

1 guess my concern is, as in any procedural situation where you
2 have a time deadline, we understand the need to amplify or
3 have these concerns addressed. The question I'm asking is is
4 the Commission requiring that we resubmit another motion
5 within the same two year period?

6 MR. CHAIRMAN: No. Your motion is still pending.
7 But I think what needs to happen is a meeting of the minds
8 between the parties. And perhaps that motion needs to be
9 amended or supplemented.

10 MR. MURASHIGE: Thank you.

11 MR. CHAIRMAN: Moving on to the next item on the
12 agenda, number three, A83-553, Princeville Corporation. All
13 right. Will the parties identify themselves for the record.

14 MR. HONG: Thank you, Mr. Chairman. For the record
15 my name is Walton Hong representing the petitioner Princeville
16 Corporation. With me I have Mr. Tom Shigemoto who was last on
17 the stand when we recessed the last hearing on November 15th,
18 I believe, along with Paula Morikami. I would like to note
19 that Mr. Bud Challenger who's the chief executive officer for
20 Princeville Corporation was supposed to be back here coming
21 back from the mainland. Unfortunately his flight got delayed
22 because of some storm. He called us from Honolulu and said he
23 would hope to be here by 3:45. He had to cut short a trip
24 from the mainland because he originally scheduled his vacation
25 when the hearing was first scheduled the ending of January.

1 When that hearing was held up he placed the trip back and had
2 a conflict with his schedule. And I hope you will excuse his
3 tardiness, if you will. Thank you.

4 MR. DEWAN: Brad Dewan for The Concerned Citizens
5 of Anini. With me is Susan Wilson representing The Concerned
6 Citizens of Anini.

7 MR. MORIMOTO: Peter Morimoto, Deputy County
8 Attorney on behalf of the County of Kauai. With me is Brian
9 Mamaclay who's a planner with the County of Kauai Planning
10 Department.

11 MR. EICHOR: Rick Eichor on behalf of the Office of
12 State Planning. With me is Abe Mitsuda from the Land Use
13 Division of the Office of State Planning.

14 MR. CHAIRMAN: Before we proceed there's two
15 housekeeping matters I need to address. On June 7, 1990 the
16 Commission received a letter from a Dr. Jack Lundgren. And at
17 this time unless there's any objections the Commission will
18 entertain a motion to accept that letter into evidence.

19 MR. HONG: No objection from the petitioners.

20 MR. DEWAN: No objection.

21 MR. CHAIRMAN: Is there a motion?

22 COMMISSIONER WON: So moved.

23 COMMISSIONER MATTSON: Second.

24 MR. CHAIRMAN: All those in favor? (Aye) Further,
25 on February 20, 21, 1991 memoranda were received from the

1 parties addressing the affordable housing and others matters.
2 Unless there's objections those matters will be entered into
3 evidence.

4 MR. DEWAN: I do have a motion with respect to
5 submittals by the petitioner.

6 MR. CHAIRMAN: Do you have objections?

7 MR. DEWAN: Yes. My motion is for the affidavits
8 to be deleted from the record. They would violate our due
9 process. The rules of the Land Use Commission and of the
10 Hawaii Administrative Procedures Act guarantees a right of
11 cross-examination.

12 It's apparent that these three individuals will not
13 appear before the Commission to allow us to cross-examine. We
14 think it inappropriate that after seven years individuals be
15 allowed to testify as to the intent of the Decision and Order
16 when a very significant record was maintained. It is the
17 purpose of Decision and Orders to set forth the facts,
18 Findings of Fact and Conclusions of Law regarding a Decision
19 and Order. So I have an original and 15 copies to submit to
20 support the motion to have those affidavits deleted from the
21 record.

22 MR. CHAIRMAN: Any response?

23 MR. MORIMOTO: The County of Kauai will join in
24 that motion.

25 MR. EICHOR: The state will join also.

1 MR. HONG: Mr. Chairman and members of the
2 Commission, first of all we would like to note the
3 untimeliness of this motion. I think we could have been given
4 the courtesy of having been advised of the motion in advance.
5 Nonetheless, the issue of what was intended by the condition
6 regarding the 10 percent affordable housing and the Decision
7 and Order was not brought up by the petitioner but was brought
8 up by the intervenors and the county as far as contesting and
9 questioning the intent.

10 As far as the petitioner was concerned, as far as
11 certain members of the county was concerned, we thought it was
12 very clear that the 10 percent affordable units could be
13 developed offsite. I think the fact that we have had a period
14 of time passing since the Decision and Order in which the
15 affidavits were first submitted, I think it's irrelevant
16 because the issue was brought up. How do you know you're
17 supposed to address it as a concern? Further I note that the
18 Hawaii Rules of Administrative Procedures Act Chapter 91 of
19 the State of Hawaii as well as the Land Use Commission Rules
20 and Regulations provide that strict rules of evidence will not
21 be followed.

22 I draw the Commission's attention to the case Chock
23 versus Bitterman. This was a case 5 Hawaii Appellate 59, a
24 1984 case where the Hawaii Appellate Court in reviewing what
25 was intended or what was permitted before administrative

1 agencies in its hearings stated that the agencies were, the
2 statute was intended and I quote, "To direct administrative
3 agencies to admit any and all evidence presented to them
4 limited only by considerations of relevancy, materiality and
5 repetition."

6 And this was quoted from Cazimero versus Kohala
7 Sugar Company 54 Hawaii 479, 1973 case. Additionally the
8 Hawaii Supreme Court stated that the general purpose of the
9 Administrative Procedures Act was to quote, "Free
10 administrative agencies from the bounds of any technical rules
11 of evidence." And its intent was, "To require agencies to
12 admit evidence that would have been inadmissible in common law
13 trials."

14 I think, Mr. Chairman and members of the
15 Commission, what we have here is a fear of what the truth is.
16 The truth is that it was not intended the 10 percent
17 requirement imposed on the petitioner be restricted to
18 development only on the Central and Western Plateau. I think
19 the intent was, and it's settled by the affidavits, that it
20 was intended that the 10 percent could be satisfied offsite.

21 The parties had ample opportunity, like we did, to
22 obtain counter-affidavits. Did they do it? No, they did not.
23 We submit the reason they did not was because they could not.

24 Therefore, we ask the Commission accept the
25 affidavits as part of the evidence under the ruling of Chock

1 vs. Bitterman and that the Commission rule that the 10 percent
2 housing requirement can be met offsite. Thank you.

3 MR. CHAIRMAN: I think, Mr. Hong, you left me
4 confused here a little bit. You're asking us to do two
5 things: To allow the affidavits into the record as well as
6 proof as to the intent?

7 MR. HONG: I guess I'm responding to the
8 intervenor's motion. I ask that their motion be denied. And
9 it would follow, as a course, if the motion is denied that the
10 affidavits become part of the record in this Commission making
11 its decision what was the intention behind the housing
12 condition.

13 MR. CHAIRMAN: Okay. Mr. Dewan, you have any
14 rebuttal?

15 MR. DEWAN: Yes. In terms of case law I think it's
16 fairly clear. We have two cases: Town vs. Land Use
17 Commission, which involved a petitioner coming before the
18 Commission several times. Finally, the intervenor failed to
19 show and the petitioner added new testimony to his, to the
20 record on appeal.

21 The Hawaii Supreme Court said that the permit had
22 to be denied because the intervenor was not given a fair
23 opportunity to cross-examine the petitioner regarding this new
24 information or to present rebuttal evidence.

25 We also have in the matter of the application of

1 Hawaiian Telephone Company. This is a regulation case, a rate
2 case. Again the issue here was an exhibit was submitted at
3 the eleventh hour before the PUC. The Supreme Court went
4 along with the Hawaiian Telephone Company because, contrary to
5 what's happening here, intervenor had in fact failed to take,
6 avail himself of the opportunity to have a witness from the
7 telephone company come and take the stand.

8 So I think the Hawaii Supreme Court is very clear
9 on the intention that intervenors, all the parties to a
10 proceeding should be given the opportunity to cross-examine
11 any individual who's presenting testimony. It is a failure of
12 due process. And I think the Land Use Commission Rules, the
13 Hawaii Administrative Procedures Act talks about two kinds of
14 evidence, oral and documentary. This does not constitute
15 documentary evidence because documentary evidence is typically
16 deeds, wills or written agreements. The other kind is oral
17 testimony. Oral testimony has to be in person, again, to
18 allow all parties the right to cross-examine.

19 So we would strongly urge this Commission to not
20 thwart the rights that are being granted the intervenor by the
21 Hawaii Administrative Procedures Act and by your own rules and
22 not allowing us to cross-examine these individuals as to their
23 own statements.

24 Again I think it's also very bad precedent to allow
25 Commissioners at a hearing at seven or eight years ago to come

1 before you, even if they were willing to come before you, to
2 talk about their intent when there's such a significant and
3 extended record available. And you will have the submittal by
4 the Concerned Citizens of Anini that refers very specifically
5 to points in the record, in the transcript where discussion
6 about inclusionary housing, housing had to be onsite, was
7 discussed during the hearings.

8 So we are not fearful of the truth. We are going
9 back to the record as it stands. We are asking the Commission
10 to rely upon that record rather than have past Commissioners
11 come before you simply by affidavits and not in person. Thank
12 you.

13 MR. CHAIRMAN: Any further comment from the county
14 or the state?

15 MR. MORIMOTO: I'd like to note at the last meeting
16 Chairman Nip correctly noted the language of the condition was
17 clear. And if we are going to go back to the legislative
18 history or the Commission history to determine what the intent
19 of the Commission was, then, I think Mr. Dewan is right. You
20 go back to what's in the record. To try to create Commission
21 history seven or eight years after the fact by an affidavit is
22 highly improper.

23 What the Commission's intent was is in the record
24 and it's clear. When they drafted the language of the
25 condition they meant for it to be onsite. And to have two

1 affidavits or three affidavits trying to recreate what
2 happened seven or eight years ago is highly improper.

3 MR. CHAIRMAN: State?

4 MR. EICHOR: I think that comes to the essence of
5 it. The problem that you're presented with is one of
6 construction of the language which, on the one hand is argued
7 as being ambiguous so that we can go offsite. On the other
8 hand it appears from plain wording to mean that the
9 construction will be onsite.

10 If the clause were ambiguous so that you were
11 trying to construe it, then you would try and define the
12 meaning from, as he says, the legislative history or from the
13 record. But with all deference to the individuals who
14 submitted affidavits, I don't think the affidavit of an
15 individual is competent to prove the intent of the Commission.
16 There are nine people on the Commission. And there may have
17 been some differing views in terms of what was intended. So
18 if you want to determine that intent you've got to look at the
19 entire record.

20 Now, the Office of State Planning's position is
21 that based upon the representations of Mr. Challenger that
22 they will contribute more than 10 percent to affordable
23 housing if they go offsite, we are not opposing their
24 proposition. But for clarification from a legal standpoint I
25 think the affidavits are ineffective.

1 MR. CHAIRMAN: But not inappropriate?

2 MR. EICHOR: I'm not sure whether appropriateness
3 fits into it. I think if I were in the position of the
4 petitioner attempting to prove intent, it has some weight.
5 But I think the more appropriate method of proving it would be
6 to cite to the record followed up, perhaps, by affidavits:
7 "This was our intent." The affidavits standing alone I really
8 don't think is good evidence of the Commission as a whole,
9 even though it may come from the Chairman.

10 MR. CHAIRMAN: All right. At this time I'm going
11 to entertain a motion to go into Executive Session to clarify
12 this point of law with our counsel.

13 MR. HONG: Make I make one point?

14 MR. CHAIRMAN: No.

15 COMMISSIONER KAJIOKA: For the benefit of us non-
16 lawyers I move we go into Executive Session.

17 MR. CHAIRMAN: Second?

18 COMMISSIONER MATTSON: Second.

19 MR. CHAIRMAN: So ordered.

20 (Executive Session)

21 MR. CHAIRMAN: We will reconvene. At this time if
22 the parties have any further comment, I think Mr. Hong wishes
23 to make an additional statement.

24 MR. HONG: In view of this we are saying we could
25 possibly, if necessary, get either Mr. Kouchi or Mr. Tacbian

1 here as a live witness if necessary. I don't know if they
2 would be available tomorrow. But, again, this issue of the 10
3 percent is, perhaps, a side issue or sidetracking of the main
4 issue. And the main issue is whether or not this Commission
5 should grant Princeville Corporation --

6 MR. CHAIRMAN: I think we are straying from the
7 point that's before us or the matter that's currently pending
8 before us, action on Mr. Dewan's motion. Do you have any
9 further comments?

10 MR. HONG: No. But I would appreciate if I could
11 get a copy of his motion. We haven't seen it yet. (Pause)
12 Mr. Chairman, I think having very quickly read the motion and
13 memorandum I'd like to respond to the two cases cited by the
14 intervenors. I don't remember the facts of Town vs. Land Use
15 Commission very well except that that was a case that
16 established quasi-judicial hearings for the Land Use hearings
17 under the APA.

18 In the intervenor's discussion of the facts of that
19 case, in his memorandum he stated that the evidence was
20 presented at a time that the intervenor did not attend and
21 included new evidence.

22 I think that can be distinguished, if you will,
23 from this present case in the affidavits were presented
24 before, to the parties, served on all the parties as well as
25 the Commission. I think like in motion practice before a

1 court of law in a motion you can do it by affidavits.
2 Affidavits become relevant to the court's consideration. And
3 the proper procedure is to file countering affidavits. Not to
4 say, "We are not going to accept the affidavits."

5 I think under Rule 56 motion for summary judgment
6 you file affidavits. And if the other parties did not file
7 countering affidavits the affidavits stand as uncontested.

8 I think in this case the parties having been given
9 the affidavits in advance, I think the proper route would have
10 been for them to file a countering affidavit saying that, no,
11 it was not the intention of the Commission.

12 Insofar as the reason we are in this situation is
13 because there is a question what was intended by the
14 condition. If it was so clear as the intervenors would like
15 to have this Commission believe that the intention was the 10
16 percent had to be only situated on the Western and Central
17 Plateau, and that the reference to the Central and Western
18 Plateau was not, as we are saying, a yard stick to measure if
19 you develop X number of units on the Western and Central
20 Plateau then you have to provide 10 percent of that X.

21 If it was so clear, then, there shouldn't have even
22 been this discussion, and the continuation of the last
23 hearing, if you will, whereby the parties were given an
24 opportunity to address this issue.

25 In the matter of the Hawaiian Telephone Company

1 case, again without having the case before me, it appears that
2 what we have is when they said the Supreme Court was not
3 sympathetic to the claim that the exhibit was improper because
4 of a lack of opportunity to cross-examine, I note according to
5 the facts stated in the memorandum the court noted Hawaiian
6 Telephone offered as a witnesses a Hawaiian Telephone employee
7 who participated in developing the exhibit. I don't know what
8 that exhibit consisted of.

9 But we would state that we will have, if necessary,
10 either Ron Kouchi or Phil Tacbian available to testify. We
11 can try to make him available tomorrow. Although I don't
12 think it's a crucial point to our motion to extend, I think it
13 seems to be a stumbling point for this Commission and the
14 other parties, and would like to resolve it in the best way we
15 know possible to get to what was the actual meaning behind the
16 housing condition. Thank you.

17 MR. DEWAN: Couple of quick points. One is
18 petitioner is failing to remember it was Chairman Nip who
19 seemed to state at the last hearing that the meaning of that
20 condition of housing onsite was very clear.

21 MR. CHAIRMAN: Mr. Dewan, I don't want to interrupt
22 your arguments or restrict your presentation. But I think
23 what we need to do is limit the discussion to rebutting any
24 new points, legal points raised by Mr. Hong with regard to
25 whether or not this memo should be admitted into evidence, not

1 what is attempting to be proved at the hearing that we are
2 here to conduct.

3 So unless you have any specific rebuttal to Mr.
4 Hong's commentary on the two cases cited in your memo we need
5 to move on.

6 MR. DEWAN: Well, I think the two cases stand by
7 themselves. My one rebuttal would be that I would recommend
8 my view even having those Commissioners here testifying as to
9 the intent of that condition would be inappropriate. I think
10 there's plenty of case law indicating that having state
11 legislators come and testify as to the intent of a state
12 statute is inappropriate. And I think the Decision and Order
13 of a Land Use Commission is akin to a state statute.

14 There's substantial record here. And again I point
15 to the memo of the Concerned Citizens of Anini. We feel the
16 record is very clear. Petitioner didn't even refer to one
17 element of the record in support of his contention.

18 MR. CHAIRMAN: Mr. Morimoto?

19 MR. MORIMOTO: Yes. I would move to strike on the
20 additional grounds that the affidavits are irrelevant. Again
21 attempting to create the Commission record seven or eight
22 years after the fact and to have two Commissioners speak on
23 behalf of the other nine back in 1983 is highly improper. We
24 get into a situation where we begin shopping for Commissioners
25 years after the fact to get a favorable intent out of them. I

1 don't think any of you want to be placed in that position
2 either.

3 MR. CHAIRMAN: Mr. Eichor, anything else?

4 MR. EICHOR: I don't believe the affidavits are
5 competent to prove the intent of the Commission.

6 MR. CHAIRMAN: All right. What's pending, then,
7 before the Chair is the disposition of the administrative
8 matters of memos submitted by the parties dated February 20
9 and February 21. Pending is the Concerned Citizens Motion to
10 Delete the petitioner's memo dated February 21 as joined in by
11 the county and the state. And based on the motion, the
12 memoranda in support of the Motion to Delete and the
13 discussions and the record thereon, the Chair is going to
14 grant the Motion to Delete. And the petitioner's memo dated
15 February 21 shall be stricken.

16 At this time, Mr. Hong, would you call your next
17 witness.

18 MR. HONG: When we recessed or continued last
19 Mr. Shigemoto was on the stand. There were some questions
20 that were deferred to him under the cross-examination of
21 Mr. Challenger. I believe Mr. Shigemoto is prepared to
22 respond to those questions if the other parties still want to
23 go into those areas.

24 MR. CHAIRMAN: Any parties have questions for
25 Mr. Shigemoto at this time?

1 MR. MORIMOTO: Yes, the county does.

2 MR. CHAIRMAN: Mr. Shigemoto is still under oath
3 so, Mr. Morimoto you may proceed.

4 MR. MORIMOTO: For the record I'm showing Mr. Hong
5 county's Exhibit A. It's Princeville Resort's Residential
6 Real Estate 1990-1995 Marketing Plan Overview. And I believe
7 copies of that report have been provided to the Commission.

8 MR. CHAIRMAN: Mr. Morimoto, before you begin at
9 this time can the parties give us some indication as to how
10 many more witnesses for the petitioner, intervenors, county
11 and state?

12 MR. HONG: Mr. Shigemoto is our last witness
13 subject to any rebuttal witness which we may have following
14 the presentation of the other parties' cases.

15 MR. DEWAN: Intervenors will not be calling any
16 witnesses.

17 MR. MORIMOTO: County knows of no witnesses at this
18 time. It depends upon the testimony of Mr. Shigemoto in
19 responding to queries about Exhibit A, county's Exhibit A.

20 MR. CHAIRMAN: State?

21 MR. EICHOR: We have no witnesses, just the
22 memorandum dated February 21st, 1991 that will be submitted.

23 MR. CHAIRMAN: Thank you. You may proceed.

24 MR. HONG: I guess I'm a little confused where
25 county's Exhibit A came from. As far as we know this is

1 supposed to be a confidential report within upper management
2 level. I'm curious where it came from. We know nothing about
3 it.

4 MR. CHAIRMAN: I'm sorry, I didn't catch the first
5 part of your question.

6 MR. HONG: I guess we are surprised to see this
7 report because at least the person from Princeville sitting
8 next to me knows nothing about this. She suspects this report
9 may have been a confidential report or a draft report. And
10 we'd like to know where this came from. It bothers us if this
11 is a confidential draft report how did the county get ahold of
12 it. I'd like the county to give us an explanation where they
13 got it from.

14 MR. MORIMOTO: If Mr. Hong is implying that we
15 somehow stole the report?

16 MR. HONG: No. I just want an explanation where it
17 came from.

18 MR. MORIMOTO: I'd rather not reveal the source of
19 this report. However, are they disputing the -- you know, if
20 the Commission wishes I would go in camera, so to speak, to
21 reveal to the Commissioners where the county received the
22 report.

23 MR. CHAIRMAN: What is your objection, Mr. Hong?

24 MR. HONG: We just wondered for the record where it
25 came from since the witnesses not knowing about this report

1 and they are supposed to have knowledge what's going on in
2 Princeville. We question whether this is a final report or
3 draft report or what. That's our problem. If the county
4 would give us some background as far as, you know, where it
5 came from, give us some line on what this is.

6 MR. MORIMOTO: I believe the document speaks for
7 itself. Where it came from? It came from Princeville
8 Corporation owner and developer of Mirage Princeville Resort.

9 MR. CHAIRMAN: I'm not sure if I understand if
10 there's an objection by the petitioner with regard to this
11 exhibit at this time that we can rule on. Do you have some
12 questions for the county that may or may not be relevant or
13 appropriate at this time?

14 MR. HONG: I have an objection. If it's a draft
15 report it's unfair to the petitioner to have this binding on
16 the petitioner as an indication of the petitioner's position.
17 That's why we are asking where it came from so we can get an
18 idea what is the nature of the animal we are dealing with.

19 If it's a draft it's unfair to say it's a binding
20 or final report that the petitioner should be burdened with.

21 (Commissioner Mattson excused from this point in
22 the proceedings)

23 MR. CHAIRMAN: Your objections at this time are
24 premature. At this time I think the county should proceed.
25 And if there are any relevant objections to be made they can

1 be made at the appropriate time. And we can rule on them at
2 that time. You may proceed, Mr. Morimoto.

3 TOM SHIGEMOTO,
4 called as a witness by and on behalf of the Petitioner having
5 been previously duly sworn to tell the truth, the whole truth
6 and nothing but the truth, was examined and testified as
7 follows:

8 CROSS-EXAMINATION

9 BY MR. MORIMOTO:

10 Q For the record, Mr. Shigemoto, I'm going to show
11 you what's been shown to your counsel as county's Exhibit A.
12 First of all, Mr. Shigemoto, are you familiar with Princeville
13 Resort?

14 A In what sense?

15 Q Are you employed by Princeville?

16 A I am employed by the Princeville Corporation, yes.

17 Q Do you recognize the names at the bottom of the
18 face page of county Exhibit A?

19 A Yes.

20 Q What's the first name there?

21 A John E. Tabart.

22 Q What's his relationship to Princeville?

23 A John is the CEO of Princeville, Chief Executive
24 Officer of Princeville Corporation.

25 Q Who is Warwick Redgrave?

1 A I don't know his exact title. I think he's a
2 special consultant to Princeville in regards to residential
3 sales.

4 Q Tanya R. Bova?

5 A She's the director of marketing and advertising.

6 Q Are all of these people currently employed by
7 Princeville Corporation?

8 A Yes, they are.

9 MR. MORIMOTO: At this time I'd like to move into
10 evidence county Exhibit A.

11 MR. CHAIRMAN: Any objections?

12 MR. HONG: I don't know how to word the objection
13 because I don't know what we are dealing with. I object on
14 the basis I'm not sure who wrote this, under what
15 circumstances, whether it's a final or draft report and again
16 for the similar reasons as the motion for striking our
17 affidavits in the memorandum in that the authors of this
18 report are not available for us to question them. And we
19 don't know, haven't had a chance to look at this report.

20 Again I voice a running concern that we are not
21 provided with copies of these exhibits like this in advance.
22 It seems to be quite easy just to drop a copy in the mail or
23 walk it over to us so we won't be surprised and at least find
24 it, rather than spring it at the last minute on us, which goes
25 against the whole idea of open, fair discussions as far as

1 getting to what are the issues and how do we respond to the
2 issues. So I would object to the introduction of Exhibit A.

3 MR. MORIMOTO: May I respond?

4 MR. CHAIRMAN: Yes.

5 MR. MORIMOTO: The County of Kauai twice made
6 requests for the issuance of a subpoena duces tecum which was
7 served on all of the parties. In the subpoena duces tecum
8 the county requested that John Tabart bring any and all
9 documents, studies, reports or memorandum which describe or
10 pertain to Princeville Corporation's marketing plan and/or
11 proposals for its lots and/or houses and lots to be developed
12 on the Western and Central Plateaus of Princeville
13 Corporation's Phase II.

14 Mr. Hong was fully aware that this subpoena duces
15 tecum was served or was attempted to be served on Mr. Tabart.
16 And had full notice that we intended to introduce whatever
17 memorandums or exhibits were produced as a result of the
18 issuance of this subpoena.

19 However, we have subsequently learned that Mr.
20 Tabart is in Australia and wasn't going to be available for
21 this hearing. We obtained a copy of the residential real
22 estate marketing plan and intended to introduce it through
23 other witnesses that were available.

24 And since Mr. Shigemoto is available and he's
25 familiar with the people listed as the preparers of this

1 report, and he's familiar with Princeville Corporation, I
2 believe any question as to its authenticity has been removed.

3 MR. CHAIRMAN: I think the questions to
4 Mr. Shigemoto were merely does he recognize those names and
5 who are those individuals. As to any relationship with Mr.
6 Shigemoto and this document, I'm not sure that's been
7 addressed or satisfied at this time. What is your offer of
8 proof with regard to county's Exhibit A as being at this time
9 offered into evidence?

10 MR. MORIMOTO: One of the contentions of the county
11 is that the petition, the 1983 petition and the Environmental
12 Impact Statements submitted in support of that petition by
13 Princeville Corporation made specific representations
14 regarding catering to the local market or catering to local
15 purchasers in Princeville Corporation's Phase II development;
16 and also talked about providing substantially discounted
17 employee housing in the Phase II development.

18 When the Land Use Commission made its decision back
19 in 1985 it stated that the redistricting was justified because
20 Princeville Corporation would be providing across-the-board
21 housing for all economic groups.

22 We will attempt to establish through this
23 Residential Marketing Plan Overview that Princeville
24 Corporation has no such intention; that their intent as stated
25 on page 5 of the Marketing Plan Overview is to market the

1 project to 65 to 70 percent of it to the U. S. mainland
2 investors; 20 to 30 percent or more from Japan and 5 percent
3 from Europe and other destinations. There's no mention in
4 this marketing plan overview of local purchasers or offering
5 housing to employees at discounted prices.

6 MR. CHAIRMAN: I think, perhaps, a more direct
7 question to Mr. Shigemoto with regard to this issue would be
8 to identify whether or not he's aware or has seen or had any
9 participation in the preparation of this document.

10 Q (By Mr. Morimoto): Mr. Shigemoto, have you ever
11 seen copies of Exhibit A?

12 A No.

13 Q Do you have any familiarity with who prepared it?

14 A No.

15 Q Do you know Mr. Tabart?

16 A Yes.

17 Q Do you know Mr. Redgrave?

18 A Yes.

19 Q Do you know Miss Bova?

20 A Yes.

21 Q Can you turn to the back of the document. Do you
22 recognize the corporate logo on that document?

23 A Certainly.

24 Q Whose logo is that?

25 A That's Princeville Corporation's logo.

1 Q And at the bottom is an address. Do you recognize
2 that address?

3 A Yes. That's a Princeville's Corporation's.

4 Q Whose telephone number is that?

5 A That's Princeville's.

6 Q There's a fax number. Whose fax number is that?

7 A Princeville Corporation's.

8 Q Is there any doubt in your mind as to the
9 authenticity of this document?

10 A I don't know what you mean.

11 Q Is there any doubt that this document constitutes a
12 report prepared by John Tabart, Warwick Redgrave or Tanya
13 Bova?

14 A I can't answer that. I don't know.

15 MR. CHAIRMAN: At this time with regard to the
16 county's motion to move Exhibit A into evidence I'm going to
17 defer at this time and allow you to question Mr. Shigemoto and
18 we'll hear further arguments with regard to the authenticity
19 of county Exhibit A, and then rule on your motion to have it
20 submitted, and hear any objections at the appropriate time.

21 MR. MORIMOTO: Being that Mr. Shigemoto is not
22 familiar with the contents of the document or who prepared it
23 it would be difficult to continue questioning him on it. And
24 for that reason I'll pass the witness at this time.

25 MR. CHAIRMAN: All right. State?

CROSS-EXAMINATION

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BY MR. EICHOR:

Q Mr. Shigemoto, have you had any part in the marketing plans for Princeville?

A No.

Q You haven't participated in any of the meetings or discussions with any of the people identified on county Exhibit A?

A No.

Q At the last hearing Mr. Challenger referred the questions on the new Master Plan to you. Can you give us an overview of the present phasing plans and housing units on what is planned?

A There's the plan before you. March '89 Master Plan. This plan, yes, I can. Just to orient you to the Princeville area. This is a map of Princeville Phase I and our proposed Phase II. The ocean is to the top of the map which would be north. This is Kuhio Highway. And this is the south of our property. The Phase I boundary ends approximately here where the current entry to Phase I is. This is what we generally refer to as the Western Plateau. This is currently what we got incremental districting for at this point, and this portion here is what we refer to as our Eastern Plateau.

This yellow, the yellow colors represent basically

1 single-family residential proposals. No higher than R-6
2 zoning. The pink shaded area here represents our resort area.
3 It's basically the same, maybe a little less than what was
4 shown on our 1989 Master Plan.

5 On our '89 Master Plan there was also a tennis
6 center located here of about 15 acres. That's deleted from
7 this proposal, and a three-acre site is shown here adjacent to
8 the hotel.

9 Also what wasn't shown on the 1989 Master Plan is a
10 second golf, 18-hole golf course on the Phase II. And that is
11 shown dispersed among and in between units in the Central and
12 the Eastern Plateau. Also what is not shown which are shown
13 on the '89 plan was a school site situated approximately here,
14 and a limited industrial zoned area here adjacent to the
15 airport runway. That's basically it.

16 Q Have you changed the number of either hotels or
17 residential or condo units that were originally planned?

18 A If anything the resort -- the hotel area and the
19 multi-family area have reduced compared to our '89 Master
20 Plan.

21 Q What is the reason for that?

22 A Two things. First of all the new owners felt that
23 there was a need to have more golf courses between the
24 residential and the resort areas which reduced the total
25 square footage of that anticipated resort zoned areas. And

1 it's just because of that the area for the multi-family as
2 well got reduced.

3 Q Have you switched or increased the number of single
4 family as opposed to multi-family units or vice versa?

5 A No. In fact the total number of units that are
6 shown planned here are less than what was anticipated back in
7 1989.

8 Q Do you know whether the price range that is
9 targeted has changed, price range for the sale of units?

10 A I don't know.

11 Q Has there been any change in the them or the goals
12 of the project, if you know?

13 A No. I think they are basically the same as
14 outlined previously.

15 Q Okay. Why was the housing site deleted, if you
16 know?

17 A What housing site?

18 Q I'm sorry. Not the housing, the school site.

19 A Well, the school site, there was a feeling that the
20 Department of Education actually kind of dictates where the
21 school site will be, when and after they do their site
22 selection study. So we just didn't feel it was appropriate to
23 indicate it anywhere on the plan. The other reason, of
24 course, is that there's some resistance from the county about
25 development mauka and that was one of the unresolved issues

1 when Princeville presented its Master Plan to the Planning
2 Commission.

3 Q Mr. Challenger indicated that Princeville
4 Corporation would donate a school site in Princeville when
5 there's a need. I suppose that would be determined by the
6 county and DOE. Do you have a site in mind where that might
7 be placed?

8 A At this time, no.

9 Q Although I recognize that there's some concern as
10 to whether the affordable housing was on or offsite, do you
11 have any sites selected for the affordable housing?

12 A Not at this time. I think more studies have to be
13 done. If it is a requirement that it be done in Phase II we
14 are going to have to look at wherever it fits.

15 Q Do you have a site identified as a potential
16 location off of the Princeville area?

17 A No, we have not determined that, no.

18 Q Mr. Challenger indicated also if it was done
19 offsite that you would provide more than the 10 percent which
20 was shown in the Decision and Order condition. Has there been
21 any discussion as to how much you would increase the 10
22 percent requirement?

23 A No.

24 Q Who would be the proper person to answer those
25 questions?

1 A Mr. Challenger.

2 MR. EICHOR: That's all I have. Thank you.

3 MR. CHAIRMAN: Mr. Dewan?

4 MR. DEWAN: Just a few questions.

5 CROSS-EXAMINATION

6 BY MR. DEWAN:

7 Q Do you happen to know back in 1983 what was the
8 reason for seeking the redistricting of the Western and
9 Eastern Plateaus?

10 A The purpose? As land developers and with the
11 amount of land that Princeville owns I believe it's incumbent
12 upon them to pursue developing their holdings. They are a
13 business, and I think that after a certain point, you know,
14 their development is going to cease. In fact there's very
15 little land that Princeville owns in Phase I, and it's part of
16 the ongoing development process.

17 Q Can you state, then, what is the purpose now as
18 petitioner seeks to go forward with its development of Phase
19 II, what are the purposes of development of the Western and
20 Central Plateau? How would you describe the purpose of this
21 redistricting or justification for it?

22 A As I said, you know, they are a business. They
23 need to make profits. It's a timely process. We don't get
24 approvals all at once. Therefore, we are moving forward with
25 our development of the Western Plateau. And in due time we

1 will get to the Central Plateau, if approved. As far as
2 justification goes, the rationale for that would be developing
3 jobs, developing needed housing, whatever the price limit may
4 be.

5 Q Maybe my question really is then directed towards
6 the character of Princeville Development Corporation past and
7 present. It's stated in the EIS that Princeville Development
8 Corporation basically was to do the basic infrastructure and
9 then sell off the lots for, to a developer or individual
10 homeowner.

11 Is that the same character, the same type of
12 process that Princeville Corporation today intends, to simply
13 put in the basic infrastructure and then sell to a subsequent
14 developer?

15 A No, I don't think so. There may be some vacant lot
16 sales if that's what you're driving at. But basically
17 Princeville intends to develop the units on the lots.

18 Q Themselves?

19 A Yes.

20 Q Mr. Challenger talked about marketing to
21 individuals in Southern California. Are you aware of the
22 Exhibit 25 that was submitted by petitioner in conjunction
23 with his original petition, a study called Local Residential
24 Market Potential Princeville Phase II that was prepared by
25 Ming Chew Associates?

1 A I can't honestly say I'm familiar with that, no.

2 Q Are you able to clarify in any way what you
3 perceive as the marketing direction for these residential
4 units?

5 A No, I would feel very uncomfortable doing that.
6 I'm not familiar with that at all.

7 Q Because of your short time with Princeville or
8 you're not involved with developing a marketing plan?

9 A Right. I'm not involved with developing the
10 marketing plan.

11 Q Mr. Challenger deferred some of the these questions
12 to you I had previously. Is it true the last studies done to
13 support the Phase II development were actually done in the
14 late 1970's or early 1980's?

15 A I believe that's correct.

16 Q Are you involved at all in the current population
17 projections that the development of Princeville Corporation is
18 using?

19 A Can you clarify that. In what sense?

20 Q In the sense as you're looking at your development
21 plans for the Western and Central and possibly Eastern
22 Plateaus, what are your population growth projections?

23 A If you're asking if we've established densities in
24 these areas, yes, we have.

25 Q And are you aware that the -- well, there's

1 justifications for Phase II contained in the EIS regarding
2 population growth. Are you able to state whether these
3 projections are now different than what were originally stated
4 in the EIS in '83 and '84?

5 MR. HONG: Mr. Chairman, I object to this question.
6 I believe the transcript will show at the last hearing the
7 applicant indicated that if at the time they came in for the
8 incremental redistricting for the Central Plateau, if, in
9 fact, there was a need for an updating of the EIS they would
10 do so.

11 I think the line of questioning appears to be
12 headed towards whether or not there should be an upgrading, if
13 you will, of the EIS. I think the petitioner's already stated
14 it will do so, if necessary, at that time.

15 MR. CHAIRMAN: You want to respond to Mr. Hong's
16 objections?

17 MR. DEWAN: I wasn't that clear that the petitioner
18 had agreed to do -- I guess maybe the issue is how much of the
19 EIS would be redone at the time of the application.

20 MR. HONG: I think the representation made by
21 Mr. Challenger was that the EIS would be upgraded in whatever
22 aspects deemed necessary at that time. There are certain
23 things obviously we don't have to upgrade; certain things we
24 will have to upgrade. I believe we can't say we are going to
25 do this, this and that until that time when we come in for the

1 incremental redistricting what has changed from the original
2 EIS that needs updating.

3 MR. DEWAN: I guess my response is it seems a
4 little bit backward to ask for an extension of time to do your
5 development on the Western Plateau, which would allow you to
6 have incremental districting on the Central Plateau, when the
7 key issues are that there has been significant change of your
8 original application, of your original justification for Phase
9 II and your Environmental Impact Study results. I think the
10 issue is today, not tomorrow when you might come in for the
11 Central redistricting issue. That's our concern.

12 MR. CHAIRMAN: Wait a minute. Now we are getting a
13 little far off, far afield. There was a question posed by
14 Mr. Shigemoto. An objection was raised. And perhaps to
15 clarify the court reporter could read the question by Mr.
16 Dewan to Mr. Shigemoto.

17 (Pending question read by the reporter)

18 MR. CHAIRMAN: Objection is overruled. You may
19 answer the question.

20 THE WITNESS: I believe our projections are lower
21 than what they were proposed back in '83.

22 Q (By Mr. Dewan): You mentioned that the density is
23 now lower for Phase II, the Western and Central Plateau than
24 what it was originally proposed back in '83 and '84?

25 A Correction. Phase II because the Eastern Plateau

1 was also included in the total projections.

2 Q So you're saying it has nothing to do with the
3 actual number of units being proposed, being proposed to be
4 built? The actual number of units, housing units is about the
5 same as what was proposed in '83 and '84 part of the original
6 petition?

7 A It's less.

8 Q It's less?

9 A Yes.

10 Q Why? Do you have an understanding why they would
11 be building less units than what was originally proposed?

12 A I believe our new owners feel that the densities
13 should reflect more of a single-family residential type
14 development than multi-family.

15 Q Will the lot sizes be larger?

16 A I can't really say.

17 Q Did you provide for multi-family units in Phase I,
18 the original petition?

19 A In Phase I?

20 Q The Phase II of the original petition?

21 A Yes. They were multi-family areas.

22 Q What's the comparison today to what was originally
23 proposed? Is there less or more or about the same as what was
24 proposed?

25 A There's less. There was a big multi-family zoned

1 area right in here.

2 Q Can you explain why there is less now?

3 A I explained that a big reason for that is because
4 now we have the golf course that comes interspersed between
5 the resort multi-family and single family areas.

6 Q In the petition and in the transcript there is
7 continued reference to the discount housing program and the
8 desire to continue that into Phase II. Are you aware of
9 whether that is, in fact, going to be continued?

10 A I believe that's the policy of Princeville
11 Corporation to keep on offering discounts to employees.

12 Q Do you know what level of discount that would be?

13 A Right now it's 25 percent.

14 Q And will those lots be on Phase II property?

15 A I believe so, yes.

16 Q Will there be any gated or gates to any parts of
17 the residential units proposed for Phase II on the Western or
18 Central Plateau redistricting ingress and egress?

19 MR. HONG: I question the relevance here of the
20 question. It's an extension. Whether it's going to be gated
21 or how tall the buildings are going to be --

22 MR. CHAIRMAN: I think the question is relevant.
23 You may answer the question.

24 THE WITNESS: No. I'm not aware at this time as to
25 whether or not there will be gates. I know there will be a

1 gate at the main entry. But as to the individual roadways I
2 don't know.

3 Q (By Mr. Dewan): Again I guess I'll repeat the
4 question. Are you aware of what the marketing price is going
5 to be, proposed sales price for these residential units?

6 A No.

7 Q And who would know that, prices?

8 A Mr. Challenger.

9 MR. DEWAN: No further questions.

10 MR. CHAIRMAN: Redirect?

11 MR. HONG: Mr. Chairman, if I may start by a
12 housekeeping matter, if I may. I don't believe that the
13 Master Plan that Mr. Shigemoto was referring to, all though it
14 was submitted to all the parties and submitted to the
15 Commission I believe on November 2, 1990, has been received
16 into evidence. If there are no objections we'd like to have
17 it received into evidence so it becomes part of the record.

18 MR. CHAIRMAN: Hearing none, so ordered.

19 FURTHER EXAMINATION

20 BY MR. HONG:

21 Q Mr. Shigemoto, you were made aware of the position
22 of the Office of State Planning insofar as their position on
23 this motion, have you not?

24 A Yes, I have.

25 Q Would you briefly tell this Commission what

1 Princeville, what the applicant's position is with respect to
2 the recommendations of the Office of State Planning?

3 A Basically we don't have any objections to the
4 recommendations made by the Office of State Planning except I
5 think we need to clarify their recommended Condition number
6 one. And that was discussed at the last Commission meeting,
7 whereby Mr. Challenger had some problems agreeing to that
8 simply because he wasn't, not wasn't aware, he was afraid that
9 if we agreed to that, that condition, because we have already
10 revised development as proposed in the '83 EIS he felt maybe
11 that would cause some problems with the reversion provision.

12 And I think that was clarified. So if the
13 understanding is that we will develop our properties based on
14 the '89 Master Plan then we don't have a problem.

15 Q For point of clarification, there was reference to
16 Mr. Challenger making a representation that Princeville would
17 be willing to contribute more than the 10 percent. Wasn't
18 that, I believe, qualified that if it can be shown that
19 Princeville contributed to the additional demand for
20 affordable housing then they would be willing to contribute
21 additional housing?

22 A That's correct.

23 Q Isn't it an additional justification or purpose for
24 the Phase II is to complete or round out the Princeville as a
25 resort/residential community?

1 A That's correct.

2 Q One last question. In response to whether there
3 would be a gate, you said there would be a gate at the main
4 entrance. Is this --

5 A Yes.

6 Q Is this gate for security purposes or would the
7 general public be restricted from entering Princeville in any
8 way?

9 A No. I believe if it works the same way as the
10 present guardhouse does the gate is open till about eleven
11 o'clock at night. And then only after eleven they check
12 guests or whoever, visitors from, you know, who's entering the
13 property.

14 Q And the purpose is to keep people who have no
15 business in the project off the project?

16 A That's correct.

17 MR. HONG: That's all the questions I have,
18 Mr. Chairman.

19 MR. CHAIRMAN: County?

20 MR. MORIMOTO: I have a few questions, very brief.

21 MR. CHAIRMAN: All right.

22 MR. MORIMOTO: Thank you.

23 RE-CROSS-EXAMINATION

24 BY MR. MORIMOTO:

25 Q Mr. Shigemoto, are any of the people listed on the

1 face page of county Exhibit A present on the island?

2 A I believe all three of them are on the island.

3 Q All three are on the island?

4 A I believe so.

5 Q Would the petitioner have any objection to having
6 one of those people present to testify about the preparation
7 of this document?

8 MR. HONG: Well, during the break Paula Morikami
9 went to see who was available. I thought she said two of them
10 were off the island. I'm not sure if the third is on the
11 island or not. I believe Mr. Redgrave is out of the country.
12 Miss Bova is on the mainland and Mr. Tabart was on the island.
13 He may still be here. We are not sure whether he's still here
14 or not.

15 I would like to note that we tried to track down
16 the source of this Exhibit A. And we found that's a
17 confidential report that was not supposed to have been
18 released. And I'd like to know where it was received from and
19 where it was gotten from. It's very disturbing.

20 MR. CHAIRMAN: That's inappropriate at this time.
21 We are on redirect. I think, Mr. Morimoto, your question has
22 been answered. Do you have any other questions?

23 MR. MORIMOTO: Yes.

24 Q Mr. Shigemoto, was Princeville up before the
25 County's Planning Commission for subdivision approval

1 recently?

2 A On what property?

3 Q I believe it was a subdivision on the Western
4 Plateau of the Phase II?

5 A Yes.

6 Q And isn't it true that it was represented to the
7 Planning Commission of the County of Kauai that the houses to
8 be developed in that subdivision would go for between \$750,000
9 and \$800,000 per unit?

10 A I believe the 750 thousand dollar figure was
11 mentioned to the subdivision community, yes.

12 Q As a starting price?

13 A I can't recall if it was starting or that's the
14 upper limit.

15 Q How many units were going to be developed in the
16 subdivision?

17 A One hundred eighteen lots. Correction.
18 Ninety-one.

19 Q Mr. Shigemoto, do you know if Mr. Challenger would
20 be familiar with the contents of county Exhibit A?

21 A No.

22 Q You wouldn't know?

23 A I wouldn't know.

24 Q But Mr. Challenger is the chief operating officer?

25 A That's correct.

1 Q And he's second in command to Mr. Tabart?

2 A That's correct.

3 Q And he's, in fact, Mr. Redgraves' superior?

4 A I don't know that relationship. As I said Mr.
5 Redgrave is a special consultant. So what standing he has in
6 the company I can't say.

7 Q Well, would Mr. Challenger be considered Miss
8 Bovas' boss?

9 A Yes.

10 MR. MORIMOTO: Again I'd like to ask if the
11 petitioner could produce Mr. Challenger.

12 MR. HONG: As we noted he's supposed to be here. I
13 don't know how the flights are arriving. I would like to also
14 note for the record that Mr. Challenger was questioned, and
15 all of the parties did have an opportunity to cross-examine
16 him. We presented Mr. Shigemoto to answer questions that were
17 not in the area of Mr. Challenger's expertise.

18 Now, to call Mr. Challenger back again I'm not sure
19 if that's getting a second bite at the apple, having already
20 questioned him.

21 MR. CHAIRMAN: Was it petitioner's representation
22 Mr. Challenger would be here, would be available for further
23 examination?

24 MR. HONG: He would be available. We didn't intend
25 to call him as a witness. I believe Mr. Shigemoto

1 is our last witness.

2 MR. CHAIRMAN: The parties know what they need to
3 do if they wish Mr. Challenger to testify. Any questions from
4 the state?

5 MR. EICHOR: No.

6 MR. CHAIRMAN: Intervenor, any questions?

7 MR. DEWAN: No.

8 MR. CHAIRMAN: Commissioners? Thank you,
9 Mr. Shigemoto. Petitioner have any further witnesses at this
10 time?

11 MR. HONG: No, we do not subject to any rebuttal
12 witnesses which may be necessary.

13 MR. MORIMOTO: For the purpose of laying a
14 foundation of the authenticity of this document the county
15 will call Beryl Blaich to the stand.

16 MR. CHAIRMAN: Okay. All right. Ms. Blaich, I
17 believe you testified in this hearing, is that correct, as a
18 public witness?

19 A MS. BLAICH: I testified on the matter of C & F as
20 a public witness, not in relation to this.

21 MR. CHAIRMAN: Okay. Will you please raise your
22 right hand.

23 BERYL BLAICH,
24 called as a witness by and on behalf of the County having been
25 first duly sworn to tell the truth, the whole truth and

1 nothing but the truth, was examined and testified as follows:

2 THE WITNESS: I will.

3 EXAMINATION

4 BY MR. MORIMOTO:

5 Q Ms. Blaich, I handed you a copy of county Exhibit

6 A. Do you recognize that document?

7 A Yes, I do.

8 Q And when did you first see that document?

9 A I'm sorry. I'm not going to be able to remember
10 the dates. It was subsequent to your first hearing on this
11 matter.

12 Q So it was after November 1990?

13 A Yes. Actually it was very shortly after. It was,
14 I believe, the next day after your hearing on this issue.

15 Q And under what circumstances did you see that
16 document?

17 A This document was sent to me by a gentlemen by the
18 name of, I hope I'm going to get his name right, Shigeki
19 Iwamashita.

20 Q How do you come to know Mr. Iwamashita?

21 A Mr. Iwamashita was referred to me or given my name
22 by an, well, I'm not exactly sure. But Mr. Iwamashita is an
23 employee of Sunwa Bank in Tokyo. And he was visiting the
24 Island of Kauai because his company was being asked to become
25 an investor in Princeville Development Corporation by Suntory,

1 the majority owner of Princeville Development Company.

2 And he had been desiring to speak to government
3 officials and community people, or had been suggested to him
4 that he might also wish to speak to community people so that
5 he could get a full appraisal of Princeville's plans and how
6 they were perceived in the community.

7 I was contacted by Ann Bouslog of Peat Marwick and
8 Mitchell who asked if I would be willing to meet
9 Mr. Iwamashita. And I said that I would. And we had
10 breakfast together. And because I worked on the Hanalei
11 project, which created a Cultural Resource and Management Plan
12 and Design Guidelines for Hanalei, and has done a lot of
13 historic research for Hanalei, I brought him lots of documents
14 from the Hanalei project including the Cultural Resource
15 Management Plan Design Guideline and three community fliers.

16 And I told him should his company be interested in
17 actually investing I really hoped that these documents would
18 be read by him so that he would have a full understanding of
19 Princeville's place in the whole context of the North Shore.

20 And I further told him that several of the
21 documents he was really free to keep, and there was only one
22 document, and that was the Cultural Resource Management Plan,
23 which we didn't have many copies of it. And that if they
24 decided not to invest I would appreciate having that one back,
25 if they could.

1 The day of this C & F Farms hearing I received a
2 package from Japan which I didn't have an opportunity to look
3 at. On the next day I opened it up. And Mr. Iwamashita had
4 sent back all of my documents. And he had also sent this
5 Residential Real Estate 1990-1995 Marketing Plan Overview.

6 I felt that it was interesting because
7 Mr. Challenger had indicated on the stand, and I had heard
8 them, that there was no marketing plan for Princeville Phase
9 II or for the rest of Phase I. And this appeared to be such a
10 plan.

11 Q Okay. I want you to look through that exhibit, if
12 you could.

13 A Yes, I have looked through it.

14 Q Ms. Blaich, is that county's Exhibit A an accurate
15 reproduction of the marketing plan that was sent to you by
16 Mr. Iwamashita?

17 A This is the same document except that the original
18 document had blue, royal blue binding. It had a white shiny
19 cover, and it had a gold embossed Princeville emblem.

20 Q Are --

21 A Excuse me. I might also add that the document did
22 not say Draft.

23 Q The document that you had?

24 A Correct.

25 MR. MORIMOTO: At this time I'd like to move into

1 evidence county Exhibit A.

2 MR. CHAIRMAN: Any objections?

3 MR. HONG: Mr. Chairman, could we defer the
4 movement until I have a chance to ask Ms. Blaich on the
5 document?

6 MR. CHAIRMAN: You may cross.

7 CROSS-EXAMINATION

8 BY MR. HONG:

9 Q Beryl, you indicated that Mr. Challenger said at
10 the last hearing that Princeville did not have any marketing
11 plans and this seems to be inconsistent with that statement.

12 Wasn't the statement by Mr. Challenger that
13 Princeville was in the process of undertaking marketing plans?

14 A Yeah. I think you're correct.

15 Q You indicated that this document, that it was not a
16 draft. Could it also be a draft without saying so? Does it
17 say it's a final copy?

18 MR. MORIMOTO: Objection. Calls for speculation.

19 MR. CHAIRMAN: Sustained.

20 Q (By Mr. Hong): Does the document contain any
21 indication that it is not a draft?

22 MR. MORIMOTO: Objection. The document speaks for
23 itself.

24 MR. CHAIRMAN: She can answer the question.

25 THE WITNESS: Does the document contain any

1 indication that it is not a draft? No, it looks like a final
2 document.

3 Q (By Mr. Hong): Looks like a final document. Okay.

4 A And it is also consistent with my understanding of
5 what the current subdivision plans on the Western Plateau are.

6 Q Are you privy to know what the current subdivision
7 plans of Princeville on the Western Plateau are?

8 A The subdivision, it was known that the subdivision
9 was going to be reduced in size. It was known that the
10 subdivision was going to be offering larger lots than had been
11 the case in the original Phase II hearings.

12 Q This is referring only to the first subdivision
13 known as Queen Emma Bluffs, is that right?

14 A Yes. That's the only subdivision.

15 Q So you don't know what Princeville's plans are with
16 respect to the other subdivisions proposed for the Western
17 Plateau?

18 A No, I do not. Excuse me, Mr. Hong. The document
19 also speaks about properties within Phase I of which I'm not
20 aware of what the plans are. But, and it speaks of specific
21 uses for the hotel as part of a marketing plan, and that those
22 were consistent with current occurrences at Princeville.

23 MR. HONG: That's all the questions I have of
24 Ms. Blauch at this time, Mr. Chairman. However, we do, again,
25 renew our objection to the introduction of county's Exhibit A

1 on the basis it is a confidential document; that there is no
2 indication that it's intended to be a final document.

3 As far as I know, as far as the petitioner's
4 witnesses have stated they are not aware of the document.
5 Mr. Challenger is expected any moment. And hopefully we can
6 ask him the same question.

7 MR. CHAIRMAN: Ms. Blaich, your answer to the
8 question to describe the original document as provided to you
9 by Mr. Iwamashita, did that document to the best of your
10 recollection have any markings on it saying Attorney-client
11 Privilege or Confidential?

12 THE WITNESS: No. There were no markings on it
13 whatsoever.

14 MR. CHAIRMAN: The objection is overruled. The
15 document shall be admitted as county's Exhibit A.

16 MR. MORIMOTO: Thank you. Thank you, Beryl.

17 MR. CHAIRMAN: Any further witnesses? The parties
18 wish at this time to present final arguments?

19 MR. HONG: Thank you. Mr. Chairman and members of
20 the Commission. This has been a very long and drawn out
21 proceeding. We had hoped for a simple motion to extend. The
22 basic issue before this Commission is five years ago this
23 Commission reclassified approximately 190 acres of land for a
24 residential development with incremental reclassification for
25 what is called or known as the Central Plateau.

1 Within the five year period Princeville Corporation
2 could not complete substantially the infrastructure for the
3 Western Plateau. We came before this Commission with a
4 motion to extend asking for another five years to complete the
5 infrastructure for the Western Plateau.

6 In our request we indicated what Princeville
7 Corporation had done during the intervening five years which
8 included the golf course, the clubhouse, changing or taking
9 steps to change a main entrance, extending the water
10 infrastructure, completing the water plan as well as
11 undertaking several projects while in Phase I admittedly were
12 to the benefit of Phase II.

13 For example, expanding the shopping center because
14 of a demonstrated need that the current shopping center was
15 insufficient to provide for the needs of Phase I at present
16 much less Phase II. We also indicated that due to
17 circumstances beyond the petitioner's control, i.e. an
18 attempted corporate take over by Spinner Corporation and the
19 ultimate buyout by Quintex Corporation and then the subsequent
20 receivership of Quintex Corporation ate up a substantial
21 portion of the five years.

22 I think the papers filed with this Commission,
23 which were incorporated into Mr. Challenger's testimony,
24 indicated that this alone took more than two and a half years,
25 the corporate infighting, trying to avoid an unfriendly take

1 over and the subsequent problems of Quintex Corporation.

2 I think the record shows that Princeville has been
3 developing, albeit slower than they would like; slower than
4 the community would like or perhaps other members of the
5 community would not mind, but at any rate Princeville
6 Corporation has been proceeding towards the eventual
7 development of the Princeville Resort community as a whole.
8 The resort community is not only Phase I but is also Phase II
9 with all the various amenities expected of a resort community.

10 We have heard testimony insofar as what the
11 marketing plans may have been, i.e. that the lots are now
12 going to be more expensive lots; that we're not meeting the
13 housing requirement.

14 However, we would counter by saying Princeville has
15 never shirked its housing requirement. It has stated on the
16 record that that it intends to fulfill the housing
17 requirement. It was a side issue whether the housing
18 requirement could be developed offsite. Princeville has
19 acquired the property. It will develop housing offsite for
20 affordable housing. It has proceeded in good faith for this
21 development. And the latest Master Plan as proposed and
22 introduced as petitioner's exhibit indicates that there will
23 be a lower density. With a lower density there should be less
24 impacts.

25 Princeville has indicated if there's a concern at

1 the time of the incremental reclassification that the EIS be
2 upgraded or updated in various respects applicable, that it
3 would do so.

4 I think we have proceeded in very good faith. But
5 the time ran out on us due to, in part, circumstances beyond
6 our control. We intend to continue working towards the full
7 development of Princeville as a resort community.

8 And on that note we ask for your favorable
9 consideration. We note that the Office of State Planning's
10 position is consistent with our position. And we do not
11 object to it with the, perhaps, additional condition of the
12 school site and with the clarification that the Master Plan as
13 last submitted be the representation before the Commission.

14 On that basis, Mr. Chairman, members of the
15 Commission we ask for your favorable action on the motion to
16 extend. Thank you.

17 MR. CHAIRMAN: County?

18 MR. MORIMOTO: Thank you. In 1983 the petitioner
19 came before the Land Use Commission. They submitted a
20 petition, an EIS in support of their proposal. Throughout the
21 petition and the EIS they made numerous references to
22 providing reasonably priced house lots and homes to the local
23 homeowner market. And for that I'd like to cite page 36 in
24 Section XI of their petition, Justification For Proposed
25 Classification Part D, which is entitled Homesites For Local

1 Residents.

2 It states that, "The petitioner's sales file
3 revealed that 52 percent of the original purchasers of house
4 lots in Phase I of the development had Hawaii addresses at the
5 time of the sale. In addition the percentage of owners with
6 addresses on the North Shore on the Island of Kauai is 21.5
7 percent. Although these sales figures do not include
8 condominium purchasers, the petitioner believes it provides a
9 good indicator of who will purchase house lots in the project.

10 "Historically Princeville house lots have generally
11 been among the most competitively priced on the island on a
12 square foot basis."

13 Skipping down here. It says here "It is believed
14 that the prevailing lifestyle of Princeville becomes more
15 acceptable and as interest rates drop the local homeowner
16 market for Phase II will increase."

17 Further on it says, "It is believed that house lots
18 of this smaller size will have a smaller total price and,
19 therefore, be more attractive to local purchasers. Finally,
20 "It should be noted that the petitioner has in the past and
21 will continue in the future to make available house lots at
22 substantially discounted prices to its employees."

23 In Section XII of the petition Consistency With
24 Land Use Law and Regulations. On pages 38 and 39 it says,
25 "The proposed project will provide temporary and permanent

1 employment to Kauai residents and make available homesites at
2 reasonable prices to Kauai residents."

3 In the summary of the EIS Chapter I page I-7
4 Section 1.4.12 it states, "Princeville Corporation intends to
5 continue its past programs of making house lots available to
6 employees at a discounted rate."

7 Moving down again in Chapter V: Relationship of
8 the Proposed Action to Land Use Plans, Policies and Controls
9 for the Affected Area, Section 5.2.6 State Housing Plan page
10 V-9 it states, "Lots will be sold to employees at a
11 substantial discount."

12 Based upon the representations made to the Land Use
13 Commission in the petition and in the Environmental Impact
14 Statement the Land Use Commission concluded or found as Fact
15 Number 53, "The proposed development of the Western and
16 Central Plateaus is in accordance with the standards set forth
17 in Part II, Section 2-2 of the State Land Use District
18 Regulations for reclassification into the Urban District in
19 that: (i) The proposed development would provide housing
20 accessible to existing and proposed employment centers, and
21 assist in providing a balance of housing supply for all
22 economic groups."

23 And the LUC then imposed the following condition on
24 the redistricting: "The petitioner shall provide housing
25 opportunities for low and moderate income Hawaii residents by

1 offering for sale on a preferential basis, on its own or in
2 cooperation with either or both the Hawaii Housing Authority
3 or the County of Kauai 10 percent of the lots or houses and
4 lots to be developed on the Western and Central Plateaus of
5 the property to residents of the State of Hawaii of low and
6 moderate income as determined by the Hawaii Housing Authority
7 or the County of Kauai from time to time....." Et cetera, et
8 cetera.

9 When you compare the representations made by
10 Princeville in their petition and in their EIS statement with
11 their Residential Real Estate Marketing Plan it's clear that
12 they have no intention of providing housing to local people.

13 If you look on page 1 of the plan it states that on
14 the third paragraph, "The high-end real estate product
15 requires the ultimate in target marketing." Further on down
16 the page it says that "Slowdowns in the economy can focus
17 interest on the value perceived products that appeal to the
18 affluent market. Princeville's real estate product has been
19 designed to meet the exacting demands for quality and value of
20 that affluent buyer/investor. Additionally, Princeville and
21 its shareholders have broad associations in the U. S. and
22 Japanese markets ranging from film makers associated with
23 Princeville's history to the company's former public
24 shareholders, to clients, suppliers, and partners in its
25 shareholders' companies around the globe."

1 On page 2 of the marketing statement, the marketing
2 plan in the second paragraph it states that, "In addition the
3 mission is to establish Princeville's real estate both present
4 and future as a value-based secure investment that will create
5 first time sales and an appreciated value for resales." In
6 other words, speculation.

7 Going to page 3 of their marketing plan, paragraph
8 number 4. "To successfully market the luxury \$1 million homes
9 and lots at the award winning Princeville Resort Community so
10 as to create 120 to 150 real estate sales per annum."

11 Continuing on to page 5 Section 4.2 it's the luxury
12 residential market. Suffice to note that the first sentence
13 in paragraph one says, "The increasing affluence of the
14 population of the western world particularly the high end
15 individuals in the United States and the developed countries
16 of Asia together with significant increase in the availability
17 of leisure time is creating a demand for luxury second/
18 vacation homes."

19 Continuing on down to the third paragraph, it
20 states, "We estimate that the Princeville target market will
21 comprise 65 to 70 percent U.S. mainland investors, 20 to 30
22 percent or more from Japan and 5 percent from Europe and other
23 destinations."

24 If you look at the market demographics on page 6,
25 two of the demographics noted are: One, that the person is a

1 multiple home owner -- excuse me, three of the things -- with
2 a \$5 million net worth and multiple visits to Hawaii. Clearly
3 not your typical local purchaser. If you look at the next
4 page it's a map of the United States with the estimates of
5 millionaire population within the United States.

6 Now, when you compare their marketing plan with
7 what was represented to the Land Use Commission back in 1983
8 it becomes pretty clear that they have no intention of living
9 up to the representations made in the EIS statement and the
10 petition. I liken this to the bait-and-switch technique that
11 is used by some unscrupulous markets where they advertise a
12 certain product, and the consumer goes into the market to buy
13 the product only to find that the shelf is empty.

14 That's what we have here. You have Princeville
15 telling the Land Use Commission: Hey, we are going to cater
16 to local purchaser. We are going to provide housing for the
17 local homeowner or for the local demand. That's not what's
18 happened. They are going to create their market. The demand
19 isn't their at the present time. They are going to go out
20 there to market these houses and create the demand on the
21 mainland United States, in Japan and in Europe.

22 What this plan means we are going to have a
23 segregated community on the North Shore of Kauai. Economic
24 apartheid if you will. And if you allow Princeville to amend
25 this condition through this backdoor method you're going to be

1 sending a message to other developers who come before you:
2 One, it's okay to redistrict land, to get this increased value
3 for it, and then sell without living up to the conditions that
4 the Land Use Commission imposes. I know this is something
5 that Governor Waihe'e expressed grave concern about.

6 Another message you're going to be sending is it's
7 okay to amend conditions without following the Land Use
8 Commission's Rules and Regulations.

9 The third message, probably the most important,
10 you're going to tell the developer it's okay to skirt Land Use
11 Commission policies; you don't have to follow Chapter 205 or
12 the LUC's Rules and Regulations. You can come up, redistrict
13 the property and get the increased value and forget whatever
14 conditions were imposed.

15 It's now 1991, approximately eight years since
16 Princeville came before you to get the property redistricted.
17 They are asking you for another five years to complete their
18 improvements. I would suggest that they, that you view this
19 project as if it were new, as if it were a 1991 proposal.
20 Force Princeville to resubmit its plans, to scrutinize the
21 project using 1991 standards, and to let you know what they
22 intend to do now, not what they intended to do back in 1983
23 but in 1991. Thank you.

24 MR. CHAIRMAN: State?

25 MR. EICHOR: Keeping in mind that this is a motion

1 to extend time so that they can comply, and bearing in mind
2 that the predecessor of the present owner did encounter
3 substantial financial difficulties, I don't think we can
4 excuse changes that are not correct representations that were
5 previously made to the Commission.

6 Maybe one of the things that should be considered
7 is whether an extension for five years is appropriate. But
8 the Office of State Planning doesn't oppose the motion subject
9 to the four conditions that we set out in our letter of
10 February 21st, 1991.

11 I'll briefly summarize those. The first condition
12 that we would suggest be added on deals with development in
13 substantial compliance with representations.

14 The second is giving notice to the Commission of
15 any intent to sell or assign the ownership interest.

16 Third is to provide annual reports to the Land Use
17 Commission. None of these were attached to the original
18 Decision and Order.

19 And fourth is a condition based upon the
20 representations made by Mr. Challenger and also addresses the,
21 what we feel is a rather clear condition that the 10 percent
22 affordable housing will be developed onsite. And that's a
23 condition which would allow affordable housing to be developed
24 through construction of units either onsite or offsite under
25 terms and locations that may be agreeable to the Housing

1 Finance and Development Corporation, State of Hawaii and the
2 County of Kauai which would, I'm sure, result in some
3 negotiations.

4 MR. CHAIRMAN: Intervenors?

5 MR. DEWAN: I concur with the county's position
6 that really the Land Use Commission needs to consider this as
7 a new application. Princeville Corporation has itself
8 undergone a significant change in its focus. It used to
9 simply be a land sales corporation company. It's now
10 going into the business of actually being a developer.

11 We have stressed throughout the hearing that the
12 EIS that was prepared and submitted in '83-'84, much of it was
13 prepared before that in the late 1970's is terribly out of
14 date and needs to be updated.

15 We are especially concerned about the Anini Stream
16 which it's well documented as being severely degraded. Many
17 of the assumptions, population growth, et cetera, that the,
18 that determine the basic impact upon the North Shore are all
19 out dated.

20 The affordable housing issue, we've tried to
21 represent how even in Phase I Princeville Corporation has
22 tried to avoid their responsibility, their commitment. We've
23 referenced how they had a Lot II that was designated for users
24 of affordable housing and employee housing. They went in,
25 made a shopping center. They are simply doing the same thing

1 in Phase II.

2 County Exhibit A clearly indicates this is going to
3 be a gated community, \$1 million homes. This is not what the
4 County of Kauai or the State of Hawaii needs at this time.
5 The justifications for Princeville Corporation in failing to
6 complete the infrastructure requirements on the Western
7 Plateau are not convincing.

8 We, in our previous hearing, went over all the
9 number of projects that they engaged in; the funds they
10 committed to those projects, they were well in excess of the
11 time and energy that were necessary to complete the
12 infrastructure requirements on the Western Plateau. They
13 could have done it if they had wanted to.

14 I think fundamentally there's a concern about
15 meshing what is being planned and evidenced here in their new
16 marketing study, what's indicated and planned for on the North
17 Shore Development Plan update of the County of Kauai.

18 There's no intention, there's no plan to have an
19 exclusive resort community on the North Shore even in
20 Princeville, even though it was and is designated a resort
21 location.

22 So we would urge the Commission to deny this
23 request and ask the Princeville Corporation to come in with a
24 full petition for the Central Plateau. Thank you.

25 MR. HONG: Chairman, may I make one comment about

1 the marketing plan?

2 MR. CHAIRMAN: No. Inappropriate. At this time
3 we'll take a short recess to give the court reporter a break.

4 (Recess)

5 MR. CHAIRMAN: We'll reconvene. Is there a motion?

6 COMMISSIONER SHINNO: Mr. Chairman, I move to deny
7 the petitioner's motion.

8 MR. CHAIRMAN: Is there a second?

9 COMMISSIONER WADA: Second.

10 MR. CHAIRMAN: Any discussion? Hearing none, will
11 the Executive Officer call the roll.

12 EXECUTIVE OFFICER: Commissioner Shinno?

13 COMMISSIONER SHINNO: Aye.

14 EXECUTIVE OFFICER: Commissioner Ahn?

15 COMMISSIONER AHN: Aye.

16 EXECUTIVE OFFICER: Commissioner Kajioka?

17 COMMISSIONER KAJIOKA: Aye.

18 EXECUTIVE OFFICER: Commissioner Wada?

19 COMMISSIONER WADA: Aye.

20 EXECUTIVE OFFICER: Commission Won?

21 COMMISSIONER WON: Yes.

22 EXECUTIVE OFFICER: Chairman Hoe?

23 MR. CHAIRMAN: Yes.

24 EXECUTIVE OFFICER: Mr. Chairman, we have six votes
25 in support of the motion.

1 MR. CHAIRMAN: The petitioner's motion to extend
2 time has been denied.

3 At this time we'll take another short recess so we
4 can get organized on the next matter.

5 (Recess)

6 MR. CHAIRMAN: All right. We will convene the
7 hearing in Docket A90-656. Will the parties at this time
8 identify themselves for the record.

9 MR. MURASHIGE: Good afternoon, Mr. Chairman,
10 members of the Commission. My name is Calvin Murashige. With
11 me is Clinton Shiraishi. We are the attorneys for C & F
12 Farming. Also sitting at the counsel table is Henry Fredricks
13 and Heather Harvey.

14 MR. MORIMOTO: For the record Peter Morimoto Deputy
15 County Attorney on behalf of the County of Kauai. With me is
16 Mike Laureta who's a staff planner with the County of Kauai.

17 MR. EICHOR: Rick Eichor for the Office of State
18 Planning. With me is Karen Yamamoto with the Land Use
19 Division of the Office of State Planning.

20 MR. CHAIRMAN: Are there any additional exhibits
21 that need to be addressed at this time?

22 MR. MURASHIGE: Mr. Chairman, we have submitted a
23 second amended list of exhibits. And what we have added to it
24 are documents since the last hearing which would be GG-1
25 through LL-1. And I think, I don't know whether I passed them