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LAND USE COMMISSION

STATE OF HAWAII

July 11, 2018

Maui Arts & Cultural Center

Haynes Meeting Room

One Cameron Way

Kahului, Maui, Hawai'i 96732-1137

AGENDA

- I. Adoption of Minutes
- II. Tentative Meeting Schedule
- III. Status Report and Action (If Necessary)
A94-706 Ka'ono'ulu Ranch (Maui)
- IV. Executive Session
- V. Adjournment

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:
COMMISSIONERS:

2
3 NANCE CABRAL, Acting Chair
4 AARON MAHI, Vice Chair
5 EDMUND ACZON
6 ARNOLD WONG
7 GARY OKUDA
8 DAWN CHANG
9 LEE OHIGASHI

10
11 RANDALL S. NISHIYAMA, ESQ.
12 Deputy Attorney General

13
14 STAFF:
15 DANIEL ORODENKER, Executive Director
16 RILEY K. HAKODA, Planner/Chief Clerk
17 BERT K. SARUWATARI, Planner
18 ARIANA MASUOKA, Secretary

19
20 RANDAL SAKUMOTO, ESQ.
21 CATHERINE TASCHNER, ESQ.
22 Attorneys for Petitioner Ka'ono'ulu Ranch

23
24 CURTIS TABATA, ESQ.
25 Attorneys for Honua'ula Partners, LLC

26
27 TOM PIERCE, ESQ.
28 Attorney for Intervenors

29
30 MICHAEL HOPPER, ESQ.
31 Corporation Counsel County of Maui
32 ANN CUA, Supervisor Dept. of Planning
33 Attorney for Maui County Department of Planning

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35 DAWN APUNA, ESQ.
36 Deputy Attorney General, State of Hawai'i
37 RODNEY FUNAKOSHI, Planner
38 LORENE MAKI, Planner
39 Attorney for State Office of Planning

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1 ACTING CHAIR CABRAL: Good morning, I would
2 like to call the meeting to order today.

3 My name is Nancy Cabral from the Big Island
4 here as Acting Chair and substituting because our
5 Commissioner Scheuer was not able to be here, so I
6 know everyone will be supportive of our volunteer
7 effort.

8 This is the July 11, 2018 Land Use
9 Commission meeting.

10 The first order of business is the adoption
11 of the June 28, 2018 minutes.

12 And I ask my fellow Commissioners, any
13 corrections, comments on these minutes?

14 COMMISSIONER CHANG: I move to approve the
15 minutes.

16 COMMISSIONER MAHI: Second.

17 ACTING CHAIR CABRAL: Motion from
18 Commissioner Dawn and seconded by Commissioner Mahi
19 to adopt the minutes.

20 Do I hear any other comments on them?

21 All those in favor say "Yea"; any opposed?
22 Thank you. The minutes are unanimously adopted.

23 Next agenda item tentative meeting
24 schedule. Mr. Orodener, can you please provide
25 that?

1 EXECUTIVE OFFICER: Thank you, Madam Chair.

2 On July 25th, once again on Maui for Hale
3 Mua Order to Show Cause.

4 On August 8th, we'll be on Oahu for Kualoa
5 for agricultural land hearing.

6 On August 22nd we will be in Kona for
7 Waikoloa Mauka Order to Show Cause.

8 On September 12th, we will have a continued
9 hearing on this matter, if necessary.

10 On September 13th we will be here in Kihei
11 High School matter.

12 And on September 26th, we will be on Oahu
13 for Kapolei Development.

14 I would also note for the Commissioners
15 that we have scheduled hearings, public hearings on
16 our Administrative Rule Amendment, and we will be on
17 Kaua'i on August 9th; on August 15th, we will be in
18 Hilo; August 16th we will be on Oahu; on August 23rd
19 we will be on Maui; and on August 28th we will be in
20 Kona.

21 Those are not hearings, just --
22 Commissioners aren't required to attend.
23 Commissioners are welcome to attend if they would
24 like.

25 Also want to note for everybody today, our

1 new secretary Ariana Masuoka. Like to welcome her
2 and thank her for coming to work for us.

3 ACTING CHAIR CABRAL: Thank you very much.

4 On our next agenda item, we will be hearing
5 status report on Docket A94-706, Ka'ono'ulu Ranch in
6 Maui. There is a Petition for reclassification of
7 approximately 88 acres of land from the State Land
8 Use Commission Agricultural District to the State
9 Land Use Urban District for a mix of retail, office,
10 light industrial, and commercial uses with
11 approximately 200 apartment units at Ka'ono'ulu,
12 Makawao, Wailuku, Maui, Tax Map Key No. 3-9-1:16,
13 Parcels 170 through 174.

14 Will the parties please identify themselves
15 for the record?

16 MR. SAKUMOTO: Good morning, Randall
17 Sakumoto and Catherine Taschner are here for Piilani
18 Promenade North and South

19 MR. TABATA: Good morning, Curtis Tabata
20 for Honua'ula Partners.

21 MR. HOPPER: Deputy Corporation Counsel
22 Michael Hopper for Maui County Department of
23 Planning. With me is Ann Cua with Department of
24 Planning.

25 MS. APUNA: Deputy Attorney General, Dawn

1 Apuna on behalf of Office of Planning. Here with me
2 is Lorene Maki and Rodney Funakoshi.

3 MR. PIERCE: Tom Pierce on behalf of
4 Intervenors Maui Tomorrow, South Maui Citizens for
5 Responsible Growth and Daniel Kanahale.

6 ACTING CHAIR CABRAL: Thank you very much.

7 Let me update the record for this docket.

8 On July 5, 2017, Honua'ula Partners filed a
9 Motion for Order Amending the Findings of Fact,
10 Conclusions of Law, and Decision and Orders dated
11 February 10, 1995.

12 On July 10, 2017, Honua'ula Partners filed
13 a Motion to Designate the Land Use Commission as
14 Approving Agency for Environmental Statement Under
15 HRS Chapter 343 and for Authority to Prepare
16 Environmental Impact Statement.

17 On July 20, 2017, and by the Findings of
18 Fact, Conclusions of Law and Decision and Order
19 Denying the Acceptance of a Final Environmental
20 Impact Statement filed July 27, 2017, the LUC
21 determined that the FEIS, which is the Final
22 Environmental Impact Statement filed by Piilani
23 Promenade on April 26th, 2017, did not meet the
24 requirements of HRS 343 or HAR Chapter 11-200 and
25 denied the acceptance of the Final Environmental

1 Impact Statement.

2 On July 25, 2017, Honua'ula withdrew its
3 Motion to Designate the LUC as Approving Agency for
4 the Environmental Impact Statement.

5 On July 2nd, 2018, the LUC mailed the
6 July 11th, 2018 agenda to the Parties and to
7 individuals and entities on the Statewide and Maui
8 County mailing list.

9 For the members of the public, please be
10 reminded that the Commission will not be considering
11 the merits of the Petition A94-706; rather the
12 Commission is interested in learning what the current
13 state of the proceedings related to this docket is.

14 Public testimony regards to this report
15 will be heard after the Applicant has completed its
16 report and the Parties and Commission have completed
17 their questioning.

18 Let me go over our procedures for this
19 docket.

20 First, I will call on the Petitioner,
21 Piilani Promenade, to provide its status update of
22 this matter.

23 Second, I will call on the Petitioner,
24 Honua'ula Partners, to provide its status update on
25 this matter.

1 Third, I will then ask the Intervenors,
2 County and OP for their comments in that order.

3 After the Petitioners' reports and the
4 conclusion of presentation by the Intervenors, the
5 County and Office of Planning, and questions by the
6 Commission, those individuals desiring to provide
7 public testimony for the Commission's consideration
8 will be asked to identify themselves and will be
9 called in order to our witness box where they will be
10 sworn in prior to their testimony.

11 The Chair would also like to note that from
12 time to time I will be calling for short breaks.

13 Are there any questions on our procedures
14 for today?

15 MR. SAKUMOTO: No questions, Madam Chair.

16 ACTING CHAIR CABRAL: Thank you.

17 Petitioners, will you please provide us your status
18 report? Mr. Sakumoto.

19 MR. SAKUMOTO: Thank you very much.

20 Because this docket was established back in
21 1994 when the original Petitioner Ka'ono'ulu Ranch
22 filed their Petition for District Boundary Amendment,
23 I thought it might be useful to provide the
24 Commission with an overview of the procedural history
25 of this docket, how it is we got to where we are

1 today.

2 I think when I explain to you where we are
3 today, you'll understand why I wanted to go back, if
4 that's okay with you, Madam Chair?

5 ACTING CHAIR CABRAL: The floor is yours.

6 MR. SAKUMOTO: Thank you.

7 On February 10, '95, the Commission issued
8 its Decision and Order to reclassify the Petition
9 Area from State Agricultural District to the State
10 Urban District subject to the conditions specified in
11 the D and O.

12 In 1998 and 1999 the original Petitioner,
13 Ka'ono'ulu Ranch, applied for and received from the
14 County of Maui a change in zoning and subdivision
15 approval for a large lot subdivision of the Petition
16 Area.

17 In 2005 the original Petitioner sold the
18 property to Maui Industrial Partners LLC.

19 In 2009 the County of Maui issued Final
20 Subdivision Approval for a large lot subdivision
21 creating six separate bulk subdivision lots referred
22 to as lots 2A through 2G.

23 To obtain final approval cash bonds are
24 posted with the county to secure the subdivider's
25 obligation to provide the required subdivision

1 improvements. These bonds totaled over \$22 million.

2 Later in 2009 Maui Industrial Partners sold
3 lot 2B to Honua'ula Partners; and in 2010 they sold
4 the balance of the property to Piilani Promenade
5 North and South.

6 Piilani's initial plans called for the
7 development of a shopping complex. The community
8 voiced strong opposition to this concept, and in 2012
9 several groups and individuals filed a Motion for
10 Hearing, Issuance of Order to Show Cause and other
11 relief with the Commission.

12 After several days of hearings, the
13 Commission ultimately determined that the proposed
14 development would violate certain conditions of the
15 '95 Decision and Order

16 In 2013 Piilani Promenade filed Motion to
17 Amend the 1995 Decision and Order to allow the
18 development of a mixed-use project.

19 Piilani spent the next several years
20 preparing and processing an EIS to support the Motion
21 to Amend and the mixed-use project. Again, the
22 community voiced strong opposition to the mixed use
23 project, and as was just stated by the Chair, in 2017
24 the Commission rejected the EIS.

25 After two unsuccessful attempts to propose

1 new development alternatives, Piilani Promenade has
2 now decided to return to the original development
3 plan that was presented to the Commission when the
4 Decision and Order was issued in 1995.

5 Earlier this year Piilani Promenade teamed
6 up with Koa Partners to lead the approval design and
7 development efforts for the original development
8 plan.

9 The first step in this process was for Koa
10 to reach out to community members and other
11 stakeholders to open new lines of communication, to
12 be transparent about the idea of going back to the
13 original 1995 plan, and to listen to the thoughts and
14 ideas of those who are willing to engage in this
15 dialogue.

16 Mr. Harry Lake of Koa Partners has been
17 conducting meetings with various community members
18 and groups to solicit feedback, and is present today.
19 Harry (indicating). Thank you.

20 If the Commission has questions about the
21 community outreach effort, Mr. Lake will be glad to
22 answer those questions.

23 Procedurally, where we want to go with this
24 in the future, I think there are basically several
25 steps.

1 The first is we would like time to continue
2 the dialogue that has been initiated with the
3 community. This was something that was absent from
4 our process before, but I think that it is started in
5 earnest. We're not done yet. I think there's still
6 a lot more discussion that needs to take place, but
7 we would like to be able to continue that process so
8 that we can hear the thoughts that are necessary to
9 be heard before any decision is made on moving
10 forward.

11 Based on the feedback that we do receive,
12 we would refine the Conceptual Plan for Development
13 that substantially complies with the representations
14 made per the 1995 Decision and Order.

15 We would then present the plan to the State
16 Office of Planning, the County of Maui and the
17 Intervenors, and we would seek to negotiate a
18 stipulation with all parties here at the table today
19 regarding that plan.

20 Once we are in agreement on that plan, our
21 thought would be to come back with the stipulation to
22 the Commission, and a motion to the Commission that
23 basically asks for four things.

24 1: We would ask that the Commission
25 determine that there are no outstanding violations of

1 the Decision and Order;

2 2: That Phase II of the Order to Show
3 Cause proceedings be dismissed as there would be no
4 outstanding violation under the D and O.

5 3: We would request that they approve the
6 withdrawal of the Motion to Amend the Decision and
7 Order that was filed in 2013.

8 And 4: We would ask that the Commission
9 lift the stay that was imposed back in 2013 on any
10 construction on the property.

11 So that concludes my statement. I'm happy
12 to answer any questions the Commission may have.

13 ACTING CHAIR CABRAL: Commissioners, do you
14 have any questions at this time? Commissioner Wong.

15 COMMISSIONER WONG: Just one question.

16 So we did an EIS for this project
17 previously. So the EIS, would it be considered still
18 because of the time?

19 MR. SAKUMOTO: Thank you very much,
20 Commissioner Wong.

21 The EIS that was presented to the
22 Commission in, I guess the hearing was in 2017, was
23 for a different project. That EIS related to the --
24 what I refer to in my summary as the mixed-use
25 project, the project that contains affordable

1 housing. It contains retail, commercial and light
2 industrial.

3 So that EIS was rejected by the Commission,
4 so there is no EIS at this moment in time.

5 COMMISSIONER WONG: So the question I have
6 is, will there be an EIS for this new thing that's
7 being bandied around in the community?

8 MR. SAKUMOTO: So maybe I should go back to
9 the original.

10 We are going back to the original plan that
11 was approved in 1995, and we're trying to work from
12 there as our base.

13 The original plan did not trigger the need
14 for an EIS as determined by the Commission. And so
15 there was no EIS that was presented or accepted in
16 connection with that 1995 approval by the original
17 petitioner.

18 If the question is, however, are we
19 concerned with any impacts which the project may now
20 have? So even if we go back to the 1995 plan, do we
21 -- how do we deal with that?

22 And so my answer is, I don't believe we
23 will trigger an EIS, however, we still obviously
24 would like to be cognizant of any impacts that the
25 1995 project would create. And we are willing to

1 look at what impacts there are, and determine the
2 appropriate studies that would need to be conducted.

3 COMMISSIONER WONG: Thank you.

4 ACTING CHAIR CABRAL: Any more questions?
5 Go ahead.

6 COMMISSIONER ACZON: You mentioned about
7 the 22 million. Are there any of those monies
8 expended?

9 MR. SAKUMOTO: Have any of those monies
10 been expended? Yes. So of those monies, what I
11 understand is approximately 1,900,000 were spent on
12 the materials that are presently located on the
13 property.

14 I'm not sure if you recall, we did a site
15 visit last year, and while we were on the site visit
16 there were a lot of construction materials that were
17 staged on the property. I believe that's what that
18 money was utilized for.

19 COMMISSIONER ACZON: So those are stored on
20 the property?

21 MR. SAKUMOTO: Yeah, I believe they've been
22 stored there.

23 COMMISSIONER ACZON: Any construction done?

24 MR. SAKUMOTO: Has any construction been
25 done? My understanding is that there were grading

1 permits that were issued, and that also -- yeah. So
2 there was some grading that did take place, as well
3 as a perimeter fence that was established prior to
4 the grading. The grading was not done -- I believe,
5 from what I recall, that it was the grading activity
6 that triggered the community objection to the
7 project, and I don't believe that they ever finished
8 it. But I think that that is what started -- you
9 know, there was a dust fence that was erected around
10 the property.

11 COMMISSIONER ACZON: That was before the
12 order of banning construction?

13 MR. SAKUMOTO: Yes.

14 COMMISSIONER ACZON: Any other expenses
15 besides grading?

16 MR. SAKUMOTO: In terms of actual hard cost
17 for construction, or are you asking about any cost?

18 COMMISSIONER ACZON: Any cost, the project.

19 MR. SAKUMOTO: For the project, I don't
20 have the dollar amounts in front of me, Commissioner
21 Aczon, but I do know that significant amounts were
22 paid for professional services for planners,
23 architects, engineers. The EIS took four years. It
24 involved at least 13 different consulting firms, and
25 so that cost quite a bit of money.

1 I can provide the Commission with that
2 information if you would like to see it.

3 COMMISSIONER ACZON: That would be
4 appreciated.

5 MR. SAKUMOTO: The big picture, there is a
6 mix of hard cost and soft cost. Right now a
7 significant portion of the 22 million is still being
8 held by the County of Maui.

9 COMMISSIONER ACZON: Thank you very much.

10 ACTING CHAIR CABRAL: Commissioner Dawn.

11 COMMISSIONER CHANG: Thank you, Chair.

12 Is there an opportunity that I could ask
13 Mr. Lake some questions, his consultant that's doing
14 community engagement, who he's spoken to and
15 responses by the community?

16 MR. SAKUMOTO: I have no other, Commission.

17 ACTING CHAIR CABRAL: Do you think that
18 would be at this time, or do you want to wait until
19 you hear the other presentations?

20 COMMISSIONER CHANG: I want to hear what
21 the Intervenors have to say too, but while the
22 Petitioner has -- this is his statement, to follow up
23 with his consultant as to the work that he's done.

24 ACTING CHAIR CABRAL: If we can have the
25 consultant come forward and be sworn in.

1 May I swear you in?

2 THE WITNESS: Yes.

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

6 THE WITNESS: Yes.

7 ACTING CHAIR CABRAL: Can you state your
8 name for the record, and then proceed with your
9 testimony.

10 THE WITNESS: Harry Lake, Chief Executive
11 Officer, Koa Partners, real estate development.

12 HARRY LAKE

13 Was called as a witness by and on behalf of Piilani
14 Promenade, was sworn to tell the truth, was examined
15 and testified as follows:

16 DIRECT EXAMINATION

17 COMMISSIONER CHANG: Thank you so much, Mr.
18 Latham.

19 MR. SAKUMOTO: Commissioner Chang, his name
20 is Lake, L-a-k-e.

21 COMMISSIONER CHANG: I apologize. Thank
22 you for the correction.

23 Mr. Lake, your counsel mentioned that you,
24 that Piilani has engaged in community engagements and
25 been working with the various stakeholders.

1 Could you provide us a brief summary of who
2 you've spoken to and context or comments that you've
3 received; and if you personally did the outreach or
4 if you had someone else do the outreach?

5 THE WITNESS: Yes. Thank you so much for
6 your time.

7 We're excited at Koa Partners to be
8 involved in this process. Born and raised in
9 Hawai'i. Went to McKinley High School, graduated
10 from UH Manoa. Served in Hawai'i Army National
11 Guard. And our whole life purpose is to deliver
12 great real estate projects.

13 So we have been engaged to partner up with
14 Seraphim (phonetic) just like Randall mentioned to
15 help develop and execute the project. A key
16 component of that is obviously getting feedback from
17 the community.

18 So as part of that, and in January we
19 started reaching out to people. Really we even went
20 out with blank sheets of paper where we said, hey,
21 let's go back and let's just seek to understand.
22 We're going to start all over essentially.

23 So we reached out to Vernon Kalanikau. We
24 also reached out to Daniel Kanahale, and I just want
25 to just acknowledge the Intervenors' community

1 representatives here Lucienne deNaie and her team has
2 been phenomenal in helping us to properly engage with
3 key stakeholders here.

4 And to that point, Maui Tomorrow, Citizens
5 for South Maui, we have also reached out to them as
6 well. Lucienne deNaie, Mark Hyde, Al Perez are all
7 involved in discussion.

8 We've also reached out to KCA leaders.
9 Mike Moran who's here, as well as Dick Mayer, Kihei
10 Community Association, and again, great stewards of
11 the community, and dialogue has been very positive
12 and ongoing, and we understand that this is a
13 process, not a conclusion, and we're in the middle of
14 that dialogue right now and others.

15 But those are the key stakeholders I think
16 were very vocal early on in the process, so we wanted
17 to start there and then radiate beyond that in the
18 next steps. And I can go a little through our
19 process, if you like.

20 COMMISSIONER CHANG: Perhaps to facilitate
21 this discussion, did you have an opportunity to read
22 through the Findings of Fact by the LUC with respect
23 to the FEIS?

24 THE WITNESS: Yes, Randall has been guiding
25 us a ton on that.

1 COMMISSIONER CHANG: Did you have an
2 opportunity to review some of the concerns that were
3 raised by the community with respect to both, one,
4 the community engagement, traditional customary
5 practices, the water issues, the type of development?
6 Did you have an opportunity to review all of that?

7 THE WITNESS: Yes, we have reviewed it, and
8 we acknowledge that's some work to be done on our
9 side. We are spending a lot of time on cultural
10 issues, and that's where a lot of our efforts are
11 spent right now. And we have some exhibits that
12 we're sharing with you as part of a dialogue, and
13 sort of speaks to what we heard.

14 And, again, we have a lot more to work on
15 but, again, this is a process that we're going
16 through. First was to seek to understand, which was
17 to review all the historical testimonies, previous
18 plans, as well as re-engage with the community and
19 have a good honest discussion there.

20 As part of that, we've been authorized to
21 go back and deliver a project that is consistent with
22 the 1995 approvals and the original D and O. So
23 within that constraint, we wanted to seek, okay, how
24 can we deliver a plan substantially compliant with
25 those, and still speak to the interest of the

1 community. So that's the dialogue we've been having.

2 COMMISSIONER CHANG: Approximately how many
3 meetings have you had?

4 THE WITNESS: It's been ongoing. I've been
5 in market probably every month, so -- we've had
6 multiple meetings, I would say at least half a dozen
7 individual meetings to really coordinate meetings,
8 but there have been substantial dialogue and
9 coordination for meetings.

10 Also had some conference calls as well with
11 Pierce and others.

12 COMMISSIONER CHANG: Has there been an
13 attempt to do a general public meeting like public
14 announcement and inviting the larger community other
15 than the intervenors and stakeholders?

16 THE WITNESS: That is the next step we are
17 about to have. So what we wanted to do is sort of
18 present the process that we're going through right
19 now, and before we go too far ahead, say, hey, are we
20 consistent, are we heading in the direction we
21 believe is a good direction for us to go into which
22 we can actually deliver.

23 The last thing we want to do is go down a
24 path and have dialogue with a plan that we can't
25 deliver. So that's where we are at right now. We're

1 saying we want to be compliant with the 1995 plan,
2 the original D and O. Have a stipulated agreement
3 with stakeholders, intervenors, does this process
4 feel okay. Then take the next step and broadly
5 solicit additional information and come back to you
6 again for something actual.

7 COMMISSIONER CHANG: I appreciate the
8 thoughtful process that you outlined. I don't want
9 to get into the substances. I know that that will be
10 the subject of discussion with the community. I was
11 more interested in your process and general community
12 engagement. Thank you.

13 THE WITNESS: Thank you for your time.

14 ACTING CHAIR CABRAL: Any more questions of
15 this consultant at this time from our Commissioners?
16 Sorry, Commissioner Okuda.

17 COMMISSIONER OKUDA: Mr. Lake, just to
18 complete your background. Do you hold any licenses
19 in the State of Hawaii?

20 THE WITNESS: I am -- I was a licensed
21 broker, but no, we're not actively brokering
22 anything.

23 COMMISSIONER OKUDA: Just for background,
24 so you have a real estate brokers license?

25 THE WITNESS: Yes, lapsed. That's not the

1 capacity we are working here.

2 COMMISSIONER OKUDA: I'm just trying to put
3 a framework on what background you might have with
4 respect to your testimony and what you're telling.
5 Okay, thank you.

6 THE WITNESS: Yeah, you're welcome.

7 ACTING CHAIR CABRAL: Anyone else?

8 COMMISSIONER CHANG: Sorry. This isn't for
9 you, Mr. Lake. Actually it's a question for counsel.
10 You made a statement that based upon the
11 original, that Piilani's intent is to go back to the
12 original 1995 project, and that you -- at this point
13 in time you don't believe there's any trigger for an
14 EIS.

15 Condition 5 related to roadway
16 improvements. Doesn't that affect state land?
17 Wouldn't that trigger 343?

18 MR. SAKUMOTO: I believe Condition 5 was
19 the establishment of the frontage road in the
20 project. And the frontage road was the road that I
21 think was originally conceived as a road that ran
22 parallel to Piilani Highway but it was inside the
23 property. So it was a road parallel to the highway
24 but not on the highway, as I understood it.

25 COMMISSIONER CHANG: Because it was my

1 understanding that was the reason that you actually
2 did the EIS was because of the impact to the state
3 road. What's the difference in your new project
4 versus the 1995 -- maybe I shouldn't assume -- what
5 was the reason for doing the EIS in 2013? What was
6 the trigger?

7 MR. SAKUMOTO: In 2013 the EIS dealt with
8 the mixed-use project which, as I mentioned, included
9 commercial, industrial, light industrial, residential
10 and the use as described in the EIS, and for those
11 contemplated uses, the traffic impact analysis that
12 was provided mandated certain road widening along
13 Piilani Highway.

14 Presumably it was a project that would
15 generate more traffic, or just the types of traffic
16 that would necessitate widening along Piilani
17 Highway. That was the trigger for the 2013 EIS.

18 It was based upon the 2013 project which we
19 have now abandoned.

20 COMMISSIONER CHANG: So at this point in
21 time it's your position that there is -- that there
22 is no trigger to 343? There's no road widening?
23 There's no impacts to public roads?

24 MR. SAKUMOTO: I think my position right
25 now is that the 1995 project had no trigger. We are

1 intending to develop a project in substantial
2 compliance with the representations made for that
3 1995 project.

4 The exact project that comes about will
5 only been known after Mr. Lake completes his
6 community engagement process. I think at that
7 juncture we will look to see what happens with
8 regards to impacts.

9 So it's very difficult for me to say
10 conclusively there is none or there will be none.
11 You know, the only thing I can say is, as I mentioned
12 earlier, we're committed to reviewing impacts because
13 the 1995 project may, even if it's done now in 2018,
14 it may be reasonable to look at those impacts.

15 COMMISSIONER CHANG: I appreciate that. So
16 my understanding, what you're saying is it's
17 premature at this point in time for you to make a
18 conclusive statement that no 343 trigger until you
19 see what the final product will be, the design will
20 be?

21 MR. SAKUMOTO: That's correct.

22 COMMISSIONER CHANG: So in 1995 was there
23 an EIS prepared for this project?

24 MR. SAKUMOTO: There was not. I think
25 there was a statement in the record that the

1 Commission concluded or accepted the Petitioner's
2 conclusion that there was no trigger for an EIS.

3 COMMISSIONER CHANG: Thank you so much.

4 ACTING CHAIR CABRAL: Any more comments?
5 Mr. Okuda.

6 COMMISSIONER OKUDA: Thank you, Madam
7 Chair. Just to follow up some of the questions.

8 And it's really, really good that you have
9 community outreach, because that, I think, moves our
10 community and our democracy forward, more outreach,
11 more involvement is always better, more ideas are
12 always better. But to follow up the question.

13 So can you for sure tell us today that the
14 project that will ultimately be built, will be what
15 we would call the 1995 project? In other words, the
16 project that's approved by the 1995 D and O, or might
17 it be something else, or a modification of that based
18 on the outreach that you're engaging in right now?

19 MR. SAKUMOTO: That's a very good question.
20 So the D and O, as you know, I believe it's Condition
21 17, requires that the project be developed in
22 substantial compliance with the representations made
23 to the Commission in connection with that D and O.

24 And our position is that we will do that.
25 We will build a project in substantial compliance

1 with the representations made in connection with the
2 1995 Decision and Order.

3 Is that going to be exactly the project
4 that was presented to the Commission in 1995?
5 Probably not. We are relying upon the language in
6 the D and O that says develop in substantial
7 compliance.

8 Now, what is that? It's really hard for me
9 to put a finger on that. I have been discussing this
10 issue with the Commission staff, trying to find some
11 guidance on how much leeway there is in that
12 statement. There isn't much in terms of precedence
13 by this Commission.

14 However, what we are trying to do is
15 utilize whatever flexibility that language may have
16 to try to, you know, use that so that there's some
17 meaningful engagement with the community, otherwise
18 why would there been any reason for the dialogue in
19 the first place. We believe that there should be
20 enough flexibility in that language to allow us to
21 present a project once this dialogue has concluded,
22 which does substantially comply with the
23 representations made, but which may not be exactly
24 what was shown in 1995.

25 We think that, and we hope that the process

1 has some amount of reasonable flexibility built into
2 that. We think that's the best result for all
3 parties concerned.

4 COMMISSIONER OKUDA: And I appreciate the
5 answer. Please don't take anything what I say as
6 prejudging anything, or you know, showing any feeling
7 one way or the other on any of the issues. And I
8 definitely don't speak for the Commission, the
9 Commission only speaks based on votes taken after a
10 proper procedure.

11 But aren't we now really starting to get
12 into the real problem which was kind of touched on by
13 the Hawaii Supreme Court case Bridge Aina Lea, which
14 is found at 134 Hawai'i 187, where you have approvals
15 given under D and O's with conditions, and then we
16 have now, what, 20-plus years have passed, many of
17 the conditions haven't been met, and unless someone
18 can tell me that nobody has made money on this
19 project, the Supreme Court in fact quoted from
20 submission by the Office of Planning when these
21 issues were being discussed at the legislature about
22 why the policy should be lose it or use it. In other
23 words, that the tradeoff where developers --
24 shouldn't say developers -- landowners are given
25 boundary redesignations from Agriculture to Urban or

1 Conservation to Urban it essentially immediately
2 creates value in the property. So it's not
3 unreasonable to expect that the recipients of this
4 value caused by government action live up to the
5 conditions.

6 And so I'm just saying, that seems to be --
7 not seems to be -- that's a policy statement by the
8 Hawaii Supreme Court which we're duty bound to
9 follow, and I think that's a concern. Don't get me
10 wrong, community engagement is really good. Things
11 change in the world. If we can have a better
12 project, we all want to move the community forward.
13 There's nothing inherently wrong with development or
14 anything like that, but the Supreme Court -- and tell
15 me if you disagree -- is giving us admonition that if
16 people get benefits from a government process, they
17 should live up to the commitment they have made. Is
18 that a fair statement?

19 MR. SAKUMOTO: That's a very loaded
20 question.

21 Let me respond, Commissioner Okuda, by
22 saying this. I guess maybe I would like to respond
23 maybe to two parts of what you said.

24 First of all, with regards to compliance
25 with conditions under the Decision and Order, I think

1 you'll find, as we have shown, the annual reports,
2 basically the finding by the Commission in 2013,
3 which triggered the prohibition on construction, was
4 that there were three conditions that were not in
5 compliance.

6 The Commission found -- and I'm
7 paraphrasing here -- that if the project that was
8 then in front of the Commission went forward, it
9 would not comply with Condition 5, which dealt with
10 the frontage road, because there was no frontage road
11 in the design of that project. It would not comply
12 with Condition 17, which was that the -- I believe
13 17 -- that the project be built in substantial
14 compliance with the representations made -- I'm
15 sorry -- Condition 15.

16 So it was a finding that if they went ahead
17 with that project, it would not comply with those two
18 conditions.

19 The Commission also found that the
20 Petitioner was delinquent in the filing of its annual
21 report.

22 So as it relates to those three, those are
23 the three that I think we were aware of at the time
24 that we were not in compliance, so to speak.

25 I think the frontage road condition, we

1 will address that in some fashion, whatever the
2 concerns were, I think it was done to alleviate some
3 of the traffic along Piilani Highway.

4 Our intention is to update our traffic
5 study and try to address whatever concerns were
6 raised by that condition.

7 Condition 15 with regards to building and
8 substantial compliance, I think I just gave a whole
9 long speech about that is basically what our plan is.
10 We will now build the project in substantial
11 compliance with the representations made.

12 That's the whole premise of what we plan to
13 do.

14 And the last thing is, the delinquent
15 reports, the annual reports are now current, by both
16 co-petitioners, by Honua'ula Partners and by Piilani
17 Promenade.

18 COMMISSIONER OKUDA: Can I ask with more
19 specificity, what construction has taken place on the
20 property before today besides the grading that you
21 described.

22 MR. SAKUMOTO: I'm not aware of any other
23 construction taking place except what I mentioned
24 previously.

25 COMMISSIONER OKUDA: Accept for or besides

1 the grading permit that you described or testified
2 to, what other permits have been obtained with
3 respect to the property?

4 MR. SAKUMOTO: I believe that there have
5 been two subdivision approvals issued by the county,
6 the grading permits that were issued by the county,
7 and the --

8 COMMISSIONER OKUDA: Any building permits?

9 MR. SAKUMOTO: No building permits.

10 COMMISSIONER OKUDA: Have any construction
11 contracts, or contracts been entered into with
12 contractors for development of the property besides
13 maybe whatever grading contract had been entered into
14 previously?

15 MR. SAKUMOTO: That I do not know. I would
16 have to research that and come back to you.

17 COMMISSIONER OKUDA: Final question.

18 Are there any permit applications pending
19 at this point in time?

20 MR. SAKUMOTO: No, there are none.

21 COMMISSIONER OKUDA: So would you agree
22 that given those type of factors, there really hasn't
23 been any substantial commencement consistent with the
24 representations made to the Commission with respect
25 to the property?

1 MR. SAKUMOTO: You know, in terms of
2 substantial commencement, I think that, as I
3 mentioned, Piilani Promenade has invested
4 considerable amounts of money into the property.
5 They own the property now for about nine years. They
6 have, as I mentioned, spent the money to establish
7 the subdivision, or maintain the subdivision
8 approval, and I believe, looking at the Bridge Aina
9 Lea case, and what the court found would qualify as
10 substantial commencement, that there are facts within
11 our case that would support an argument that there
12 has been substantial commencement.

13 I did not come today with any brief on
14 this, so my answer may be less formal and thorough
15 than you would have wanted, but today I came with
16 just my status report.

17 If you would like us to submit a brief on
18 that, certainly we can.

19 COMMISSIONER OKUDA: No, no, I appreciate
20 your response. And again, I'm just asking the
21 questions just to get additional information, because
22 this really probably is not the place and forum to
23 decide any Bridge Aina Lea issues. It's not to say
24 even such issues would arise, but it's just for
25 information. So I really do appreciate the

1 information you did provide. Thank you.

2 ACTING CHAIR CABRAL: Thank you, fellow
3 Commissioners. And I see that Consultant Lake has
4 his light on.

5 I'm sorry, Commissioner Lee.

6 COMMISSIONER OHIGASHI: That's me. Mr.
7 Sakumoto, I failed in my note taking at the
8 beginning. I believe you outlined four steps you
9 were going to go with. Please just go over those
10 four steps.

11 MR. SAKUMOTO: Certainly. Step one -- I
12 actually have a handout if you would like that you
13 can take notes on because it's exactly what I'm
14 reading, if that helps the Commission.

15 COMMISSIONER OHIGASHI: I just wanted to go
16 through the steps.

17 ACTING CHAIR CABRAL: If you could make
18 sure that our recording secretary gets that in
19 entirety because then it will end up in our
20 testimony.

21 MR. SAKUMOTO: Let me go over those steps
22 again.

23 The first thing I said was that we would
24 like time to continue the dialogue with the community
25 that has been started. We think that more time is

1 needed to finish the process.

2 The second thing would be that based on the
3 feedback we get, we would refine a conceptual plan
4 that substantially complies with the 1995 Decision
5 and Order.

6 One thing that was circulated to you, it
7 was Mr. Lake's handout, where it was the document
8 that actually he's been using at the community
9 meetings in order to facilitate discussions with the
10 interested parties. And so what we plan to do is
11 come up with some version of the plan, probably
12 within the range of what is in that handout.

13 And then the third step would be, we would
14 present it to the parties here at the table, formally
15 present it to Office of Planning, the County of Maui
16 and to the Intervenors, and we would do that with a
17 request, this is a fourth step which is to seek a
18 stipulation from all parties that this plan that we
19 have circulated does substantially comply with the
20 representations made to the Commission.

21 Thereafter, we would file the stipulation
22 with the Commission along with a request for -- there
23 are four things -- determining that there were no
24 violations of the D and O; deemed the Phase II
25 portion of the Order to Show Cause proceedings moot

1 or to discuss them; approve the withdrawal of the
2 Motion to Amend because we still have a pending
3 motion which hasn't been heard by the Commission.
4 But once the Commission basically approves the first
5 two points, we would withdraw that Motion to Amend.

6 And lastly, to lift the stays on the
7 construction.

8 COMMISSIONER OHIGASHI: Is there hopefully
9 a timetable that you're looking at to try and resolve
10 this matter?

11 MR. SAKUMOTO: We would -- you know, we are
12 trying to move as quickly as we can. As I mentioned,
13 the county is holding a significant amount of cash
14 that has been posted to secure the obligation to do
15 the subdivision improvements. It doesn't work in
16 Piilani Promenade's best interest to delay, because
17 time is money and it's been sitting there for years.

18 But at this juncture, I think what's more
19 important to them is that the community engagement
20 process be done correctly and thoroughly and, you
21 know, I know that doesn't answer your question.

22 If I could respond to -- I heard earlier
23 your tentative dates of meetings, and apparently we
24 are scheduled to be on in September, September 12th.
25 I couldn't tell you that we will be finished by

1 September, it's already July. My guess is we won't.
2 That this process will still be ongoing, and I would
3 just ask for the Commission's indulgence and their
4 patience to allow us to work through this process.

5 COMMISSIONER OHIGASHI: Assuming that the
6 fourth step about filing a stipulation is not
7 achieved, will you be seeking alternative remedies in
8 the form of some kind of declaratory ruling or other
9 type of relief before the Commission concerning the
10 proposal?

11 MR. SAKUMOTO: I haven't thought that far
12 ahead. I don't know the answer to that question.

13 Our goal is, certainly, and we have been
14 working in earnest to get to something where we can
15 all agree. And that's our primary objective right
16 now. That's our sole objective right now.

17 So I honestly have not thought about what
18 else would happen if we weren't able to achieve that.
19 I certainly hope that doesn't happen.

20 COMMISSIONER OHIGASHI: The result, what
21 you're hoping for is that the stipulation would
22 resolve the issue of whether or not the proposal that
23 you plan to make would conform, would meet
24 substantial compliance that we need -- let me
25 rephrase it.

1 My understanding is that a stipulation by
2 all parties would be that the proposal that you're
3 making substantially complies with the D and O issued
4 originally in 1995?

5 MR. SAKUMOTO: That decision is the
6 Commission's decision to make. I think we would just
7 like to show the Commission a unified front.

8 COMMISSIONER OHIGASHI: I understand that
9 part. I just want to be sure that's what you're
10 seeking, a stipulation?

11 MR. SAKUMOTO: Yes, yes.

12 ACTING CHAIR CABRAL: Commissioners?

13 COMMISSIONER CHANG: Just one last
14 question. This will be the last.

15 It's just that I want to follow up with the
16 line of questioning you had with Commissioner Okuda.
17 And I realize that you probably were not necessarily
18 prepared for this line of questioning, so -- but it
19 is going to be relevant to the Commission.

20 Because you made a statement that you
21 believe that the expenditure of funds to date would
22 qualify as a substantial commencement.

23 Could you tell me what is the estimated
24 total cost of this project? If you have spent
25 approximately \$1.9 million, you've got \$20 million

1 with the county, what is your estimated cost of this
2 entire project?

3 MR. SAKUMOTO: First of all, we have about
4 23 million that's being held by the county, not 29,
5 just for the record.

6 I do not have that figure right now.
7 Again, we do not know what the project ultimately
8 will be. I think that will be known after the
9 dialogue has been concluded. But for the same reason
10 why I couldn't answer whether there would be an EIS
11 trigger, I cannot tell you what the project cost
12 would be. We don't know -- we're still talking in
13 very general terms about what the project will
14 consist of, and until we know the general components
15 of the project, we can't plan the more detailed plans
16 that would help us prepare cost estimates.

17 But that's probably the best answer I can
18 give.

19 COMMISSIONER CHANG: So would it be fair to
20 say, not trying to put words into your mouth, but
21 would it be fair to say that a determination of
22 whether there's been substantial compliance,
23 substantial commencement based upon the monetary
24 expenditure may also be premature until you know for
25 sure what your project is going to be?

1 MR. SAKUMOTO: I'm answering this based on
2 my understanding of Bridge Aina Lea and what the
3 Supreme Court held in that case and what they
4 considered to be cost that would validate the fact
5 that there has been substantial commencement.

6 My understanding is a part of that was not
7 only the hard cost that were expended, but the soft
8 cost. They looked at the aggregate costs that were
9 expended by the petitioner in that situation. And
10 while certainly we may not be in that realm in terms
11 of dollar amount, as I mentioned, we have put up \$23
12 million in cash to secure the subdivision approval.

13 Of that, a portion has been expended to
14 acquire the infrastructure materials that you saw on
15 the property. And I guess, as I said before, I
16 didn't come today with any kind of legal briefing on
17 Bridge Aina Lea, but based on my understanding of
18 that case, I do believe that the cost that we have
19 spent, incurred to date, would qualify. That's my
20 understanding.

21 COMMISSIONER CHANG: Do you have an
22 estimate of your soft cost?

23 MR. SAKUMOTO: I do not have that.

24 COMMISSIONER CHANG: I don't think we
25 intended to necessarily put you on the spot. We

1 understand that a lot of this discussion is probably
2 premature until we see what your ultimate plans are
3 going to be, but the opportunity presented itself to
4 ask this line of questioning. Thank you very much.

5 ACTING CHAIR CABRAL: Thank you.
6 Consultant Lake, you have your light on. Did you
7 like to say something at this time?

8 THE WITNESS: I don't know the proper time
9 to go over how we are exploring substantial
10 compliance and design, we can do after all the
11 presentation. I just wanted -- Commissioner Okuda's
12 point we have, in the spirit of transparency, we have
13 sort of how we are trying to put forth something that
14 creates a dialogue.

15 In terms of the budget, the original plan
16 kind of had industrial lot land sales. To that point
17 there probably wasn't that much more in dollars
18 needed to be spent above what the horizontal cost
19 right now. From that perspective there's
20 substantial -- if we went all the way back to
21 industrial lot sales, there is probably not much more
22 dollars to be spent than what we already posted and
23 already have.

24 If we just did horizontal -- that's not
25 what we are hoping to do, we're hoping to do a lot

1 more than that, but depending on which vision we
2 ultimately end up doing.

3 COMMISSIONER CHANG: Just one follow up.
4 Bear with my ignorance. I'm not really as familiar
5 with -- are you saying that the \$23 million, that's
6 the extent of what you would -- of this --

7 THE WITNESS: No, I'm saying that if we
8 were to do industrial lot sales like A&B is doing,
9 things like that, there wasn't -- the hard cost to go
10 vertical on those pieces with 123 lots -- I'm just
11 saying there is an argument to be said there if we
12 went back to that particular plan, a substantial
13 amount of dollars has been posted and expended. We
14 don't intend to do that. Our hope is to do something
15 slightly different, just to let you know.

16 ACTING CHAIR CABRAL: Thank you very much.

17 I think we are ready to move on.

18 As we move on, I want to remind ourselves
19 as the Commissioners today we are interested in
20 learning what the current state of the proceedings
21 are in relation to this docket, because we will not
22 be considering the actual merits of the A94-706.

23 So at this point, Attorney Tabata, are you
24 ready to make a statement?

25 COMMISSIONER WONG: Can we take a brief

1 recess, please?

2 ACTING CHAIR CABRAL: I guess so. We will
3 take a brief recess. Thank you very much.

4 (Recess taken.)

5 ACTING CHAIR CABRAL: Like to call the
6 proceedings back to order.

7 At this time, Mr. Tabata, are you prepared
8 to make a statement?

9 MR. TABATA: Yes, I am. Thank you, Acting
10 Chair.

11 Honua'ula Partners joins in Mr. Sakumoto's
12 Status Report. We have nothing to add, but I'll try
13 to answer any questions that the Commissioners may
14 have. Thank you.

15 ACTING CHAIR CABRAL: Why thank you very
16 much. Do I have any additional questions that the
17 Commissioners may have at this time? Commissioner
18 Lee.

19 COMMISSIONER OHIGASHI: The reason why I
20 asked Mr. Sakumoto about the next step, have you gone
21 over these next steps with Mr. Sakumoto?

22 MR. TABATA: Yes.

23 COMMISSIONER OHIGASHI: Do you agree?

24 MR. TABATA: Yes, and we agree.

25 ACTING CHAIR CABRAL: Any other questions

1 or comments from the Commissioners? Commissioner
2 Dawn.

3 COMMISSIONER CHANG: Thank you.

4 Mr. Tabata, the last time we were -- when
5 this matter came before LUC, your client purchased
6 one of the smaller parcels of land; is that correct?

7 MR. TABATA: Yes, 13 acres.

8 COMMISSIONER CHANG: What was your client
9 going to do with that land?

10 MR. TABATA: At the time the 13 acres was
11 acquired to build 250 units of affordable housing as
12 a requirement for a separate project, a project
13 formerly known as Wailea 670. So for that project
14 zone change approval had a Condition No. 5 that
15 required the 250 units to be built on our 13 acres on
16 the Piilani side, Piilani project.

17 Since the last time we have been before
18 you, Honua'ula Partners has obtained a change in zone
19 to amend Condition No. 5, so now we are able to build
20 the 250 units of the affordable housing on site at
21 the Wailea site. So we do not need to build our
22 units on the Piilani site. We have the flexibility
23 of doing it on either location and in portions.

24 COMMISSIONER CHANG: Thank you for that
25 clarification, because that was my understanding that

1 your client was going to use that 13 acres for the
2 250 affordable units.

3 So is it your client's intention to do a
4 joint development agreement with Piilani? Are you
5 going to sell your property to Piilani? Or you're
6 going to develop this property jointly with Piilani?

7 MR. TABATA: At this point we have agreed
8 with Piilani to work with them through this process
9 that Harry Lake is leading for us. So we are in
10 support of the effort, taking their lead really, and
11 cooperating.

12 COMMISSIONER CHANG: Has your client put
13 any -- made any expenditure of funds for the 13 acres
14 that you own?

15 MR. TABATA: I don't have those figures,
16 but I'm quite certain there must be some planning
17 cost and engineering cost involved. I don't have
18 those numbers today.

19 COMMISSIONER CHANG: Will your 13 acres --
20 is it your intention that the 13 acres will go back
21 to the original 1995, the proposal that was put forth
22 to the LUC 1995 that your 13 acres will be part of
23 that overall, that new revised development?

24 MR. TABATA: Just as it was described by
25 Mr. Sakumoto, our 13 acres we consider to be a part

1 of current effort involved with. So, yes, for us, it
2 is also our intent to comply with the 1995 D and O to
3 be in substantial compliance with our
4 representations.

5 COMMISSIONER CHANG: Thank you very much.

6 ACTING CHAIR CABRAL: Any more questions or
7 comments from our Commissioners?

8 Thank you very much for your additional
9 input, and I'm sure when we see you again you'll have
10 all kinds of figures and numbers for our
11 Commissioners.

12 At this time I would like to ask the
13 Intervenor for Maui Tomorrow Foundation, South Maui
14 Citizens for Responsible Growth, and Daniel Kanahale
15 for their comments, and that would be Mr. Pierce.

16 MR. PIERCE: Thank you, Acting Chair, and
17 thank you Commissioners for being over here on Maui
18 to hear this today. And we really appreciate
19 continuing review of this project.

20 There's just a couple of things, because we
21 recognize that there are a number of procedural
22 issues that will have to get worked out at some
23 point, and I recognize for purposes of today that
24 it's just a status conference, so I'm not interested
25 in trying to weigh in too deeply on those, but the

1 one thing that I felt in terms of laying out the
2 background that would be helpful for the
3 Commissioners to know today as part of the status is
4 just a bit more of the background of how we became
5 Intervenors, because most of the attorneys have
6 changed, and I believe all the Commissioners have
7 changed since that happened.

8 And I can do this very quickly, but in
9 2012, the spring of 2012 the Piilani Promenade owners
10 actually started putting up silt fences and
11 construction fences. That was when we were aware
12 that there was a project occurring. Then my clients
13 engaged me. We started doing our investigation. And
14 during that process what we found was that the county
15 felt that everything was okay, but when we began to
16 look at the 1995 LUC D and O, we felt that, based
17 upon what we were hearing was going to be proposed
18 for the site, that it was not in substantial
19 compliance. So that's when we filed a Motion for
20 Order to Show Cause.

21 And what actually ended up happening was in
22 September of 2012, the Commission granted our Motion
23 for an Order to Show Cause. And then in November of
24 2012 we had a four-day hearing, contested case
25 hearing with lots of witnesses testifying. And the

1 staff probably recall as well because it was some
2 long days, but we got through that and the
3 Commission, majority of the Commissioners voted that
4 the project was not in substantial compliance at that
5 point in time, what was being proposed at that point
6 in time.

7 So that was very much the issue in
8 contention. What was odd about the case was that at
9 that point in time clearly on the day that the
10 Commission issued its oral ruling, it was clear that
11 we had prevailed on our point which was that there
12 was no substantial compliance.

13 What then happened, which is required in
14 the administrative rules, is that each of the parties
15 prepared their Findings of Facts, Conclusions of Law,
16 and actually those are still sitting with the
17 Commission today. They have not been -- neither one
18 of the two have been adopted by the Commission, so
19 those are sitting there today, and the reason is
20 because afterwards the petitioner, understanding that
21 that essentially they lost on this issue, asked for a
22 motion for a stay.

23 So we've been in basically limbo so to
24 speak since 2012, or early 2013.

25 And that was what actually also happened

1 there was a bifurcation of the case, so the first
2 phase was whether or not there was substantial
3 compliance. And the Phase II that Mr. Sakumoto
4 mentioned briefly was whether or not the property
5 should be reverted, and that actually goes to this
6 issue that was being discussed which is no
7 substantial commencement of the project, because
8 Bridge Aina Lea came down after our days.

9 And based upon my reviewing, the one thing
10 that continues to be concern for the Intervenors
11 which I would mention is very clear from the Bridge
12 Aina Lea case is they analyzed Chapter 205 carefully,
13 and they are very concerned in that case that -- the
14 appellate court is very concerned with the fact that
15 projects have -- when you go through all the
16 consulting analysis, those types of things, that has
17 a shelf life, and it will go stale if not used within
18 appropriate period of time.

19 So they make it clear that the purpose of
20 getting those entitlements is to actually go forward
21 with the project, not to use it for speculative gains
22 in order to convey the property to somebody else
23 which is what happened in this case.

24 So we don't know whether or not -- Mr. Lake
25 is correct, and my clients will testify about the

1 ongoing conversations. We are very happy that the
2 Petitioner is engaging with us. That certainly never
3 happened with the former representatives. So we're
4 very happy with that.

5 We've have, I guess I would call it a
6 peculiar procedural status of this case. We're not
7 prepared to say what should happen at this stage. We
8 do think it is always good to be in conversation with
9 the developer, especially if they're engaging in good
10 faith with the community, so we are happy about that.

11 But I do think it's helpful for the
12 Commission to understand that background because it
13 is -- we are continuing docket issue, and it would
14 have to be resolution. I think that's clear from the
15 way Mr. Sakumoto laid out four points.

16 He said that there would need to be a
17 stipulation from the Intervenor that there's no
18 outstanding violations. We're not there today, but
19 that's certainly something that we will engage with
20 them on.

21 And that Phase II, the issue of reversion
22 of the property back to agriculture would be
23 dismissed. That a Motion to Amend would be withdraw
24 n-- excuse me, Motion to Amend would be withdrawn
25 because they're no longer amending the project, and

1 the stay would be lifted.

2 We are not at that stage yet. We think the
3 status conference is helpful in keeping the
4 Commissioners up-to-date.

5 The other two things I would point out,
6 based upon some of the earlier testimony, there is
7 some -- I believe Mr. Sakumoto said there has been
8 some grading activities. Those are related, as we
9 understand it, to a MECO substation. And it's our
10 understanding that the MECO substation is not related
11 to their proposal, in fact, it's an independent
12 project that's being done by MECO.

13 There is some grading activity occurring
14 there with respect to that. We do not believe that
15 that would be part of the Petitioners' project, and
16 we would certainly not be part of the commencement of
17 their project.

18 In fact, that's the only reason, or
19 ability, that any kind of activity could be happening
20 there right now without violating the stay is that it
21 has nothing do with their project.

22 The second thing in terms of EIS is the
23 fact that the road on all of the various examples of
24 what is being proposed, there is a road that is
25 bifurcating the project by going through the center.

1 And that is the proposed road for the Up Country
2 between Kihei and Up Country, a very significant
3 road. And, in fact, the earlier Petitioners, that
4 was how they were starting to market the property,
5 major thoroughfare for Kihei.

6 So this is not a small -- I want to make
7 sure the Commissioners are aware that this is not a
8 small intersection. This is going to be potentially
9 over time one of the largest intersections on the
10 Island of Maui.

11 And I think with that, unless the
12 Commissioners have any questions, that's it for the
13 procedural aspect. I know that my clients will give
14 a bit of testimony in terms of conversations they're
15 having. Thank you very much.

16 ACTING CHAIR CABRAL: Do I have any
17 Commissioners who would like to ask any questions of
18 our Intervenor, Mr. Pierce? Commissioner Edmund.

19 COMMISSIONER ACZON: You mentioned that you
20 have someone to testify?

21 MR. PIERCE: Yes, sir.

22 COMMISSIONER ACZON: I would like to hear
23 him first.

24 MR. PIERCE: I believe we have Lucienne
25 deNaie who has been in one of the conversations will

1 be testifying, as well as Mr. Perez from Maui
2 Tomorrow, and Mr. Hyde for Citizens for Responsible
3 Growth.

4 ACTING CHAIR CABRAL: Okay, thank you. We
5 will look forward to their public testimony.

6 I would like to go ahead. Any other input
7 from Commissioners at this time? If not, then I
8 would like to go ahead and go to the county. Mr.
9 Hopper, would you like to have any input at this
10 time?

11 MR. HOPPER: Thank you, Madam Vice Chair.
12 The County of Maui Department of Planning's
13 understanding is the status of this project has been
14 mentioned is under a stay that was requested and
15 received by the developers pending a filing of a
16 Motion to Amend, or failing that, alternative
17 proposal as presented by the Petitioners today.

18 The County of Maui is in a similar position
19 to the Land Use Commission. We are awaiting any
20 specific plans that the developers have. We did
21 receive the status report, status and annual reports
22 filed with the Commission. Our office received them
23 a couple days ago, and it came to my desk yesterday
24 afternoon. So we have had a bit of time to review
25 them, but like the Commission, I think we're awaiting

1 any particular development plan to be submitted to
2 the parties and discussed.

3 So that's the status that we have right
4 now. We are available for questions if you have
5 them, but that's essentially where we are at right
6 now along with the Commission. Thank you.

7 ACTING CHAIR CABRAL: Thank you very much.

8 Commissioners, do you have any questions?
9 Commissioner Dawn.

10 COMMISSIONER CHANG: Just two questions.

11 One, and maybe it's premature, so you might
12 not know.

13 Pursuant to Mr. Pierce's statement about
14 the main thorough -- that road, do you know whether
15 that road will be dedicated to the county?

16 MR. HOPPER: Whether it's county or state,
17 I'm not sure of the eventual plan. That's something
18 that we need to talk with State DOT about.

19 But as of now our understanding is that's a
20 private road. So I'm not sure. It's on their
21 property. So I'm not sure how constructing that
22 would trigger any type of EIS if it's not state or
23 county lands.

24 At that point, unless there is another
25 determination, but again, that's an issue with

1 respect to the status report that we have not looked
2 at earlier.

3 So if there is a question of that, we can
4 maybe have more detailed response, maybe something in
5 the history where that was discussed, but I don't
6 have that for you today.

7 COMMISSIONER CHANG: And the second
8 question.

9 There's been representation that the county
10 has the \$23 million that you are holding in bonds
11 from Piilani.

12 MR. HOPPER: My understanding was that that
13 was part of subdivision bond, the estimated cost of
14 all of the improvements. But again, if it's
15 stated -- we can get confirmation, ask the Department
16 of Public Works to confirm that number and how much
17 is remaining, because there should be a record of
18 that. So if the Commission requests that, we can
19 provide that information.

20 COMMISSIONER CHANG: I'm certain you're not
21 having anticipated me asking this question, but for
22 purposes of 343, if a roadway is going to be
23 dedicated to the county, and it's being required to
24 be built to county standards, and this is totally
25 speculative, because we don't know what the plan is,

1 but what is the county's practice with respect to
2 development plan comes in, a proposal is to develop
3 roadway to county standards with intentions to
4 dedicate, does that trigger Chapter 343, in your
5 experience?

6 MR. HOPPER: Not in every case. I think
7 it's dependent on individual case, but not every
8 single time a road is dedicated to a county is an EIS
9 required. If that happens relatively frequently, I
10 think in reading the state law, it talks about if
11 there is discretionary permit along with state or
12 county.

13 But in general the mere dedication of a
14 road would not trigger. We certainly don't require
15 an EIS every time a road is dedicated to the county.

16 ACTING CHAIR CABRAL: Any other questions
17 from the Commissioners at this time?

18 Moving along, moving along. State Office
19 of Planning. Ms. Apuna, would you like to provide
20 any input?

21 MS. APUNA: We just have a few points of
22 clarification and maybe some questions.

23 First, just like to point out Piilani
24 status report, they mention \$2.6 million that would
25 be expended towards materials and construction,

1 including 1.9 towards materials and 700,000 spent on
2 labor and construction to clear the property. That
3 might help Commissioner Aczon and Commissioner Okuda
4 in terms of seeing that there is some substantial
5 commencement in the project.

6 We would ask Petitioner whether they can
7 say on record whether the going back to the original
8 plan, whether they think that they would have to
9 amend the original D and O, if that is a possibility?

10 And we would also like some clarification
11 as far as these handouts. There's the orange
12 spiral-bound proposed project, and then a single
13 sheet that had a site plan. So we're a little
14 confused as to what is the significance of these
15 different handouts.

16 ACTING CHAIR CABRAL: The handouts, would
17 Petitioner Sakumoto like to comment on the
18 differences between the orange handout and
19 individually not attached conceptual drawing?

20 MR. SAKUMOTO: Thank you, Madam Chair.

21 The booklet that I believe Ms. Apuna was
22 referring to with the orange cover is the booklet
23 provided by Mr. Lake. And I think I mentioned
24 earlier, this is a reduced-size copy that he has been
25 using to facilitate the community discussions.

1 As to the other handout, I don't know where
2 this came from. I do see it says "KCA Proposal".
3 Maybe a KCA representative can answer that. I did
4 not provide that handout.

5 ACTING CHAIR CABRAL: Anyone from KCA that
6 would like to comment on that? We will wait until
7 you come up to testify at that time. That would move
8 things along.

9 Office of Planning, do you have any other
10 comments at this time?

11 MS. APUNA: Add that we're willing to work
12 with the parties and Petitioners as far as taking
13 these next steps that they've outlined.

14 We're okay with that process going forward.

15 ACTING CHAIR CABRAL: Thank you very much.
16 Commissioners, any comments or questions at this
17 time?

18 COMMISSIONER CHANG: Was it your statement
19 that the expenditure of approximately \$2.6 million is
20 substantial commencement?

21 MS. APUNA: Yeah. I think Office of
22 Planning would say that that counts as substantial
23 commencement. When you talk about that, you're
24 talking about reversion, and we don't think that
25 that's really -- Intervenor says they're very happy

1 with the process ongoing. We don't think that's
2 really at issue here.

3 We think they have outlined exactly what
4 the steps are in order to get back on track, and I
5 think we don't have to worry about reversion. I
6 think they probably want to go with what has been
7 developed rather than go back to agriculture.

8 COMMISSIONER CHANG: Thank you.

9 ACTING CHAIR CABRAL: Commissioner Gary.

10 COMMISSIONER OKUDA: If I can follow-up
11 Commissioner Chang's questions.

12 Wouldn't the issue or a determination of
13 how much money is actually spent, whether that
14 constitutes substantial commencement or not, wouldn't
15 you have to also look at the total budget, or the
16 total projected cost of a project?

17 In other words, \$1.6 million where the
18 total projected budget is \$2 million, that's a large
19 percentage compared to where maybe the total budget
20 is maybe \$1 billion.

21 MS. APUNA: I don't think it's clear
22 necessarily in the case law, there isn't a certain
23 percentage or proportion or dollar amount. It's not
24 clear, but I think --

25 COMMISSIONER OKUDA: Again, it's not to

1 prejudge anything here. Would you agree that to
2 really determine what constitutes substantial
3 commencement, it requires reviewing all facts, and
4 amount of money spent is one fact, but there are also
5 other facts which may be in addition to money spent
6 and other facts including total budget and things of
7 that nature.

8 I just want to be clear that maybe we are a
9 little premature here judging one way or the other.

10 MS. APUNA: Yeah, sure.

11 ACTING CHAIR CABRAL: Any other comments
12 from the Commissioners? I think I failed to ask,
13 Petitioners or county have any questions at this
14 time? I stand corrected, no questions.

15 What I would like to do then, we're going
16 to proceed after this to our public testimony, but
17 I've been asked to take another short break, so we
18 will take a short break, come back and go directly
19 into public testimony. Thank you very much.

20 (Recess taken.)

21 ACTING CHAIR CABRAL: I would like to call
22 the meeting back to order, and at this time --

23 MR. PIERCE: If I may just make an
24 objection on behalf of Intervenors, take me
25 15 seconds?

1 ACTING CHAIR CABRAL: I have no objection
2 to that. Go ahead.

3 MR. PIERCE: Commissioners, clearly at this
4 time the issue of whether there's been substantial
5 commencement of the project is not before the
6 Commissioners. In fact, as I was laying out the
7 procedural history, that issue, we think, would come
8 up if there's determination by the Commission to go
9 into Phase II which was the issue reverter, because
10 when that's when that issue becomes important.

11 So we would just, obviously under the
12 administrative rules and agency, evidence -- you as a
13 Commission can accept whatever you want as evidence,
14 but we would just point out that at this point there
15 has been no opportunity by Intervenors to
16 cross-examine, for example, we would want to
17 understand why the Office of Planning believes there
18 has been substantial commencement with the project
19 based upon the very minimal information we have
20 before us today.

21 So we would object to that line of opinion
22 from the Office of Planning, because we understand
23 the Commission has to defer to some of the opinions
24 that are made by the Office of Planning. So we would
25 object that this is not properly before the

1 Commission and that clearly that this is a
2 preliminary discussion as Commissioner Okuda said.
3 It has to be taken from that perspective at this
4 point in time.

5 ACTING CHAIR CABRAL: I know we could go on
6 with that topic, but again, as I've stated a couple
7 of times now, right now we can appreciate that
8 everyone has a right to say whatever they say, but we
9 Commissioners are interested in learning what the
10 current status of the proceeding is related to this
11 docket.

12 I agree that any determinations to the
13 proceedings, or any decision, any correct
14 presentations or formal presentations will be made in
15 the future.

16 MS. APUNA: Chair, could I just say
17 something, since Intervenor is directly addressing
18 something that --

19 ACTING CHAIR CABRAL: If you keep it short.

20 MS. APUNA: I'll retract any statement that
21 OP is saying that \$2 million, or whatever amount, is
22 substantial commencement. I wasn't making any legal
23 point or -- and so I was speaking to or repeating
24 what was in Petitioner's filing as far as the money
25 spent toward the project. So I retract my statement

1 that there was substantial commencement. I hope that
2 clarifies.

3 ACTING CHAIR CABRAL: Thank you. I think
4 some of that came about because we started asking
5 questions --

6 COMMISSIONER OKUDA: Chair, I can clarify
7 my questions. It's not intended to adduce or obtain
8 evidence as far as an ultimate determination on
9 whether or not there's substantial commencement or
10 not. And I do agree with what the Intervenor is
11 stating as far as the right of all parties to
12 cross-examine and develop a full record.

13 My questions were simply so I can better
14 understand the status reports that were submitted,
15 and that's the limit of my questions.

16 ACTING CHAIR CABRAL: Thank you.

17 Any other comments? Are we ready for
18 public testimony? Public testimony. Thank you.

19 I think at this time I'll ask our Executive
20 Director to proceed with calling those that have
21 signed up in the order in which they have signed up.

22 I may ask, as the Commissioners rules
23 allow, and to promote efficiency in these
24 proceedings, all individuals providing public
25 testimony limit their comments to no more than three

1 minutes, and when the time is called by our staff, to
2 please wrap up your comments. Thank you, we will
3 proceed.

4 EXECUTIVE OFFICER: First witness signed up
5 Mike Moran, followed by Mark Hyde.

6 ACTING CHAIR CABRAL: May I swear you in?

7 THE WITNESS: Yes, ma'am.

8 ACTING CHAIR CABRAL: Thank you.

9 Do you swear or affirm that the testimony
10 you are about to give is the truth?

11 THE WITNESS: I do.

12 ACTING CHAIR CABRAL: Thank you.

13 MIKE MORAN

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

16 DIRECT EXAMINATION

17 THE WITNESS: Aloha, Chair and
18 Commissioners. My name is Mike Moran, and I'm
19 testifying for the Kihei Community Association.
20 Mahalo for your volunteer service to our residents.

21 As you are once again on this ongoing
22 A94-706 Ka'ono'ulu, after your unanimous decision on
23 the prior proposed use of these lands, we ask you to
24 hear our local community input as you receive a
25 status report.

1 We have been one of the stakeholders
2 invited to meet with the new declared landowner
3 representative Mr. Harry Lake, which we appreciate.
4 We hear positive sounding words that he wants to
5 follow the needs expressed by the local community for
6 this land, while following the parameters set in your
7 decisions.

8 You may recall we had presented a proposal
9 for mostly residential mixed use to the landowner,
10 and that mysterious green one-page sheet that you
11 have, as truly affordable housing is far and away the
12 greatest need of South Maui and most of our island.

13 We are aware that the original proposed
14 purpose when land use change was granted was for
15 light industrial. While Maui County zoning allows a
16 wide number of potential uses in this category,
17 because of the stacked zoning, which does include
18 multi-family housing as we understand it for our
19 community, we are using most direct descriptions to
20 avoid misleading conclusions.

21 We do not need more light industrial
22 facilities in the strict sense of the term.
23 Adjoining on the north edge we have a true light
24 industrial complex that is already full of vacancies.
25 Further, the Kihei Charter High School has been

1 located within this complex for many years, and they
2 will be severely downsizing in this use creating more
3 vacancies as they will open their newly constructed
4 school down the road in the R & T Park.

5 So what we do see would be the best outcome
6 for Kihei region. First, nothing done here until
7 there is sufficient infrastructure in place following
8 1998 community plan.

9 Next, the cultural concerns of the
10 Hawaiians that must be addressed, followed by overall
11 environmental concerns. Then, and only then, address
12 the built environment on the land with emphasis on
13 workforce housing. Mahalo.

14 ACTING CHAIR CABRAL: Thank you very much.

15 Do we have any questions from the
16 Commissioners? Do the Petitioners have any questions
17 of this member of the public?

18 MR. SAKUMOTO: No questions.

19 MR. TABATA: No questions.

20 MR. HOPPER: No questions.

21 MS. APUNA: No questions.

22 MR. PIERCE: No questions.

23 ACTING CHAIR CABRAL: Thank you very much.

24 EXECUTIVE OFFICER: Mark Hyde followed by
25 Charlene Schulenburg.

1 THE WITNESS: Good morning.

2 ACTING CHAIR CABRAL: May I swear you in?

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

5 THE WITNESS: Yes, I do.

6 ACTING CHAIR CABRAL: Go ahead and please
7 state your name for the record and your address.

8 MARK HYDE

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

11 DIRECT EXAMINATION

12 THE WITNESS: Mark Hyde. I reside in 4320
13 East Waiola Loop in Kihei.

14 ACTING CHAIR CABRAL: Please proceed.

15 THE WITNESS: It was nearly a quarter of a
16 century ago, 1994, when the Ka'ono'ulu Ranch appeared
17 before your predecessors in this body, and presented
18 a plan that included a 123 lot light industrial park
19 for this 88 acres of land.

20 When the Commission approved that, it made
21 an order, one provision of which was that there would
22 be an appropriate amendment of the community plan to
23 permit this kind of development at that site. As I
24 recall the order was actually made in 1995 which
25 folded nicely in with the process that the community

1 was engaged in at the time to update the community
2 plan. And as a consequence, this particular
3 development was folded into the language of the plan,
4 it was adopted by the council in 1998, and
5 specifically bolted into the plan at page 18 in
6 paragraph K.

7 The point I would like to bring to your
8 attention is that to the extent that this Commission
9 were to approve a variation on that representation,
10 that I would hope and expect that you would condition
11 any change requiring a congruent approval and
12 amendment of the community plan to accommodate a
13 different development. Thank you very much.

14 ACTING CHAIR CABRAL: Thank you. Any
15 questions from the Commissioners? Commissioner Dawn.

16 COMMISSIONER CHANG: Mr. Hyde, have you
17 participated in the outreach efforts by Mr. Lake?

18 THE WITNESS: Yes.

19 COMMISSIONER CHANG: Thank you.

20 THE WITNESS: You're welcome.

21 ACTING CHAIR CABRAL: Any other questions
22 from the Commissioners? Any questions from our
23 Petitioners?

24 MR. SAKUMOTO: No questions.

25 MR. TABATA: No.

1 MR. HOPPER: No, Ma'am.

2 ACTING CHAIR CABRAL: Dawn?

3 MS. APUNA: No.

4 MR. PIERCE: No.

5 ACTING CHAIR CABRAL: Thank you very much,
6 sir.

7 EXECUTIVE OFFICER: Charlene Schulenburg
8 followed by Lucienne deNaie.

9 ACTING CHAIR CABRAL: May I swear you in?

10 THE WITNESS: Yes.

11 ACTING CHAIR CABRAL: Do you swear or
12 affirm that the testimony that you're about to give
13 is the truth?

14 THE WITNESS: Yes, I do. Charlene
15 Schulenburg, 1390 South Kihei Road in Kihei.

16 CHARLENE SCHULENBURG

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

19 DIRECT EXAMINATION

20 THE WITNESS: First of all, I want to
21 welcome you all back. We were all here not too long
22 ago. Thanks again for coming.

23 We know these are big issues, especially
24 when it deals with 88 plus 13 acres.

25 Just some general comments based on what I

1 listened to today. Not sure what the actual purpose
2 of today's meeting was, so I apologize if I'm
3 ignorant of that, so I'm not sure what the outcome
4 plan for this meeting was. I appreciate all the
5 updates for sure.

6 In no particular order, I guess I'm just a
7 little confused about their needing more time. They
8 have owned it for nine years, and they did the
9 amendment for the mixed-use thing back in 2013.
10 They've been through this process. And there were
11 lots of information given that they needed to
12 provide, and I'm just really confused as to what else
13 they need do.

14 When this last LUC meeting ended last year,
15 I mean, they had a very clear cut list of things that
16 they needed to do, and community outreach certainly
17 is one of them. And I feel like that could have been
18 done in the time that's taken place since then.

19 The thing about the substantial
20 commencement is odd in that they do have to provide
21 reports, annual reports. So I'm confused why they
22 can't say how much soft cost has occurred. I would
23 think that would be in the reports already.

24 So this commencement issue is a big one,
25 and it just feels a little disingenuous that they

1 don't have the numbers.

2 And what is the substantial commencement
3 number? Is it a percentage of something? Is it a
4 percentage of their budget? Is it a percentage of --
5 what is it? So that needs to be defined, at least
6 for the community to understand what this is all
7 about, please.

8 And then it's just disappointing that it
9 started with their fences going up, and that the
10 community didn't know what the new plan was. So EIS
11 stuff is super important. That's what kind of
12 brought a lot of issues that dealt with the cultural
13 aspects that hadn't been addressed properly, and the
14 flooding aspects that are absolutely huge to
15 everything makai of this property plus the kai
16 itself.

17 So there's major flooding issues that are
18 still not being addressed in some of this. And I
19 take them for their word that they want to be
20 concerned with these issues, but without it being a
21 requirement, without it being written that they have
22 to do additional studies, it's very concerning that
23 these issues that the community have would actually
24 be properly addressed in a formal and legal way.

25 So that's kind of my overall view. Yeah,

1 traffic. I mean the traffic study, anybody can do a
2 traffic study and bring people in and say there is no
3 significant impact, but we're already overdeveloped
4 in Kihei, and Piilani Highway is already suffering as
5 a result of that. And everybody knows that. So this
6 would be a major -- a major intersection as was
7 defined by counsel for Maui Tomorrow, and you know,
8 we have to take that really seriously, that can't be
9 just brushed over.

10 I can say lots more, but those are my main
11 points. Thank you.

12 ACTING CHAIR CABRAL: Thank you very much.

13 Any questions from the Commissioners on
14 this? Commissioner Edmund.

15 COMMISSIONER ACZON: Have you attended any
16 of those outreach by Mr. Lake?

17 THE WITNESS: I was not personally
18 contacted. I am a member of KCA, although I'm
19 representing myself today. And Mike Moran, our head
20 of KCA, did say that he was contacted by Mr. Lake. I
21 would love to be part of it, absolutely.

22 In fact, I would think that anybody who
23 testified at that last LUC meeting would have been
24 contacted, so I'm kind of surprised that we all
25 weren't, but I do appreciate the outreach.

1 COMMISSIONER ACZON: Pretty sure Mr. Lake
2 is going to get in touch with you.

3 ACTING CHAIR CABRAL: Any other comments
4 from Commissioners or questions? Any questions or
5 comments from the Petitioner?

6 MR. SAKUMOTO: No.

7 MR. TABATA: No.

8 MR. HOPPER: No.

9 MS. APUNA: No.

10 MR. PIERCE: No.

11 ACTING CHAIR CABRAL: Thank you very much.

12 EXECUTIVE OFFICER: Next witness, Lucienne
13 deNaie followed by Alohalani Smith.

14 ACTING CHAIR CABRAL: May I swear you in?

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

17 THE WITNESS: I do. Lucienne deNaie. My
18 address is 320 Door of Faith Road in Haiku.

19 LUCIENNE DENAIE

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

22 DIRECT EXAMINATION

23 THE WITNESS: Mahalo, Acting Chair Cabral
24 and members of the Commission. Thank you for coming
25 to Maui.

1 I'm testifying today in my position as
2 President of the Board of Maui Tomorrow Foundation.
3 We very much appreciate the outreach that Mr. Lake
4 and his partners have done with us and other members
5 in the community, and agree that much more is needed,
6 but it's much better to have this kind of
7 consultation.

8 This project started back in the 1990s with
9 a lot of community consultation which resulted in the
10 original project that was approved in the community
11 plan and by the LUC. So it's really what is needed
12 when you have a good-sized development on 88 acres.

13 The process also needs to be based on
14 truthful disclosures, and we do have some concerns
15 that the statements about there be no need for
16 updated EIS, there are going to be impacts, and there
17 needs to be a way to examine those impacts and see
18 what can actually be done to mitigate them.

19 I will move on to some of the things that
20 we have in our meetings thus far with Mr. Lake and
21 his folks.

22 I also want to point out that it's my
23 understanding from looking at county files that most
24 of that \$23 million bond is for relocation of the
25 county's main water pipe, 36-inch transmission line

1 that brings water from Iao Valley all the way to
2 South Maui, and that pipe diagonally crosses the
3 property. It will need to be relocated and a new
4 pipe will need to be installed, and that's what those
5 pipes are. So probably most of the bonding is for
6 that improvement.

7 What we have heard thus far from folks in
8 the community meetings is that Kulanihakoi is not
9 some barren weed covered acreage along Piilani
10 Highway, it has the remains of a small Hawaiian
11 village. It's built within the bend of one of the
12 South Maui major gulches, and I will say here that
13 all the engineering studies you see for South Maui
14 note that this gulch, because it has five
15 tributaries, is the major drainageway in all of South
16 Maui, carries the most flows.

17 So because of that, probably 500 years ago
18 this project could have been like in a little delta
19 area. It has another gulch going through it that
20 also carries water.

21 So we need to go back, look at conditions
22 before the slopes were deforested, when Kihei had
23 shining palms all along the coast, major fishponds
24 immediately downslope from here, what was the
25 significance of this land based on that?

1 And we know there are several heiaus on the
2 beach at the mouth of this area. There's a muliwai.
3 There is a special spring. So all of these are
4 impacts that upslope development had impacts on these
5 things that are just immediately downslope within a
6 half mile to a mile.

7 So what we heard from the community is that
8 any future plan needs to start by minimizing the
9 impacts to these cultural features both on and
10 off-site. That would include preserving the natural
11 gulch onsite as a feature of the plan, and preserving
12 cultural sites that are associated with ongoing
13 cultural activities on the land.

14 The lineal descendants and the cultural
15 practitioners must not only be consulted, but have
16 their views respectfully included in the plan.
17 That's it.

18 ACTING CHAIR CABRAL: Thank you.

19 THE WITNESS: We have not heard a plan that
20 does that, so we want to let you know that's what we
21 are hearing from the community.

22 ACTING CHAIR CABRAL: Any comments or
23 questions from our Commissioners?

24 COMMISSIONER CHANG: I want to follow up
25 with your closing comment about cultural

1 practitioners, cultural descendants. Have they
2 participated in the community engagement process
3 with --

4 THE WITNESS: There is an outreach to the
5 Hewahewa family who were the LCA holder of record
6 during the Mahele, and there will be outreach to Mr.
7 Alvin Liu, who is also a descendant of that family
8 that has not yet occurred due to scheduling.

9 But our concern is it's not just, oh, we
10 met with them, check off the box, but that what is
11 heard becomes part of the plan.

12 COMMISSIONER CHANG: Thank you.

13 ACTING CHAIR CABRAL: Any other questions
14 from our Commissioners?

15 Questions or comments from the Petitioner?

16 MR. SAKUMOTO: None.

17 MR. TABATA: No.

18 MR. HOPPER: No, Ma'am.

19 MS. APUNA: No.

20 MR. PIERCE: No.

21 EXECUTIVE OFFICER: Alohalani Smith
22 followed by Vernon Kalanikau.

23 ACTING CHAIR CABRAL: May I swear you in?

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

1 THE WITNESS: Yes, I do.

2 ACTING CHAIR CABRAL: Proceed, state your
3 name and address.

4 ALOHALANI SMITH

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

7 DIRECT EXAMINATION

8 THE WITNESS: Alohalani Smith, and Piilani
9 Highway out in Kaupo. We are better known as our
10 mile marker, so it's mile marker 33.

11 I'm here -- I'm the Aha Moku Island Council
12 representative for Kaupo and I'm one of 12
13 representatives. I'm in support for the affordable
14 housing as long as it's smart development.

15 My concern -- first of all I wanted to
16 commend the community engagement, and I suggest that
17 you guys also reach out to the Aha Moku Island
18 Council because we're a wealth of information.

19 I am one of the Hewahewa family
20 descendants, and my concern is the cultural
21 sensitivity that should be respected on the site for
22 our traditional and cultural practices and our
23 gulches, especially not to alter them.

24 We look at the Waiohuli destruction, the
25 Kula forest had a fire, so they pushed all the trees

1 in the gulch, and that resulted in the flood that hit
2 down by the Hawaiian Homelands that kind of took one
3 home off its structure. So that's an example.

4 But our recent example is the Kaua'i one
5 where they filled in the muliwai. So what a muliwai
6 is, is the mouth of the river meeting the ocean.

7 So they filled that 88 acres in, put a
8 buffalo farm and housing, and look what happened.
9 The homes that were not in the flooding area got
10 affected as well.

11 So I'm just wanting to make sure the impact
12 to our gulches is not altered at all. So I just want
13 to thank you for that.

14 ACTING CHAIR CABRAL: Thank you very much.
15 Any comments or questions from our Commissioners?

16 COMMISSIONER CHANG: Thank you.

17 Ms. Smith, you said you're a member of the
18 Hewahewa family. Has your family participated in the
19 community outreach?

20 THE WITNESS: No. Some of the cousins
21 have, but because I'm out in Kaupo, sometimes it's
22 hard, but yeah, I would like to be involved so I can
23 support it too and be a resource too.

24 COMMISSIONER CHANG: Thank you.

25 ACTING CHAIR CABRAL: Any other questions

1 or comments from Commissioners? From our
2 Petitioners?

3 MR. SAKUMOTO: No questions.

4 MR. TABATA: No questions.

5 MR. HOPPER: No.

6 MS. APUNA: No.

7 MR. PIERCE: No.

8 ACTING CHAIR CABRAL: Thank you very much
9 for your input.

10 EXECUTIVE OFFICER: Next witness is Vernon
11 Kalanikau, followed by Syl Cabral.

12 ACTING CHAIR CABRAL: May I swear you in?

13 THE WITNESS: Yeah, go ahead.

14 ACTING CHAIR CABRAL: Do you a swear or
15 affirm that the testimony that you're about to give
16 is the truth?

17 THE WITNESS: Yes.

18 ACTING CHAIR CABRAL: Please give us your
19 name and address.

20 THE WITNESS: My name is Vernon Vernon
21 Kalanikau. I live at 426A Kinolina Road in Kihei,
22 right below this project.

23 VERNON KALANIKAU

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

1 DIRECT EXAMINATION

2 THE WITNESS: So again, my name is Vernon
3 Kalanikau. Here we are again.

4 I'm the representative for this area South
5 Maui or Kula Makai under Aha Moku Council. I'm the
6 representative for that.

7 I live right below this property, right
8 across the street. My concern is always the cultural
9 features, and I mentioned that in our last meeting
10 that we had here previously that we got to really
11 malama that. We cannot change the terrain, that's
12 for sure. We have to keep the terrain that we have.

13 Cultural practices are still being done
14 when they choose to. Most recently Hewahewa ohana
15 and others from Oahu and throughout Maui have
16 participated on that property.

17 I do cultural practices right below the
18 property in Kulanihakoi River, which runs right
19 through this property. So just know the cultural
20 practices will always be ongoing. It will never
21 stop.

22 But as far as the terrain and the features
23 and the cultural features on the property, that needs
24 to be cared for and not interfered with, so I really
25 appreciate Harry Lake. He's been meeting with us

1 several times and making a great effort in
2 communicating with us through emails or phone calls.
3 And he's really taken into heart about working with
4 our Moku Council and KCA and other members in the
5 community to come up with something but in a smart
6 way, in a cultural way.

7 Like for us our concern is the runoff, the
8 water, it's going to end up below. It's always
9 flooding makai of this property. So we have
10 suggested some ideas on how we can keep the water,
11 surface water on the property.

12 So that's working out fine. So appreciate
13 what Harry has been doing with us.

14 There's some concerns about need to update
15 our inventory, other features that was not
16 inventoried, cultural features on that property from
17 what I understand or was told by others like Lucienne
18 and the families that have concerns about that.

19 We need to include the Hewahewa ohana.
20 They couldn't make it today to say what they have to
21 say, but first things first, you know, family first,
22 then everybody else come after.

23 So culturally we need to focus on that
24 first. That's the kuleana first and then we can
25 figure out what works for that area.

1 Traffic going to be horrendous. Whatever
2 we decide to do in that area off Piilani and the high
3 school right down the road, traffic light. You don't
4 want to be on Piilani Highway in the future, but it's
5 going to happen.

6 So that's all I have too say. Thank you.

7 ACTING CHAIR CABRAL: Commissioners, any
8 comments or questions of this public witness? How
9 about from our Petitioners?

10 MR. SAKUMOTO: No questions.

11 MR. TABATA: No.

12 MR. HOPPER: No, Ma'am.

13 MS. APUNA: No.

14 MR. PIERCE: No.

15 ACTING CHAIR CABRAL: Thank you very much.

16 EXECUTIVE OFFICER: Next witness Syl
17 Cabral.

18 ACTING CHAIR CABRAL: I would like to
19 comment, no relationship that I know of, Cabral. Or
20 we haven't met yet.

21 Can I go ahead and swear you in, please?

22 THE WITNESS: Yes.

23 ACTING CHAIR CABRAL: Do you swear or
24 affirm that the testimony you're about to give is the
25 truth?

1 THE WITNESS: It is to the extent of my
2 knowledge, yes.

3 ACTING CHAIR CABRAL: Can you give us your
4 full name and address?

5 THE WITNESS: Syl Cabral, Walaka Street,
6 Kihei.

7 SYL CABRAL

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

10 DIRECT EXAMINATION

11 THE WITNESS: Well, we can either get --
12 I'm going to go on a little short rant, I'm sorry.

13 Well, we can either get rid of Monsanto, or
14 I suggest 30-foot walls around the project to stop
15 the impact of the daily spraying of poison for your
16 potential employees, residents and tourists.

17 There is a glut of vacant land units in the
18 island, especially at the Queen Mall, Kihei Mall,
19 Lahaina Gateway.

20 As far as residential requirements, I think
21 they should buy land from the 36,000 acres in Central
22 Kihei to build truly affordable homes, 250 homes with
23 a little plot of land, tiny home, ohana, a carport,
24 so that we can live. I beg you. I beg you that we
25 get some housing, not these fake affordable villas

1 that nobody can afford. Kalamaki Villa, the Kihei
2 Ali'i Villas. We don't want villas, we want homes.
3 I beg you, we need homes.

4 And first choice is the people that have
5 employed here, that have jobs here, that are working
6 here. Our children, the people that are born here.
7 Not these people that fly in and get into these
8 villas the next day.

9 Now, according to the U.S. Census our
10 median price is 32,000 a year. So I don't know where
11 you guys are getting this \$92,000 a year median price
12 which jacks up these houses so 20 people out of the
13 200 Kalamaki people qualified. Five people qualified
14 for the affordable Kihei Kalama Villas which are now
15 500,000 for a studio.

16 This project, this land, this road is
17 state, federal money. The federal money has come and
18 gone for the last 50 years waiting for the road. Now
19 it's moved from the tech center to the Promenade.
20 It's federal money. It's a state highway. It's
21 going to connect to Hailemaile. Everything is on the
22 map. They could open it tomorrow if anybody had any
23 sense to open up a road.

24 This project is going to be a billion
25 dollars, so the 2 million sitting there paid is

1 nothing to compared to the billion, because even at
2 half a billion, it's 4 million an acre.

3 And that's it. And I'm glad to be here. I
4 came here by accident, and I'm glad I got to speak.

5 ACTING CHAIR CABRAL: Thank very much.
6 Would our Commissioners like to make any comments or
7 have any questions of Ms. Cabral? None.

8 Petitioners have any questions?

9 MR. SAKUMOTO: No questions.

10 MR. TABATA: Nope.

11 MR. HOPPER: No.

12 MS. APUNA: No.

13 MR. PIERCE: No, thank you.

14 ACTING CHAIR CABRAL: Thank you very much
15 for your testimony.

16 Since we have no one else to testify, I
17 would like to ask --

18 MR. PEREZ: I would like to testify. I did
19 not sign up.

20 ACTING CHAIR CABRAL: Come forward and give
21 us your -- I will swear you in.

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

24 THE WITNESS: I do.

25 ACTING CHAIR CABRAL: Give us your full

1 name and address.

2 THE WITNESS: My name IS Albert Perez. My
3 address is 55 North Church Street in Wailuku.

4 ACTING CHAIR CABRAL: Thank you, proceed.

5 ALBERT PEREZ

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

8 DIRECT EXAMINATION

9 THE WITNESS: Thank you for coming to Maui
10 again. We appreciate the opportunity to testify in
11 this status update.

12 We do appreciate the outreach by Mr. Lake,
13 the new consultant for the developer. We can verify
14 that we have had two meetings with him. I would like
15 to say that we are always willing to engage in
16 discussion that has the potential to lead to
17 compliance with our community plans, and respects the
18 significant cultural sites and ongoing cultural
19 practice that occur on the site.

20 When you walk on this land, you realize
21 that it's not just a flat bunch of weeds and kiawe.
22 The land is rolling and varied. There are gulches
23 and high points. The gulches provide shelter, and
24 the high points provide excellent views for
25 astronomy, weather observation, and ocean

1 observation.

2 With regard to discussion of affordable
3 housing, there's been some talk about. There haven't
4 been any real commitments that we've heard of. And
5 the Honua'ula Partner side could occur, to my
6 understanding, it could occur on this 88 acres, or it
7 could occur on the Wailea 670 acres, so we're not
8 sure if that's going to occur on this site.

9 I would just like to wrap up by saying that
10 while we appreciate the outreach and the community
11 opportunity to work with the developer, and we did
12 make suggestions along the same lines that we're
13 making to the previous consultant that were
14 essentially ignored.

15 But our willingness to engage in this
16 dialogue should not be construed as approval of any
17 new plans, but we remain hopeful. Thank you.

18 ACTING CHAIR CABRAL: Any questions or
19 comments from our Commissioners? How about from our
20 Petitioners?

21 MR. SAKUMOTO: No questions.

22 MR. TABATA: No, Ma'am.

23 MR. HOPPER: No.

24 MS. APUNA: No questions.

25 MR. PIERCE: No, thank you.

1 Planning, Ms. Apuna, do you have any comments?

2 MS. APUNA: No comments, thank you.

3 ACTING CHAIR CABRAL: Thank you very much.

4 Do our Commissioners have any final
5 comments?

6 COMMISSIONER CHANG: I can't resist.

7 I do have one request when we do come back,
8 sort of goes back to the Petitioner Piilani's
9 statement about substantial compliance with the 1995
10 D and O.

11 Most of us who are sitting on the
12 Commission were not here at that time, so it would be
13 very helpful if you could outline what was the
14 proposed development in 1995? And as you propose
15 your new -- the revised development -- how does that
16 substantially comply with the original one?

17 That would be very helpful, again, most all
18 of us, all of us were not here at that time. Thank
19 you.

20 ACTING CHAIR CABRAL: Petitioner, can you
21 comment on that?

22 MR. SAKUMOTO: That's an excellent
23 suggestion and we would be very happy to provide that
24 information.

25 ACTING CHAIR CABRAL: We will look forward

1 to that.

2 Commissioner Gary.

3 COMMISSIONER OKUDA: Chair, just one
4 statement. Although not to part ways too much with
5 my fellow Commissioner, but I think D and O's speak
6 for them self.

7 ACTING CHAIR CABRAL: Thank you for your
8 comments.

9 Any other comments from the Commissioners?
10 I would like to remind the Commissioners at this
11 point we are -- it's a status report, and we're not
12 required to take any kind of action.

13 If there is no further discussion, I would
14 like to declare that this meeting will be adjourned
15 as a meeting. I'm going to call for a recess because
16 we are going to go into executive session to discuss
17 LUC matters that are not related to this issue at
18 all.

19 (Recess taken and Executive Session.)

20 (The proceedings adjourned at 12:06 p.m.)

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CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on July 11, 2018, at 9:04 a.m., the proceedings contained herein was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision; that the foregoing represents, to the best of my ability, a true and correct copy of the proceedings had in the foregoing matter.

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

Dated this 11th day of July, 2018, in Honolulu, Hawaii.

/s/ Jean Marie McManus

JEAN MARIE McMANUS, CSR #156