEUER: Ms. deNaie. You know
7 this better than anyone.

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

10 THE WITNESS: I do.

11 My name is Lucienne deNaie. Do I have to
12 give my address, too? P.O. Box 610, Haiku 96708.

13 LUCIENNE deNAIE
14 Was called as a witness by and on behalf of the
15 public, was sworn to tell the truth, was examined and
16 testified as follows:

17 DIRECT EXAMINATION

18 THE WITNESS: I wanted to address the
19 matter of the -- I believe it's a 28-acre lot that
20 was part of the original rezoning. I think that's
21 probably the parcel that is represented by the HR2
22 people, if I understand correctly.

23 This lot was part of the rezoning that the
24 County did in 2008, and I believe that conditions of
25 the zoning there do trigger a commitment to actually

1 improve, make certain improvements on Pi'ilani
2 Highway, if any of that -- if any of those parcels
3 are developed.

4 It's not like when all of them are
5 developed, the 28 acres was part of like a zone --
6 rezoning request for about, I want to say like
7 300 acres of which part was golf course and part were
8 residential lots.

9 So I know that that's not a condition that
10 was put on by the LUC; however, the Makena Resort,
11 when they obtained that rezoning when Mr. Dahlin was
12 the head of Makena Resort, they did sign a unilateral
13 agreement that had, I don't know, 30 some conditions,
14 and that was one of the conditions. So you should
15 just be aware, I believe that they are planning to
16 develop this property.

17 The property does have some very
18 significant cultural sites on it. I know Ms. Apana
19 and Mr. Kanahale did advocate for the Aupuni wall on
20 that property be preserved, and SHPD agreed that it
21 should be. I'm not sure what its status is now, but
22 I wonder, probably you guys don't have much to say on
23 this. You just get a report every year, but just
24 letting you know that there are probably some
25 information that should be in that report that may or

1 may not be. Thank you.

2 CHAIRPERSON SCHEUER: Thank you, Ms.

3 deNaie.

4 Are there any questions for Ms. deNaie?

5 MS. LIM: No questions from Makena.

6 MR. SAKAMOTO: No questions.

7 MR. HOPPER: No questions.

8 MS. APUNA: No questions.

9 CHAIRPERSON SCHEUER: Commissioners?

10 Thank you very much.

11 Okay. As I said in the last docket, Mr.

12 Sakamoto and Ms. Lim, you're separate representatives

13 for different landowners to the Petition Area.

14 Please advise whether you're planning to present your

15 status report separately or jointly.

16 MS. LIM: A little bit of both, Chair,

17 because --

18 CHAIRPERSON SCHEUER: Today couldn't go

19 easy.

20 MS. LIM: Actually, we hope it'll make it a

21 bit more simple especially given the late hour of the

22 day.

23 But because my client owns the majority of

24 the property that's subject to the Commission's

25 reclassification, we decided that we would give a bit

1 of overview of the property, and we can discuss the
2 status of conditions or where we are in terms of
3 development as to the approximately 120 acres that
4 the Makena Golf and Beach Club folks own, and then
5 Mr. Sakamoto can address the development status as to
6 the portion of the docket that H2R --

7 CHAIRPERSON SCHEUER: Okay. So just to be
8 clear that we are going to, however, understand that
9 if you're essentially presenting jointly, you're in
10 agreement on the statements that the others are
11 making to the extent possible?

12 MS. LIM: Can I say that if we -- and I
13 trust Mr. Sakamoto would do the same thing -- if
14 either one of us were to hear something that's
15 contrary to what we understand, perhaps we would
16 raise that issue.

17 CHAIRPERSON SCHEUER: That would be helpful
18 to this Commission to understand what representations
19 are being made by each of the parties.

20 MS. LIM: I think that's fair.

21 MR. SAKUMOTO: Yes, agreed.

22 CHAIRPERSON SCHEUER: Okay. Thank you.

23 MS. LIM: Okay. And I will try to keep
24 this short, but we did pass out three maps earlier
25 today. I believe Riley passed them out.

1 And as I mentioned, Makena Golf and Beach
2 Club is the client that I'm here to represent. They
3 own about 1750 acres in the Makena Resort area. So
4 if you look at that first map --

5 MR. HOPPER: Mr. Chair, I'm sorry, we
6 didn't receive a copy of the maps. I don't think OP
7 did either.

8 MS. LIM: So the court reporter asked me to
9 repeat the number of acres that Makena Golf and Beach
10 Club owns.

11 The docket that LUC reclassified 145.943
12 acres from ag to Urban in 1998. Of that 145.943
13 acres, Makena Golf and Beach Club owns approximately
14 120 acres. And then the remainder is held by H2R,
15 LLC.

16 So the first map, and we don't have numbers
17 on the map, but it's the one that's titled: State
18 Land Use District. The intent with this map was to
19 show the approximately 1700-some-odd acres that the
20 Makena Golf and Beach Club folks own, so that's the
21 property that's outlined in the black dashed line.
22 So it's quite a large area.

23 As you can see, the area that's colored in
24 red, that's all Urban. And I know I'm talking to
25 Land Use Commission, and I'm sure your staff has

1 briefed you on all this, but we figured we would put
2 together some maps as well.

3 So this is all Urban property here.
4 There's agricultural mauka of that. You can see that
5 there's also Urban property that is not within our
6 client's ownership, and that's over to the north, as
7 well as along the coast there.

8 If you look to the second page -- so that's
9 just an overview. Again, there's a lot of Urban
10 property.

11 The second page, which is titled LUC Docket
12 A97-721 down at the bottom. So what this is intended
13 to show is the, like I said, approximately 146 acres
14 that the LUC reclassified back in 1998.

15 So you can see that there were just almost
16 like little pieces that got swept up because almost
17 all of the Makena Resort area was already in Urban.

18 So there was six petition areas under this
19 1998 docket. A little triangle up there in the
20 north. You can see a little shape that likes look a
21 fish up here up along the top of the property. I
22 don't even know how to describe that other shape next
23 to it.

24 And then this area here which has got like
25 three triangles across the top. This is still, the

1 property that's shown in red, and, again, this is the
2 property that is the subject of today's docket, is
3 owned by Makena Golf and Beach Club.

4 The piece that's shown on this map that's
5 in purple is also Urban and is also part of this
6 docket, A97-721, but this is the piece that's owned
7 by H2R.

8 So we wanted to just put that out visually
9 as well as with words.

10 And the next page we can talk about, the
11 Commission had questions. It's just simply to show
12 the Kihei-Makena Community Plan designations that are
13 on the property.

14 And my apologies, actually I think I forgot
15 to mention on the first page the red dashed outline
16 is actually something that is relatively new.
17 Meaning, it occurred many years after the 1998
18 Commission approval, and that was the establishment
19 of the Maui Island Plan Urban Growth Boundary.

20 So you can see that the red dashed line
21 covers all of the Urban property as you would expect,
22 and wraps around all of the property that's owned
23 both by Makena and by H2R. So that's the red dashed
24 line is the Urban Growth Boundary Maui Island Plan.

25 So what has gone on this property since

1 1998? Well, originally the Makena Resort Corp came
2 and sought the reclassification because they were,
3 based on our understanding of the record, master
4 planning the entire Makena Resort.

5 As people are probably aware, you know,
6 economies change, world situations change. What
7 eventually wound up happening is that that property
8 went into receivership around 2009, 2010.

9 ATC Makena purchased the property or got
10 property out of receivership I believe in like late
11 2010, and then from that point forward began to
12 pursue development activities on the property.

13 The development activities that have been
14 pursued on the property are not within the LUC
15 jurisdictional areas. They're areas that were
16 previously Urban, and there's two projects.

17 One is where the Maui Prince Hotel used to
18 be, where the hotel has been taken down and replaced
19 with, is it 65 -- 65 residential units, and then
20 there's another project that -- a residential project
21 with some commercial, and that's just a little bit to
22 the north of the former hotel site.

23 But Makena -- and when I say "Makena," I'm
24 talking about the Makena Golf and Beach Resort folks
25 that I'm representing -- had not engaged in any kind

1 of master planning of this property. Again, they got
2 it out of receivership. They had to look,
3 and there's varying conflicting entitlements that had
4 to be reviewed. There's a lot of different property
5 here.

6 Again, it's over 1700 acres, so the initial
7 efforts were really to pursue development on those
8 areas.

9 Now, as part of that development effort in
10 2017, when Makena was pursuing a SMA use permit
11 through Maui Planning Commission, there was a dispute
12 with some community groups, and there was some
13 litigation brought. And that litigation we're very
14 happy to report did get resolved in a settlement
15 agreement, and that settlement agreement goes far
16 beyond just the project that was the subject of the
17 SMA use permit. It actually to some degree covers
18 all of the Makena property. Again, all of the
19 property owned by the Makena Golf and Beach Club
20 owners.

21 In that settlement agreement, there was an
22 agreement what Makena would do a master plan EIS, so
23 an EIS that would look at not just one little
24 individual project that was coming up, let's say the
25 next project that required an SMA permit but would,

1 in fact, look at all of the Makena property.

2 So since that 2017 effort, 2018 effort,
3 Makena has been engaging in figuring out how are they
4 going to master plan it. The Commission here already
5 knows from a 2012 motion that all of the property has
6 been rezoned. That was one of the conditions that
7 the Commission originally put on the property.

8 In 2012, you deleted that condition because
9 it had been fully satisfied, but just because it's
10 zoned doesn't mean that it's automatically prepared
11 for development, much of this property is in the
12 Special Management Area.

13 But this point, again, for the Makena Golf
14 and Beach Club folks, the plan is to continue
15 engaging in formulating the master plan for this EIS.

16 And, Ka'imi, may be you want to tell the
17 Commission what you expect in terms of timing on the
18 EIS.

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

22 THE WITNESS: Yes, I do.

23 KA'IMI JUDD

24 Was called as a witness by and on behalf of the
25 Petitioner ATC Makena, was sworn to tell the truth,

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 THE WITNESS: Currently we're in our --
4 oh, Ka'imi Judd. Do I have to state my address and
5 all that, too?

6 CHAIRPERSON SCHEUER: Just your name
7 because your address is already on the record.

8 THE WITNESS: Okay. Ka'imi Judd.

9 Yes, we are in our development of the
10 conceptual plans for the EIS area, EIS prep notice.
11 We're targeting for a publication sometime in first
12 quarter of next year, obviously pending all the plans
13 coming together and working on some of the
14 obligations of the settlement agreement as well.

15 MS. LIM: So that's about where we're at.
16 We've continued to keep the Commission updated with
17 annual reports and will, of course, continue to do
18 that. But otherwise, we're here to respond to any
19 questions that the Commissioners may have.

20 CHAIRPERSON SCHEUER: Okay. Should that
21 happen now or should that happen since you're doing
22 that sort of a joint report?

23 MR. SAKUMOTO: My report is very short.

24 CHAIRPERSON SCHEUER: Okay. Why don't you
25 go ahead.

1 MR. SAKUMOTO: As Ms. Lim explained, my
2 client, H2R is the owner of the purple colored
3 property on -- I think it's the second of the two
4 pages. At the time of the Petition, that was
5 referred to Petition Area 5. It was identified as
6 tax map key 2-1-005:083, 084 and 085. And a portion
7 of parcel 108.

8 It has since been consolidated, and is now
9 identified as TMK 2-1-5:085.

10 Basically, we acquired the property in
11 October of last year. And I think it's safe to say
12 we're moving ahead with exploring what needs to be
13 done under the County land use entitlements to
14 explore the possible development of the property at
15 this stage. That's it.

16 CHAIRPERSON SCHEUER: Commissioners, are
17 there questions for either of the Petitioners?

18 Mr. Ohigashi.

19 COMMISSIONER OHIGASHI: Randall, I just
20 wanted to know whether or not the settlement
21 agreement Ms. Lim indicated covers your property,
22 too.

23 MR. SAKUMOTO: No, it doesn't.

24 CHAIRPERSON SCHEUER: Is that it? Okay.
25 Commissioners?

1 Commissioner Chang.

2 COMMISSIONER CHANG: Just -- I think
3 hopefully just two questions.

4 You said you're in the process of doing an
5 EIS. Could you show me on the map what area is going
6 to be included in that EIS?

7 MS. LIM: Sure, Commissioner Chang. So if
8 you look at -- let's look at Map No. 2.

9 CHAIRPERSON SCHEUER: Number 2, okay.

10 MS. LIM: Pretty much all of the property
11 that's outlined in the black dashed lines. So if --
12 if we go to the far south or -- at that side of the
13 map with the little finger. You can see how that is
14 to the south of the property. It goes around all in
15 here that, again, the purple area will not be
16 included in our EIS. That's not part of our master
17 plan. This little bit over here that's in front of
18 the ocean essentially --

19 THE WITNESS: Is it okay if I jump in here?

20 MS. LIM: Yes, go ahead.

21 THE WITNESS: So what was agreed to in the
22 settlement agreement to encompass the area of the --
23 what we call future lands of the EIS, is basically
24 everything that is held by the Makena Golf and Beach
25 Resort with the exception of there is an upper ag

1 subdivision actually, or an upper parcel that's
2 outside of the Urban Growth Boundary. It will be
3 considered in the EIS as part of an overall context,
4 but that the actual EIS area is -- doesn't include
5 that. It does not include the former hotel HM
6 parcel, and does not include parcels that were
7 referred to as M5, M6, S7, B2 that are makai of
8 Makena Alanui.

9 So basically everything above Makena Alanui
10 excluding that upper roughly 700 acres. Again, in
11 considering, as the EISs do the overall, everything
12 in the area even outside of Makena's holdings, but
13 that's the project, if you will, area of the EIS,
14 what I described

15 COMMISSIONER CHANG: I know that your
16 counsel is using the dotted line. So I'm looking
17 at -- only because you talked about Makena Alanui, so
18 I'm looking at your third page, because it actually
19 has Makena Alanui on it. So will your EIS cover what
20 in -- what's in white?

21 THE WITNESS: Yeah. It might be easier to
22 use that map, so what's in white with the exception
23 of what's on the upper portion, that large piece
24 called ag.

25 COMMISSIONER CHANG: Ag, okay.

1 THE WITNESS: Again, it will contemplate
2 what is being done there, but it won't be within the
3 EIS project area, and excluding the areas makai of
4 Makena Alanui, which basically is that large PK area
5 is the mauka portion or above Makena Alanui. That's
6 the existing golf course area, and then there's an MF
7 on the far left that's above Makena Alanui.

8 So everything above Makena Alanui, if that
9 makes sense, and excluding that large ag area.

10 COMMISSIONER CHANG: And prior to filing
11 the EIS, are you guys engaging the community on
12 discussions related to components of the EIS?

13 MR. JUDD: That's correct. We've been
14 active in discussions for some time now, and then
15 there are certain conditions, as I mentioned, of a
16 settlement agreement that we are working together
17 with those parties.

18 COMMISSIONER CHANG: Can I ask what is
19 the -- what case the settlement agreement is, if
20 you're allowed to say?

21 Is this the Alanui, the original? No?

22 MS. LIM: No, no. It was a later
23 settlement agreement. There is actually an EA done
24 for -- through the Maui Planning Commission, and we
25 anticipate this master plan EIS will also go through

1 the Maui Planning Commission because it's expected
2 that the first permit that will be sought will be a
3 Special Management Area permit.

4 In any event, there was an EA done for a
5 project that is, again, if we're looking at the map
6 No. 3, kind of where the MF is down by the oceanfront
7 makai of Makena Alanui. There's a project in there.
8 An EA was done.

9 And, again, some community groups raised
10 concerns about it, raised concerns about whether it
11 should be an EA or an EIS, and it was through that
12 settlement that this agreement into the master plan
13 EIS was struck.

14 But in addition to complying with the new
15 OEQC rules which requires a public scoping meeting, I
16 believe I can say without any hesitation that Makena
17 Gold and Beach Club or ATC Makena, since this entity
18 has taken over the ownership.

19 They've made quite a sincere effort to stay
20 in touch with the community, so that will continue.

21 COMMISSIONER CHANG: You might want to make
22 sure you put Mr. Mayer on your list.

23 Okay. And the LUC conditions apply to a
24 portion of this -- I guess until you complete your
25 master plan and your EIS, we don't know whether

1 you're going to seek any amendments to those
2 conditions, or you're going to fulfill those
3 conditions?

4 MS. LIM: Well, that is correct. The areas
5 that were approved by the LUC for Urban
6 reclassification in 1998, again, the little red
7 shapes on the second map, were approved for
8 residential development except for the largest red
9 area which was partially residential, partially golf
10 course.

11 At this point, again, it's very early in
12 the master planning stage. The development will be
13 substantially consistent with that, but it would be
14 premature to say whether or not there would be a need
15 to seek any kind of adjustment from the Commission.

16 COMMISSIONER CHANG: Thank you.

17 MS. LIM: Thank you.

18 CHAIRPERSON SCHEUER: Commissioners,
19 questions at this time for the Petitioner, either of
20 them?

21 County.

22 MR. HOPPER: No questions, Mr. Chair.

23 CHAIRPERSON SCHEUER: All right. Do you
24 have anything to present?

25 MR. HOPPER: No. No, Mr. Chair.

1 CHAIRPERSON SCHEUER: OP?

2 MS. APUNA: Thank you, Chair.

3 So the Department of Transportation would
4 like to report that Condition No. 12 under the D&O as
5 amended by, I think it's a Fifth Amended Amendment.
6 It states, that Petitioners shall participate in the
7 pro rata funding and construction of local and
8 regional transportation improvements and programs
9 including dedication of rights of way as determined
10 by the State DOT and the County of Maui. Agreement
11 between Petitioner and DOT at the level of funding
12 and participation shall be obtained within 14 years
13 from June 1, 2000.

14 So I am reporting from DOT that for ATC
15 Makena or Makena Beach and Golf, they met with DOT on
16 July 25th, 2019. No agreement has been reached with
17 regard to this condition, so that fair share
18 condition has not been fulfilled to date.

19 For H2R LLC, they also met with DOT on
20 September 4th, 2019. There is verbal agreement
21 between DOT and H2R LLC, and they're expected to
22 fulfill this requirement with a formal agreement. So
23 that's what I have to report.

24 CHAIRPERSON SCHEUER: So there is still --
25 there is communications, but there's still not

1 current compliance with?

2 MS. APUNA: Right. For Maui Beach and
3 Golf, I think it's still outstanding, but I don't
4 know if there's still ongoing -- if they're planning
5 to have further talks and perhaps the Petitioner can
6 comment on that.

7 CHAIRPERSON SCHEUER: Petitioner?

8 MS. LIM: Thanks for raising the question.
9 So, in fact, I think it was within the last -- I know
10 it was within the last week, Mr. Judd sent over a
11 draft of an agreement to the Department of
12 Transportation because this requirement to enter into
13 the agreement -- I mean, we're well aware of it. In
14 fact, there have been various starts and stops on the
15 efforts, and I could explain why if the Commission is
16 interested, but just to put it very simply.

17 There were starts and stops because the
18 Department of Transportation is looking to, I think,
19 efficiently address one very large improvement which
20 is the widening of Pi'ilani Highway, and there were
21 various parties that were going to be involved in
22 working together to contribute to that major
23 improvement.

24 Over the course of time, those parties have
25 changed. Certain parties went their own way rather

1 than being together in something that was called the
2 inter-developer agreement, which was never finalized.

3 But in any event, there were efforts for
4 various landowners to get together, not necessarily
5 related to the LUC conditions, but related to, for
6 example, zoning conditions or other conditions that
7 were placed by regulatory agencies.

8 The inter-developer agreement doesn't
9 appear to be workable, and that is why Makena Golf
10 and Beach Club is back in discussions with DOT. Not
11 turning our back on the possibility of an
12 inter-developer agreement. But frankly not really
13 sure if there are other developers who are in a
14 position to get into that kind of agreement. So
15 we're trying to craft an agreement with DOT, just a
16 bi-party agreement.

17 CHAIRPERSON SCHEUER: That's been in
18 process for -- well, when did the current entity
19 acquire?

20 MS. LIM: Current entity, I believe it was
21 December 2018. And, again, all the real estate is
22 held by the ATC Makena entity, so I'm just saying the
23 controlling interest of those ATC Makena entities has
24 changed at the end of last year. But the reasons --
25 and, again, I don't want to bore you with too many

1 details, but the reason why there were these starts
2 and stops was not only the inter-developer agreement
3 concept, which I think your discussion about
4 bifurcation to explain why inter-developer agreements
5 can be complicated.

6 But it's also because the DOT -- if you
7 look at Map 2, the LUC's jurisdiction is pretty
8 modest here. I mean, you're looking at an
9 approximately 1700-acre development or, you know,
10 ownership area, and LUC's jurisdiction as to Makena
11 Golf and Beach is about 120 acres.

12 So although we were at various times
13 prepared to enter into an agreement with DOT just to
14 satisfy this LUC condition, the feedback we got from
15 DOT after they thought it over, was, you know, we
16 really want to look at an agreement that's going to
17 satisfy for all of the Makena Resorts.

18 And we said, well, we are not master
19 planning all of the Makena Resorts. This is going
20 back in 2016, even 2017. So it was sort of the
21 perfect confluence of events where that's what DOT
22 was looking for then. Let's get an agreement that's
23 going to address not only the 120 acres required with
24 the LUC, but a more of a master plan agreement.

25 And Makena is now in a position where they

1 are, you know, looking to do master planning of all
2 the properties. So that's the nature of the
3 discussions with DOT now. It's okay, we're ready to
4 talk about master planning and what is the agreement
5 that we can enter into to satisfy DOT requirements
6 for the whole master plan area.

7 CHAIRPERSON SCHEUER: There's a lower
8 energy from this Commission. We've been working for
9 a few days.

10 Can you, at the risk of revolution, can you
11 say a little bit more to me just to help me
12 understand what you -- you led with in terms of
13 describing the current party you represent and how
14 the ownership interests are structured?

15 MS. LIM: I can try. I don't have a heck
16 of a lot more to say about that, but, again, the --
17 what we call the ATC Makena entities, and if you look
18 at the most recent annual report, you know, there's a
19 listing of entities, and they all begin with an ATC.

20 So that's who got the property, that's who
21 holds the real estate. And they acquired that
22 through Commissioners deeds, again, out of the, you
23 know, the receiver in 2010. And various ATC Makena
24 entities, they hold the properties as tenants in
25 common. So that's why there's tons of names on each

1 parcel.

2 In late 2018 is when the controlling
3 interest of those ATC entities was taken over by the
4 AREG entity that I mentioned at the start. And so
5 the real estate is the same, the obligations are the
6 same. There's not been any kind of transfer of real
7 estate. It's just ethically I didn't want to present
8 to the Commission that I am here solely on behalf of
9 ATC Makena, because at the end of the day, our client
10 is this entity that now controls all of the ATC
11 Makena entities.

12 CHAIRPERSON SCHEUER: That's helpful.

13 Who's the ultimate owner of the entity that
14 you represent?

15 MS. LIM: I don't know. I honestly don't
16 know the answer to that. I mean, I would have to go
17 look at the corporate work chart, but it's -- the
18 entity --

19 CHAIRPERSON SCHEUER: They pay in cash in
20 smaller amounts. I'm happy when I get this envelope.
21 You know, it's great. No, no, I jest.

22 MS. LIM: But it's that the change -- and
23 perhaps Ka'imi can correct me if I get this wrong,
24 but the change from it -- from being with the ATC
25 Makena Holdings to now the Makena Golf and Beach Club

1 was the -- the group that is the Makena Golf and
2 Beach Club was already within the ATC Makena holdings
3 ownership, if that makes any sense?

4 So I really can't go further up the chain,
5 I'm sorry to say. If that's something that's a
6 burning interest, I'm sure I can get you that
7 information.

8 CHAIRPERSON SCHEUER: I'd find it helpful.

9 Is there anything else, Commissioners?

10 If not, I think we are done with this
11 agenda item.

12 The last, prior to adjournment item we have
13 of note and no official action, but applause and
14 tears may be welcomed is that after six years of an
15 incredible service, Aaron Mahi is no longer going to
16 be serving on the Commission.

17 I have had the benefit of serving nine
18 years with Aaron. Three years on the Oahu Island
19 Burial Council, and then six years on this
20 Commission, and he is a cultural teacher, a process
21 teacher.

22 When I'm going in the right direction, I
23 get a slight smile. When I'm going in the wrong
24 direction, I really know. And he is, among many
25 other things, an example of true aloha. So we thank

1 you so much.

2 Do you want to say anything on the record?

3 COMMISSIONER MAHI: I'll be brief.

4 I just wanted to say, and, again, the
5 privilege and the honor and the aloha that I feel for
6 the of the Land Use Commission.

7 And also I want to send my aloha to all
8 those that I've accepted the task of managing our
9 aina from whatever perspective you happen to enter
10 into this realm of our Hawai'i.

11 The reason I became a part of this was to
12 do some -- contribute something to the conditions
13 that, and the issues that we face as all being a part
14 of this aina of our chain of islands of our Hawai'i,
15 and I learned a lot being here.

16 I wish I could have stayed to the end. But
17 because of health reasons and also my duties with
18 partners in the Foundation has expanded it's
19 difficult to make all the meetings.

20 But I just want to say, all of you folks
21 have proven that everything is diligent and vigilant
22 and seeking those things that are right, and that's
23 what we've experienced these past two days
24 vigorously. You know, looking for the needs of our
25 people and looking for the needs of those that can

1 come to supply that need under conditions which we as
2 a part of the aupuni. And aupuni means, you know,
3 the governing entities have that duty to control and
4 to monitor and to seek that pono. I thank you all,
5 mahalo.

6 CHAIRPERSON SCHEUER: Mahalo.

7 Are there any further comments or business?
8 If not, our next Land Use Commission meeting's on
9 October 9th and 10th, 2019. We'll be at the Honolulu
10 International Airport.

11 On October 24th and 25th and possibly
12 October 28th meeting, we will be in Hilo, and those
13 meetings require the Commission provide meals for
14 working lunches, an integral part of the meeting is
15 the remote locals of the meeting and the time
16 schedule required to conduct our business.

17 Mr. Orodener, can the staff please make
18 the necessary working arrangements for that lunch?

19 EXECUTIVE OFFICER: Mr. Chair, yes, we
20 will.

21 CHAIRPERSON SCHEUER: Okay. There being
22 nothing further, this meeting is adjourned.

23 (The proceedings adjourned at 3:00 p.m.)
24
25

CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on September 26, 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 26th day of September, 2019, in Honolulu, Hawaii.

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