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LAND USE COMMISSION
STATE OF HAWAII

2015 NOV -6 P 2:03

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A89-646
)	
QUEEN LILIOUKALANI TRUST	)	THE OFFICE OF PLANNING'S
	)	RESPONSE TO PETITIONER'S
To amend the Agricultural District	)	MOTION FOR ORDER MODIFYING
Boundary into the Urban District for	)	THE FINDINGS OF FACT,
approximately 919.366 acres and to Amend	)	CONCLUSIONS OF LAW, AND
the Conservation District Boundary into the	)	DECISION AND ORDER FILED
Urban District for approximately 188.353	)	AUGUST 28, 1991; OFFICE OF
acres, at Keahuolu, Island, County and State	)	PLANNING EXHIBIT 1 AND
of Hawaii, Hawaii	)	CERTIFICATE OF SERVICE
Tax Map Key Nos. 7-4-08: por. 2, por. 12)	
)	

THE OFFICE OF PLANNING'S RESPONSE TO PETITIONER'S MOTION FOR ORDER
MODIFYING THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND
ORDER FILED AUGUST 28, 1991

The Office of Planning believes there is insufficient information in the record to make a determination on the acceptability of the Motion, but reserves the right to offer further comments if additional information is submitted.

The Petitioner has filed a Motion For Order Modifying the Findings of Fact, Conclusions of Law, and Decision and Order Filed August 28, 1991 on August 14, 2015 ("Motion") requesting that the Land Use Commission ("LUC") remove 212.333 acres of Agricultural land located makai of Queen Kaahumanu Highway (currently designated Phase III) from the Petition Area. Phase III is subject to incremental reclassification to the Urban District upon a prima facie showing that the Petitioner has made substantial completion of the first increment. The first

increment is Phases I and II totaling 546 acres of the Petition area. Phases I and II were redistricted from the Agricultural and Conservation Districts to the Urban District.

The original proposal for Phases I, II and III included the following uses:

1. Centralized downtown area for Business, retail, and commercial uses
2. Government center for State, County, and federal offices
3. Regional shopping center
4. Professional center
5. Regional hospital
6. Business and light industrial park
7. Business hotel complex
8. Historic complex, and
9. College campus-a University of Hawaii campus, which was denied by the Land Use Commission, because the State campus was relocated to another area on the west side.

Petitioner's Motion indicates that no residential uses were originally proposed. Also, Petitioner indicates that the slopes on Phase I and II are more suited to residential development. Since the original proposal does not include any residential development, Petitioner has indicated that they will present a new proposal for Phase III in a future Petition. However, it is unclear whether Petitioner may request the LUC to amend the proposal to allow residential development within Phases I and II in the future.

Petitioner indicates in their Motion and Supplemental Memorandum that market conditions have significantly slowed since the LUC's approval of the Petition. Petitioner's Motion also indicates that negotiations with large commercial retailers have been unsuccessful because of slow market conditions.

New Proposal for Phase III. Petitioner indicates that a small portion, less than 15 acres of land, will be carved out of the Phase III area and developed separately. This area, as shown on Petitioner's Exhibit 1, will be processed as a County District Boundary Amendment along with other permits and approvals. Petitioner indicates that this area will become part of the Makalapua Project District for mixed use commercial, residential, hotel development, community facilities, and open space areas.

New Petition and Land Use Plan. The Motion indicates that the Petitioner will file a new Petition for reclassification for the remainder of the land area in Phase III.

Petitioner's Argument. Petitioner indicates in the Motion that the LUC has approved a similar motion for Docket No. A89-643 McClean Honokohau Properties to withdraw a portion of Increment II from the Petition land area. Petitioner's motion asserts that the LUC approved that motion after reviewing the record and hearing no objections by the Office of State Planning (Currently the Office of Planning, OP) and the County of Hawaii Planning Department.

However, as shown in the April 18, 1995 transcript of the LUC hearing, OP had many concerns regarding this specific Motion by the McClean Honokohau Properties, and in fact asked for a continuance in order to request more information from the State agencies regarding the proposal for development of this portion of the Petition area. The LUC granted a continuance in order for OP to gather more information. (TR 4/18/95 p 25 L 16-p 27 L 25; p 28 L 17-p 31 L24) The Motion was granted only after more information was obtained and OP discussed the proposal with the other State agencies. See OP Exhibit 1.

Analysis

The Petition is subject to 25 conditions of approval, as stated in the Findings of Fact, Conclusions of Law and Decision and Order dated August 28, 1991. The Petitioner proposes to withdraw Phase III to pursue a less than 15-acre mixed use commercial, residential, hotel (emphasis added), community facilities and open space. OP is concerned that if LUC approves this motion, these conditions would also be released and no longer applicable, including Condition 1 relating to the requirement as follows.

“1. Petitioner shall generate one (1) non-tourism related job, or the equivalent thereof, for each hotel unit Petitioner is allowed to build. As used herein, “non-tourism related” means not related to hotels or residential condominiums intended for use as transient accommodations, or recreational, entertainment or other facilities and services used primarily by tourists. The equivalent value of one (1) non-tourism related job will be determined by the Office of State Planning.”

Conclusion

OP is concerned that if the conditions are being released for this portion of the development, then Petitioner should provide more detailed information on the land use plan for Phase III, including the less than 15-acre area proposed for development, so that OP can obtain

comments from the affected State agencies and determine the acceptability of removing these conditions from Phase III.

DATED: Honolulu, Hawai'i, this 6th day of November, 2015.

OFFICE OF PLANNING
STATE OF HAWAI'I

Leo 

LEO R. ASUNCION
Acting Director

Docket No. A89-646

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular mail.

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DATED: Honolulu, Hawai'i, this 6th day of November, 2015.

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LEO R. ASUNCION
Acting Director
Office of Planning

ORIGINAL

STATE OF HAWAII
LAND USE COMMISSION

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APR 26 1 13 PM '95
LAND USE COMMISSION
STATE OF HAWAII

Public hearing held on Tuesday, April 18, 1995, commencing at
10:00 a.m. at King Kamehameha's Kona Beach Hotel, 75-5660 Palani
Road, Kailua-Kona, Hawaii.

BEFORE: EVELYN MIYATA, RPR, CSR No. 160
Notary Public, State of Hawaii

MIYATA REPORTING SERVICES, INC.

APPEARANCES:

PRESIDING OFFICER:
COMMISSIONERS:

ALLEN K. HOE
ELTON WADA
TRUDY SENDA
EUSEBIO LAPENIA, JR.
LLOYD F. KAWAKAMI
M. CASEY JARMAN

Deputy Attorney General:
Executive Officer:
Chief Clerk:
Staff Planners:

WINFRED K. T. PONG, ESQ.
ESTHER UEDA
DARLENE KINOSHITA
KATHY YONAMINE

For Petitioner:
Action - A89-643

ROBERT J. SMOLENSKI, ESQ.
BOB McCLEAN

For Petitioner:
Action - A94-710

ERIC T. MAEHARA, ESQ.

For the State of Hawaii:
Office of State Planning

JAMES F. NAGLE, ESQ.
Deputy Attorney General
ABE MITSUDA
Head, LUC DIVISION
LORENE MAKI

For the County of Hawaii:

ROYDEN YAMASATO
Planning Department

For the County of Maui:

ANN CUA
Planning Department

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1 TUESDAY, APRIL 18, 1995

10:00 A.M.

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PRESIDING OFFICER HOE: All right. Why don't we call the proceedings to order.

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ACTION - A89-643:

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PRESIDING OFFICER HOE: This morning, the matter currently before us is an action meeting on Docket A89-643, McClean Honokohau Properties, to consider Petitioner's Motion for Amendment to Findings of Fact, Conclusions of Law, and the Decision and Order of this Commission dated April 16, 1991.

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First off, will the parties please identify themselves for the record.

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MR. SMOLENSKI: Good morning, Mr. Chairman, members of the Commission. I'm Robert Smolenski, attorney for McClean Honokohau Properties, which is the Petitioner, and to my right is Bob McClean, who is the general partner of McClean Honokohau Properties, which is a limited partnership.

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MR. YAMASATO: Good morning, Mr. Chairman, Commissioners. My name is Royden Yamasato. I'm representing the Hawaii County Planning Department.

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MR. NAGLE: Good morning, Mr. Chairman, members of the Commission. James Nagle on behalf of the Office of State Planning. With me this morning is Abe Mitsuda from

1 the office.

2 PRESIDING OFFICER HOE: Kathy, do you want to
3 give us an orientation.

4 MS. YONAMINE: Thank you, Chairman Hoe.

5 On the board, we have two maps. Map No. 1 is the
6 Official State Land Use District Boundary Map which is a
7 composite of USGS Quads H-2, Keahole Point, and H-7,
8 Kailua. The scale on Map No. 1 is 1 inch equal to
9 2,000 feet. Map No. 2 is a tax map of the area which
10 illustrates TMK's 7-3-09 and 7-4-08 at a scale of 1 inch
11 equal to 1,000 feet. Both maps are oriented with north
12 straight up.

13 The State Land Use Districts are depicted on both
14 maps with the Urban District in red, the Conservation
15 District in green, the Rural District in brown, and the
16 Agricultural District is uncolored. The subject area is
17 cross-hatched in yellow located here (indicating), and the
18 Increment II area is outlined in yellow in this area right
19 here (indicating). Cross-hatched in pencil are portions
20 of Docket No. A94-705, County of Hawaii Planning Depart-
21 ment, located in this area and some down here (indicat-
22 ing). Also cross-hatched in pencil is Increment 3 of
23 Docket No. A89-646, Liliuokalani Trust, located in this
24 area (indicating), and Increment 2 of Docket No. A81-525,
25 Y-O Limited, located here (indicating). The SMA line is

1 shown in purple, and the UIC line is shown in lavender.

2 The Subject Area is located in the North Kona
3 District of the island of Hawaii, consists of approxi-
4 mately 12.294 acres, and is currently part of a 44.02-acre
5 area approved for incremental development under the
6 Commission's Decision and Order dated April 16, 1991, for
7 LUC Docket No. A89-643. The Subject Area is identified by
8 TMK 7-4-08, portion of parcel 26. The Subject Area is
9 bordered on the north and east by Docket No. A94-705,
10 County of Hawaii Planning Department, which is currently
11 pending before the Commission. It is also bordered on the
12 south by HFDC's proposed Villages of Laiopua and to the
13 west by Increment II lands.

14 Previous LUC actions in the immediate vicinity
15 include:

16 Docket No. A87-618, Isemoto Contracting Company,
17 Limited, reclassification of approximately 9.9 acres from
18 the Conservation District to the Urban District for indus-
19 trial uses located in this area right here (indicating);

20 Docket No. A89-643, McClean Honokohau Properties,
21 a Hawaii limited partnership, which involved the reclassi-
22 fication of Increment I, consisting of approximately
23 45.5 acres, from the Conservation to the Urban District
24 for industrial and commercial uses located in this area
25 (indicating); and

1 Docket No. A90-660, HFDC, reclassification of
2 approximately 391.541 acres from the Conservation District
3 to the Urban District and 335.508 acres from the Agricul-
4 tural District to the Urban District for a master planned
5 residential community located in this area here
6 (indicating).

7 Are there any questions?

8 PRESIDING OFFICER HOE: Kathy, can you clarify
9 for me again, because I think I was looking down when you
10 pointed it out, can you, in terms of the subject -- the
11 Petition Area approved in '91, distinguish for me again
12 Increment I, Increment II.

13 MS. YONAMINE: Okay. This area right here is
14 Increment I (indicating), and this area outlined in yellow
15 is Increment II (indicating), and this area mauka -- well,
16 I don't know if you can see it, but it's cross-hatched in
17 yellow --

18 PRESIDING OFFICER HOE: So it's mixed, Increment
19 II is mixed?

20 MS. YONAMINE: Yeah. You mean Conservation and
21 Ag?

22 PRESIDING OFFICER HOE: Yeah.

23 MS. YONAMINE: Yeah.

24 PRESIDING OFFICER HOE: All right. Thank you.
25 Any other questions?

1 If not, thank you.

2 Is anyone here from the public, general public,
3 who wishes to give public -- make a public statement with
4 regard to this request by the Petitioners?

5 If not, then Mr. Smolenski, you may present your
6 motion.

7 MR. SMOLENSKI: Thank you, Mr. Chairman.

8 First of all, I would like to apologize for the
9 size of the maps that we have presented here. We do have,
10 which I will pass around and which I just got this
11 morning, and we will make copies, with the Chairman's
12 permission, to submit as an exhibit of the planned area
13 which has more detail.

14 But if everyone has a copy of the motion, there
15 is in Exhibit C, which is the last -- the next-to-the-last
16 page of our motion paper, which shows -- it shows both
17 increments of the '89 parcel which was redistricted
18 incrementally by the Commission in -- exactly four years
19 ago. It was April 16, 1991. And there's the dark area
20 there, just to further emphasize the property we're
21 talking about, has already been redistricted. That's the
22 parcel -- the portion to the left, and then there's a
23 dotted portion which is Increment II, and that's subject
24 to incremental districting. We're looking at the right-
25 hand portion of that dotted area which is Agricultural.

1 Again, I will pass this around a little later,
2 but we have -- if we look at the area here, we have the
3 Honokohau Boat Harbor, we have Kealakehe lands, we have
4 Kealakehe Parkway that goes up this side (indicating), and
5 we presently have the usage on Increment I which is Light
6 Industrial, Light Industrial and Commercial, and there has
7 been a substantial amount of development, as represented
8 to the Commission before, that has taken place in that
9 first increment.

10 The second increment is 44 acres, and 17 acres at
11 the very top, the mauka part, is in the Agricultural
12 District. The remainder of it, 31 acres, is still in the
13 Conservation District, and that Increment II was subject
14 to the redistricting.

15 The original plan five years ago when we started
16 the process was based on the development that looked like
17 it was occurring, to have Light Industrial and Commercial
18 for both increments, and this bottom portion, Increment I,
19 had been used in Light Industrial subject to permission of
20 the DLNR under some permits. Now what McClean Honokohau
21 Properties is proposing is to release 12.294 acres from
22 the Order in order to proceed with the County for a
23 redistricting to Urban and a request for residential
24 zoning pursuant to the statute that allows for less than
25 15 acres to be handled by the County Planning Commission.

1 The reason -- and I'll ask Mr. McClean to expand
2 upon this -- that the Petitioner is requesting it at this
3 time is, as everyone knows, the development of Kealakehe
4 and development in the area has not generated as much need
5 for Industrial and Commercial as might have been antici-
6 pated four or five years ago. Furthermore, we'll show on
7 another -- on this diagram that we're going to pass around
8 that the County -- there's a mid-level road that will be
9 put through the property, through the Agricultural portion
10 of the property, and it is our understanding that the
11 County's desire is for everything mauka of that mid-level
12 road to be residential.

13 And what the Petitioner is proposing is to
14 develop mauka of that road a residential adult community.
15 Now, someone asked us before what is an active adult
16 residential community. It's actually a senior residential
17 community, but -- so it's no different than that. So
18 we're looking at ages 55 and above.

19 I'm sorry, Mr. Chairman?

20 PRESIDING OFFICER HOE: Pretty much guys like us.

21 MR. SMOLENSKI: At least some of us.

22 So there would be -- I think there were some
23 questions about would we have to address schools, etc.,
24 but we're looking at a requirement of 55 and above for
25 this community, and again, I'll ask Mr. McClean to expand

1 upon it, but we see that there would be much less of an
2 impact environmentally and it will be actually more
3 consistent with the eventual residential development of
4 Kealakehe when that is eventually built here. Now --

5 PRESIDING OFFICER HOE: Bob, can you just clarify
6 quickly, now, all of the 12.294 acres are in the Ag
7 portion of Increment II; is that correct?

8 MR. SMOLENSKI: Yes, it's all in the Ag portion,
9 and because of the proposed location of the mid-level
10 road, there still will be, in order to conform with the
11 mid-level road and only have the residential mauka of it,
12 we've asked for less than the full 17 acres that's in the
13 Ag, and then that's where we get 12.294. So it's all
14 Agricultural now.

15 We pointed out in the motion that the property,
16 as found by the Commission in 1991, is not -- it's poor
17 for agriculture, it's not suited for agriculture. We have
18 also pointed out what we feel is the greater compatibility
19 of the proposed use with the adjoining areas.

20 Now, we have attached to our motion -- and I
21 don't know if everyone has it before them -- but we have
22 an Exhibit E that shows the parcel itself -- I'm sorry --
23 Exhibit A to our motion, and the parcel of 12.294 acres is
24 listed as parcel 1 and is Agricultural to Urban -- does
25 everyone have a copy of this or -- and it shows to the

1 left of that, as you look at it, a proposed future road-
2 way, so if I would hold, if you do have Exhibit A to your
3 motion, if I would hold that up, it would go this way
4 (indicating).

5 (While indicating): Here in yellow is the
6 proposed Agricultural, 12.294, here is the boundary,
7 Kealakehe is here, the rest of Increment II is here, and
8 the proposed mid-level road is here, so this would be
9 adjoining the proposed mid-level roadway. The
10 Agricultural/Conservation District line actually goes at
11 an angle here (indicating). So if the Commission does
12 grant our motion and release this, we would have an
13 Increment II remaining of 31 acres, and most of it would
14 still be in Conservation with a small slip of Agricul-
15 tural, and that would be subject to further consideration
16 at the time of the request for the second increment by the
17 Commission.

18 We have, which I just received this morning when
19 I arrived, an option site plan showing 72 proposed units
20 and a proposed layout, and at this point, I would like to
21 ask Bob McClean to go into that in some detail to the
22 extent the Commissioners would like to hear detail, and I
23 apologize for not having copies, but we would pass this
24 around and then make copies and, with the Commissioners'
25 approval, submit it.

1 PRESIDING OFFICER HOE: All right. Mr. McClean,
2 before you begin, let's put you under oath.

3 (Bob McClean was duly sworn.)

4 PRESIDING OFFICER HOE: All right. Thank you.
5 You may proceed.

6 Let me just address one more procedural matter
7 before we continue. We need to state for the record that
8 in this particular document, which was decided in 1991,
9 there was an additional party as represented by attorney
10 Sandra Schutte being the Intervenor granted by this
11 Commission to Isemoto Construction Company. That party
12 ~~has been notified of Petitioner's motion and these~~
13 proceedings today, and for the record, staff has been
14 informed by Miss Schutte that she will not be here and she
15 has forwarded the information to her client, the
16 Intervenor, Isemoto Contracting.

17 You may proceed.

18 BOB McCLEAN,
19 called as a witness, having been first duly sworn, was
20 examined and testified as follows:

21 MR. McCLEAN: This is our proposed unit develop-
22 ment. It has 72 lots. We propose to have one entrance
23 from this new mid-level road. Now, the mid-level road is
24 currently being built by HFDC as part of their project
25 right up to our property line, and that's what initiated

1 the thought of doing something different. When we first
2 filed for our reclassification, it seemed that we were at
3 the end of the world out there, and along came HFDC with
4 their development. They haven't built any homes yet, but
5 they put in roads and they built this mid-level road,
6 which is a 120-foot right-of-way up to our property, not
7 for our benefit, but they also built a water tank there,
8 and they needed it for the water tank and they also needed
9 it for the new Kealakehe High School.

10 So we have, coming up to our property right here
11 (indicating), a 120-foot right-of-way for this mid-level
12 road which is going to extend across our property, across
13 Lanihau, over to Kaloko, and join this road at Kaloko. In
14 the road, they brought water, electricity underground, and
15 sewer, so we have sewer available and we have approval
16 from the sewer treatment plant operated by the County to
17 connect and use their sewer treatment plant for this area.

18 So we developed this, and we feel that it fits in
19 much better with the area around us than light industrial
20 or commercial because adjoining us, as you all know, this
21 is HFDC and it's residential (indicating), so it certainly
22 fits in better with that. Also, the County has deter-
23 mined, as I understand it -- I'm sure the County can speak
24 for itself -- but the County has determined that they
25 would like to have everything above this mid-level road,

1 mauka of it, residential, and our new proposal fits in
2 with that.

3 Are there any questions that I can answer?

4 PRESIDING OFFICER HOE: County? OSP?

5 MR. YAMASATO: No questions.

6 PRESIDING OFFICER HOE: OSP?

7 MR. NAGLE: Thank you, Mr. Chair.

8 Mr. McClean, why don't you just have a seat.

9 MR. McCLEAN: Okay.

10 CROSS EXAMINATION

11 BY MR. NAGLE:

12 ~~Q We had a number of concerns regarding the~~
13 project, and I know we discussed it briefly prior to the
14 hearing.

15 You are proposing to change the use of the
16 property from Light Industrial and Commercial to what
17 you've noted to be as an active adult residential
18 community?

19 A That's correct

20 Q Okay. And you stated that the term "active adult
21 residential community" is a euphemism for a senior citizen
22 community?

23 A Correct.

24 Q Okay. Initially when we read the motion, we had
25 some concerns because the prior Decision and Order did not

1 take into account the matter of public school services,
2 and now we see that with your definition of "active adult
3 residential community," that's probably still not
4 applicable, probably still won't be a specific need for
5 school services since it will be a senior citizen
6 community.

7 A That's correct.

8 Q All right. However, we do have some concerns
9 because the prior project didn't go into highway and road-
10 way facilities for this type of project, correct?

11 A Yes.

12 Q So could you amplify for us upon what you antici-
13 pate as far as traffic problems, traffic counts. How do
14 we address those sorts of concerns?

15 A Well, it was my view that the commercial and
16 industrial use of this area would entail much more traffic
17 than residential where it would be a much more passive
18 use, I would think.

19 Originally when we got our land use commission,
20 the mid-level road was indicated up mauka of our property
21 and so it meant that traffic would have to flow up there
22 somehow to get over to Kealakehe, but this mid-level road,
23 which I'm sure we will participate in building, will
24 provide just unusually good access to the residential
25 area. It just goes over another 400 feet to the Kealakehe

1 Parkway which will head down makai to Queen K.

2 And we have -- I have had just very preliminary
3 discussions with the County engineer here about getting
4 the property owners together -- Lanihau here, Queen
5 Liliuokalani on the other side of HFDC -- and putting
6 together a project to extend this mid-level road from
7 Palani through our property, through Lanihau, and out to
8 Kaloko, which would, I think, provide much needed relief
9 to the Queen K. Highway, which is now becoming very
10 crowded. It would be a bypass for it.

11 Q Originally, as you conceived Phase II of the
12 ~~project for this 12-plus acres, how many commercial and/or~~
13 light industrial businesses did you anticipate being
14 located on that property?

15 A Oh, that's -- we did not have a detailed plan on
16 how to break it up, but I would guess 25 or 30, something
17 like that, and we envision that commercial, particularly
18 something like a Pizza Hut or, near the high school, a
19 McDonald's or -- we were hoping something like that would
20 develop. It would, I think, generate much more traffic
21 and confusion of a traffic nature than a passive
22 residential community.

23 Q Do you anticipate the senior citizens all having
24 cars?

25 A Yes, no question about that. But on the project,

1 we have a swimming pool, we have a clubhouse, we have
2 amenities for the senior citizens, and we have tennis
3 courts. It's designed so that they can walk around and
4 get a little exercise on the project itself, and there's a
5 green belt extending down here (indicating) so that
6 they'll find most of the activities they enjoy on the
7 property itself coming down Kealakehe Parkway. We hope
8 some of them will have boats and put boats in our boat
9 park. If the golf course ever gets built, they would come
10 down Kealekehe Parkway and play golf. But they would stay
11 generally, I think, within the immediate area.

12 Q Is it the Petitioner's plan to have this active
13 adult residential community part of a larger residential
14 community?

15 A No. I say no but with this explanation. If
16 this -- we have no idea whether this will be very success-
17 ful, moderately successful, or not successful, because
18 there's not been a project like this in the area.
19 Obviously, we expect it to be successful. If it became
20 substantially successful beyond our dreams, we probably
21 would think about coming back to the Land Use Commission
22 and proposing it for maybe another 12 acres on the makai
23 side of the road, but we would certainly come back here
24 and ask for that if that became the fact.

25 Q Where is the rock quarry located in relationship

1 to this proposed project?

2 A Okay. The quarry's on the industrial property
3 right about in here (indicating). It's not at the top of
4 the industrial or Increment I. It's about two-thirds of
5 the way up from the makai boundary to the dividing line
6 between Increment I and Increment II.

7 Q And do you anticipate the rock quarry being in
8 existence after this residential community is built?

9 A No.

10 Q When will the rock --

11 A Well, we're phasing it out -- our agreement with
12 HFDC is that they can, on six months' notice, ask us to
13 shut it down and we will shut it down, so it really
14 depends upon HFDC. If there's any reason to shut it down,
15 we will do so. If there's no reason, we would probably
16 run it for another three or four years. It doesn't really
17 interfere with the adult community.

18 Q You see the rock quarry being compatible with the
19 build-out of the adult community?

20 A Well, they're separated by so much distance that
21 I don't think one affects the other.

22 Q How much distance is there between the rock
23 quarry and the proposed community?

24 A Well, to explain, the rock quarry is down in
25 Increment I at a level of about 130 feet, and on the mauka

1 side of the rock quarry, there's a big cliff which is very
2 obvious from the highway, so the rock quarry is, in a
3 sense, hidden from the mauka portion of our property and
4 everybody else's property by this substantial cliff, and
5 the cliff is right across here (indicating) and the adult
6 community is up here (indicating), and I don't think one
7 would affect the other. If it does, we will shut down the
8 rock quarry.

9 Q Are you doing any blasting now?

10 A Very infrequently. They blasted once in the last
11 year as far as I'm aware of.

12 Q Do you anticipate the need for any buffers
13 between the rock quarry and the residential community or
14 any mitigation measures regarding dust control, things
15 such as that?

16 A No. We will -- we have applied for a permit to
17 drill a well, which will be brackish water, to really help
18 with the dust control of the quarry. If the quarry
19 becomes a problem, it will be shut down rather than vice
20 versa. If there's any confusion, the rock quarry will go.

21 Q So your representation to the Commission is if,
22 in any manner, the quarry poses any sort of a problem or
23 difficulty for the adult residential community, you will
24 shut down the quarry?

25 A Correct. And the same with HFDC. If we

1 interfere with them, they can ask us, and in six months,
2 we'll shut it down.

3 Q The -- as mentioned by Mr. Smolenski, the
4 proposed Project Area that we're talking about, the
5 12-plus acres, still leaves approximately 5 acres, a
6 sliver of land that's 5 acres in Agriculture remaining,
7 correct?

8 A Yes and no. The mid-level road is part of the
9 Ag, so if it gets built, there won't be 5 acres left.

10 Q Right. But even if the road is built as you
11 provide in your exhibit, there will still remain some sort
12 of sliver of Agricultural land remaining?

13 A That's right.

14 Q What do you propose to do with that sliver of Ag
15 land?

16 A Use it in conjunction with the Conservation and
17 have it subject to the Land Use Commission's determination
18 for Increment II, as it is now.

19 Q All right. Does the Petitioner own any other
20 land besides this -- the land located in Phases I and II?

21 A No.

22 Q And did you previously have plans for an elderly
23 housing project or a senior citizens project?

24 A That's -- this is the same --

25 Q That's this?

1 A That's this.

2 MR. NAGLE: May I have just a moment, please,
3 Mr. Chair?

4 PRESIDING OFFICER HOE: Sure.

5 (Pause)

6 Q (By Mr. Nagle) Where will the water for this
7 project come from?

8 A Well, there's a waterline right here (indicat-
9 ing). The HFDC has built the mid-level road right up to
10 here (indicating), and it has a waterline in it, under-
11 ground electricity, and sewer, and we will just extend
12 that line up into our project.

13 Q And what do you propose to do for wastewater
14 disposal?

15 A Same thing. There's a sewer right in this
16 mid-level road, and we will sewer the project and connect
17 to the existing sewer there.

18 Q Have you discussed this project at all with HFDC?

19 A Yes.

20 Q And what's their position on your active adult
21 residential community?

22 A They -- they had no objection to it. I just
23 discussed it with them telling them what we're going to
24 do.

25 Q Who did you talk to at HFDC?

1 A Mike McElroy.

2 Q And how long ago would this have been,
3 Mr. McClean?

4 A Oh, it was over the last year. We furnished them
5 with a drawing of what we propose to do, and we -- we
6 discussed it numerous times over a period of a year. They
7 needed some space off the corner of our property for a
8 slope for their water tank, and we gave them that, and we
9 discussed it in connection with that.

10 Q All right. Were your discussions verbal or do
11 you have documentation from HFDC?

12 A I think there was some written documentation with
13 reference to the -- our granting them the right to enter
14 and slope on our property, there was something from the
15 Attorney General's Office that we signed.

16 Q But as far as HFDC's position relative to your
17 proposed project, was that a verbal commitment?

18 A Yes, yes, and I'm not sure it was a commitment.
19 It was more just a discussion of what we propose to do.

20 MR. NAGLE: Thank you. No further questions.

21 PRESIDING OFFICER HOE: Okay. Mr. Smolenski, any
22 Redirect of Mr. McClean?

23 MR. SMOLENSKI: No, Mr. Chairman. We have the
24 description. If the Commission would like to view it, we
25 can -- Mr. McClean can --

1 PRESIDING OFFICER HOE: Commissioners, any
2 questions?

3 For the record, the exhibit that Mr. McClean has
4 and Mr. Smolenski have been referring to will be identi-
5 fied as Exhibit D, and if you will provide the Commission
6 with copies of that.

7 MR. SMOLENSKI: Yes, we will. Thank you.

8 PRESIDING OFFICER HOE: Commissioners, anyone
9 want to look at the diagram closer?

10 It would seem, then, at this point, seem that
11 it's a pretty straightforward issue. However, the County
12 and OSP still have to put their position on the record, so
13 before we continue, any questions?

14 County, do you want to make your presentation?

15 MR. YAMASATO: Thank you, Mr. Chairman.

16 Mr. Chairman and Commissioners, the County has no
17 objection to the motion for amendment for release of the
18 12.294-acre parcel. We apologize for not having a written
19 position statement for the Commission. However, we would
20 like to provide our oral testimony today for the record.

21 The subject property is in the County's Unplanned
22 Zone District. The minimum lot size for that zone
23 district is 5 acres. The proposed 12-acre parcel would
24 have to be subdivided out of that larger parcel in order
25 to qualify for the County's 15-acre or less boundary

1 amendment process. We understand that the Petitioner has
2 already been advised of that, also. The proposed area is
3 also part of the Kailua to Keahole Development Plan, and
4 both -- the subject area is compatible in concept with the
5 proposed land use pattern and circulation pattern for the
6 K to K Plan.

7 So the County doesn't have any objections to the
8 proposed amendment, and the County will address all the
9 issues relative to the development when it appears before
10 the County, County Planning Commission and the County
11 Council.

12 ~~PRESIDING OFFICER HOE: All right.~~

13 Mr. Smolenski, do you have any questions of the County?

14 MR. SMOLENSKI: No, Mr. Chairman.

15 PRESIDING OFFICER HOE: OSP?

16 MR. NAGLE: Thank you, Mr. Chairman.

17 OSP has concerns regarding the project, and these
18 relate mainly to the fact that the proposed use of the
19 property has changed from Light Industrial and Commercial
20 to the active adult residential community and the concerns
21 relating to the evidence that was presented previously to
22 the Commission and form the basis of the prior Decision
23 and Order of the Commission.

24 Fortunately, Mr. McClean has given us additional
25 information today that -- initially when we were looking

1 at it, we were saying, well, as previously mentioned,
2 schools weren't provided for in the prior D and O, and now
3 we realize it's actually an elderly housing project that
4 we're talking about. However, we still have some concerns
5 regarding the evidence that was presented at the prior
6 hearing versus what this project -- what the proposed
7 project entails, and the prior Decision and Order didn't
8 envision the active adult residential community so that we
9 have some concerns such as traffic and water and waste-
10 water and things such as that.

11 What we would ask, Mr. Chairman, is to have an
12 opportunity for us to give some input to the governmental
13 agencies that are concerned with these and just to find
14 out what their position is. When we initially got the
15 motion, it didn't give us enough information to go back to
16 the other agencies to tell them what kind of project we
17 were dealing with because we weren't sure until this
18 morning what we were talking about, and so we would like
19 at least the opportunity to go back to the agencies, see
20 if they have a problem with the project as proposed, and
21 so advise the Commission.

22 PRESIDING OFFICER HOE: Any objections on the
23 part of the Petitioner?

24 MR. SMOLENSKI: No, we don't have any objection,
25 Mr. Chairman. We're -- in the interests of efficiency,

1 perhaps if the Commission is leaning towards approving our
2 motion, perhaps we could have an approval which would be
3 subject to that checking.

4 I would point out that the County -- the
5 Legislature, in Section 205-3.1(c), has specifically
6 provided for the redistricting and the -- and, of course,
7 rezoning at the same time of parcels less than 15 acres,
8 and we're in a situation where if we were just starting,
9 we could go to -- and we had a separate parcel, we could
10 go to the County on this and we would not be before the
11 Commission. However, when we did start, as Mr. McClean
12 mentioned, what is now the mid-level road which goes
13 through and just mauka of this section that we're
14 proposing, the mid-level road was up here somewhere
15 (indicating), so the situation has changed.

16 The County's thinking I believe has changed where
17 they would rather see residential here, and it seems to me
18 that the purpose of the statute is for the County to
19 address the concerns that OSP has raised. I don't have a
20 problem of them, you know, checking with the agencies, but
21 I think the Commission should also consider what I believe
22 the purpose of the statute is, and something of the size
23 that we're requesting I believe can be adequately
24 addressed in all of these areas mentioned by the County.

25 PRESIDING OFFICER HOE: That's true. However,

1 you know, back in 1991, Petitioner made a conscious
2 decision to avoid that process and presented it to us, so
3 you're asking us for relief, and I think OSP's concerns
4 are legitimate. You know, I don't get a sense that
5 there's any overwhelming objections to what is being
6 proposed, but they need some time to clarify.

7 I have a couple of points. I think, one, before
8 we can take action to approve or grant your request, we
9 would need a specific metes and bounds description of the
10 parcel. Right now, that doesn't seem to be part of the
11 record.

12 MR. SMOLENSKI: Perhaps it's misleading because
13 we have two pages of Exhibit A, and the metes and bounds
14 is the second page of Exhibit A. First page is the map.

15 PRESIDING OFFICER HOE: Oh, okay.

16 MR. SMOLENSKI: So it's --

17 PRESIDING OFFICER HOE: All right. So that
18 concern, then, apparently is addressed.

19 And then the other concern is issues relating to
20 the mid-level road, which, according to your motion, at
21 this point is not considered or deemed to be part of the
22 parcel. However, access to this parcel would be over the
23 mid-level road, and my concern is the timing for placing
24 the mid-level road into service because obviously, action
25 would have to be taken either at the County level on a

1 separate subdivided parcel for that roadway purpose or
2 you would have to come back before us to again seek relief
3 to cut loose that portion of the Ag lands to be used for a
4 roadway purpose.

5 So I think, one, we need a little bit more
6 information either from the County, OSP, and as well as
7 the Petitioner in terms of the timing aspects of the
8 mid-level road because obviously, the mid-level -- the
9 area that has been designated as you have represented to
10 be used for the mid-level road is still within our
11 jurisdiction, and there's no evidence or no comments in
12 terms of how that's going to come into being.

13 So I think, one, we probably should continue this
14 hearing specifically to get -- give OSP an opportunity to
15 circulate the proposal and also to get additional informa-
16 tion as to the timing of the mid-level road construction.

17 Does the County have -- any of the parties have
18 any additional questions or comments?

19 MR. YAMASATO: Yes, Mr. Chairman, if I may, with
20 respect to the Commission's decision on whether or not to
21 approve or disapprove and to attach conditions to the
22 amendment. However, we'd like to put on the record that
23 we're not endorsing at this point in time Mr. McClean's
24 plan that he presented as an exhibit today. We are saying
25 that the proposed residential use is a compatible with the

1 land use pattern and the roadway system is a compatible
2 with the roadway circulation plan for the K to K Plan.

3 In addition to that, the -- if the Commission
4 decides to approve Petitioner's request, the applicant
5 would still have to go and subdivide that parcel out and
6 he still needs to submit his application for boundary
7 amendment and for change of zone. During that process,
8 the applications are circulated to all agencies including
9 OSP and OHCD for comment on the application, so we will
10 get further detailed comments as we proceed into that
11 process.

12 However, I understand the Commission's concern
13 relative to the timing and staging, so we wouldn't have
14 any problems in the continuing, also. Thank you.

15 PRESIDING OFFICER HOE: All right. You know, I'm
16 a little bit puzzled in terms of, I guess, the strategy
17 being considered by the Petitioner to seek an amendment by
18 deleting that 12 acres from Increment II of the overall
19 proposed project and then taking it to the County to go
20 through their reclass. as well as their General Plan or
21 zoning process. Again, as I indicated, there doesn't seem
22 to be any major objections or any objections to what is
23 being proposed, so there might even be, in my mind, an
24 easier way to do this by simply, perhaps, asking this
25 Commission to amend its D and O to transfer this 12 acres

1 plus the roadway and make it part of Increment I, so, I
2 mean, to me, it would be a lot simpler to do it that way.
3 Obviously, the end result is to produce the senior
4 citizens residential project, and I think those things can
5 be discussed with the County and OSP.

6 MR. SMOLENSKI: Mr. Chairman, we certainly would
7 be willing to proceed that way if that were the better way
8 to do it. I think our analysis up to this point was that
9 this looked like it was probably the most efficient and
10 the easiest way to go.

11 PRESIDING OFFICER HOE: It might be, but to me,
12 ~~it doesn't seem that it would be the better way to do it.~~

13 MR. SMOLENSKI: Well, we're happy to try to do it
14 another way.

15 PRESIDING OFFICER HOE: So we'll continue these
16 proceedings till our next -- actually, till moved on by
17 staff, and during the interim, hopefully the parties can
18 kind of rethink the approach, and if not, then having the
19 Petitioner address those two issues, and then we'll take
20 action as necessary.

21 Anything else?

22 MR. NAGLE: No, Mr. Chair.

23 PRESIDING OFFICER HOE: All right. Thank you.

24 MR. SMOLENSKI: Thank you, Mr. Chairman.

25 PRESIDING OFFICER HOE: Let's take a short

1 recess.

2 (A recess was taken.)

3 ACTION - A94-710:

4 PRESIDING OFFICER HOE: All right. Let's go
5 back on the record.

6 Call Docket A94-710, West Maui Venture Group. At
7 this time, will the parties please identify themselves for
8 the record.

9 MR. MAEHARA: Yes, Mr. Chairman. Eric Maehara
10 representing the Petitioner.

11 MS. CUA: Ann Cua representing the County of
12 Maui.

13 MR. NAGLE: James Nagle on behalf of the Office
14 of State Planning. With me is Lorene Maki.

15 PRESIDING OFFICER HOE: All right. At this time,
16 then, the parties may proceed with closing arguments.

17 Mr. Maehara?

18 MR. MAEHARA: Yes, Mr. Chairman. We submitted
19 our Proposed Findings, Conclusions, and Decision and
20 Order. We received the responses from both the County and
21 the State. We have no objections and accept the excep-
22 tions that were contained within the County's response.

23 With regard to OSP's response, we find, again,
24 those exceptions acceptable with one -- one possible
25 proposed change. In OSP's response on -- excuse me --