

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of) Docket No. A94-706
)
 KAONOULU RANCH to Amend the)
 Agricultural Land Use District Boundary)
 into the Urban Land Use District for)
 Approximately 88 acres at Kaonoulu,)
 Makawao-Wailuku, Maui, Hawai'i; Tax)
 Map Key Nos. (2) 2-2-02: por. 15 and 3-9-)
 01:16)
 _____)



PETITIONERS' EXHIBITS "29" – "35"

Evidentiary Hearing:
 Date: Tentatively July 8, 2020
 Time: TBD

McCORRISTON MILLER MUKAI
 MacKINNON LLP

RANDALL F. SAKUMOTO 4848
 KELSEY S. YAMAGUCHI 10423
 Five Waterfront Plaza, 4th Floor
 500 Ala Moana Boulevard
 Honolulu, Hawai'i 96813
 Telephone: (808) 529-7300
 Facsimile: (808) 524-8293

BRONSTER FUJICHAKU ROBBINS
 A Law Corporation

MARGERY S. BRONSTER 4750
 REX Y. FUJICHAKU 7198
 1003 Bishop Street, Suite 2300
 Honolulu, Hawai'i 96813
 Telephone: (808) 524-5644
 Facsimile: (808) 599-1881

Attorneys for Petitioners
 PIILANI PROMENADE SOUTH, LLC and
 PIILANI PROMENADE NORTH, LLC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

LAND USE COMMISSION
STATE OF HAWAI'I
July 19, 2017
Commencing at 9:20 a.m.
Held at County of Kaua'i Moikeha Building
Conference Room 2A/2B
4444 Rice Street, Lihue, Kaua'i, Hawai'i 96766
and
A94-706 Ka'ono'ulu Ranch (Maui) Page 46
Commencing at 2:00 p.m.
Maui Arts & Cultural Center
Morgado Meeting Room
One Cameron Way
Kahului, Maui, Hawai'i 96732-1137



I. ADOPTION OF ORDER
A17-802 County of Kaua'i Housing Agency
(Kaua'i)
To Consider Adoption of Order for COUNTY OF
KAUA'I HOUSING AGENCY'S Petition for State Land
Use District Boundary Amendment to Amend the
Agricultural Land Use District Boundaries into
the Urban Land Use District for certain lands
situated at 'Ele'ele, Kauai', consisting of
of approximately 75 acres, Tax Map Key No. (4)
2-1-001:054

23

II. A94-706 Ka'ono'ulu Ranch (Maui) Page 46

24

25 BEFORE: Jean Marie McManus, CSR #156

McMANUS COURT REPORTERS 808-239-6148

2

1 APPEARANCES: (Kauai Lima Ola)

2 EDMUND ACZON, Chair

JONATHAN SCHEUER, Vice Chair

3 ARNOLD WONG, Vice Chair (Maui only)

COMMISSIONERS:

4 GARY OKUDA

LINDA ESTES

5 NANCY CABRAL

DAWN CHANG

6 LEE OHIGASHI

7 DIANE ERICKSON, ESQ.

Deputy Attorney General

8

STAFF:

9 DANIEL ORODENKER, Executive Director

RILEY K. HAKODA, Planner/Chief Clerk

10 BERT K. SARUWATARI, Planner

11 DAVID J. MINKIN, ESQ.

KELSEY S. YAMAGUCHI, ESQ.

12 Attorneys for Petitioner

County of Kaua'i Housing Agency

13

MICHAEL DAHILIG, Director of Planning

14 County of Kauai Planning Department

15 DAWN APUNA, ESQ.

RODNEY FUNAKOSHI, Planning Director

16 State Office of Planning

17 JEAN NISHIDA SOUZA, Intervenor

KA'ONO'ULU RANCH (Maui)

18 RANDAL SAKUMOTO, ESQ.

LISA CATALDO, ESQ.

19 Attorneys for Petitioner Ka'ono'ulu Ranch

LUC 7-19-17 Kauai and Maui

20 CURTIS TABATA, ESQ.
BENJAMIN MATSUBARA, ESQ.
21 Attorneys for Honua'ula Partners, LLC

22 TOM PIERCE, ESQ.
Attorney for Intervenors
23
24 MICHAEL HOPPER, ESQ., Corp Counsel, County of Maui
WILLIAM SPENCE, Director County of Maui
ANN CUA, Planner
25 Attorney for Maui County Department of Planning

McMANUS COURT REPORTERS 808-239-6148

3

1	INDEX	
2	CLOSING ARGUMENTS:	PAGE
3	County of Kaua'i Housing Agency	7
4	County of Kaua'i Planning Department	13
5	State of Hawai'i Office of Planning	13
6	Intervenor	14
7	Rebuttal Argument, Petitioner	26

8
9
10
11
12
13
14
15

16
17
18
19
20
21
22
23
24
25

McMANUS COURT REPORTERS 808-239-6148

4

1 CHAIRPERSON ACZON: Good morning. Welcome
2 back. This is July 19, 2017, Land Use Commission
3 Meeting.

4 The first order of business is the adoption
5 of the June 28-29, 2017 Meeting Minutes, which
6 included the recess and was continued to July 7,
7 2017.

8 Are there any correction or comments?

9 COMMISSIONER ESTES: Yes, I have a
10 question.

11 Page 5, first paragraph, it says: Because
12 of transportation time constraints the parties all

13 waived their closing arguments. Is that true?

14 CHAIRPERSON ACZON: As far as I know.

15 We'll ask everybody. There was an option get

16 15 minutes or wave.

17 COMMISSIONER ESTES: I move approval.

18 CHAIRPERSON ACZON: Any second?

19 COMMISSIONER CABRAL: I'll second.

20 CHAIRPERSON ACZON: The motion has been

21 made by Commissioner Estes and seconded by

22 Commissioner Cabral to adopt the minutes.

23 All in favor say

24 aye". Opposed? The minutes are adopted unanimously.

25 The next agenda schedule is Mr. Orodener.

McMANUS COURT REPORTERS 808-239-6148

5

1 EXECUTIVE DIRECTOR: Mr. Chair, our next

2 proceedings, we would like to wait until this

3 afternoon.

4 CHAIRPERSON ACZON: Any objections from the

5 Commissioners?

6 VICE CHAIR SCHEUER: No objection.

7 CHAIRPERSON ACZON: This is an action

8 meeting on Docket A17-802, Petition of County of

9 Kaua'i Housing Agency to approve of the form of the
10 order in this matter.

11 The Commission met in Lihue, Kaua'i, on
12 June 28-29, 2017 which was recessed and continued to
13 July 7, 2017.

14 Written public testimony was submitted to
15 the Commission, but various individuals who's names
16 are on record and on July 7th, Intervenor Souza
17 amended exhibit list and exhibits 1, 1A to C3, and 4
18 to 10 which were admitted to the record.

19 The Commission voted that document number
20 A17-802 to grant, with conditions, the Petition to
21 Amend the Agricultural Land Use District Boundary
22 into the Urban Land Use District for certain lands
23 situated at 'Ele'Ele, Kaua'i, consisting of
24 approximately 75 acres. Tax Map Key No.: (4)2-1-001.
25 Lot 54 and instructed staff to prepare proposed

McMANUS COURT REPORTERS 808-239-6148

6

1 Findings of Fact, Conclusions of Law and Decision and
2 Order consistent with its conditions for
3 consideration, deliberation and adoption.

4 At that meeting, prior to voting, all the
5 Commissioners affirmed that they had reviewed the

6 record and transcripts in this docket.

7 On July 14, 2017, Commission mailed an
8 Advisory Notice to the Parties advising them to
9 ensure that all Parties have had the opportunity to
10 present their arguments in recognition of how the
11 July 7th, 2017 proceedings were cut short due to
12 travel time constraints.

13 The Parties will be allowed an additional
14 15 minutes to present closing argument before the LUC
15 on the adoption of the order, and briefly address any
16 issue relating to the evidence presented during the
17 evidentiary hearing, including comments and
18 recommendations from the Petitioner's proposed
19 Decision and Order.

20 On July 17th, 2017, Intervenor submitted
21 proposed Findings of Fact.

22 Will the parties please identify themselves
23 for the record? Please remember to use microphones,
24 talk into the microphone, so our transcriber can
25 record it.

McMANUS COURT REPORTERS 808-239-6148

7

1 MR. MINKIN: Good morning, David Minkin and

LUC 7-19-17 Kauai and Maui

2 Kelsey Yamaguchi on behalf of the County of Kaua'i
3 Housing Agency. With me is Kanani Fu, the Director.

4 MR. DAHILIG: Good morning, Michael Dahilig
5 on behalf of the County of Kaua'i Planning
6 Department.

7 MS. APUNA: Deputy Attorney General Dawn
8 Apuna on behalf of State Office of Planning, with me
9 is Rodney Funakoshi.

10 MS. SOUZA: Good morning, Jean Souza,
11 Intervenor.

12 CHAIRPERSON ACZON: Good morning everyone.

13 To ensure that the parties are able to
14 conclude their closing arguments, public testimony
15 will be taken after the arguments and before the
16 Commission considers the Adoption of the Order.

17 The Commission will now have the parties
18 present closing arguments. Mr. Minkin.

19 CLOSING ARGUMENT

20 COUNTY OF KAUA'I HOUSING AGENCY

21 MR. MINKIN: Thank you.

22 Over the three days that we have had
23 testimony and presentations and questions and
24 responses, I think a number of things have become
25 abundantly clear. I think it was then Vice Chair

1 Scheuer who kept saying we don't to need to hear
2 about the housing, we understand that housing is
3 needed on Kaua'i.

4 But there was a reason why we were doing
5 that. We needed to have you folks understand that
6 not only is housing an issue an on the Island of
7 Kaua'i, but it's also an issue on the west side. And
8 it's an issue on the west side that needs to be
9 addressed. And how is it being addressed?

10 The County, by purchasing this land and
11 basically the deed requiring it to be either
12 agricultural or housing planned ahead. The County
13 now wants to move ahead with its plans and provide
14 for its residents on the west side.

15 And, yes, there has been testimony that,
16 who's going to live there", but I think from the
17 testimony from the Habitat for Humanity we saw that
18 majority of the folks that are moving into their
19 land, their affordable housing, are from the west
20 side.

21 So what do we know? Housing is needed.
22 And how do we go about doing it? Here we did a

23 unique process because we followed HRS 205-17 --
24 excuse me, HRS 205, and had the County Council adopt
25 it, as put forth by the administration. And various

McMANUS COURT REPORTERS 808-239-6148

9

1 things took place there, public hearings.

2 Now we're before you folks for the boundary
3 amendment for the 75 acres. And what have we
4 learned? We have learned that the county is going to
5 be willing, based upon the Commissioner's questions to
6 facilitate working with the community on a number of
7 issues going forward.

8 We have learned that TIARs are going to be
9 done for additional phases. We have learned that the
10 DOE -- we've had two principals come forward. There
11 is capacity currently. There may not be capacity in
12 the future, but we are going to work with DOE and
13 state agencies. We are going to work with KEMA, the
14 local Civil Defense Agency to deal with how we do the
15 community center after we go out for community input.

16 We know that all of the structures are
17 going to be built to county code. We know that all
18 of the structures -- and that's important. Why?

19 Because one of the things that both the state and
20 county came back on Civil Defense issues. We don't
21 really want people out on the road when there is
22 crises, when there's those types of incidents or
23 episodes like Hurricane Iniki. We want them to be
24 able stay into their home if possible. And why is
25 that important? Because these homes are going to be

McMANUS COURT REPORTERS 808-239-6148

10

1 built to current code.

2 We also know there is going to be updated
3 cultural impact studies, updated archeological
4 studies, other conditions proposed by the Office of
5 Planning, slightly modified based upon the testimony
6 here, are going to be adopted.

7 Even a condition that the Intervenor
8 proposed regarding lighting is going to be adopted.

9 We have also basically acknowledged that
10 for the drainage issue, we're going to do best
11 management practices.

12 We are going to take a look at that and do
13 those things, because while the kupuna and kumu hula
14 and Missy Kamai were able to testify that there isn't
15 really anything of cultural and traditional

16 significance on these 75 acres. We know that makai
17 and we know mauka there are.

18 So how do we work those things in? And
19 that's why it's important to basically facilitate and
20 keep going forward with the community. Keep the
21 community engaged.

22 There are questions about whether your
23 responsibility has been met based upon the case Ka
24 Pa'akai. We believe that it has. We believe that
25 the Commission has the relevant facts before it from

McMANUS COURT REPORTERS 808-239-6148

11

1 all of the evidence, not just one portion. And if
2 one portion of our submission was insufficient, we
3 have basically, we believe, corrected that and
4 included that so that you folks can conclude your
5 constitutional mandate is being met.

6 What else? Public Trust Doctrine.
7 Commissioner Okuda mentioned that, and Kaua'i
8 Springs, a case that I was involved with for the
9 County of Kaua'i, basically had the Hawaii Supreme
10 Court state that it's every governmental entity, no
11 matter at what level, has to take a look at the

12 Public Trust Doctrine. That is something the County
13 of Kaua'i is well acquainted with.

14 That was a case that the County of Kaua'i,
15 the Planning Commission went after a water bottler,
16 and that was what the Hawaii Supreme Court said. You
17 just can't pass it off to another agency and say it's
18 your kuleana, you just can't do it.

19 The County of Kaua'i is cognizant of its
20 Public Trust Doctrine, responsibilities of the
21 constitution.

22 What else have we heard? We have heard
23 some folks come in say, Phase I is okay, but we don't
24 know about the other phases. But you've heard from
25 other witnesses that to do it in that sort of

McMANUS COURT REPORTERS 808-239-6148

12

1 piecemeal process, could jeopardize, and probably
2 will jeopardize funding going forward. There are
3 Memorandums of Understanding already with state
4 agencies. Why? Those memorandums deal with the
5 financial aspect. Those financial aspects have to be
6 anticipated, not after the fact, but going forward.

7 Therefore, based upon all of the credible
8 evidence, all of the conditions that we have sought,

9 all of the conditions that the Office of Planning has
10 instituted, as well as those that have been voted on
11 by you folks with amendments and additional
12 amendments at our last hearing on July 7th, this
13 project should be approved. This Boundary Amendment
14 should be approve for these 75 acres all phases at
15 this point in time. To do it piecemeal would not be
16 prudent upon this Commission, because all of the
17 statutory and constitutional elements have been met
18 with our presentation.

19 With that I will end knowing that we have a
20 time frame.

21 CHAIRPERSON ACZON: Thank you. Any
22 questions for Mr. Minkin, Commissioners?

23 Thank you.

24 County, please proceed with your closing
25 arguments.

McMANUS COURT REPORTERS 808-239-6148

13

1 Mr. Dahilig, I have to swear you in again.

2 You swear that the testimony that you're
3 about to give is the truth?

4 MR. DAHILIG: Yes.

LUC 7-19-17 Kauai and Maui
CHAIRPERSON ACZON: State your name and

5

6 address.

6

7

Mike Dahilig with the County Planning

8

Department, 4444 Rice Street, Suite 8473A Lihue.

9

CLOSING ARGUMENT

10

COUNTY OF KAUA'I PLANNING DEPARTMENT

11

MR. DAHILIG: The County of Kaua'i Planning

12

Department stands on the written closing arguments

13

submitted by our attorney this morning.

14

Thank you, Mr. Chair.

15

CHAIRPERSON ACZON: Commissioners, any

16

questions for Mr. Dahilig?

17

Ms. Apuna, please proceed with your closing

18

argument.

19

CLOSING ARGUMENT

20

STATE OF HAWAII OFFICE OF PLANNING

21

MS. APUNA: Office of Planning is in

22

support of this project. We think it's a good

23

project. We really would just like to thank the

24

Commission for their efforts in trying to establish a

25

complete record and have a proper process. So, thank

McMANUS COURT REPORTERS 808-239-6148

14

1

you.

2 CHAIRPERSON ACZON: Thank you, any
3 questions for Ms. Apuna, Commissioners?

4 Ms. Souza, please proceed with your closing
5 argument.

6 CLOSING ARGUMENT

7 INTERVENOR

8 MS. SOUZA: Yes, Jean Souza. I do not have
9 objections to the Petitioner's specific statements in
10 the Petitioner's Proposed Findings of Fact,
11 Conclusions of Law and Decision and Order, however,
12 in light of the new information provided during these
13 hearings, there are other Findings of Facts that I
14 believe should be included.

15 With that, I submitted on Monday 31 new
16 Findings, Proposed Findings, for you to consider for
17 inclusion in your Decision and Order.

18 I don't know whether it's applicable to
19 respond to some of your conditions in the Decision
20 and Order document that was given to us this morning,
21 and I'm just going to go ahead and give you a couple
22 of suggested changes to/or consider.

23 So related to LUC proposed Condition 2 on
24 highway and roadway facilities, I note that there is
25 no provision to consider regional impacts.

1 VICE CHAIR SCHEUER: Mr. Chair.

2 Ms. Souza, if you could just refer us to
3 the page so that we're able to follow along with your
4 argument, please.

5 MS. SOUZA: So this would be the LUC
6 Decision and Order, page 76, item 8 -- excuse me -- B
7 at the top.

8 And I would like to suggest four words to
9 add at the beginning. And it says: An updated TIAR,
10 and add four words, "and regional traffic analysis".
11 And then continue with your wording, "shall be
12 prepared prior to".

13 Then on page 81, at the top of the page,
14 this relates to the condition on stormwater
15 management and drainage. I would like to suggest one
16 sentence, addition of one sentence to be inserted
17 after the word "designed" on the first line, and the
18 new sentence is: "Petitioner shall prevent runoff
19 from the Petition area from adversely affecting the
20 state highway facilities and downstream properties".

21 Then continue on with your sentence

LUC 7-19-17 Kauai and Maui
22 "Petitioner shall mitigate".

23 COMMISSIONER CABRAL: Could you reread your
24 line again?

25 MS. SOUZA: Sure. So on page 81, line 1,
McMANUS COURT REPORTERS 808-239-6148

16

1 your wording says, "improvements, or cause them to be
2 maintained or designed as designed. Put a period
3 there and insert one sentence, and the sentence is:
4 "Petitioner shall prevent runoff from the Petition
5 area from adversely affecting state highway
6 facilities and downstream properties." Period.

7 This is modeled after previous condition
8 that you imposed on an affordable housing project on
9 another island.

10 Then on page 82, and this is just minor,
11 but just bringing the LUC terms up-to-date. On page
12 82, Condition 13 refers to the word "Civil Defense"
13 both in the top and title as well as in the second
14 line. And I think the new term is "Emergency
15 Management". So I want to just put it out there that
16 the topic be "Emergency Management", and that Civil
17 Defense Shelter at the end of your sentence, be
18 changed to Emergency Shelter.

19 Then I reviewed some of the transcripts,
20 and I have some suggested changes to the transcripts.
21 And I want to just focus in on those that have a
22 difference in terms of the meaning of the sentence
23 rather than some of the minor changes.

24 So on the transcript for July 7th, page
25 186.

McMANUS COURT REPORTERS 808-239-6148

17

1 VICE CHAIR SCHEUER: Chair, if I may.

2 Ms. Souza, we don't --

3 CHAIRPERSON ACZON: We don't have the
4 transcript.

5 VICE CHAIR SCHEUER: Well, we don't have
6 them in front of us, and we also don't formally adopt
7 transcripts as a record. So I think it's valuable
8 for you to communicate to the Commission and the
9 staff that you believe that the draft transcripts
10 that you received might not fully represent what was
11 said there. But we're not going to take a vote today
12 on adoption of the transcript, if there is -- in the
13 interest of us focusing on your most salient
14 points -- if there is some critical issue that you

15 think that we haven't understood, that might be the
16 most effective thing for you to highlight for us,
17 respectfully.

18 MS. SOUZA: I'm willing to do that, I just
19 didn't know what the process was.

20 There is one statement made by Commissioner
21 Cabral related to amendments to the condition, and
22 this is on page -- I'm just going say this just for
23 correction, just for the record, on page 195 of the
24 transcript for July 7th, Commissioner Cabral said, "I
25 except", e-x-c-e-p-t. I believe it should be "I

McMANUS COURT REPORTERS 808-239-6148

18

1 accept" a-c-c-e-p-t. I think it makes a difference in
2 terms of the interpretation of that line. So just
3 wanted to suggest that correction.

4 CHAIRPERSON ACZON: Otherwise just say --

5 MS. SOUZA: That would summarize my
6 position. Thank you.

7 CHAIRPERSON ACZON: Thank you. Any
8 question for Ms. Souza, or any comments on her
9 changes? Vice Chair Scheuer.

10 VICE CHAIR SCHEUER: Aloha, Ms. Souza. In
11 your intervention, you stipulated to focusing your

12 intervention on seven issues.

13 Just confirming that additional conditions
14 you raised today you believe fall within those seven
15 stipulated areas?

16 MS. SOUZA: Yes.

17 VICE CHAIR SCHEUER: And if I have
18 correctly understood the general -- the major thrust
19 of your argument and intervention, is that you've
20 asked for two alternate things.

21 First, you've asked LUC to consider only
22 approving redistricting of Phase I of the project, or
23 in the alternative, if the Land Use Commission is
24 inclined to approve the redistricting of the entire
25 75 acres, to put certain conditions in place.

McMANUS COURT REPORTERS 808-239-6148

19

1 Have I understood your argument correctly?

2 MS. SOUZA: Yes.

3 VICE CHAIR SCHEUER: With the two additions
4 that you've offered us today to the language of the
5 conditions, are you personally satisfied with the
6 conditions that are now being placed on the record?
7 Or if -- let me rephrase that.

8 Were the Commission to adopt your two
9 proposed changes, with that and what's already in the
10 proposed Decision and Order as conditions, would you
11 be satisfied?

12 MS. SOUZA: Except for the last couple of
13 minutes, I did remember one other thing that I
14 neglected to mention and it was related to one of my
15 areas of concern, and that relates to the
16 notification of potential residents about the hazards
17 associated with Kapa Reservoir.

18 So in my proposed conditions submitted
19 earlier, I did identify a wording, and that wording
20 has not been adopted by the Commission.

21 So with that, plus the other two that I
22 mentioned, yes, I would be satisfied. Thank you.

23 VICE CHAIR SCHEUER: Thank you, very much.

24 CHAIRPERSON ACZON: Commissioner Estes.

25 COMMISSIONER ESTES: In relation to the

McMANUS COURT REPORTERS 808-239-6148

20

1 traffic analysis, tell me what your definition of
2 regional is.

3 MS. SOUZA: Regional implies downstream.

4 So for this, for the Traffic Impact Analysis Report,

5 the traffic expert said that the TIAR addresses local
6 impacts in the area.

7 And so as we have stated, myself and public
8 members have stated, that there are traffic hot spots
9 into town.

10 COMMISSIONER ESTES: Into town meaning
11 Lihue?

12 MS. SOUZA: Yes, between the Petition area
13 and Lihue, yes.

14 CHAIRPERSON ACZON: Anybody else,
15 Commissioners? Thank you. Commissioner Ohigashi.

16 COMMISSIONER OHIGASHI: Can I ask Planning
17 Department to comment what is your definition of
18 region?

19 MR. DAHILIG: In doing a --

20 COMMISSIONER OHIGASHI: In doing a TIAR.

21 MR. DAHILIG: Traditionally TIARs are not
22 exact science, they're a prediction. So it tries to
23 encompass as much of a capture area as possible.

24 So to be able to describe the definition of
25 region is related on understanding of the

1 LUC 7-19-17 Kauai and Maui
2 socioeconomic activity in and around an area.

3 So, for instance, and area like
4 'Ele'ele-Hanapepe, if look at a capture area that
5 looks at where the jobs are, where the residents are
6 and where the residents are going in and out of.

7 So it's qualitative, not quantitative. So
8 I would hesitate to say that our department has a
9 Rubric to say that a region that encompasses a TIAR
10 is in fact the correct region. We leave it up to
11 traffic engineers.

12 COMMISSIONER OHIGASHI: TIAR, does that
13 take into account other -- a certain area? Normally
14 takes into account a certain area, correct?

15 MR. DAHILIG: Correct.

16 COMMISSIONER OHIGASHI: Would the word
17 "region" used to expand that area, and would it take
18 place or would it be just --

19 MR. DAHILIG: The word "region" leaves it
20 up to whoever is interpreting it at that time whether
21 something is being met or not. So I would have
22 difficulty saying that if you were to use the word
23 "region" in an order, that it is a fixed area. But
24 that, again, I think if you were leaving that up to
the traffic engineer that is qualified under state

25 law to provide those professional services, they

McMANUS COURT REPORTERS 808-239-6148

22

1 would determine what that regional area is.

2 COMMISSIONER CHANG: Mr. Chair.

3 CHAIRPERSON ACZON: I want to make sure
4 Commissioner Ohigashi --

5 COMMISSIONER OHIGASHI: I'm just thinking.

6 COMMISSIONER CHANG: Ms. Souza, my
7 understanding from regional is you want it much
8 broader than the TIAR that was being proposed to look
9 at the specific area of Hanapepe-'Ele'Ele. When
10 you're talking about regional, you want it expanded
11 beyond what was being proposed, is that correct, to
12 include areas like Lihue?

13 MS. SOUZA: If I could just give a little
14 background.

15 So one of the testimonies presented to you
16 included a graphic from a multimodal study done for
17 the County of Kaua'i. And it looked at the different
18 regions of the island, and it identified the presence
19 of populations that had jobs in different regions and
20 how much housing was provided in each region.

21 That table which was presented as

22 attachment to one of the testimonies by Councilmember
23 Yukimura. It showed that the number of jobs was
24 smallest in the west side and larger in all of the
25 other districts on the island. And yet the housing

McMANUS COURT REPORTERS 808-239-6148

23

1 provided on the west side was more.

2 My point is that most of the people in
3 Hanapepe-'Ele'Ele do commute to other regions of the
4 island for jobs. So I believe that there was no
5 professionally submitted evidence on the record that
6 indicated that all or most of the people that will be
7 taking housing in the Petition area already live in
8 Hanapepe-'Ele'ele. I think we have to assume that
9 they will be from elsewhere. So therefor, there will
10 be, yes, on-site traffic impacts, but there will also
11 be regional impacts as people drive to other job
12 centers.

13 So I'm advocating the expansion of the
14 traffic analysis to include regional impacts, not
15 just on-site impacts.

16 COMMISSIONER CHANG: And I know our time is
17 short, so I don't want to belabor this, but that does

18 conflict with some of the testimony that we received
19 which looked at that the affordable housing, that
20 many of the residents was designed to address the
21 west side.

22 So people living on the west side would be
23 able to -- would be living in these affordable
24 housing minimizing the traffic outside of
25 Hanapepe-'Ele'ele. And I don't want to dwell on this

McMANUS COURT REPORTERS 808-239-6148

24

1 too long because time is of the essence. I just want
2 to be very clear that that is your statement, and
3 that there is other testimony that was provided which
4 may be a little different from your assessment.

5 MS. SOUZA: I have been paying attention to
6 what people have said and who has said it. Both the
7 traffic expert and the marketing expert both did not
8 say that the housing will be taken up by all or most
9 of the people already live in Hanapepe-'Ele'ele.

10 The west side is a big region. It extends
11 from 'Ele'Ele all the way to PMRF. So even if people
12 come from Kekaha or Waimea and take up these units,
13 that is still going to be more traffic than people
14 who already live there.

15 So looking at the two professional
16 statements, Traffic Impact Analysis expert and the
17 marketing expert, those are the folks that I was
18 looking at.

19 COMMISSIONER CHANG: Thank you very much.

20 CHAIRPERSON ACZON: Any other questions?
21 Commissioner Ohigashi, any additional questions? I
22 thought I cut you off.

23 COMMISSIONER OHIGASHI: No.

24 CHAIRPERSON ACZON: Commissioner Estes, you
25 okay? Commissioner Cabral.

McMANUS COURT REPORTERS 808-239-6148

25

1 COMMISSIONER CABRAL: I do want to comment
2 on Ms. Souza's comments about the traffic. While I
3 don't know what the traffic is going do, I will
4 support my knowledge that if you're going to get
5 federal housing funds, that your housing then is open
6 to people from all regions, and you cannot, per se,
7 mandate that they have to be from around the
8 neighborhood.

9 So I would encourage the county to prepare,
10 as they get more taxpaying citizens in owning those

11 homes, to be preparing to spend some of that money on
12 expanding roadways, and including their bicycle
13 paths.

14 CHAIRPERSON ACZON: Don't mention bike.
15 Anybody else? Commissioner Scheuer.

16 VICE CHAIR SCHEUER: Chair, can you clarify
17 our scheduling challenges that we have alluded to?
18 When do we have to be out of here and back to the
19 airport?

20 CHAIRPERSON ACZON: Chief clerk?

21 CHIEF CLERK: Our flight is scheduled
22 departure is 11:24, boarding starts about 11:00
23 o'clock, so if everyone has already checked in, we're
24 good. But I still have to breakdown everything and
25 get it checked in.

McMANUS COURT REPORTERS 808-239-6148

26

1 VICE CHAIR SCHEUER: So my procedural issue
2 is that Intervenor has suggested three changes to
3 language to the conditions, one of which we don't
4 actually have in front of us.

5 CHAIRPERSON ACZON: We can take it up
6 during deliberations.

7 VICE CHAIR SCHEUER: Thank you very much,

8 Chair. I was going to say in relations to that that
9 we certainly don't have to have LUC concurrence from
10 the parties, but I would strongly prefer it, if it is
11 at all possible for there to be concurrence on the
12 parties, so I didn't know whether or not there was
13 sufficient time for there to be a brief recess where
14 that is worked out at some point during our process.

15 CHAIRPERSON ACZON: We will try our best.
16 If not, there's another day.

17 Anybody else, questions for Ms. Souza? If
18 not, Mr. Minkin, do you have rebuttal?

19 MR. MINKIN: Yes, very short.

20 REBUTTAL ARGUMENT

21 MR. MINKIN: I heard four changes by Ms.
22 Souza. The third one being changing to Emergency
23 Management instead of Civil Defense. And my
24 understanding is the County Charter has been changed,
25 and that now refers to it as Emergency Management, so

McMANUS COURT REPORTERS 808-239-6148

27

1 no problem there at all.

2 The problem with the "and regional traffic
3 analysis" is that it's adding something that our

4 traffic expert did not -- that basically said it's
5 difficult to do. The TIAR for at least Phase I was
6 blessed by the State of Hawaii Department of
7 Transportation. And I believe as long as you have a
8 professional do it, and if there's concerns that get
9 raised by either the county or the State Department
10 of Transportation, then they can have the
11 professional do whatever they want.

12 I don't believe it's something that's
13 incumbent upon this board, Commission, to basically
14 add in "and regional traffic" when it's such a
15 nebulous term, and as long as there is a professional
16 doing it.

17 The issue about Kapa Reservoir, that is
18 something that's wholly out of our control. And as
19 people buy property, there are disclosures that have
20 to be made. Realtors know that. Professionals know
21 that. To force us to do that when it may or may not
22 be within the geographic location, I think would be
23 an onerous task for us to do.

24 And it's something that's now being asked
25 to be done for this 75 acres. Was it also being

1 asked to be done for Habitat for Humanity? Was it
2 done for 'Ele'Ele Nani across the street? I just
3 don't know. I don't think that's appropriate.

4 The one that gives us major heartburn is
5 adding the sentence, insert, "Petitioner shall
6 prevent runoff downstream and from adversely
7 affecting state highway and downward properties".

8 That's something that you just really can't
9 plan for. That's something that goes back to I
10 believe it was Commissioner Chang talked about best
11 management practices. And if we're building things
12 compliant with the code, and we're doing things, and
13 we have heard from the engineers already that the
14 runoff that will occur, based upon the catchment
15 basin and swales and everything else, if they're kept
16 in shape, will be no more than what's already in
17 existence there on Kaua'i Coffee.

18 To indicate or tell us to "shall prevent",
19 I really don't know what "shall", which is mandatory
20 "prevent" means, and I think that's an onerous task
21 for anyone to do.

22 Basically we have been asked to do best
23 management practices, comply with codes, look at
24 things, keep things in proper order so that whereas

25 there was testimony I believe by Ms. Souza and some

McMANUS COURT REPORTERS 808-239-6148

29

1 others about they have swales and people are parking
2 on them, there's going to be parking areas, these
3 things. The swales are going to be kept -- the
4 vegetation is going to be such that water can drain.
5 So I do not believe that that condition should be
6 added. Thank you.

7 CHAIRPERSON ACZON: Thank you for those
8 comments. We'll take that into consideration during
9 our deliberations.

10 Commissioners, any further comments? If
11 not, that would conclude closing arguments.

12 Commission will now hear public testimony.
13 Do we have any? Anyone in the audience who wishes to
14 provide public testimony in this matter? If not,
15 that concludes the public testimony.

16 The Commission is now ready to consider the
17 Adoption of the Order. Commissioners, before you for
18 your consideration, deliberation, and adoption to the
19 proposed Findings of Fact, Conclusions of Law, and
20 Decision and Order prepared by staff as instructed at

LUC 7-19-17 Kauai and Maui
21 the last meeting on this docket and modified by
22 today's proceedings.

23 Is there any discussion? Commissioners
24 we're in discussion. Anyone? Who wants to go first?
25 Commissioner Okuda.

McMANUS COURT REPORTERS 808-239-6148

30

1 COMMISSIONER OKUDA: Chair, I first like to
2 thank Intervenor Ms. Souza for her participation. I
3 think it adds to the process which is really
4 important about getting the best decision, might not
5 be perfect, but with everyone's input, and especially
6 the hard work you put in with your expertise. I know
7 it's appreciated by everyone, and that also goes for
8 everyone else who participated.

9 I would ask and urge the Commission to
10 adopt the order as-is, respectfully not including the
11 provisions that Ms. Souza recommended and advocated.
12 I'm not saying that her suggestions don't make sense
13 in a perfect world, but these are my concerns.

14 One concern is the fact that with respect
15 to a condition about absolutely preventing runoff, I
16 believe Hawaii law already addresses that concern,
17 and for that I would call the Parties' attention to

18 the case Rodrigues, R-O-D-R-I-G-U-E-S, versus State
19 of Hawaii, which is found at 52 Hawaii 156. That's a
20 Hawaii Supreme Court case that basically says that if
21 you negligently divert water, the person who
22 negligently diverts the water may be liable under the
23 theory of negligence.

24 So I believe Ms. Souza's concern about
25 runoff is well taken, but I believe the Hawaii law

McMANUS COURT REPORTERS 808-239-6148

31

1 already addresses that issue.

2 As far as traffic study, I agree that the
3 evidence shows that there's a process in place with
4 expertise that would consider these items in the
5 future, and there's some things that we don't have a
6 crystal ball as far as predicting the future, but I
7 believe the evidence has shown that at least this
8 county administration has taken its responsibilities
9 under the law seriously as far as how they proceed
10 regarding this.

11 And, finally, I would urge not to have an
12 adoption requiring the warning of risks of the
13 reservoir, and one reason is, I do not believe the

14 evidentiary record is sufficient to show the level,
15 if any, of risk.

16 We didn't have any engineering studies or
17 anything like that to form an evidentiary basis, and
18 our decisions have to be based on the evidence. So
19 there isn't an evidentiary basis to put in a
20 condition about warning with respect to the risk of
21 reservoirs. And absent that type of evidence, my
22 concern is that if the Land Use Commission were to
23 acknowledge something, which may or may not be a
24 risk, we may be setting inadvertently a standard of
25 care which might create liability against certain

McMANUS COURT REPORTERS 808-239-6148

32

1 parties, including the state, when we really didn't
2 intend to do so.

3 So would I urge the adoption of the
4 Decision and Order as written respectfully, Ms.
5 Souza, without your suggested amendments or revisions
6 or additions which I believe have shown
7 thoughtfulness on your part, which we do appreciate.

8 CHAIRPERSON ACZON: Thank you, Commissioner
9 Okuda. Vice Chair Scheuer.

10 VICE CHAIR SCHEUER: Asking for a little

11 forbearance. I'm going to have a somewhat long
12 response to Commissioner Okuda's suggestions, and
13 then my general comments on the document.

14 I'll be as efficient as I can. For the
15 specific proposed amendments to the conditions
16 proposed by Ms. Souza, I see no reason to not -- for
17 a motion not to at very least incorporate the change
18 to Emergency Services that the county has agreed to.

19 So rather than unchange, as Commissioner
20 Okuda suggested, I think at the very least that seems
21 to be a noncontested change.

22 I do agree with the analysis by
23 Commissioner Okuda regarding the reservoir. And also
24 just observe that we do have on the docket that the
25 county, which is helping put infrastructure in place

McMANUS COURT REPORTERS 808-239-6148

33

1 and has acquired the lands and is doing various
2 things to get this affordable housing developed is
3 not actually the sales entity, not the actual
4 developer entity, having them try to make sure that
5 third-party is going do that informing seems to be
6 like a point of difficulty in actual implementation.

7 So would I be disinclined to accept that proposed
8 condition of the Intervenor.

9 Regarding runoff, I will politely disagree
10 with some of the characterization of the testimony
11 done by Mr. Lincoln, because under cross-examination
12 from Commissioner Okuda the engineer, who testified
13 about the runoff, stated on the record that there
14 were best practices that are available that are not
15 planned to be used in this development.

16 And so while I'm not convinced that the
17 phrasing is correct that Ms. Souza has prepared, I
18 think there is something a little more that we could
19 perhaps add onto a condition, and it might be a
20 simple as a phrase about, you know, all available
21 best practices that would address any of the runoff
22 concerns that we've had.

23 I don't think requiring no runoff is a
24 practicable concern, but I believe we could address
25 those. Those are my four responses.

McMANUS COURT REPORTERS 808-239-6148

34

1 I then wanted to state a few general things
2 for the record.

3 I wanted to say this last time and this is

4 done as kindly and as respectfully as I can.

5 I'm very grateful to the Intervenor having
6 stepped forward at cost to herself to do it. And
7 respectfully, Mr. Minkin, I found your questioning of
8 her during her presentation abusive and not welcome.
9 I thought it was not necessary.

10 It is certainly fine to be an aggressive
11 and good advocate for your client, and I think that's
12 necessary, but I think it crossed the line a little
13 bit in terms of being appropriate for somebody who at
14 no reward for herself is just trying to participate
15 in this process.

16 I want to just highlight a couple other
17 things during testimony. Not an Intervenor,
18 Councilmember Yukimura came forward and raised a
19 number of significant concerns about the project, and
20 was strongly seeking that we only approve Phase I of
21 the project. There is reasons I don't agree -- while
22 I have tremendous respect and a long relationship
23 with Ms. Yukimura, I don't agree with what she
24 suggested.

25 When rereading her three testimonies she

1 submitted to us, two of her points were that traffic
2 was insufficiently analyzed, and that impact on
3 agricultural lands were insufficiently analyzed.

4 I think the record those otherwise. That
5 the record that county put together actually shows
6 that with the TIAR issues addressed with looking at
7 the overall impact on significant Agricultural
8 Important Lands in this county those impacts have
9 been addressed.

10 I am inclined to actually agree with a
11 number of the other concerns Ms. Yukimura raised
12 about the concentration of affordable housing,
13 whether this is the ideal location for affordable
14 housing. How we can ensure that it is indeed west
15 side residents who get those units. I think those
16 are legitimate concerns.

17 And I think those are really not concerns
18 of the Land Use Commission. I think those are the
19 concerns of Kaua'i County, the council and the mayor.
20 We are not an appellate body in that sense.

21 I don't necessarily know that I would have
22 put all my eggs in this one basket. I would have
23 preferred, because I have advised other agencies on

24 the same, to have a land acquisition policy in place
25 before choosing which land to buy.

McMANUS COURT REPORTERS 808-239-6148

36

1 Those are my feelings, but that has nothing
2 to do with what my responsibilities are. It's not
3 our job to question the county in terms of approving
4 or disapproving the project based on those concerns
5 that she raised.

6 Finally, I just do want to note for the
7 record, in case my fellow Commissioners didn't
8 notice, that we did receive very good testimony from
9 Sabra Kauka, kumu hula, about the importance of this
10 project and her concern about development. She did
11 send in written testimony afterwards on July 7th that
12 said with increased knowledge of the project, she
13 would have preferred to have only Phase I approved.

14 So there was a certain thing about the rush
15 of proceedings that we didn't get maybe everything we
16 wanted to hear all at once.

17 That said I also stand by my great aloha
18 and thanks to the County of Kaua'i for stepping up.
19 Not a perfect project, no project is, but doing
20 something the county doesn't have to do, but trying

21 really hard to address a very real need for residents
22 of the island and going through this. Very, very
23 grateful to the mayor, to the council, to the housing
24 department for putting this project forward.

25 Thank you for your patience in listening to

McMANUS COURT REPORTERS 808-239-6148

37

1 my remarks.

2 CHAIRPERSON ACZON: Commissioners. Anybody
3 else? Commissioner Chang.

4 COMMISSIONER CHANG: Thank you.

5 I too would like to commend the parties,
6 and in particular the Intervenor, who I think made
7 everybody a lot more accountable by providing sort of
8 a level of consciousness, the community's
9 consciousness, and I appreciated that.

10 I just want to quickly address some of the
11 your proposed recommendations.

12 In my view I think the regional is not
13 appropriate. I think the TIAR, it would be incumbent
14 upon the county, given the way that the project is
15 being imposed, that right now only Phase I is
16 approved.

17 When they proceed on the other phases, they
18 will have to consider all of those other projects or
19 the status at that time, and in my view I think
20 having the TIAR updated before they proceed on the
21 next phases will be some adequate protection.

22 The overall traffic issues in Lihue and
23 beyond, that is really, I think, a countywide issue
24 that they need to address, which is probably, in my
25 view, beyond this particular project.

McMANUS COURT REPORTERS 808-239-6148

38

1 With respect to the runoff, I too, putting
2 on my attorney's hat, I worry about the liability
3 issue. I think that my intention on making those
4 additional amendments about the swales, the
5 vegetation, maintenance, that the intention there was
6 to create a higher standard of BMPs. And, again, the
7 future projects will all have to be reviewed, and
8 they will go through their own end assessment and
9 have to comply with whatever the requirements are at
10 that time.

11 So it will be incumbent upon the county to
12 apply the best management practices at the time they
13 proceed with those future phases.

14 Civil Defense, I agree, I think we can just
15 change it to whatever the appropriate language is.
16 If it's Emergency Management language, then that's
17 what it should be changed to.

18 I, like Commissioner Okuda, with respect to
19 the disclosure about the reservoir, am extremely
20 reluctant because of potential exposure both to the
21 project, who has no control over that by creating
22 this warning.

23 However, it will be incumbent upon the
24 county and those around there to make sure that there
25 are safety measures in place, because I think you

McMANUS COURT REPORTERS 808-239-6148

39

1 have put everybody on notice. And now with that
2 notice is a high ended scrutiny that they will all
3 have to adhere to. So I am comfortable with Ms.
4 Souza's proposed amendment to the emergency, but I
5 would have the proposed findings stand on its own.

6 I would like to make a final comment. The
7 first day of proceedings I think you all realized as
8 we proceeded with your Cultural Impact Assessment, it
9 just wasn't -- there were some real concerns, let me

10 put it that way.

11 And I greatly appreciated the next day
12 bringing in the practitioners, bringing in the people
13 who had ancestral connections to those lands that
14 should have been included in the first CIA. But the
15 fact that they were recognized as experts, the fact
16 that they were given opportunity to speak, I really,
17 really appreciated having them -- that we could hear
18 it personally rather than in a report, and I think
19 the record is much stronger as a result of that
20 testimony.

21 And from someone who has advocated, we have
22 an affirmative obligation to preserve and protect
23 traditional and customary practices. To unilaterally
24 say there are no traditional and customary practices
25 for me is -- Hawaiians lived on here for centuries.

McMANUS COURT REPORTERS 808-239-6148

40

1 They walked those lands. There's probably something
2 going on. So currently, based upon the record, I
3 think we now have a good idea what happened and we
4 also now have some protections I believe in the makai
5 area.

6 But I do appreciate the second day of

7 testimony hearing from all of the witnesses as to
8 their connection to these lands, and their firsthand
9 testimony. So thank you.

10 CHAIRPERSON ACZON: Thank you. Anybody?
11 Commissioner Estes.

12 COMMISSIONER ESTES: I move adoption of the
13 order with the change "Emergency Services".

14 COMMISSIONER CABRAL: I'll second that.

15 CHAIRPERSON ACZON: Okay. It has been
16 moved by Commissioner Estes and seconded by
17 Commissioners Cabral to approve the form of the
18 order. Is there any discussion?

19 VICE CHAIR SCHEUER: Mr. Chair, I would
20 like to propose an amendment to the motion, just one.

21 On page 81, in lieu of the proposed
22 language offered by the Intervenor, on line 2, on
23 page 81 I would propose an amendment inserting the
24 words "best practices for", between the words
25 "incorporating" and "low".

McMANUS COURT REPORTERS 808-239-6148

41

1 So it would read: Petitioner shall
2 mitigate nonpoint source pollution by incorporating

LUC 7-19-17 Kauai and Maui
3 best practices for low impact development practices
4 for on-site stormwater.

5 CHAIRPERSON ACZON: Are you including
6 introducing that amendment?

7 COMMISSIONER ESTES: And I accept it.

8 COMMISSIONER CABRAL: And I accept that.

9 COMMISSIONER OHIGASHI: Can you just
10 repeat?

11 VICE CHAIR SCHEUER: Yes.

12 The amended line would read, we are again
13 on page 81, under conditions, under the proposed
14 order, beginning at line 1, at the end of line 1.

15 The Petitioner shall mitigate nonpoint
16 source pollution by incorporating -- insert three --
17 best practices for. And the remainder of the
18 sentence remains the same.

19 And I believe that actually addresses the
20 spirit of the Intervenor's comments and reflects more
21 accurately what we had on the record.

22 MR. MINKIN: For the record, we have no
23 objection with that.

24 CHAIRPERSON ACZON: Commissioner Okuda.

25 COMMISSIONER OKUDA: After considering what

McMANUS COURT REPORTERS 808-239-6148

1 Commissioner Scheuer has said, I think his amendment
2 better accurately reflects the record, and I believe
3 it's consistent with the Rodrigues case also. So
4 thank you for clarifying that point.

5 CHAIRPERSON ACZON: Commissioners, there is
6 a motion to approve the form of the order with
7 amendment. Is there any further discussion? Hearing
8 none, Mr. Orodener, please poll the Commissioners.

9 EXECUTIVE DIRECTOR: Thank you, Mr. Chair.

10 The motion is to adopt the order with to
11 add the language "Emergency Services" and as amended
12 by Commissioner Scheuer, to add additional language
13 regarding best practices.

14 Commissioner Estes?

15 COMMISSIONER ESTES: Yes.

16 EXECUTIVE DIRECTOR: Commissioner Cabral?

17 COMMISSIONER CABRAL: Yes.

18 EXECUTIVE DIRECTOR: Vice Chair Scheuer?

19 VICE CHAIR SCHEUER: Aye.

20 EXECUTIVE DIRECTOR: Commissioner Okuda?

21 COMMISSIONER OKUDA: Yes.

22 EXECUTIVE DIRECTOR: Commissioner Chang?

23 COMMISSIONER CHANG: Yes.

24 EXECUTIVE DIRECTOR: Commissioner Ohigashi?

25 COMMISSIONER OHIGASHI: Yes.

McMANUS COURT REPORTERS 808-239-6148

43

1 EXECUTIVE DIRECTOR: Chair Aczon?

2 CHAIRPERSON ACZON: Yes.

3 EXECUTIVE DIRECTOR: Thank you. Mr. Chair,
4 the motion passes unanimously.

5 CHAIRPERSON ACZON: Thank you everyone.

6 Thank you for your patience.

7 Commissioner Okuda.

8 COMMISSIONER OKUDA: Could I just say one
9 thing? It's a follow up to what Commissioner Chang
10 had said.

11 With respect to protection of Native
12 Hawaiian practices, which is enshrined in our
13 constitution, I think the record should make clear,
14 as one who worked at 1978 Constitutional Conviction,
15 you could pick the number of Native Hawaiian
16 delegates on one hand. There weren't that many in
17 the constitution.

18 What Commissioner Chang spoke about is not
19 simply a Native Hawaiian concern, it's a statement of

20 community values, and I think it's a community value
21 that cuts across ethnic lines, economic lines,
22 neighborhoods, it's statewide because that
23 constitution was ratified by not everyone in the
24 state, but by a statewide vote.

25 So I think it's important to keep in mind

McMANUS COURT REPORTERS 808-239-6148

44

1 that when we inquire into these items in these types
2 of proceedings, we are not doing it just for a
3 certain limited community, it's an inquiry that
4 reflects community values of everyone who lives in
5 Hawaii.

6 I just like to state that for the record.

7 CHAIRPERSON ACZON: Thank you, Commissioner
8 Okuda.

9 The Land Use Commission will now recess and
10 reconvene at Maui Arts and Cultural Center at
11 approximately 2:00 p.m. today.

12 (The proceedings recessed at 10:40 a.m.)

13

14

15

16

17
18
19
20
21
22
23
24
25

McMANUS COURT REPORTERS 808-239-6148

45

1		CERTIFICATE
2	STATE OF HAWAII)
3	COUNTY OF HONOLULU) SS.
4)

5 I, JEAN MARIE McMANUS, do hereby certify:

6 That on July 19, 2017 at 9:20 a.m., the

7 proceedings contained herein was taken down by me in

8 machine shorthand and was thereafter reduced to

9 typewriting under my supervision; that the foregoing

10 represents, to the best of my ability, a true and

11 correct copy of the proceedings had in the foregoing

12 matter.

I further certify that I am not of counsel for

13 LUC 7-19-17 Kauai and Maui
14 any of the parties hereto, nor in any way interested
15 in the outcome of the cause named in this caption.

16 Dated this 19th day of July, 2017, in Honolulu,
17 Hawaii.

18
19 /s/ Jean Marie McManus
20 JEAN MARIE McMANUS, CSR #156

21
22
23
24
25

McMANUS COURT REPORTERS 808-239-6148

46

1 LAND USE COMMISSION
2 STATE OF HAWAII
3 July 19, 2017
4 Commencing at 2:00 p.m.
5 Maui Arts & Cultural Center
6 Morgado Meeting Room
7 One Cameron Way
8 Kahului, Maui, Hawai'i 96732-1137

9

LUC 7-19-17 Kauai and Maui

10 ACTION

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

12 To consider acceptance of Pi'ilani Promenade North,
13 LLC's and Pi'ilani Promenade South, LLC's Final
14 Environmental Impact Statement in support of their
15 Motion for Order Amending the Findings of Fact,
16 Conclusions of Law, and Decision and Order Dated
17 February 10, 1995, which reclassified approximately
18 88 acres at Ka'ono'ulu, Makawao-Wailuku, Maui,
19 Hawai'i.

20

21

22

23

24

25

BEFORE: Jean Marie McManus, CSR #156

26

27

28

McMANUS COURT REPORTERS 808-239-6148

47

1 APPEARANCES:

2 EDMUND ACZON, Chair
3 JONATHAN SCHEUER, Vice Chair
4 ARNOLD WONG, Vice Chair

5 COMMISSIONERS:

6 GARY OKUDA
7 LINDA ESTES
8 NANCY CABRAL

LUC 7-19-17 Kauai and Maui

- 6 DAWN CHANG
- LEE OHIGASHI
- 7
- 8 DIANE ERICKSON, ESQ.
- Deputy Attorney General
- 9
- STAFF:
- 10 DANIEL ORODENKER, Executive Director
- RILEY K. HAKODA, Planner/Chief Clerk
- 11 BERT K. SARUWATARI, Planner
- 12 RANDAL SAKUMOTO, ESQ.
- LISA CATALDO, ESQ.
- 13 Attorneys for Petitioner Ka'ono'ulu Ranch
- 14 CURTIS TABATA, ESQ.
- BENJAMIN MATSUBARA, ESQ.
- 15 Attorneys for Honua'ula Partners, LLC
- 16 TOM PIERCE, ESQ.
- Attorney for Intervenors
- 17
- MICHAEL HOPPER, ESQ.
- 18 Corporation Counsel County of Maui
- WILLIAM SPENCE, Director County of Maui
- 19 ANN CUA, Planner
- Attorney for Maui County Department of Planning
- 20
- DAWN APUNA, ESQ.
- 21 Deputy Attorney General, State of Hawai'i
- RODNEY FUNAKOSHI, Planner
- 22 Attorney for State Office of Planning
- 23
- 24
- 25

McMANUS COURT REPORTERS 808-239-6148

LUC 7-19-17 Kauai and Maui

	PUBLIC WITNESSES:	PAGE
3		
	Joan Martin	57
4	Mario Cardone	59
	Mike Moran	62
5	Linda Berry	66
	Rob Weltman	70
6	Charlene Schulenburg (for Mary Wagner)	74
	Gary Passon	77
7	Mike Foley	81
	Amber Putsis (for Pamela Tumpap)	84
8	Robin Knox	88
	Basil Oshiro	92
9	Ronald Vaught	99
	Vernon Kalanikau	103
10	Chantal Lonergan	107
	Tom Cook	109
11	Michelle Del Rosario	112
	Gene Zarro	115
12	Cody Tuivaiti	118
	Donnie Becker	125
13	Jay Krigsman	132
	Robert Aldrich	135
14	David Kaawa Hewahewa	139
	Tom Blackburn-Rodriguez	143
15	Kaena Elima	146
	Ke'eaumoku Kapu	146
16	Matthew Cearny	157
	Jill Engledow	161
17	Allison Miller	163
	Ko Hewahewa	166
18	Mark Sheehan	175
	Kelly King	177
19	Cross-Examination/Intervenor	181
	Hannibal Starbuck	186
20	Jon Jon Tabon	190
	Cecilia Rose Reilley	195
21	Heali'i Haukane	199
	Kapono Makahana'loa-Antonez	202
22	Deborah Mader	204
	Albert Perez	207
23		
24	EXHIBITS MARKED AND RECEIVED INTO EVIDENCE	
25	LUC 1	70

1 CHAIRPERSON ACZON: Good afternoon. This
2 is the Maui portion of the July 19, 2017, Land use
3 Commission meeting.

4 The minutes for the June 28, 29 and
5 July 7th, 2017 were unanimously adopted earlier this
6 morning on Kaua'i.

7 The next agenda is the attentive meeting
8 schedule.

9 EXECUTIVE DIRECTOR: Thank you, Mr. Chair.
10 We'll be here tomorrow for continuation on this
11 docket.

12 On July 26th we will be on Kaua'i for
13 action on Maui Community College and Island Schools,
14 and also to take action on the request to be the
15 accepting authority for the EISPN for Honua'ula
16 Partners.

17 August 9th on Oahu. August 10th we will be
18 on Kaua'i again to adopt the order for Island Schools
19 and UHKCC.

20 On August 23rd, we will be on Maui for
21 Pukalani Associates Motion for Extension of Time.

22 On September 6th and 7th we will again be

LUC 7-19-17 Kauai and Maui
23 on Maui -- on the 6th we'll be on Maui for Waikapu
24 Town, and on the 7th we will be on Oahu for Solar
25 Special Permits.

McMANUS COURT REPORTERS 808-239-6148

50

1 September 20th to 22nd HCPO, and that is
2 all we have on the schedule for right now.

3 CHAIRPERSON ACZON: Commissioners, any
4 questions about our schedule?

5 Thank you, Mr. Orodener.

6 Next agenda item action meeting on Docket
7 No. A94-706 Ka'ono'ulu Ranch to consider the
8 acceptance of the Final Environmental Impact
9 Statement.

10 Will the parties please identify themselves
11 for the record?

12 MR. SAKUMOTO: Thank you, Mr. Chair.
13 Randall Sakumoto and Lisa Cataldo on behalf of
14 Petitioners.

15 MS. APUNA: Deputy Attorney General Dawn
16 Apuna on behalf State Office of Planning. With me is
17 Rodney Funakoshi.

18 MR. HOPPER: Hello. Michael Hopper, Deputy
19 Corporation Counsel for Maui County Department of

20 Planning. With me is Planning Director Wil Spence
21 and planner Ann Kua is also here.

22 MR. PIERCE: Good morning, Mr. Chair. Tom
23 Pierce on behalf of Intervenors, Maui Tomorrow
24 Foundation, Inc., South Maui Citizens for Responsible
25 Growth and Daniel Kanahale.

McMANUS COURT REPORTERS 808-239-6148

51

1 MR. TABATA: Good afternoon, Chair, members
2 of the Commission. Curtis Tabata and Benjamin
3 Matsubara for Honua'ula Partners LLC.

4 CHAIRPERSON ACZON: Let me update the
5 record in this docket.

6 On December 10, 2015, the Petitioner
7 provided a status report to the Commission. From
8 then until now the Commission received various
9 correspondence. Annual reports and testimony, which
10 was posed to our website and made part of the record.

11 On July 1st, 2016, the Commission received
12 Notice of Appearance for Counsel for Honua'ula
13 Partners LLC.

14 On March 9, 2017, the Commission made a
15 site visit to the Petition Area.

LUC 7-19-17 Kauai and Maui

16 On June 27th, 2017, the Commission received
17 Petitioner's Volumes 1-5 and digital copies.

18 On July 12th, 2017, the LUC mailed the
19 July 19-20th, 2017 agenda to the Parties, and to the
20 individuals and entities on the Statewide, Kaua'i and
21 Maui mailing lists.

22 On July 13th, 2017, the Commission received
23 Notice of Change of Counsel for Petitioner.

24 On July 14th, 2017, the Commission received
25 OP's and Maui County's Comments and Concerns

McMANUS COURT REPORTERS 808-239-6148

52

1 Regarding Docket A94-706 to Consider Acceptance of a
2 FEIS.

3 In addition, on July 18, 2017, the
4 Commission received an email from Intervenors
5 Requesting Sufficient Testimony Time for Maui
6 Tomorrow Foundation, South Maui Citizens for
7 Responsible Growth, and Daniel Kanahahele.

8 Mr. Pierce, do you, in fact, represent the
9 individual and organizations referenced in your
10 request?

11 MR. PIERCE: I represent the Intervenors,
12 yes.

13 CHAIRPERSON ACZON: You have the ability to
14 call them as witnesses. If they do give public
15 testimony, they'll be subject to the same time
16 constraints as the other testifiers.

17 MR. PIERCE: Thank you, Mr. Chair. I
18 understand we will be given the opportunity to call
19 them as witnesses. Thank you, Mr. Chair, that works
20 for us.

21 CHAIRPERSON ACZON: Yeah, just to be fair
22 with public testimony.

23 MR. PIERCE: I appreciate that from the
24 Commission.

25 CHAIRPERSON ACZON: Let me briefly describe

McMANUS COURT REPORTERS 808-239-6148

53

1 our procedure for today on this docket.

2 First, I'll give opportunity for the
3 Petitioner to comment on the Commission's Policy
4 governing reimbursement of hearing expenses.

5 I will then call for those individuals
6 deciding to provide public testimony.

7 After public testimony, the Petitioner will
8 be called to make its presentation.

9 After the completion of the Petitioner's
10 Presentation, we will receive any comments from the
11 County of Maui Planning Department, the State Office
12 of Planning and Intervenor on Petitioner's Final EIS.

13 When public testimony begins, I will call
14 for those individuals deciding to provide public
15 testimony to identify themselves. All such
16 individuals will be called in turn to our witness box
17 where they will be sworn in prior to their testimony.

18 The public testimony today should be
19 limited to the Petitioner's Final EIS and should not
20 go into the merits of the Petitioner's Motion to
21 Amend the LUC's Decision and Order in this docket.

22 Also, if you have written testimony or
23 other documents you would like to submit, please give
24 them to the Chief Clerk so they can be filed-stamped
25 and made part of the record.

McMANUS COURT REPORTERS 808-239-6148

54

1 After completion of the presentations, the
2 Commission will then conduct its deliberations. The
3 Chair would like to remind the parties and public
4 that per HAR 11-200-23(d) - In the event agency fails
5 to make a determination of acceptance or

6 non-acceptance within 30 days of the receipt of the
7 Final EIS, then the statement shall be deemed
8 accepted.

9 The Chair would also note for the parties
10 and public that from time to time I will be calling
11 for short breaks. And please, use the microphone
12 when you're testifying or speaking.

13 Are there any questions in our procedure
14 for today, parties?

15 MR. PIERCE: Mr. Chair, Tom Pierce on
16 behalf of the Intervenors. I just have one question.

17 I'm not sure I heard when would you like
18 for us in your process today to call our witnesses?

19 CHAIRPERSON ACZON: During your
20 presentation.

21 MR. PIERCE: Thank you very much.

22 CHAIRPERSON ACZON: After the public
23 testimony.

24 COMMISSIONER OHIGASHI: Mr. Chair.

25 CHAIRPERSON ACZON: Go ahead, Commissioner

McMANUS COURT REPORTERS 808-239-6148

55

1 Ohigashi.

2 COMMISSIONER OHIGASHI: Being that I'm a
3 resident of this county, I do know some of the
4 Intervenors. Clare Apana assisted myself, together
5 in the community effort, regarding connections to, I
6 think it was Maui Lani Partners. We testified in
7 front of the Planning Commission and the County
8 Council and was able to obtain some legislation, but
9 it wasn't a formal group.

10 And I do know Daniel Kanahale because
11 through social matters. I want to disclose that.

12 The third person I do know is Maui Tomorrow
13 Albert Perez. I believe that from time to time he
14 would stop by my office and talk story.

15 But other than that, I want to make sure
16 those disclosures are on the record.

17 CHAIRPERSON ACZON: Any objections by the
18 parties for Commissioner Ohigashi's participation?

19 MR. SAKUMOTO: No objections from the
20 Petitioner.

21 MS. APUNA: No objection.

22 MR. HOPPER: No objection.

23 MR. PIERCE: No objection from Intervenors.

24 CHAIRPERSON ACZON: Thank you.

25 For those of you who just came in and

1 wanted to testify, please sign in our testifiers,
2 please.

3 Mr. Sakamoto, has our staff informed you of
4 the Commission's policy on reimbursement of hearing
5 expenses? If so, could you please state your
6 client's position with respect to this policy.

7 MR. SAKUMOTO: Yes, Mr. Chairman, they have
8 advised us, and we accept the policy.

9 CHAIRPERSON ACZON: Thank you.

10 Is there anyone in the audience who desires
11 to provide public testimony on the matter before us?
12 For public witnesses who are testifying, the
13 Commission would appreciate it if you could confine
14 your testimony to the acceptability of the FEIS and
15 avoid repetitive testimony.

16 In addition, a three-minute time limit on
17 testimony will be enforced.

18 Anyone? First testifier.

19 EXECUTIVE DIRECTOR: Thank you, Mr. Chair.
20 Our first testifier is Joan Martin followed by Mario
21 Cardone.

22 I would also like to apologize ahead of

23 time if I mispronounce the names. Some of the
24 handwriting is not very good.

25 CHAIRPERSON ACZON: The chair for the
McMANUS COURT REPORTERS 808-239-6148

57

1 testifiers is on this side.

2 EXECUTIVE DIRECTOR: Joan Martin followed
3 by Mario Cardone.

4 CHAIRPERSON ACZON: As soon as your name is
5 called, please wait by the left side to the witness
6 box.

7 May I swear you in first?

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

10 THE WITNESS: Yes, sir.

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

13 THE WITNESS: My name is Joan Martin. My
14 address is 85 Manino Circle, Number 202, Kihei,
15 Hawai'i.

16 CHAIRPERSON ACZON: Please proceed.

17 JOAN MARTIN

18 Was called as a public witness, was sworn to tell the

LUC 7-19-17 Kauai and Maui
19 truth, was examined and testified as follows:

20 DIRECT EXAMINATION

21 THE WITNESS: Good afternoon.

22 Again, my name is Joan Martin. I have
23 lived in Kihei since 1998 and wish to indicate my
24 strong support for acceptance of the Final
25 Environmental Impact Statement submitted for the

McMANUS COURT REPORTERS 808-239-6148

58

1 Pi'ilani Promenade project in Kihei, Hawai'i. I
2 believe that the FEIS is complete and response to all
3 the environmental questions regarding the project,
4 including extensive cultural surveys of the project.

5 While this hearing is focused on the
6 acceptance of the FEIS, I do want to note that when
7 completed the project will include 226 apartments
8 with 25 percent affordable under the Maui County
9 workforce housing requirements for those earning 80
10 to 120 percent of the area median income.

11 The lack of sufficient affordable rentals
12 in our community is at a crisis, and I support this
13 effort.

14 I also support the creation of additional
15 retail opportunities in South Maui and the jobs that

16 will come with it. Right now, if I want to by a pair
17 of socks, I have to drive to Central Maui and back.
18 I can get shaved ice and a tourist T-shirt easy
19 enough in Kihei, but what about shoes or a birthday
20 gift? No luck.

21 I want to close my remarks by thanking the
22 Commission for coming to Maui after a long day
23 already on Kaua'i. Thank you for your service and
24 for the courtesy of hearing my testimony today.

25 CHAIRPERSON ACZON: Any questions for the
McMANUS COURT REPORTERS 808-239-6148

59

1 testifier?

2 MR. SAKUMOTO: No questions.

3 MS. APUNA: No questions.

4 MR. HOPPER: No question.

5 CHAIRPERSON ACZON: Intervenors?

6 MR. PIERCE: No questions.

7 CHAIRPERSON ACZON: Thank you, Ms. Martin.

8 Mr. Cardone.

9 EXECUTIVE DIRECTOR: Following Mike Moran.

10 CHAIRPERSON ACZON: Let me swear you in
11 first.

LUC 7-19-17 Kauai and Maui

12 Do you affirm that the testimony that you
13 are about to give is the truth?

14 THE WITNESS: I do.

15 CHAIRPERSON ACZON: Please state your name
16 and address for the record.

17 THE WITNESS: Mario Cardone, 202 Ohukai
18 Road, Kihei.

19 CHAIRPERSON ACZON: Please proceed.

20 MARIO CARDONE

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

23 DIRECT EXAMINATION

24 THE WITNESS: My name is Mario Cardone.

25 I'm a commercial real estate broker specializing in

McMANUS COURT REPORTERS 808-239-6148

60

1 the North Kihei industrial area. I've been involved
2 in this area for the past 24 years. I live in North
3 Kihei across the highway on Ohukai Road, and have
4 lived there for over 30 years.

5 Pi'ilani Promenade project has a direct
6 impact on where I live and where I work.

7 The current project is greatly improved
8 over the previous plan proposed by Eclipse

9 Development. I did not believe that the scale and
10 type of retail that was previously proposed was
11 appropriate. However, I would like to see Pi'ilani
12 Promenade's EIS accepted by the Land Use Commission,
13 to give this project the chance it deserves to
14 provide the community based industrial, apartment and
15 commercial uses it is promising.

16 All parcels in the Pi'ilani Business Park
17 and Kihei Commercial Center subdivisions, which are
18 immediately to the north of Pi'ilani Promenade, have
19 been developed, and the vacancy of ground floor
20 industrial and commercial space is very low.

21 The vacancy rate island wide for industrial
22 space is less than one percent, and adding space for
23 warehousing, light manufacturing, industrial service
24 businesses, and the like, is very much needed.

25 Community based commercial space is also

McMANUS COURT REPORTERS 808-239-6148

61

1 very much needed. This would be for all sorts of
2 personal and business services, home improvement
3 businesses, and flex spaces for office and retail
4 uses coupled with warehouse or manufacturing space.

5 The more apartment projects we can
6 encourage, the better. Apartments at any economic
7 level help fill the housing needs of a growing
8 community. This project will provide more than its
9 fair share, as well as related pedestrian and bicycle
10 paths in a park.

11 Community based retail meant to provide
12 Kihei residents with alternatives to shopping in
13 Kahului would be beneficial for the Kihei community,
14 and will help control traffic congestion. We need
15 commercial areas that do not primarily cater to the
16 visitor market.

17 In conclusion, I would hope Land Use
18 Commissioner will approve the project's EIS and move
19 it to the next step in the process. Thank you.

20 CHAIRPERSON ACZON: Any questions? Mr.
21 Sakumoto?

22 MR. SAKUMOTO: No questions.

23 MS. APUNA: No.

24 MR. HOPPER: No.

25 MR. PIERCE: No questions.

McMANUS COURT REPORTERS 808-239-6148

62

1 MR. TABATA: No questions.

2 EXECUTIVE OFFICER: Mike Moran followed by
3 Linda Berry.

4 CHAIRPERSON ACZON: Do you affirm that
5 testimony that you're about to give is the truth.

6 THE WITNESS: I do.

7 CHAIRPERSON ACZON: Thank you, please state
8 your name and address for the record.

9 THE WITNESS: My name is Mike Moran, 167
10 Aha'aina Way in North Kihei, and I'm speaking for the
11 Kihei Community Association today.

12 MIKE MORAN

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

15 DIRECT EXAMINATION

16 We are testifying against accepting the
17 EIS. The Kihei Community Association or KCA is an
18 all volunteer unfunded non-profit with 57-year
19 history of representing the desires of the Kihei
20 community, such as street designs, stormwater
21 management and transportation. We have no financial
22 stake in your process.

23 Unfortunately, Sarofim's developers did not
24 consult with the KCA before deciding to build
25 regional retail outlet in our community. Today we

1 will offer a team testimony to touch on failing
2 specific segments within the FEIS.

3 We also support the cultural aspect to be
4 offered by Daniel Kanahale.

5 We have serious concerns about the negative
6 and environmental impacts of the proposed Pi'ilani
7 Promenade. Our community does not support the
8 project in its current configuration, as best as
9 anyone can define it in this conceptual offering.

10 In the 1990's, KCA members who worked on
11 the Kihei-Makena Community Plan were committed to
12 smart growth and designated the plan to prevent
13 further sprawl and concentrate commercial activities
14 makai of the Pi'ilani Highway.

15 Four Areas were designated for commercial
16 services on page 17 of the plan. The proposed
17 Pi'ilani Promenade site is not among those commercial
18 sites approved by the plan.

19 KCA supports positive projects like the
20 Krausz Companies, Inc. plan for their development as
21 the Kihei Town Center. It has been designated to

22 meet the needs of the community and is supported by
23 the KCA. We do not want to see unfair competition
24 from the proposed Sarofim protract in attracting
25 anchor tenants contribute to the failure of the Kihei

McMANUS COURT REPORTERS 808-239-6148

64

1 Town Center or now called Downtown Kihei.

2 Our community needs affordable housing like
3 the 100 percent affordable rental housing directly
4 across from this site set to break ground in 2018,
5 not a huge unneeded commercial entity with a
6 smattering of such housing.

7 KCA would like to make clear that the
8 Pi'ilani Promenade project is contrary to our
9 community plan, a legal document created by the
10 community to guide development in significant ways.

11 By circumventing the wishes of the
12 community, which are spelled out clearly in this
13 legal document, the Pi'ilani Promenade, as proposed,
14 will be detrimental to our natural, cultural, and
15 economic environment upon which our island is based.

16 Before discussion of the specific sections
17 of the EIS by our team, we want to point out again
18 the vague nature of the overall plan which is

19 referred frequently in the EIS as conceptual. While
20 the owner has designated areas for light industrial,
21 retail and apartments, without specific site layouts,
22 building use, or building designs, it's difficult to
23 predict actual impacts to this project.

24 And this is further complicated by the
25 Sarofim website which designates this property solely

McMANUS COURT REPORTERS 808-239-6148

65

1 as retail, even though categories of industrial,
2 residential and business are assigned to their other
3 properties. We question, does this indicate the
4 owner hopes to build --

5 CHAIRPERSON ACZON: Please summarize.

6 THE WITNESS: Does this indicate that the
7 owner hopes to build out this site as 100 percent
8 retail? Mahalo.

9 CHAIRPERSON ACZON: Thank you. Any
10 questions?

11 MR. SAKUMOTO: No questions.

12 MS. APUNA: No.

13 MR. HOPPER: No.

14 MR. PIERCE: No.

15 LUC 7-19-17 Kauai and Maui
MR. TABATA: No.

16 CHAIRPERSON ACZON: Ms. Berry.

17 May I swear you in first?

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

20 THE WITNESS: Yes.

21 CHAIRPERSON ACZON: Please state your name
22 and address for the record.

23 THE WITNESS: Linda Berry, 4 Waikalani Hema
24 Place, Kihei.

25 CHAIRPERSON ACZON: Please proceed.

McMANUS COURT REPORTERS 808-239-6148

66

1 LINDA BERRY

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

4 DIRECT EXAMINATION

5 THE WITNESS: Thank you. I'm representing
6 Kihei Community Association, and I will address the
7 Alternative Section of the EIS which presents two
8 alternatives and dismisses them both.

9 There is a third alternative that's not
10 discussed, which KCA finds preferable, and I would
11 like to tell you what it is and how we arrived at it.

12 KCA has been fighting this project for
13 years and we're tired of it. So early this year,
14 when the project came back to life, we decided to
15 take a new approach, and imagine what the owners
16 might build here that would serve Kihei.

17 Lack of housing for local families has
18 reached crisis proportions. But the Kihei-Makena
19 Community Plan does not provide for housing in this
20 location mauka of the highway.

21 Since the Community Plan was adopted
22 20 years ago, four changes that were not anticipated
23 by the plan have impacted our community.

24 First, the nationwide failure of retail
25 centers makes the need for additional retail space

McMANUS COURT REPORTERS 808-239-6148

67

1 questionable.

2 Second, the State of Hawaii DOE has begun
3 construction of Kihei High School on the site
4 directly adjacent and south of this site.

5 Third, we have run out of land for much
6 needed local housing below Pi'ilani Highway.

7 And fourth, a precedent for housing above

8 the highway has already been set at the Research and
9 Technology Park, about a mile south of this site.
10 That business park has been revised to become a mixed
11 use neighborhood, with the new Kihei Charter School
12 and residential developments already underway.

13 With these four changes in mind, we
14 concluded that this site, adjacent to the new high
15 school, makes sense for residential development.

16 To prove the feasibility, we have drawn up
17 detailed plans showing a mix of residential spaces,
18 including apartments, multi-family condominiums, live
19 work units, and single-family housing.

20 A connector road runs north-south through
21 the site which will connect housing to the north, to
22 the new Kihei High School to the south, and keep
23 extra traffic off Pi'ilani Highway.

24 The site, which -- the gulch which bisects
25 the site, and which Sarofim plans to concrete over,

McMANUS COURT REPORTERS 808-239-6148

1 destroying natural Hawaiian cultural sites, our plan
2 leaves the gulch in its natural state, leaving the
3 sites intact, and also allowing stormwater to seep
4 into the ground naturally.

5 Where the owners envision paved parking
6 lots, the green space in our plan will minimize
7 existing stormwater drainage issues.

8 We did present this plan to the owners in
9 April for their consideration, but have no commitment
10 that they will revise their plans. No alternative --

11 CHAIRPERSON ACZON: Please summarize.

12 THE WITNESS: No alternative design shown
13 in the FEIS preserves the small gulch, reduces
14 existing flooding downslope or protects significant
15 cultural sites. No alternative design shows all
16 residential use of the property.

17 Thus, the FEIS analysis is incomplete in
18 meeting minimum requirements listed in HAR 11-200-17.
19 Thank you.

20 CHAIRPERSON ACZON: Any questions?

21 MR. SAKUMOTO: No questions.

22 MS. APUNA: No questions.

23 MR. HOPPER: No questions.

24 MR. PIERCE: No.

25 CHAIRPERSON ACZON: Commissioners?

1 COMMISSIONER OKUDA: Can you give that date
2 again when that plan was transmitted to the
3 Applicant?

4 THE WITNESS: We met with them in person in
5 April.

6 COMMISSIONER OKUDA: When you met with
7 them, did you also show that diagram?

8 THE WITNESS: Yes, and we gave them copies
9 too. And they said they didn't -- while we had
10 interesting ideas, they didn't want to change what
11 they were doing at that time.

12 COMMISSIONER OKUDA: Mr. Chair, at some
13 point in time I would ask that that illustration or
14 demonstrative be made part of the record.

15 THE WITNESS: Thank you.

16 CHAIRPERSON ACZON: Any objections from the
17 parties?

18 MR. SAKUMOTO: No objection, Mr. Chairman.

19 MS. APUNA: No.

20 MR. HOPPER: No.

21 MR. PIERCE: No

22 MR. TABATA: No.

23 CHAIRPERSON ACZON: What exhibit number is
24 that, Riley?

25 LUC 7-19-17 Kauai and Maui
MS. ERICKSON: LUC 1.

McMANUS COURT REPORTERS 808-239-6148

70

1 CHAIRPERSON ACZON: Let the record show
2 that LUC, Exhibit LUC 1 was accepted for the record.
3 Thank you.

4 (Exhibit LUC 1 was marked and received into
5 evidence.)

6 Anybody else, Commissioners?

7 EXECUTIVE DIRECTOR: Rob Weltman followed
8 by Charlene Schulenburg.

9 CHAIRPERSON ACZON: Do you affirm that the
10 testimony that you're about to give is the truth?

11 THE WITNESS: I do.

12 CHAIRPERSON ACZON: Please state your name
13 and address for the record.

14 THE WITNESS: Ron Weltman, 188 Wailua
15 Place, Kihei.

16 CHAIRPERSON ACZON: Please proceed.

17 ROB WELTMAN

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

20 DIRECT EXAMINATION

21 THE WITNESS: Speaking for KCA regarding

22 the transportation impacts of the proposed Pi'ilani
23 Promenade development, KCA's concerns are based on a
24 Hawai'i State criteria for Complete Streets,
25 Kihei-Makena Community Plan, the Kihei Road Design

McMANUS COURT REPORTERS 808-239-6148

71

1 Standards, and the EPA Green Streets criteria.

2 The Hawai'i Complete Streets criteria
3 include the provision of pedestrian and bicycle
4 traffic in addition to motorized vehicles in the
5 design of roadways within the development, as well as
6 public roads impacted by the development.

7 The project includes the construction of a
8 shared-use pedestrian and bike path along the mauka
9 side of Pi'ilani Highway, adjacent to the project and
10 within the project site, in addition to two bike
11 lanes on Pi'ilani Highway.

12 However, the sketchy conceptual nature of
13 the site plan does not allow for comments on the
14 usability of the bike and pedestrian paths, but it is
15 clear that the number of bike and pedestrian paths
16 indicated are nowhere near the number needed to serve
17 a 75-acre site.

18 The Kihei-Makena Community Plan stipulates
19 reducing traffic on Pi'ilani Highway, not increasing
20 it. The population of South Maui is not sufficient
21 to support all the retail space already available
22 with more retail to come in Downtown Kihei project.

23 While the Introduction to Volume 4 of the
24 EIS states that "the objective of this project is to
25 provide services for the tourist and residents of the

McMANUS COURT REPORTERS 808-239-6148

72

1 Kihei area, and that marketing efforts will be
2 directed toward the South Maui area."

3 The proposed commercial square footage will
4 require marketing to customers from other parts of
5 the island, increasing traffic to and around the
6 site. And that is not considered in the FEIS.

7 North Pi'ilani Highway is a choke point for
8 all traffic in and out of South Maui. The FEIS
9 indicates that in 2016 the level of service was
10 already unacceptable for some traffic patterns at
11 seven intersections among those to receive additional
12 traffic due to the project.

13 And that the level of service will
14 deteriorate even without the project through 2032

15 when the project is complete.

16 With the project, four intersections will
17 have unacceptable service in almost all directions
18 when it completes in 2032.

19 The FEIS suggests possible mitigations,
20 particularly, quote, "future roadway construction in
21 the area will provide additional capacity", end
22 quote, but does not stipulate when they would be
23 constructed, who would be responsible and who will
24 pay for the necessary improvements.

25 In addition, KCA requests evaluation of

McMANUS COURT REPORTERS 808-239-6148

73

1 roundabouts the in lieu of additional signalized and
2 stop sign intersections to conform to Kihei-Makena
3 Community Plan goals for pedestrian oriented walkable
4 community without unacceptable congestion for
5 commuter time traffic.

6 CHAIRPERSON ACZON: Any questions?

7 MR. SAKUMOTO: No questions.

8 MS. APUNA: No.

9 MR. HOPPER: No.

10 CHAIRPERSON ACZON: Commissioners? Thank

11 LUC 7-19-17 Kauai and Maui
12 you. Next testifier.

13 EXECUTIVE DIRECTOR: Next Charlene
14 Schulenburg followed by Gary Passon.

15 CHAIRPERSON ACZON: May I swear you in
16 first?

17 Do you swear that the testimony that you
18 are about to give is the truth?

19 THE WITNESS: To the best of my knowledge,
20 because I am actually representing somebody who could
21 not be here who is a professional architect who is on
22 the KCA committee and is an expert.

23 CHAIRPERSON ACZON: Please state your name
24 and address for the record.

25 THE WITNESS: Charlene Schulenburg, 1390
South Kihei Road.

McMANUS COURT REPORTERS 808-239-6148

74

1 CHAIRPERSON ACZON: Please proceed.

2 CHARLENE SCHULENBURG

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

5 DIRECT EXAMINATION

6 Speaking on behalf of Mary Wagner, also
7 known as Randy, she is a professional architect, a

8 member of the A.I.A., and is certified in the LEED
9 AP.

10 The watershed protection is not adequately
11 addressed by the Pi'ilani Promenade EIS, because it
12 does not follow basic low impact design principles.

13 It is no longer acceptable to place
14 streambeds or gulches underground in conduits and
15 rerouted pathways. The developers are not following
16 a nationally accepted standard that was created
17 20 years ago by a group of architects, engineers,
18 developers and government agencies for the Center for
19 Watershed Protection Association.

20 In reference to the tributary gulch that
21 transects the property to the Kulanihakoi Gulch, the
22 Pi'ilani Promenade EIS fails to consider the
23 following principles found in the Consensus Agreement
24 On Model Development Principles to Protect Our
25 Streams, Lakes and Wetlands.

McMANUS COURT REPORTERS 808-239-6148

75

1 And she does cite this, and you guys were
2 given copies of this, she sent them in.

3 The first one is: Create a variable width,

4 naturally vegetated buffer system along all perennial
5 streams.

6 The second is: The riparian stream buffer
7 should be restored and preserved with native
8 vegetation that can be maintained throughout the plan
9 review delineation, construction and occupancy stages
10 of the development.

11 The EIS states that Drainageway A will be
12 routed to the East Kaonoulu Street right-of-way.
13 This is directly contrary to the purpose of the Model
14 Development Consensus. The natural course of the
15 existing gulch should not be changed, nor should the
16 gulch be hardened or placed into conduit.

17 Another article from the library of the
18 Center for Watershed Protection is the Architecture
19 of Urban Stream Buffers. An average buffer width of
20 50 to 200 feet is required to allow for variation in
21 gulch flow during high storm activity. Proper
22 vegetation stabilizes the ground to help decrease
23 erosion and increase uptake into the ground. None of
24 this is addressed in the EIS.

25 As a professional architect, Randy has

McMANUS COURT REPORTERS 808-239-6148

1 lived for 20 years makai of the proposed development,
2 and Randy and the KCA are alarmed by the narrow
3 vision showed shown in this EIS.

4 We have all seen and watched the brown
5 water conditions occur repeatedly in the ocean with
6 worsening intensity. Storms have increased in
7 frequency and duration. Flooding is now commonplace
8 and we need to be working to prevent future
9 occurrences, not aggravate them.

10 The gulch that has served this acreage over
11 a millennia should not be altered. It needs to be
12 restored and preserved.

13 The Promenade project is not sensitive to
14 the unique and fragile concerns of our oceanside
15 community. The apparent cut and fill and
16 manipulation of the site, including relocating a
17 gulch is cavalier to the real cost to the health of
18 our ocean and to those of us who reside here, and
19 future inhabitants.

20 CHAIRPERSON ACZON: Please summarize.

21 THE WITNESS: In summary, let's do what is
22 pono. Thank you.

23 CHAIRPERSON ACZON: Any questions?

24 MR. SAKUMOTO: No questions.

25 MS. APUNA: Nope.

McMANUS COURT REPORTERS 808-239-6148

77

1 MR. HOPPER: No.

2 MR. PIERCE: None.

3 CHAIRPERSON ACZON: Mr. Passon.

4 EXECUTIVE DIRECTOR: Followed by Mike

5 Foley.

6 CHAIRPERSON ACZON: May I swear you in?

7 Do you swear that the testimony that you're

8 about to give is the truth?

9 THE WITNESS: I do.

10 CHAIRPERSON ACZON: Please state your name

11 and address for the record.

12 THE WITNESS: Gary Passon. I live at 1390

13 South Kihei Road in Kihei.

14 CHAIRPERSON ACZON: Please proceed.

15 GARY PASSON

16 Was called as a public witness, was sworn to tell the

17 truth, was examined and testified as follows:

18 DIRECT EXAMINATION

19 THE WITNESS: Good afternoon, Members of

20 the LUC.

21 My name is Gary Passon and I'm a member of
22 the Kihei Community Association and a member of the
23 KCA Planning Committee. I represent the KCA today
24 and myself in today's hearing.

25 The KCA objects to the proposed FEIS for
McMANUS COURT REPORTERS 808-239-6148

78

1 many reasons. I would like to focus on the
2 economics, Section 3. I have provided a more
3 complete description and specific articles in support
4 of our assessment as notes to each of you today.

5 A material premise of the FEIS is that the
6 chosen economic model's projection supports the need
7 for over 500,000 square feet of additional Big Box
8 Commercial Retail space in Kihei.

9 We do not believe the models have been
10 adjusted to accurately reflect the changing retail
11 landscape nor the specific economic and retail space
12 and social environment in Kihei.

13 Fact: Kihei Town Center, KTC, or also
14 called Downtown Kihei, when considered in conjunction
15 to the two shopping areas located adjacent to the
16 east and the west of the KTC will constitute over
17 500,000 square feet of commercial retail space.

18 KTC was developed with specific community
19 input, and the developer substantially modified their
20 design to fit into the community. KTC was sized,
21 laid out, and has become supported by the community
22 because it looks like the community, is an in-fill
23 project, and because the developer has supported the
24 community's efforts to be a walkable, bike-able and a
25 mass-transit supported community.

McMANUS COURT REPORTERS 808-239-6148

79

1 The community feels this significant
2 additional retail space coming on-line soon, and the
3 underutilized retail space along Kihei Road offer
4 significant and sufficient choice, access and
5 economic retail purchasing opportunities to Kihei
6 residents.

7 The mega mall will significantly upset the
8 by economic balance in the community by unnecessarily
9 increasing the available retail space by a
10 significant amount.

11 Fact: The Pi'ilani Promenade would put in
12 large box stores into the Kihei community where
13 access to those stores is already approved and they

LUC 7-19-17 Kauai and Maui
14 are being developed only 20 minutes away in Kahului.

15 Lowe's Hardware big box and Target, having
16 recently opened, are just two examples. Not fully
17 having assessed the Kahului big box evolution on
18 which the FEIS economic models are based is a flaw.

19 Fact: Retail buying rules are changing.
20 Economic modeling of the buying needs in this FEIS
21 are based on prior models which assume a square
22 footage need per person based on car-centric retail
23 purchasing.

24 Significant new retail studies and models
25 as well as all of our real-life experience here in

McMANUS COURT REPORTERS 808-239-6148

80

1 Hawai'i suggests that on-line purchasing and
2 overnight delivery will continue to grow, and free
3 shipping will reduce the need for many trips to the
4 stores.

5 Radio Shack's failure in Kihei and across
6 the country is just one example of this coming trend.
7 The FEIS seems to be ignoring this trend away from
8 brick-and-mortar stores and the changing retail space
9 needs per resident because of the on-line buying, and
10 is therefore flawed.

11 Fact: Based on current studies many people
12 believe large mega stores will be replaced with
13 distribution centers located out of town. This will
14 likely cause significant underutilized retail space
15 in the future.

16 The project's failure over the long run
17 would blight the community with an underutilized
18 large concrete massive mall --

19 CHAIRPERSON ACZON: Please summarize.

20 THE WITNESS: -- with large parking lots,
21 highly visible from the highway, blocking view
22 planes, disturbing cultural pathways and sites, be
23 environmentally unsound, and has the potential of
24 having a significant negative effect to the
25 community.

McMANUS COURT REPORTERS 808-239-6148

81

1 We request you reject the FEIS because the
2 analysis is insufficient and flawed. Thank you.

3 CHAIRPERSON ACZON: Any questions for the
4 witness?

5 MR. SAKUMOTO: No.

6 MS. APUNA: No.

7

MR. HOPPER: No.

8

MR. PIERCE: No.

9

MR. TABATA: No.

10

CHAIRPERSON ACZON: Commissioners? Thank

11

you.

12

EXECUTIVE DIRECTOR: Mike Foley, followed

13

by Pam -- I'm sorry, I can't make out your

14

handwriting -- from Maui Chamber of Commerce.

15

CHAIRPERSON ACZON: Do you swear that the

16

testimony that you're about to give is the truth?

17

THE WITNESS: I do.

18

CHAIRPERSON ACZON: Please state your name

19

and address for the record.

20

THE WITNESS: Mike Foley, 160 Kionakai

21

Road, Kihei.

22

CHAIRPERSON ACZON: Please proceed.

23

MIKE FOLEY

24

Was called as a public witness, was sworn to tell the

25

truth, was examined and testified as follows:

McMANUS COURT REPORTERS 808-239-6148

82

1

DIRECT EXAMINATION

2

THE WITNESS: My name is Mike Foley. I'm

3

former Planning Director for Maui County, and I have

4 42 years of experience as a land use planner and
5 environmental consultant. I'm testifying today as an
6 individual in opposition to the Land Use Commission's
7 acceptance of the proposed Final EIS.

8 The project description in this EIS is
9 extremely vague and incomplete. The law requires a
10 detailed project description, and this document
11 doesn't have one.

12 The majority of the site is apparently
13 intended for commercial use, but that is really
14 unclear. How much of it is commercial? How much of
15 it is industrial? We don't know.

16 The traffic study inadequately considers
17 other South Maui developments, and is also
18 incomplete. You've already heard testimony
19 previously about the existing vacancies in South Maui
20 in commercial sites, and also the impact, it has not
21 been addressed, regarding the A&B commercial project
22 in Kahului, and the internet retail, which is an
23 obvious growing trend.

24 This proposed project would be urban
25 sprawl. The Final Environmental Impact Statement is

1 incomplete and inaccurate. The project would
2 negatively change the character of Kihei, and that's
3 not adequately addressed. The people of South Maui
4 have never had an opportunity to comment on this
5 proposed project, only on the FEIS before this
6 Commission. And we thank you for that opportunity.

7 The Alternative Section is also incomplete,
8 as you heard previously testified by Linda Berry.
9 There should have been an additional alternative
10 considered where the site would be developed in all
11 residential uses. Thank you.

12 CHAIRPERSON ACZON: Thank you. Any
13 questions?

14 MR. SAKUMOTO: No questions.

15 MS. APUNA: No.

16 MR. HOPPER: No questions.

17 CHAIRPERSON ACZON: Commissioners? Thank
18 you. Next testifier.

19 EXECUTIVE DIRECTOR: Do you swear that the
20 testimony that you're about to give is the truth?

21 THE WITNESS: I do.

22 CHAIRPERSON ACZON: Please state your name
23 and your address for the record.

24 THE WITNESS: My name is Amber Putsis. I'm
25 here to read Pamela Tumpas' testimony on her behalf.

McMANUS COURT REPORTERS 808-239-6148

84

1 Her address 95 Mahalani Street, number 22A, Wailuku,
2 Hawai'i 96793.

3 AMBER PUTSIS

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

6 DIRECT EXAMINATION

7 THE WITNESS: My name is Amber. I'm here
8 to testify or to read Pamela Tumpap's testimony.

9 She is president of the Maui Chamber of
10 Commerce. We are here to support Pi'ilani Project.

11 The Maui Chamber of Commerce supports
12 growth, which promotes the quality of life in Maui
13 County and enhances the attractiveness of Maui as a
14 visitors' destination. It is the Chamber's position
15 that development should occur only in conjunction
16 with appropriate planning processes and be
17 coordinated with the development of adequate physical
18 and social infrastructure.

19 Since its initial proposal, this project
20 has greatly progressed to help support our community.

21 A series of discussions with the community was held
22 which help shaped the current vision. The project
23 now includes multi-family, affordable rental housing,
24 needed light industrial uses, pedestrian and bicycle
25 access paths and a park.

McMANUS COURT REPORTERS 808-239-6148

85

1 It is entitled to be a vibrant regional and
2 sub-regional center providing residential, light
3 industrial, and commercial opportunities for local
4 residents and visitors. It is a project that would
5 create jobs during the development and long after,
6 generate revenue for the county and state, and
7 improve both economies, and provide amenities and
8 infrastructure for the area.

9 It contribute to one of our community's top
10 priorities, desperately needed affordable housing
11 units. A recent statewide study indicates that Maui
12 County will need close to 14,000 new affordable
13 housing units by the year 2025. And the Maui Island
14 Plan indicates there will be a demand for additional
15 34,367 housing units in just Maui through 2030, with
16 9,735 units in Kihei-Makena.

17 Whatever the correct number is, we are
18 woefully behind. However this project will be a
19 tremendous help and start as it will fill roughly two
20 percent of the projected Kihei-Makena demand through
21 2030 with the development of 226 multi-family rental
22 units, with the pricing for these units expected to
23 be affordable for Maui Island residents in a market
24 with very limited supply.

25 Further, at least 25 will 226 units will be

McMANUS COURT REPORTERS 808-239-6148

86

1 rented at an affordable rate determined by the Maui
2 County Department of Housing and Human Concerns.
3 They will be a mix of one and two bedroom units, and
4 are targeted at the full spectrum of workers in the
5 development. So therefore, this project is a key
6 component to meet our affordable housing goals.

7 In support of businesses, this project will
8 help meet regional commercial demand by providing
9 space in South Maui for expanded retail that will
10 help alleviate the need to travel to other locations
11 on the island for shopping.

12 According to an economic study by The
13 Hallstrom Group, all of the quality and competitive

14 spaces along South Kihei Road, or in newer, modern
15 centers, were occupied, and that there is a lack of
16 quality, modern, well-located inventory. The
17 Pi'ilani Promenade project will help satisfy the
18 market demand by providing needed light industrial
19 and commercial uses.

20 It's also important to the Maui Chamber of
21 Commerce that this will --

22 CHAIRPERSON ACZON: Please summarize.

23 THE WITNESS: They will create jobs and
24 deliver well in that area. And for these reasons,
25 along with the physical and social infrastructure

McMANUS COURT REPORTERS 808-239-6148

87

1 this project will create, we stand in support of the
2 Pi'ilani Promenade project.

3 CHAIRPERSON ACZON: Thank you.

4 Any questions?

5 MR. SAKUMOTO: No questions.

6 MR. HOPPER: No.

7 MR. PIERCE: No.

8 CHAIRPERSON ACZON: Vice Chair Scheuer.

9 VICE CHAIR SCHEUER: Good afternoon. I

10 realize you're reading testimony that you may not
11 have played a role in preparing.

12 Do you understand what our proceeding is
13 today?

14 THE WITNESS: It's for the acceptance of
15 the Environmental Impact Statement.

16 VICE CHAIR SCHEUER: So you realize we are
17 not voting for or against the project today? Do you
18 have any testimony related to the acceptability of
19 the FEIS?

20 THE WITNESS: No. Just that we support the
21 acceptance of it.

22 VICE CHAIR SCHEUER: Has the Maui Chamber
23 of Commerce ever opposed development in front of the
24 Land Use Commission?

25 THE WITNESS: Not to my knowledge, but I

McMANUS COURT REPORTERS 808-239-6148

88

1 couldn't say for sure whether or not.

2 CHAIRPERSON ACZON: Anybody else,
3 Commissioners? Thank you. Next.

4 EXECUTIVE DIRECTOR: Robin Knox followed by
5 Basil Oshiro.

6 CHAIRPERSON ACZON: May I swear you in

7 first?

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

10 THE WITNESS: Yes, I do.

11 CHAIRPERSON ACZON: Please state your name
12 and address.

13 THE WITNESS: My name is Robin Knox. I
14 live at 28 Waikalani Place.

15 CHAIRPERSON ACZON: Please proceed.

16 ROBIN KNOX

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: I've been a Kihei resident
21 for 11 years, and for the past six years I've lived
22 just makai of where this project is going to go in
23 off of Kulanihakoi Street.

24 By way of background, I am an environmental
25 scientist with 30 year's experience in Clean Water

McMANUS COURT REPORTERS 808-239-6148

89

1 Act. I was the former coordinator of the Southwest
2 Maui Watershed Plan that looked at this area from a

3 water quality impact. And I'm testifying on behalf
4 of myself, but I do consult with the Kula Makai Aha
5 Moku Council and the Kihei Community Association.

6 And I want to support what the KCA said
7 about not changing the drainage, the natural
8 hydrology, and the things they said about green
9 infrastructure and low impact development.

10 You cannot approve this EIS as it is. It
11 is incomplete and inadequate with regard to impacts
12 to water quality. First off, there is not even a
13 section called "water quality" in the thing. It
14 incorrectly assumes that there is no impact to
15 groundwater quality because there is no on-site
16 sewage disposal. However, it does not discuss the
17 impact of the 114,000 gallons per day that will be
18 sent to the Kihei Wastewater Treatment Plant.

19 After treatment at treatment plant, that
20 wastewater will be injected into the groundwater from
21 where it goes into the ocean. It represents, even
22 after treatment, 6.6 pounds per day of total nitrogen
23 and similar poundage of other pollutants that adds up
24 to over 2400 pounds per year, over a ton per year of
25 nitrogen. And as I will discuss further, these

1 waters are already impaired with respect to nitrogen.

2 The EIS does not estimate or quantify
3 pollutant loads, not only from sewage, but doesn't
4 look at stormwater infiltration or irrigation with R1
5 water, and how that will contaminate groundwater.

6 Even further, the Marine Water Quality
7 Report in Appendix J is flawed because it states that
8 the only potential effects to the ocean come from
9 groundwater, from the basal groundwater moving into
10 the ocean, and it does not address stormwater
11 discharges, or the fact that a stream carrying
12 stormwater discharges flows into those ocean
13 segments.

14 It assumes that in meeting the county
15 minimum stormwater standards, that water quality will
16 be protected. This is flawed because it does not
17 consider what happens in storms greater than the
18 design 50-year one-hour storm.

19 I've lived there for six years and once
20 about every 12 to 18 months in that time, there has
21 been major flash flood carries literally tons of
22 sediments down into the ocean.

23 The areas where this project is supposed to

24 be built are areas that were contemplated for
25 ecological restoration in the Southwest Maui

McMANUS COURT REPORTERS 808-239-6148

91

1 Watershed Plan.

2 CHAIRPERSON ACZON: Please summarize.

3 THE WITNESS: The EIS completely mentions
4 that the receiving waters are impaired and have been
5 reported to congress by DOH for not meeting nitrogen
6 standards and turbidity standards.

7 Repeatedly the Applicant says they
8 understand what the DOH is telling them that the
9 project cannot cause or contribute to the exceedance
10 of the standards, yet the EIS fails to offer a plan
11 for mitigation of discharge of tons of sediment and
12 nitrogen compounds into the ocean.

13 CHAIRPERSON ACZON: Any questions?

14 MR. SAKUMOTO: No.

15 MS. APUNA: No.

16 MR. HOPPER: No.

17 MR. PIERCE: No.

18 CHAIRPERSON ACZON: Commissioners?

19 EXECUTIVE DIRECTOR: Basil Oshiro followed

20 LUC 7-19-17 Kauai and Maui
by Ron Vaught.

21 CHAIRPERSON ACZON: May I swear you in
22 first?

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

25 THE WITNESS: I do.

McMANUS COURT REPORTERS 808-239-6148

92

1 CHAIRPERSON ACZON: Please state your name
2 and address for the record.

3 THE WITNESS: Basil Oshiro, 505 Nanakai
4 Street, Kihei.

5 CHAIRPERSON ACZON: Please proceed.

6 BASIL OSHIRO

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

9 DIRECT EXAMINATION

10 THE WITNESS: Aloha, Commissioners and all
11 in attendance. My name is Basil Oshiro, Kula Makai
12 Aha Moku representative.

13 We agree that this Final EIS is not
14 complete for the following reasons.

15 New sites that we have found is more
16 unlikely not recorded, for one, or being ignored,

17 which is just my opinion on the ignored part.

18 Some sites that are the means for the
19 military use, the cultural trails for ease of moving
20 mauka to makai in the area.

21 The plan alters drainage, grading plan will
22 damage this cultural sites in the construction area.
23 The Ka'ono'ulu Gulch, which we call it Ka'u Gulch --
24 they use a different name on some places -- is a
25 natural drainage for the area, and there are cultural

McMANUS COURT REPORTERS 808-239-6148

93

1 sites inside of this drainage gulch or area.

2 Altering this drainage, the natural
3 drainage of the area, will and can affect our -- will
4 and can affect makai, and protecting our wetlands is
5 part of our culture. And in this Kulanihako'i
6 muliwai and the Kalepolepo Fishpond is part of this
7 affects that will come if this Final EIS should pass.

8 It's also affecting our fishery that
9 practice for generations and decades for me.

10 And this EIS that we're having now, the
11 Final does not address what can happen makai of the
12 construction area. We want, through this, is to

13 LUC 7-19-17 Kauai and Maui
14 protect our wetlands, the muliwai.

15 And I move on with, as noted previous
16 written testimonies, the projected construction site
17 has many cultural sites, and we have not yet have
18 found, and when the grading and grubbing --

19 CHAIRPERSON ACZON: Please summarize.

20 THE WITNESS: Does come up, then we will
21 find artifacts from precontact which has already been
22 found.

23 The culture protocol of this whole EIS,
24 Final EIS has not been followed. The protocol has
25 not been followed.

CHAIRPERSON ACZON: Thank you.

McMANUS COURT REPORTERS 808-239-6148

94

1 THE WITNESS: We suggest all sites
2 preserved for education of our future generation and
3 for visitors alike.

4 CHAIRPERSON ACZON: Thank you. Any
5 questions?

6 MR. SAKUMOTO: No questions.

7 MS. APUNA: No.

8 MR. HOPPER: No.

9 CHAIRPERSON ACZON: Commissioners? Vice

10 Chair Scheuer.

11 VICE CHAIR SCHEUER: Mr. Oshiro, kala mai.
12 Just to clarify your testimony. You say that there
13 is traditional fishing resources makai of the site
14 that could be affected by development of the site?

15 THE WITNESS: Yes.

16 VICE CHAIR SCHEUER: That you're familiar
17 with as a practitioner?

18 THE WITNESS: Yes. Right now I'm a
19 president of the Maui Cooperative Fishing
20 Association. I'm a member Aha Moku Maui, Inc., as
21 board member. So I'm actually a fisherman. And I
22 got tied up, and my forte is fishing, but what
23 happens mauka will affect makai.

24 VICE CHAIR SCHEUER: Have you fished in the
25 area makai of this development?

McMANUS COURT REPORTERS 808-239-6148

95

1 THE WITNESS: Yes, for many years, even
2 before I lived in Kihei. My actual growing up is in
3 Paia. But growing up as a fisherman, I used the
4 whole island wherever I could access.

5 VICE CHAIR SCHEUER: Did the consultants

LUC 7-19-17 Kauai and Maui
6 for this project contact you to discuss fishing
7 resources in the area?

8 THE WITNESS: No.

9 VICE CHAIR SCHEUER: Thank you very much.

10 CHAIRPERSON ACZON: Any others?

11 Commissioner Chang.

12 COMMISSIONER CHANG: Aloha, just a few
13 questions to follow up on Commissioner Scheuer's
14 questions.

15 One, you talked about that many of the
16 military sites that they have documented. Have you
17 read the Cultural Impact Assessment and
18 Archaeological Inventory Survey?

19 THE WITNESS: That's the thing. When I
20 requested the latest on the Final of this thing, I
21 didn't get it. So from what we went on the site
22 visits, and what was written in the previous
23 testimonies, many of the sites were military.

24 But our belief is the military used the
25 cultural trails, so to make it easy for them, because

McMANUS COURT REPORTERS 808-239-6148

96

1 there's always something up there that shows, or you
2 can actually see the paths.

3 Maybe now it's all overgrown, but back in
4 the war zone -- not war zone, but the war time, there
5 were paths that could be seen.

6 COMMISSIONER CHANG: I want to follow up on
7 the paths. Are you aware of any mauka-makai trails
8 that go above this project site and below the project
9 site?

10 THE WITNESS: I haven't actually gone
11 on-site visits, because we have to get permission to
12 get up into the private lands, and I've been denied a
13 few times to actually walk the land. So I cannot
14 verify actually, but I can see from what I walk on
15 the site visits where we did have access. I can read
16 the land, how the water flows; how the trails
17 probably were there. But I cannot actually go up and
18 go investigate on it.

19 COMMISSIONER CHANG: Let me ask you also
20 about -- did they meet with the Aha Moku Council, do
21 you know?

22 THE WITNESS: No.

23 COMMISSIONER CHANG: Their Cultural Impact
24 Assessment concludes that there are no traditional
25 customary practices that exist on that project site.

1 Would you agree or disagree?

2 THE WITNESS: I disagree to that. I have
3 that, but I had to cut it short.

4 When you do cultural practices, it's not
5 advertised. It's just done. The practitioners would
6 gather maybe two or three, maybe five people at the
7 most, which we have done, and done the practice.

8 So there is cultural practice going on
9 without anybody else knowing except the people that
10 do it.

11 COMMISSIONER CHANG: You say that you're
12 familiar with the fishing area makai of this project
13 site. What kind of fishing do you guys do over
14 there?

15 THE WITNESS: We usually like we go dunking
16 for ulua, muliwai. And we do a lot of whipping along
17 the shoreline over there. So it's pretty much from
18 Ma'alaea to Makena where we can get to. So the
19 fishing area is vast.

20 COMMISSIONER CHANG: You talked about a
21 natural gulch in this property.

22 THE WITNESS: Yeah. And it's not a very

23 big gulch when it comes down to the area, just maybe
24 about ten, maybe 12-foot deep. And we've noted there
25 is like a dam or waterfall over there. So I have

McMANUS COURT REPORTERS 808-239-6148

98

1 looked mauka of that dam, and I see a punawai, a
2 reservoir there that was natural, and it's filled in
3 with soil or debris, mostly dirt right now.

4 COMMISSIONER CHANG: Do you know if there
5 are mo'olelos above this place, stories of this place
6 long time ago that talks about this area, what it was
7 used for?

8 THE WITNESS: Okay. There's testimony on
9 this too, and that was part of what I was going to
10 talk about too, but not enough time.

11 So my other comment was, is not -- EIS not
12 complete because whoever was doing the interviews --
13 I'm not going to mention names on that one -- they
14 didn't actually find the kupuna. They talked to me.
15 They talked to my wife, and two other people. But I
16 don't really consider myself kupuna, because I don't
17 really have the generational knowledge of the area.

18 COMMISSIONER CHANG: But you are aware that
19 there are kupuna from that area, and they were not

20 spoken to that you know of?

21 THE WITNESS: I have two people that
22 actually are, I consider kupuna and lineals to the
23 area.

24 COMMISSIONER CHANG: Thank you so much,
25 Basil. I appreciate your testimony.

McMANUS COURT REPORTERS 808-239-6148

99

1 CHAIRPERSON ACZON: Thank you, Mr. Oshiro.

2 We will take Mr. Vaught's testimony and
3 take a short recess after that.

4 Do you swear that the testimony that you're
5 about to give is the truth?

6 THE WITNESS: It is.

7 CHAIRPERSON ACZON: Thank you. Please
8 state your name and address for the record.

9 THE WITNESS: My names Ronald Vaught. I
10 live at 170 Ohukai Road, Kihei. I've been there for
11 46 years.

12 CHAIRPERSON ACZON: Please proceed.

13 RONALD VAUGHT

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

LUC 7-19-17 Kauai and Maui
DIRECT EXAMINATION

16

17

18

19

20

21

22

23

24

25

THE WITNESS: Incidentally, I discovered that Ohukai Road was a gulch. If it were not filled in, I wouldn't living there. But my wife is as close to pure Hawaiian as you can find. She teaches culture. She teaches Hawaiian history at the grade level in the schools. That's not what I'm here to talk about, but I do speak on her behalf.

I've lived on Maui for 60 years. I've been on Ohukai since 1971, which is 46 years. I've been

McMANUS COURT REPORTERS 808-239-6148

100

1

2

3

4

5

6

7

8

9

10

11

12

on Maui since there was nothing after Azeka Store until Makena was developed. It was Azeka Store Meat Market and Gas Station, and there were some 40,000 people living on Maui at that time.

I spent much of my time building and managing radio stations. Working in radio gave me a lot of time and purpose for which I put into South Maui. I was president of the Kihei Elementary School PTA, and I'm only giving you my history so that you know who I am.

When I saw the Pi'ilani Highway was set to be built below the school, I was able to influence

13 the state to realign the school so that the
14 subdivisions beneath school would not -- the children
15 wouldn't have to cross over the highway to get to
16 school.

17 And it's amazing what a little influence
18 being on radio can do when you talk to the state
19 engineers.

20 Around 1973 the county brought a 36-inch
21 water main from Wailuku to Wailea and Makena, and
22 that's where we get our water. I haven't used
23 groundwater for a long time.

24 But then came the hotels. With the hotels
25 8000 jobs. 8000 rooms, 8000 jobs, and no homes were

McMANUS COURT REPORTERS 808-239-6148

101

1 built. No homes were built on behalf of the hotel
2 employees. If you put two shifts into those hotel
3 rooms, you've got 16,000 people traversing from
4 Makena or Wailea to come out of there and go home
5 somewhere in Kahului or some other area.

6 Truth be told, the project that is the
7 Pi'ilani project was submitted before, and it was
8 not -- it had some affordable houses attached to it,

9 but it was turned down, and rightfully so, because
10 they had a bridge -- the plan, the plan was changed,
11 and they had increased the commercial part of it, and
12 they had increased a lot of other things.

13 I see in this plan the building of homes.
14 The building, at least it's a start to help some of
15 those people.

16 CHAIRPERSON ACZON: Please summarize your
17 testimony.

18 THE WITNESS: Summarize, yes.

19 I see they're going to bring in excellent
20 selection of businesses. I have read the EIS. I
21 didn't read all 4,000 pages, but I read the EIS, and
22 I can strongly believe that it is going to protect me
23 and my neighbors. My neighbors are down Ohukai Road
24 from this project.

25 And so I believe it needs to be approved

McMANUS COURT REPORTERS 808-239-6148

102

1 before we can start building houses.

2 CHAIRPERSON ACZON: Thank you.

3 Any questions?

4 MR. SAKUMOTO: No questions.

5 MS. APUNA: No.

6 MR. HOPPER: No.

7 CHAIRPERSON ACZON: Commissioners?

8 Commissioner Estes.

9 COMMISSIONER ESTES: I don't have a
10 question. I'm just wondering, I'm concerned about
11 all the people have to stand up. Is there any way to
12 get some more chairs in here?

13 CHAIRPERSON ACZON: We'll take a
14 five-minute recess.

15 (Recess taken.)

16 CHAIRPERSON ACZON: We're back on the
17 record.

18 EXECUTIVE DIRECTOR: Next witness Vernon
19 Kalanikau followed by Chantal Lonergan.

20 CHAIRPERSON ACZON: May I swear you in
21 first?

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

24 THE WITNESS: Yeah, yeah, yes, I do.

25 CHAIRPERSON ACZON: Please state your name

McMANUS COURT REPORTERS 808-239-6148

103

1 and address for the record.

LUC 7-19-17 Kauai and Maui

2 THE WITNESS: My name is Vernon Kalanikau.

3 I'm from 426 Kenolia Road in Kihei. I've been in
4 this area since 1965.

5 CHAIRPERSON ACZON: Please proceed.

6 VERNON KALANIKAU

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

9 DIRECT EXAMINATION

10 THE WITNESS: I watch this area go from no
11 flood to more flood nowadays. So talking about the
12 EIS, I here to tell you guys do not accept it at this
13 moment. Give the community more opportunity to feed
14 on that, add to that.

15 The EIS, it's very vague. It needs more
16 work. I just saw some documents today about --

17 VICE CHAIR SCHEUER: Kala mai, just one.
18 Can we have someone ask the people in the hallway to
19 be quiet, because I want to be able to hear. Mahalo.

20 THE WITNESS: I only need one break because
21 I'm hungry.

22 So, again, I from the area since '65.
23 Watched this place just get runned over through the
24 years. Looking at the EIS, no way. I mean I'm from
25 the area. We have an ohana over here. We got to

1 recognize them, Hewahewa, that's their kuleana lands.

2 They get the history. We got to listen to them.

3 They got the history.

4 I raised up right across the street from
5 this mall or Promenade. We recently had that big
6 flood, I think March 7. Then we had another one a
7 month later. I recorded that. I never bring my
8 flash drive. I don't know the process, so I would
9 like to give you guys that flash drive of what ten
10 minutes of rain will do above this project and not
11 rain in Kihei. And it flooded. It teared up South
12 Kihei Road all makai.

13 So my concern would be coming from surface
14 water, water quality to Kulanihakoi to the muliwai
15 and to the ocean, our reefs. All in that area
16 everybody should know already our reefs are dead.
17 Our homes are all tumored out. The 'opae is gone.
18 The o'opu is gone. And I trying to figure out how
19 going to reestablish that, but if going have one
20 project mauka of this moku, ahupua'a, we got to do
21 better on the cultural side and the environmental
22 side.

23 I mean for me, I willing to work with these
24 guys. This whole thing should be about they got to
25 work with us, the people of the area, and the

McMANUS COURT REPORTERS 808-239-6148

105

1 community, especially the ones with generational
2 knowledge.

3 Now I'm going to talk about the pohakus,
4 sacred sites in this area. A lot of the area up
5 there get astrological pohakus, cannot be removed,
6 they going to remove them, whatever. But everything
7 is activated now only because of what is going on in
8 this project right now. Families are coming home.
9 They want to reconnect. They want to practice their
10 traditional rights. I'm included in that.

11 My dad through the '60s, the '70s, up until
12 '84 we did our practices makai in the muliwai near
13 the fishpond. And back in those days had 'opae, had
14 limu ele'ele, had o'opu, had aholehole.

15 CHAIRPERSON ACZON: Please summarize.

16 THE WITNESS: So I just hear that no accept
17 the EIS. We got to be, people of the area, the
18 families got to be included in the conversation more

19 LUC 7-19-17 Kauai and Maui
right now. Mahalo.

20 CHAIRPERSON ACZON: Any question for the
21 testifier?

22 MR. SAKUMOTO: No questions.

23 MS. APUNA: No questions.

24 MR. HOPPER: No questions.

25 CHAIRPERSON ACZON: Commissioners? Thank

McMANUS COURT REPORTERS 808-239-6148

106

1 you.

2 COMMISSIONER CHANG: I have a question.

3 You said that there are families from the area that
4 have ancestral ties.

5 THE WITNESS: Yeah, one is I think going to
6 testify today Hewahewa.

7 COMMISSIONER CHANG: Do you know whether
8 they were contacted for the Cultural Impact
9 Assessment?

10 THE WITNESS: No, just for me, I don't
11 think so. I was in this mix for what, about four or
12 five months now. I been there longer than anybody
13 else.

14 And like I said, I watch this place go from
15 nothing to what it is today, that fast. So we got

16 issues, flooding.

17 CHAIRPERSON ACZON: Commissioner, she's
18 going to be testifying.

19 COMMISSIONER CHANG: Thank you very much.

20 CHAIRPERSON ACZON: Mahalo.

21 Next testifier.

22 EXECUTIVE DIRECTOR: Next testifier Chantal
23 Lonergan followed by Tom Cook.

24 CHAIRPERSON ACZON: Do you swear the
25 testimony you're about to give is the truth?

McMANUS COURT REPORTERS 808-239-6148

107

1 THE WITNESS: Yes.

2 CHAIRPERSON ACZON: Please state your name
3 and address for the record.

4 THE WITNESS: My name is Chantal Lonergan.
5 And the address is 95 Mahalana Street.

6 CHANTAL LONERGAN

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

9 DIRECT EXAMINATION

10 THE WITNESS: Thank you, Mr. Chair, Members
11 of the Commission. Thank you for hearing testimony

12 today.

13 My name is Chantal Dugied Lonergan, a
14 37-year resident of Maui County speaking on behalf of
15 the construction industry of Maui representing over
16 1,530 working class citizens.

17 Our mission statement is to unify the
18 building community through active advocacy,
19 communication and education to sustain growth through
20 best practices. We are engaged with holding our
21 members to a high standard for the betterment of our
22 community.

23 When clear requirements are communicated,
24 quality projects can be developed to meet our
25 community expectations and make an overall positive

McMANUS COURT REPORTERS 808-239-6148

108

1 impact on the quality of our life.

2 We are here today because the project
3 Environmental Impact Statement has been prepared and
4 submitted for processing and acceptance by you, the
5 State Land Use Commission.

6 We respect and advocate for the process,
7 and applaud participants who have engaged with the
8 community to develop visionary planning for

9 generations. We ask you to listen specifically to
10 the experts who have reviewed the completed document.

11 We understand the project originally
12 accepted back in 1994 has evolved in response to both
13 community input and economic conditions. On behalf
14 of the over 1530 working class Maui residents, and in
15 order to have an opportunity to continue discussing
16 changes to the project during the Motion to Amend
17 within the confines of this Environmental Impact
18 study which was developed under the purview of
19 Hawai'i Revised Statutes, Chapter 343, I ask that you
20 accept the EIS as submitted for processing.

21 Further, in an effort to save time, may I
22 ask everyone in the room who is not represented, I
23 know many of them have left already, but if they are
24 not testifying today, and they are in support of
25 accepting the EIS, may they please raise their hand.

McMANUS COURT REPORTERS 808-239-6148

109

1 So these are in addition to the 1530
2 members of our community that I represent. Thank
3 you.

4 CHAIRPERSON ACZON: Any questions?

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1

MR. SAKUMOTO: No.

MS. APUNA: No questions.

MR. HOPPER: No questions.

CHAIRPERSON ACZON: Thank you. Next
testifier.

EXECUTIVE DIRECTOR: Next testifier Tom
Cook, followed by Michelle Del Rosario.

CHAIRPERSON ACZON: Do you swear that the
testimony that you're about to give is the truth?

THE WITNESS: I do, sir.

CHAIRPERSON ACZON: Thank you. Please
state your name and address for the record.

THE WITNESS: Tom Cook. My address is 18
Pohalani Place in Kihei.

TOM COOK

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

DIRECT EXAMINATION

THE WITNESS: I've lived in Kihei for the
last ten years. I used to live Upcountry Kapakalua
for 35 years where I sold my family property to my

McMANUS COURT REPORTERS 808-239-6148

son.

2 I'm a general contractor. I have no
3 affiliation with this project whatsoever. But over
4 50 projects 21 of which were in Hawaiian Homes in
5 Waiohule, very steep properties. I'm addressing the
6 requirements that the county and the state hold the
7 building industry to for the BMPs for erosion
8 control, and the archaeological monitoring for
9 archaeological preservation.

10 I think lay people don't understand the
11 extent that we are held to, and the high standards.
12 There are many examples of failures of this over the
13 years. Back in Maalaea Triangle was the worst one,
14 that's when the BMPs really became serious and people
15 started taking note.

16 So anyway, I live in Kihei. My wife and I
17 and my teenage daughter, who just got her license,
18 I'm supportive of this concept of this project. I'm
19 hoping you accept this EIS so we can have further
20 discussion about it.

21 I won't be driving to Kahului as often
22 because of this project. The Upcountry highway that
23 the State Department of Transportation is coming
24 through this property, so I think that -- I tried to
25 read the EIS and I couldn't stay awake.

1 So thank you for the opportunity. I am
2 supportive of this. I understand this is not the
3 approval, correct?

4 CHAIRPERSON ACZON: That's correct.

5 THE WITNESS: This is simply acceptance of
6 the EIS, and that we will have more opportunities to
7 comment on the project in its review; is that
8 correct?

9 CHAIRPERSON ACZON: That's correct.

10 THE WITNESS: Thank you Commissioners for
11 the opportunity.

12 CHAIRPERSON ACZON: Thank you. Questions?

13 MR. SAKUMOTO: No questions.

14 CHAIRPERSON ACZON: Commissioners? Next
15 testifier.

16 EXECUTIVE DIRECTOR: Next Michelle Del
17 Rosario followed by Mark Hyde.

18 CHAIRPERSON ACZON: May I swear you in?

19 Do you swear that the testimony that you're
20 about to give is the truth?

21 THE WITNESS: Yes.

22 LUC 7-19-17 Kauai and Maui
CHAIRPERSON ACZON: Thank you. Please
23 state your name and address for the record.

24 THE WITNESS: My name is Michelle Del
25 Rosario. My address is 19 Kuanene Parkway, Makawao,
McMANUS COURT REPORTERS 808-239-6148

112

1 Hawai'i 96768.

2 CHAIRPERSON ACZON: Please proceed.

3 MICHELLE DEL ROSARIO

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

6 DIRECT EXAMINATION

7 THE WITNESS: I am the executive assistant
8 to Councilmember Kelly King who is here and will be
9 testifying later today.

10 We are in opposition of your acceptance of
11 the Final EIS. This project is not consistent with
12 the Community Plan, and we would like to see the
13 project come before the County Council Planning
14 Committee for a Community Plan Amendment.

15 As far as the impact statement itself, and
16 to speak to that. There's going to be a large
17 traffic impact in Kihei over the next couple of
18 years. We have Alexander & Baldwin with a large

19 residential community being built now in North Kihei,
20 as well as this project is not consistent with the
21 community's desire and supported by the Kihei
22 Community Association for a Kihei Town Center
23 project.

24 We already have ingress and egress issues
25 at the entrance to Hale Pi'ilani residential

McMANUS COURT REPORTERS 808-239-6148

113

1 subdivision, as well as the new Alexander & Baldwin
2 project. I know of at least one death where a young
3 adult was killed in that area in North Kihei trying
4 to cross the highway.

5 I feel if you put a project like this on
6 that side of the highway you're going to have young
7 people trying to go to the stores and the vendors
8 there, and possibly incur additional injuries or
9 death as well as the massive impact of traffic.

10 Also have a lot of drainage issues in the
11 area. One of the top issues that we get calls to our
12 office is regarding flooding. So I know if it is
13 raining Upcountry, even if it's not in Kihei, my
14 phone is going to be running off the hook.

15 So flooding and the flooding plan that is
16 in process right now are major issues in the Maui
17 community.

18 So I'm asking you to vote against the
19 acceptance of this Final Environmental Impact
20 Statement.

21 CHAIRPERSON ACZON: Thank you. Any
22 questions?

23 MR. SAKUMOTO: No questions.

24 MS. APUNA: No.

25 MR. HOPPER: No.

McMANUS COURT REPORTERS 808-239-6148

114

1 MR. PIERCE: No questions.

2 CHAIRPERSON ACZON: Commissioners? Thank
3 you.

4 COMMISSIONER CABRAL: I have a couple.

5 I've heard a couple of references to the
6 other housing project that reference Alexander &
7 Baldwin. Can you tell me how many units are planned
8 for that development and what their economic price
9 point is that they will be developing and selling
10 those units at?

11 THE WITNESS: Some of the units are already

12 under vertical construction, a couple hundred units.
13 I don't know the exact count. There are condos and
14 townhome units being built there. And they have both
15 workforce affordable housing and market priced units.

16 COMMISSIONER CABRAL: Thank you.

17 CHAIRPERSON ACZON: Next.

18 EXECUTIVE DIRECTOR: Mark Hyde followed by
19 Gene Zarro.

20 MR. PIERCE: Mr. Chair, because of the
21 Chair's order that we will be permitted to give
22 testimony, Mark Hyde is the representative for South
23 Intervenor South Maui Citizens for Responsible
24 Growth, so he will waive his time now for the
25 opportunity to give his testimony later.

McMANUS COURT REPORTERS 808-239-6148

115

1 CHAIRPERSON ACZON: Thank you. Next.

2 EXECUTIVE DIRECTOR: Gene Zarro followed by
3 Cody Nemet Tuivaiti.

4 CHAIRPERSON ACZON: May I swear you in
5 first?

6 Do you swear that the testimony that you're
7 about to give is the truth?

8 THE WITNESS: Yes.

9 CHAIRPERSON ACZON: Please state your name
10 and address for the record.

11 THE WITNESS: My name is Gene Zarro. I
12 live at 22 Ulanui Place in Pukalani. I actually
13 sleep there, I pretty much live in Kihei.

14 CHAIRPERSON ACZON: Please proceed.

15 GENE ZARRO

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

18 DIRECT EXAMINATION

19 THE WITNESS: I'm here testifying for
20 myself personally, as well as one of the founders of
21 Kihei Charter School. That young person that died
22 from the previous testifier was one of our students.
23 So we miss Sterling.

24 So what I would like to say is first of
25 all, I realize that this is just an acceptance

McMANUS COURT REPORTERS 808-239-6148

116

1 process for the FEIS, and with that said, I am in
2 strong support of this going forward, approving the
3 FEIS statement.

4 I think it's a necessary next step so that

5 we can do things to alleviate some of the pressures
6 on the community in South Maui.

7 I would like to put my KCS hat on and I
8 would like to speak to the workforce housing issues.
9 We lose teachers every year because they cannot
10 afford to live and work in Hawai'i. Whether you know
11 this or not, Hawai'i has the lowest paid teachers in
12 the country. When you combine that with the highest
13 cost of living in the country, it is nearly
14 impossible for anyone to hold down a new employee
15 unless they have family or someone they can live
16 with.

17 An example is that a new teacher in our
18 school will pay upwards of \$800 plus, plus, plus to
19 rent a bedroom in Kihei. And this has to be
20 alleviated. We need to stop the revolving door at
21 the Kahului Airport for these people that want to
22 come and want to help us.

23 If we have an educational system in Hawai'i
24 that needs improvement, it's not going to be improved
25 by these new teachers that wish to come here but

1 can't afford to stay here. The ones that can pay 800
2 a month just for a bedroom are the lucky ones. The
3 ones that have to live in Haiku and Kula, those are
4 beautiful communities, but not when you have to
5 commute 45 minutes to get to work and back.

6 So with that said, I am again in strong
7 favor of approving this. It is a necessary next step
8 to alleviating some of the pressures in South Maui.
9 Thank you.

10 CHAIRPERSON ACZON: Any questions?

11 MR. SAKUMOTO: No questions.

12 MS. APUNA: No.

13 MR. HOPPER: No.

14 CHAIRPERSON ACZON: Thank you. Next.

15 EXECUTIVE DIRECTOR: Cody Tuivaiti.

16 CHAIRPERSON ACZON: May I swear you in
17 first?

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

20 THE WITNESS: Yes.

21 CHAIRPERSON ACZON: Please state your name
22 and address for the record.

23 THE WITNESS: My name is Cody Tuivaiti. My
24 address is 58 East Welakahao.

25 LUC 7-19-17 Kauai and Maui
CHAIRPERSON ACZON: Please proceed.

McMANUS COURT REPORTERS 808-239-6148

118

1 CODY TUIVAITI

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

4 DIRECT EXAMINATION

5 THE WITNESS: Aloha mai kakou. My name is
6 Cody Tuivaiti and I'm here on behalf of the Kula Kai
7 Aha Moku Council.

8 Mahalo for taking the time to hear us out.
9 I've been in Kula Kai-Kihei my whole life. And I am
10 hanai to the Kino Ohana of Honua'ula. I'm here in
11 opposition to the Final EIS submitted to you, and ask
12 that it be dismissed today.

13 I was there on the sidewalk with the LUC,
14 even though it lasted for only 15 minutes. The EIS
15 presented feels incomplete and force fed. There are a
16 few issues that I'm deeply concerned with.

17 First and foremost, is the environmental
18 impacts it will have makai of the project. The
19 planning done in the presented EIS fails to
20 acknowledge the true extent of our flood problems,
21 reef damage, and what a massive culvert system will

22 do to amplify it.

23 By focusing all the flow into one area, it
24 will severely damage our coastline. Our natural
25 river has pockets of tunnel systems that run our

McMANUS COURT REPORTERS 808-239-6148

119

1 muliwai water beneath the soil. This is the natural
2 way our aina feeds the reef. These culverts will
3 literally steal water from our muliwai, concentrating
4 it into a funnel, creating an impact on our ocean
5 that will be irreversible.

6 We've already seen it before with areas
7 like Kohoma River where the reef is wiped out from
8 the take of nutrients from the soil and creating a
9 massive top layer of flood flow.

10 Another issue close to my heart is the
11 cultural and historical impact. Kula Kai, or Kihei
12 as much as many call it, has lost so much through the
13 years. Said to be the fastest growing city in the
14 nation at one time. The cultural historical aspect
15 of Kula Kai has been lost in concrete.

16 While most generations have seen the rise
17 of Westernization, the new generations are learning

LUC 7-19-17 Kauai and Maui
18 connection to the rise of their history, culture and
19 practice.

20 Although mostly everything south of
21 Pi'ilani Highway has been developed, we still have
22 untouched areas mauka of the highway. I see these
23 areas as future platforms for generations.

24 The EIS claims there are to have no
25 cultural significance in these areas with no cultural

McMANUS COURT REPORTERS 808-239-6148

120

1 practice being done. I strongly disagree because
2 I've been up there personally with some kupuna and
3 seen the sites for myself.

4 Also have to say that this is western
5 thinking at its best. I mean, who are they to say
6 there would never be cultural practice with the rise
7 of our lahui. Who are they to say that there are no
8 cultural sites? When I have the chance to question
9 them, they claim to have talked to a few kupuna about
10 the area based on their own research --

11 CHAIRPERSON ACZON: Please summarize.

12 THE WITNESS: -- but who are they to say
13 what kupuna is best for knowing the area?

14 When I get in hold of our kupuna that could

15 offer true expertise by the deadline, doesn't mean
16 it's complete, it means it's incomplete.

17 So while this may provide jobs, the biggest
18 provider is the aina. When the money runs out and
19 the employers move on, who will be left for
20 generations but the aina?

21 CHAIRPERSON ACZON: Thank you.

22 Any questions? Commissioner Chang.

23 COMMISSIONER CHANG: Mahalo for your
24 testimony. I wanted to just ask you a few follow-up
25 questions.

McMANUS COURT REPORTERS 808-239-6148

121

1 Were you contacted for the Cultural Impact
2 Assessment.

3 THE WITNESS: No.

4 COMMISSIONER CHANG: Do you know of -- and
5 you said that you are aware of kupuna from the area
6 that have ancestral ties to this area?

7 THE WITNESS: I'm aware of some.

8 COMMISSIONER CHANG: Do you know whether
9 they were contacted?

10 THE WITNESS: No.

11 COMMISSIONER CHANG: You talked about
12 resources that are mauka of the highway. Do those
13 resources -- do you know whether those resources
14 include like a trail system that may have gone from
15 mauka to makai?

16 THE WITNESS: I have witnessed trails with
17 obvious rock structures.

18 COMMISSIONER CHANG: What kind of fish --
19 are you a fisherman?

20 THE WITNESS: Not seasoned fisherman, no.

21 COMMISSIONER CHANG: You talked about
22 impacts on the nearshore, the muliwai. What kind of
23 resources have you seen have been impacted or may be
24 impacted?

25 THE WITNESS: Well, from growing up there

McMANUS COURT REPORTERS 808-239-6148

122

1 from young, there should be a lot of limu over there
2 and a lot of awa, but nonexistent to these days.

3 COMMISSIONER CHANG: The cultural impact
4 assessment concluded that there would be -- there are
5 no traditional customary practices in this area.

6 And is it your testimony, you said you
7 disagree with that conclusion?

8 THE WITNESS: Yeah, I disagree. The whole
9 area from mauka to makai was an area for land
10 navigation from what I was taught. So a lot of
11 reading of the stars, of the moon, things like that.

12 COMMISSIONER CHANG: Thank you very much
13 for your testimony.

14 CHAIRPERSON ACZON: Commissioner Okuda.

15 COMMISSIONER OKUDA: Thank you.

16 When you said that there were obvious rock
17 structures, can you explain what you mean by that?

18 THE WITNESS: Well, when I was up there, I
19 seen a line of rocks on both sides, you know, which
20 at first maybe looks like it could be knocked in, but
21 as you kind of follow the trail of the rocks, it kind
22 of goes for like long distances.

23 COMMISSIONER OKUDA: Have you noticed or
24 seen any other type of structures that you believe --
25 or other evidence of historical items or evidence

McMANUS COURT REPORTERS 808-239-6148

123

1 which should be followed up on?

2 THE WITNESS: Definitely.

3 COMMISSIONER OKUDA: Can you briefly give

4 us description or tell us what else you've observed?

5 THE WITNESS: Without going into too much
6 detail, and just from what I got from the area from
7 who we were at the time, the rocks were need ed --
8 were celestial rocks. Movement of those rocks would
9 conflict in the purpose of those rocks.

10 So like I was saying earlier, from mauka to
11 makai this is open area on that slope, and it was
12 used for navigational purposes. So these rocks
13 pointed in certain directions. I mean this is
14 just -- not saying that that's -- I'm no kupuna. But
15 this is the information that I've gathered.

16 COMMISSIONER OKUDA: And final question.
17 And I don't mean to pry, but you understand that we
18 kind of function in a quasi-judicial setting, so we
19 have to look at evidence even though that evidence
20 might be rather intrusive.

21 But can you tell us briefly how you know
22 this? Is this training, or education you received
23 from your ancestors?

24 THE WITNESS: I'm learning. Just learning
25 through kumu.

1 COMMISSIONER OKUDA: Okay, thank you.

2 CHAIRPERSON ACZON: Anybody else? Thank
3 you. Next.

4 EXECUTIVE DIRECTOR: Next witness is Donnie
5 Becker followed by Jay Krigsman.

6 VICE CHAIR SCHEUER: For the benefit of the
7 audience, as well as the Commissioners, can we hear
8 how many people have signed up to testify and what
9 number we're on?

10 CHAIRPERSON ACZON: We did 12 in one hour.

11 COMMISSIONER ESTES: We're on number 19.

12 COMMISSIONER CABRAL: I have 20.

13 CHAIRPERSON ACZON: Another 15.

14 May I swear you in first?

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

17 THE WITNESS: Yes, I do, Your Honor.

18 CHAIRPERSON ACZON: You had to think about
19 that. (Laughter.)

20 Please state your name and address for the
21 record.

22 THE WITNESS: Donnie Becker and I live at
23 270 Ahana, Kihei 96753.

24 CHAIRPERSON ACZON: Please proceed.

25

-o0o-

McMANUS COURT REPORTERS 808-239-6148

125

1

DONNIE BECKER

2

Was called as a public witness, was sworn to tell the

3

truth, was examined and testified as follows:

4

DIRECT EXAMINATION

5

THE WITNESS: I've lived in Kihei. I've

6

been coming here since 1975. I was stationed at

7

Schofield Barracks on Oahu, so I've seen Maui

8

changing from 1975 until now.

9

From what I've listened to with all the

10

testimony going on today is that the expression is

11

"rush the judgment" but I don't like to use the word

12

"judgment", but it sounds like this is all about

13

rushing. For you guys to make a decision here today

14

that's going to affect the future of not only Kihei

15

but the Island of Maui. And it's unbelievable how we

16

have to fight so hard to prove to you that this is

17

such an important time in existence of man on Maui

18

that we have the chance to make this place whole in

19

the future. And the word "pono". And if we don't

20

allow those two words to exist in the communication

21 of the Land Use Commissioners and the public that are
22 trying to convince you that this is such a pivotal
23 time in our existence.

24 In Kihei right now there is going to be
25 600 -- nobody seemed to know the number today -- but

McMANUS COURT REPORTERS 808-239-6148

126

1 there is 600 brand new homes that are being built on
2 Mokulele Highway and Pi'ilani Highway. That
3 intersection will have -- if there's two cars per
4 family, that's 1200 more cars that will be destined
5 for that intersection in the near future.

6 And then we have this development that
7 they're saying it's a mega mall.

8 I mean, these two things are not even
9 connecting each other, and nobody has even mentioned
10 that part of it as much as I think is needed.

11 We're given -- you guys are taking the
12 responsibility of accepting the jobs that you're here
13 to do. I know you're not getting paid, but the
14 responsibility is that you guys said to yourself, I'm
15 going to get on this Land Use Commission and I'm
16 going to do what's pono for the future of Maui and
17 for the future generations who are going to be coming

18 after you guys, the next Commissioners are going to
19 look back and they're going to say, these
20 Commissioners made it a lot harder, or they made it a
21 lot easier for me to do my job.

22 And I hope that you guys will really, you
23 know, deep down really look at the inside of what
24 we're here for.

25 We're blessed to be living in the most

McMANUS COURT REPORTERS 808-239-6148

127

1 beautiful pristine spot that people only dream about,
2 and now we are here deciding that we're rushing to
3 judgment of a mega mall that will influence
4 everything in our future. And I hope that you'll
5 take that into consideration.

6 CHAIRPERSON ACZON: Thank you. Any
7 questions?

8 MR. SAKUMOTO: No questions.

9 MS. APUNA: No.

10 MR. HOPPER: No.

11 CHAIRPERSON ACZON: Commissioners? Thank
12 you. Next.

13 EXECUTIVE DIRECTOR: Jay Kringsman followed

14 LUC 7-19-17 Kauai and Maui
by Robert Aldrich.

15 CHAIRPERSON ACZON: May I swear you in?

16 THE WITNESS: Do you.

17 CHAIRPERSON ACZON: Do you swear that the
18 testimony you're about to give is the truth?

19 THE WITNESS: Yes.

20 CHAIRPERSON ACZON: Please State you name
21 and address for the record.

22 THE WITNESS: My name is Jay Krigsman. I
23 have a local address at 225 Piikea Avenue in Kihei.

24 CHAIRPERSON ACZON: Please proceed.

25 -o0o-

McMANUS COURT REPORTERS 808-239-6148

128

1 JAY KRIGSMAN

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

4 DIRECT EXAMINATION

5 THE WITNESS: I'm a principal and represent
6 the ownership of the Pi'ilani Village Shopping Center
7 in Kihei. And roughly 30 acres of land on both sides
8 of Piikea just makai of the roundabout which we hope
9 to develop if Downtown Kihei, the project that you've
10 heard about a few times today.

11 As you can see in this room, Maui cares
12 about its future. Groups such as Kihei Community
13 Association work closely with the county to assure
14 that their vision of a well thought out planned
15 quality of life environment is maintained and brought
16 forward.

17 The community's and county's plan for South
18 Maui has been meticulously documented and spelled out
19 in the Kihei-Makena Community Plan and on the Maui
20 Island Plan.

21 The Kihei-Makena Community Plan
22 specifically calls for commercial development to be
23 focused on a corridor inside the SMA zone makai of
24 Pi'ilani Highway.

25 The Environmental Impact Statement that is

McMANUS COURT REPORTERS 808-239-6148

129

1 before you is flawed and should be rejected because
2 it does not take into consideration the true impact
3 on the environment of South Maui that will incur once
4 commercial development boundaries in the Kihei-Makena
5 Community Plan are ignored.

6 I've been working the shopping center

7 business for over 30 years, and I can assure you,
8 without question, that a retailer will always choose
9 large open parking fields, highway visibility, and
10 fewer rules, regulations, and restrictions, all of
11 which are available outside of the SMA zone and the
12 infill commercial vision of the Kihei-Makena
13 Community Plan.

14 If the Pi'ilani Promenade is permitted to
15 be built as proposed outside of the Kihei-Makena
16 Community Plan Commercial Zone and the SMA, it will
17 set a precedent that will tear down the commercial
18 boundaries set up by the Kihei-Makena Community Plan
19 and will result in many more projects being built on
20 mauka side of the Pi'ilani Highway dotting the
21 landscape with mainland-style power centers, leaving
22 the infill sites and older obsolete centers in the
23 commercial zone to rot, resulting in blight, homeless
24 hangouts, and environmental eyesore for South Maui.

25 The Kihei Community Association and the

McMANUS COURT REPORTERS 808-239-6148

130

1 county assured us that future development and
2 redevelopment in South Maui would follow the
3 guidelines and requirements of the Kihei-Makena

4 Community Plan and the Maui Island Plan, focusing
5 commercial development in the SMA zone makai of the
6 Pi'ilani Highway, and making everyone subject to the
7 same rules, requirements, and restrictions imposed by
8 the county in the SMA approval process.

9 The Environmental Impact Statement that is
10 before you is flawed and should be rejected because
11 it does not take consideration the negative impact
12 that will occur to the environment in South Maui once
13 the rules and regulations imposed by the county and
14 the SMA approval process are ignored by allowing a
15 commercial development to occur outside of the SMA
16 zone, and the boundaries shown on the Kihei-Makena
17 Community Plan.

18 Let's talk for a minute about the vacancy
19 in the market. There's been a tremendous amount of
20 new vacancy in the last two years on Maui. Lowes
21 moved around the corner to the new A&B center, and
22 the historic Maui Mall sits vacant. Sports Authority
23 at Maui Mall sits vacant. Savers on Dairy Road
24 vacant. Kmart is now vacant with no new prospects.
25 The Target Center has boxes under construction with

1 no prospect --

2 CHAIRPERSON ACZON: You have to summarize
3 your testimony.

4 THE WITNESS: In summary, I believe that
5 the even EIS in front of you for the Pi'ilani
6 Promenade is flawed and should be rejected because it
7 does not take into consideration all of the negative
8 impacts that commercial development at Pi'ilani
9 Promenade will have in South Maui due to its failure
10 to comply with the Kihei-Makena Community Plan and
11 the Maui Island Plan.

12 CHAIRPERSON ACZON: Any questions?

13 MR. SAKUMOTO: No questions.

14 CHAIRPERSON ACZON: Commissioners? Thank
15 you.

16 EXECUTIVE DIRECTOR: Robert Aldrich
17 followed by Hewahewa.

18 THE WITNESS: Aloha kakou.

19 CHAIRPERSON ACZON: Do you swear that the
20 testimony that you're about to give is the truth?

21 THE WITNESS: Yes.

22 CHAIRPERSON ACZON: Please state your name
23 and address for the record.

24 LUC 7-19-17 Kauai and Maui
THE WITNESS: Robert Aldrich, 160 Keonikai,
25 Number 16-202 Kihei.

McMANUS COURT REPORTERS 808-239-6148

132

1 CHAIRPERSON ACZON: Please Proceed.

2 ROBERT ALDRICH

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

5 DIRECT EXAMINATION

6 THE WITNESS: I do not think that the EIS
7 should be approved. I think that there are some
8 significant things that are missing in it, and it has
9 to go back to the drawing board. And I say that with
10 some hesitation, because I've read almost all of it,
11 and it's just an incredible document with many, many
12 hours of work and the cost was probably not
13 astronomical, but very high.

14 I have a background growing up in Los
15 Angeles, my grandfather was Los Angeles City Engineer
16 for 22 years. He built structures for the San
17 Gabriel River, the Los Angeles River, turned them
18 into cement, concrete. Wiped out places that had
19 nice flowing rivers, trout, American Indians,
20 everybody was using it.

21 It was in some ways similar perhaps to
22 ancient Hawai'i. Not you sure all the aloha was all
23 there at that time, but in any event I transitioned
24 into hydrology, hung around engineers all the time,
25 got involved in writing thousands of permits that

McMANUS COURT REPORTERS 808-239-6148

133

1 involved sizing corrugated metal pipes. Was able to
2 size rocks to withstand hundred years floods.

3 Things that were kind of odd. And then I
4 come over here and I'm involved with the 'Aha Kiolo
5 on Molokai. I was very honored, being the only
6 pigment challenged person over there that I know of.
7 And it was just an incredible experience. And I grew
8 to love the aina and the kai and the things that are
9 out there. They're very precious and there's not
10 much left here.

11 And I'm getting off track a little bit, but
12 I think that from the hydrologic engineering side of
13 it, the EIS was written with the idea that structures
14 would pass a 50-year flood. Not adequate. I know
15 the culverts down here along South Kihei Road are
16 undersized. The county does not have the money, I'm

LUC 7-19-17 Kauai and Maui
17 sure, to take care of that.

18 And I don't see how a project as big as
19 Pi'ilani Promenade could be allowed to proceed, when
20 this EIS does not address what needs to be done
21 downstream before you start talking about something
22 upstream that could have terrible effects.

23 The reef out there is dead. It's bleached.
24 I don't see oli oli. I don't see ulu when I go
25 snorkeling. I go whipping along the shores and what

McMANUS COURT REPORTERS 808-239-6148

134

1 have you, and I've tried to spend some time with my
2 that my hanai brothers, Hawaiians, and my friends
3 that are ili kea or white.

4 I'm kind of an oddball having spent a lot
5 of time in the navy, but that's okay. To me the
6 issue is this EIS is not balanced. It needs more
7 integrated planning in it. It needs to include the
8 Kula Kai moku. It needs to get more information as
9 to the archaeology that's up there on the hill.

10 I've talked to Vernon Kalau, and I know
11 it's there. It's just a matter of someone has to go
12 out and say, here it is. Here's the pictures. Come
13 join us in this plan. I can go on and on and on, but

14 it's just -- we need to have more information before
15 we go forward. I hate to put on stop on this because
16 I worked in construction for years and surveying, and
17 I know how much time and effort is put into that, and
18 I know from my point of view doing environmental
19 enforcement and marine biology, marine enforcement
20 and out in the land, I would rather talk to the guy
21 that's on the backhoe, the caterpillar to make sure
22 it's done right, then having to go back to an EIS
23 with 3,000, 4,000 pages and say, this is what it
24 calls for. This is what we need to do.

25 I'm kind of getting ahead of myself. But I

McMANUS COURT REPORTERS 808-239-6148

135

1 think the salient point is this EIS needs more work,
2 therefore, I hope it does not get approved.

3 CHAIRPERSON ACZON: Thank you. Any
4 questions for the testifier.

5 MR. SAKUMOTO: No questions.

6 CHAIRPERSON ACZON: Commissioners? Thank
7 you. Next witness.

8 EXECUTIVE DIRECTOR: Hewahewa followed by
9 Tom Blackburn.

10 CHAIRPERSON ACZON: Do you swear that the
11 testimony that you're about to give is the truth?

12 THE WITNESS: Yes.

13 CHAIRPERSON ACZON: State your name and
14 address for the record.

15 THE WITNESS: My name David Kaawa Hewahewa.
16 196 Iniiniki Street, Wailuku.

17 DAVID KAAWA HEWAHEWA

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

20 DIRECT EXAMINATION

21 THE WITNESS: I'm here to question -- I want
22 to deny the EIS for one thing. But the question, the
23 Hewahewa Royal Patent that never got addressed.
24 That's my name. It's Royal Patent 7447, Land
25 Commission Award 3237.

McMANUS COURT REPORTERS 808-239-6148

136

1 And we never used to get involved with
2 these kind of things, but our community was crying
3 out for us to step up and to finally -- to put a
4 check onto all this growth that's going on in our
5 islands.

6 And I'm here to deny this, and on the

7 record, I want to say, in order for this body to move
8 forward, why is my name all over the development, and
9 it's never been addressed, for one thing?

10 As far as ancestral knowledge, I've only
11 been practicing for about 12 years. My dad never
12 taught me anything growing up. Because he knew with
13 knowledge came great responsibility. So on his death
14 bed I find out all these things he knew. So, of
15 course, I inquired to practice. In my experience, if
16 you have a direct tie in this line of Hewahewa, it's
17 a DNA link, and it's a straight line that only you
18 can access.

19 So you ain't getting taught by your kupuna,
20 for one thing. It will come to you when you go there
21 and you quiet yourself, and you listen. You will be
22 directed on what to do. Maybe you guys don't
23 understand that concept in Western thinking. But in
24 our way of thinking, you learn as you practice. And
25 who's to say we don't want to go back there and

McMANUS COURT REPORTERS 808-239-6148

137

1 practice? I want to now, because of all this stuff
2 going on.

3 So that's all I have to say. And for the
4 record my name is David Kaawa Hewahewa.

5 CHAIRPERSON ACZON: Thank you, David.

6 Questions for the testifier?

7 MR. SAKUMOTO: No questions.

8 MS. APUNA: No.

9 MR. HOPPER: No.

10 CHAIRPERSON ACZON: Commissioners?

11 COMMISSIONER CHANG: Thank you so much for
12 coming.

13 THE WITNESS: You're welcome.

14 COMMISSIONER CHANG: I know sometimes it
15 can be hard, but thank you so much for being here.

16 Now you mentioned the Land Commission
17 Award.

18 THE WITNESS: Yes.

19 COMMISSIONER CHANG: Is your LCA on this
20 property?

21 THE WITNESS: Yes.

22 COMMISSIONER CHANG: Do you know what
23 happened to that LCA?

24 THE WITNESS: I don't know, because those
25 things got hidden for some reason over the years. So

1 we are trying to find that link, and we will find it,
2 because as far as I know, I'm the only Hewahewa left.

3 COMMISSIONER CHANG: So at this point in
4 time, I understand while you have a LCA, you
5 currently do not have a Western legal title to that
6 property?

7 THE WITNESS: Do they have one?

8 COMMISSIONER CHANG: Fair enough, but you
9 originally had a LCA.

10 Do you know -- your ohana obviously lived
11 on that property at some point.

12 THE WITNESS: Back then, maybe not in
13 recent.

14 COMMISSIONER CHANG: Have you gone back and
15 looked at some of the testimony --

16 THE WITNESS: No, I have not. Only now
17 when my community cries out for us to come forward,
18 we came.

19 COMMISSIONER CHANG: Did anybody come and
20 talk to you who did the Cultural Impact Assessment?

21 THE WITNESS: Not professional people.
22 Just my people.

23 COMMISSIONER CHANG: So no one from the

24 Petitioner came to you and asked you any questions
25 about this property?

McMANUS COURT REPORTERS 808-239-6148

139

1 THE WITNESS: No.

2 COMMISSIONER CHANG: Okay, thank you very
3 much.

4 THE WITNESS: You're welcome.

5 CHAIRPERSON ACZON: Anybody?
6 Commissioners? Thank you. Next testifier.

7 EXECUTIVE DIRECTOR: Next testifier Tom
8 Blackburn-Rodriguez followed by Kaena -- I can't read
9 the last name.

10 CHAIRPERSON ACZON: Do you swear that the
11 testimony that you're about to give is the truth?

12 THE WITNESS: Yes.

13 CHAIRPERSON ACZON: Thank you. Please
14 state your name and address for the record.

15 THE WITNESS: Thank you. My name is Tom
16 Blackburn-Rodriguez. I live at 85 Bonita Circle,
17 number 202, Kihei 96793.

18 CHAIRPERSON ACZON: Please proceed.

19 ROM BLACKBURN-RODRIGUEZ

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: I have brief testimony.

24 Aloha, Chair and Members of the Land Use
25 Commission. Thank you for coming to Maui and holding

McMANUS COURT REPORTERS 808-239-6148

140

1 this hearing to provide the opportunity for public
2 comment and to request that the Commission accept the
3 FEIS for Pi'ilani Promenade.

4 Just by way of background. I have lived in
5 Kihei since 1998. My family has been in Hawai'i
6 since 1870 when my ancestor became the assistant to
7 the bishop of Honolulu.

8 I am the founding president of Affordable
9 Housing Land Trust, which develops housing, which
10 remains affordable in perpetuity and never goes to
11 market price.

12 I am also a former president. I served for
13 three years on the Maui Coastal Land Trust, that
14 became the Hawaiian Islands Land Trust. And in 2004
15 the board of directors and the leadership of some of
16 the folks that I know and become friends with in this

17 meeting today, in 2004 the Maui Coastal Land Trust
18 protected 277 acres in the Waihee dunes and wetlands.

19 I come to this project as a consultant for
20 the Pi'ilani Promenade project, and I brought to the
21 Commissioners -- I think you have them -- signed
22 individual postcards by 183 individuals who support
23 the Pi'ilani Promenade with its 226 rental apartments
24 and associated jobs, but could not attend this
25 meeting due to work or family obligation.

McMANUS COURT REPORTERS 808-239-6148

141

1 I thank you very much for accepting their
2 testimony. These are actual postcards, not an
3 internet point and click survey. Had they been able
4 to attend, we would have needed to double the size of
5 this room in order for them to participate.

6 In closing, I respectfully ask the
7 Commissioners to accept the FEIS for the Pi'ilani
8 Promenade project, which has addressed cultural,
9 economic, traffic, and community issues, allowing us
10 to move on to the issuance of a Decision and Order so
11 we might discuss the uses of the property.

12 Again, thank you very much and thank you

13 LUC 7-19-17 Kauai and Maui
14 for your service. Aloha.

15 CHAIRPERSON ACZON: Any question for the
16 testifier? Parties?

17 MR. SAKUMOTO: No questions?

18 CHAIRPERSON ACZON: Commissioners?
19 Commissioner Cabral.

20 COMMISSIONER CABRAL: I counted 175
21 postcards. Is that what you have, that you
22 distributed?

23 THE WITNESS: We actually had 183. A
24 couple came in under the wire.

25 COMMISSIONER CABRAL: Thank you very much.

VICE CHAIR SCHEUER: Aloha. Thank you for
McMANUS COURT REPORTERS 808-239-6148

142

1 your service to the Maui Coastal Land Trust.

2 So you prepared these cards. Can I just
3 ask you about the line at the bottom? "Your
4 information is never shared or sold to third
5 parties."

6 THE WITNESS: That's correct, and that's
7 just because of the social media environment we live
8 in right now. People are concerned about their -- so
9 this is retained. It goes nowhere else.

10 VICE CHAIR SCHEUER: Just so you know,
11 right, this is now a public record.

12 THE WITNESS: With the exception, of
13 course, people knowing that when they sent that in.
14 But we will not market it. We will not share with
15 third parties, and will not make any money off of
16 this. Thank you.

17 CHAIRPERSON ACZON: Anybody else? Thank
18 you. Next testifier.

19 EXECUTIVE DIRECTOR: Next Kaena followed by
20 Amanda Tabon.

21 CHAIRPERSON ACZON: Can I swear you in
22 first?

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

25 THE WITNESS: I am.

McMANUS COURT REPORTERS 808-239-6148

143

1 CHAIRPERSON ACZON: Please state your name
2 and address for record.

3 THE WITNESS: Wao Kaena Elima Eha Elua
4 Makealanui O Kai Wahine Makihei (phonetic).

5 CHAIRPERSON ACZON: Your address.

LUC 7-19-17 Kauai and Maui

6 THE WITNESS: I just said my address.

7 CHAIRPERSON ACZON: Please proceed.

8 KAENA ELIMA

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: First of all, I know this is
13 kind of offhand. He's my keiki who's been sleeping
14 in the back of the room, just to let you know as
15 well.

16 I hear people talking about having to drive
17 to grab socks. I drive all the way across the island
18 to take my kids to school. How about building one
19 school instead of one mega mall? I drive from Kihei
20 every day to Paia and then to Wailuku to take my son
21 and daughter to Hawaiian Emergent School. Why not
22 build us one Hawaiian Emergent school?

23 Anyways, I'm here to deny the EIS. If you
24 guys haven't noticed -- you know, I hear all these
25 things about the rules and regulations that you guys

McMANUS COURT REPORTERS 808-239-6148

144

1 pass for water quality and stuff, but sometimes you
2 got to get out of the books and get down there and

3 look for yourself.

4 Because when you get there, this last storm
5 that we had, had one car that went into the ocean,
6 had one dumpster that was left on top the beach for
7 weeks.

8 And the water quality, you go down there,
9 you can't even swim in the water. These guys, scared
10 to let them go swim in the water. And that's after
11 the rain already came. This is weeks after the rain
12 already came, and the waves come in, and they mix up
13 the silt again, and make the water all dirty again.

14 You guys are wanting to put more water from
15 where you guys are going to build into Ka'ono'ulu
16 River which already has massive water flow when these
17 big rains come. You ask the people in the condos
18 that are next to these rivers flows, they going to
19 tell you, because the river came right through their
20 garage door last time. Came right through their
21 cars, their whole apartment building was flooded.
22 And you guys want to send more water down that way.

23 I don't think so. I don't think so.

24 Killing the reef more. You guys smothering
25 the reef. Back in the day you could find limu all

1 over the beach. What happened to the limu? People
2 was gobbling. People that move on top that beach,
3 from far away, they came over here. They move on top
4 of that beach.

5 And then they said the limu was something
6 that doesn't belong there, all the older things. So
7 they went with their tractor, and they pick up all
8 the limu off of the beach, and now no more limu. No
9 limu, food for the fish, once there's no food for the
10 fish, the fish disappear. That's the cleaners of the
11 reef. Once the fish disappear, the reef is smothered
12 by the silt of the these projects that are uphill
13 that don't take care of the water quality.

14 I just want to say I'm against this. You
15 guys have better things to build. Everything that
16 you say is for the public. It's not for the public.
17 This is for the tourist industry. Enough with them.

18 Take care of our ohana. That's the first
19 thing. Going to take care of you guys to make sure
20 that in the coming years when we're gone, and these
21 guys are gone, that the next guys get what we have.

22 That's all I got to say. Mahalo.

23 CHAIRPERSON ACZON: Thank you. Any

24 questions?

25 MR. SAKUMOTO: No questions.

McMANUS COURT REPORTERS 808-239-6148

146

1 CHAIRPERSON ACZON: Commissioners? Thank

2 you.

3 EXECUTIVE DIRECTOR: Next Amanda Tabon

4 followed by Ke'eaumoku Kapu.

5 CHAIRPERSON ACZON: Next one.

6 EXECUTIVE DIRECTOR: Ke'eaumoku Kapu.

7 CHAIRPERSON ACZON: May I swear you in

8 first?

9 Do you swear the testimony that you're
10 about to give is the truth?

11 THE WITNESS: Yep.

12 CHAIRPERSON ACZON: Please state your name
13 and address for the record.

14 THE WITNESS: My name is Ke'eaumoku Kapu.
15 I live in Kauaula Valley, Lahaina.

16 KE'EAUMOKU KAPU

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: And I think this thing kind
21 of going little bit too sideways.

22 I sit in the back and I listen to lot of
23 the issues and discussions on the EIS basically
24 claiming there is no cultural practices that are
25 being done in the area. You know, that's like saying

McMANUS COURT REPORTERS 808-239-6148

147

1 that a lot of Hawaiians are on reserve.

2 So I wanted to leave everybody with this,
3 and has a lot to do with that river. Kulanihakoi,
4 that's a very important place. And I'm going to
5 leave you with this. (Hawaiian spoken.)

6 That kahea was written for that specific
7 place, Kulanihakoi.

8 Now, for people of foreign intuition,
9 starts to make up so-called mana'o that this place
10 has no cultural practices. Has no mo'olelo. Has
11 none of those things that is really important to our
12 people. Then they talking to the wrong people.

13 I'm appalled to this, based on this
14 so-called environmental impact statement on whether
15 or not we as kanaka maoli of this aina even qualify

16 to be a part of this environmental impact statement.

17 It's appalling.

18 Then the surrounding development, how many
19 royal patents are in that area? And what gives this
20 Land Commission, as well as these developers, the
21 right to even take royal patents that was awarded
22 from the kingdom? The pre-government existed from
23 this so-called over-throw government, yeah? Where is
24 the jurisdiction? Where is -- I like see the
25 palapala on how all of a sudden warranty title deed

McMANUS COURT REPORTERS 808-239-6148

148

1 just trumps one royal patent. The hewa hewa.

2 My ohana is from that area too. I'm from
3 the Kawawao (phonetic) genealogy. My kupuna is from
4 that area. My great grandmother is Julia Keanai
5 Namaunu (phonetic). She is also a royal patent of
6 that area as well. We have other families that have
7 royal patent there, the Konahea Ohana (phonetic).
8 They're here today too. They here present. We heard
9 the call. We had to come to figure out what
10 happened. What is going on over here? How come all
11 of a sudden everybody see no more tradition, no more
12 culture, no mo'olelo in this area?

13 I just gave you one. Not just all of a
14 sudden today, this is something that went passed down
15 from generation to generation and still being passed
16 down today through my roots, through my children's
17 roots. So this EIS is missing a lot.

18 CHAIRPERSON ACZON: Please summarize.

19 THE WITNESS: I am summarizing.

20 This EIS is missing a lot, and we coming to
21 you guys, the Land Use Commission, to look at what
22 you have in front of you. You have commodity, and
23 you have kanaka, you have ohana. What is more
24 important?

25 CHAIRPERSON ACZON: Thank you, Mr. --

McMANUS COURT REPORTERS 808-239-6148

149

1 THE WITNESS: The life of the land, or the
2 people here to make money and reap our resources
3 every day? So mahalo.

4 CHAIRPERSON ACZON: Any questions,
5 Commissioners?

6 COMMISSIONER CHANG: Aloha, Ke'eamoku, were
7 you contacted? Did anybody contact you when they
8 prepared the Cultural Impact Assessment?

9 THE WITNESS: I kind of hold like a
10 position, part of the 'Aha Moku system. So my
11 kuleana is when there's projects in different mokus,
12 if it cues to me, then what I do, I respond to the
13 moku representative like Basil Oshiro.

14 COMMISSIONER CHANG: Did they send you a
15 letter or did they call you?

16 THE WITNESS: No. It's just correspondence
17 that just comes from like the departments, and it's
18 kind of a wide correspondence that's sent. So my job
19 is literally to help with the process and trying to
20 get lineal descendants, cultural descendants
21 together.

22 COMMISSIONER CHANG: Did anybody personally
23 call you to ask you if you have any ohana in this
24 area?

25 THE WITNESS: No. I got involved because I

McMANUS COURT REPORTERS 808-239-6148

150

1 knew that the project was pending. Tried to get
2 involved. Tried to get a lot of other families that
3 are rooted.

4 But if you talking about maybe the moku in
5 perspective, you get families that live there, but

6 then you also get families that have ties to the area
7 that doesn't live there. Like I already mentioned,
8 like the Konahea (phonetic) family. The Namao,
9 (phonetic) they actually from Wailuku, some even
10 Lahaina, but very rooted to that place is what I
11 basically trying to say.

12 Just because we are not from that area
13 doesn't mean it doesn't affect us. Affects us
14 greatly.

15 COMMISSIONER CHANG: Do you know whether
16 those family members were contacted for their mana'o
17 regarding Cultural Impact Assessment?

18 THE WITNESS: I haven't viewed the list,
19 but I know there are a lot of people missing in the
20 EIS that should be a part of the discussion,
21 especially for like the Hewahewa, myself as well as,
22 you know. And it's hard. It's hard because we all
23 kind of bombarded by a time frame.

24 Once this thing starts, sometime you get
25 30 days, 45 days. If you not involved, then poof,

McMANUS COURT REPORTERS 808-239-6148

151

1 there it goes. So we not a part of the process all

2 because of a time factor, and I think that's really
3 wrong. Something needs to be done with that. I like
4 to say, you know what? This should go back to the
5 drawing board and start all over to get the right
6 people to the table.

7 COMMISSIONER CHANG: The Cultural Impact
8 Assessment concluded that there were no traditional
9 customary practices in this area. Is it your
10 statement today that there are, they just didn't talk
11 to the right people?

12 THE WITNESS: Oh, yes. There is
13 definitely. If you talking about mauka versus makai,
14 you know, whatever is done mauka basically similar
15 what is done on makai side. Some people made mention
16 about the heavy impacts that happens along
17 Kulanihakoi, that whole riverbed. So the cultural
18 practices that are being done today, you know, which
19 has a lot of to do with fishing. A lot of the mauka
20 sites have a lot to do with the koas. When you get
21 fishermen going outside, they got to look at the lay
22 of the land, that's the most important thing. Where
23 are those koas on the land versus the koas that are
24 in the ocean.

25 COMMISSIONER CHANG: Do you know when this

1 project was originally started?

2 THE WITNESS: No.

3 COMMISSIONER CHANG: So they only may have
4 sent you something like the last 30 days, or you just
5 got something recently?

6 THE WITNESS: Normally, if I don't get
7 anything, then normally I got a call from a lot of
8 the moku representatives for some kind of assistance,
9 and I try to assist in any way I can.

10 COMMISSIONER CHANG: I appreciate your
11 testimony. Mahalo.

12 CHAIRPERSON ACZON: Anybody else?
13 Commissioner Okuda.

14 COMMISSIONER OKUDA: Thank you for your
15 testimony.

16 We operate under what they call
17 quasi-judicial rules, and so to some extent we have
18 to be aware that in the end somebody else, like
19 Hawaii Supreme Court, is going to look over our
20 shoulder and determine whether the decision here was
21 correct or not. And the Supreme Court justices
22 aren't going to be here, they're going to be looking

23 at the transcript that our court reporter has
24 prepared.

25 And many of us are not bilingual. Can you

McMANUS COURT REPORTERS 808-239-6148

153

1 please explain or summarize what you spoke in
2 Hawaiian?

3 THE WITNESS: It was a chant about growth.
4 But it was specifically a chant was identifying that
5 specific area Kulanihakoi.

6 COMMISSIONER OKUDA: So the chant was
7 specific to the project area; is that correct?

8 THE WITNESS: Yeah.

9 COMMISSIONER OKUDA: And how did you learn
10 this chant? And I apologize for inquiring but --

11 THE WITNESS: Generational knowledge passed
12 down from one kumu to the next, to the next
13 generation.

14 You know, being affiliated to certain
15 areas. I'm from Lahaina, but then my whole ohana is
16 like all the way from Kipahulu all the way to
17 Honokohau, yeah. So based on genealogy, as well as
18 traditional resource management, as well as

LUC 7-19-17 Kauai and Maui
19 generational knowledge is passed down through our
20 families till today.

21 COMMISSIONER OKUDA: Again, we don't meant
22 to be prying about family or cultural practices, but
23 there is a Hawaii Supreme Court that mandates us to
24 do this inquiry, and that's why we're asking. So
25 thank you very much for your testimony.

McMANUS COURT REPORTERS 808-239-6148

154

1 CHAIRPERSON ACZON: Vice Chair Scheuer.

2 VICE CHAIR SCHEUER: You testified about --
3 questioned whether the warranty deed was -- excuse
4 me -- a warranty deed was sufficient to establish
5 title.

6 Do you have some personal familiarity with
7 that particular issue either here or --

8 THE WITNESS: Yes. I have a lot of
9 personal know abouts because my case just came
10 through the Second Circuit Court through a jury trial
11 and I was successful. This just happened about maybe
12 three weeks ago.

13 VICE CHAIR SCHEUER: Could you briefly
14 elaborate for the Commission?

15 THE WITNESS: Yeah. I've been fighting a

16 court case for about 15 years with a land company on
17 the west side. Well, let's say total 17 years, and
18 the work involved in staying the course in being
19 challenged by quiet title adverse possession claims.

20 After 17 years you come to understand a lot
21 about the color of title. And when Pioneer Mill
22 basically sold these properties with a warranty title
23 deed, I challenged that 15 years ago. And within the
24 past three weeks, I was successful on winning that.
25 It was a jury trial.

McMANUS COURT REPORTERS 808-239-6148

155

1 So the reason why I bring up the issue,
2 it's not a Land Commission Award, but -- although
3 it's a Land Commission Award but with a Royal Patent
4 number, this one is similar too. There's a Land
5 Commission Award on the Hewahewa, also Royal Patent.

6 I don't know if the Commission understands
7 how the royal patent works. Once the kingdom signs
8 over the royal patent, he actually secures the Land
9 Commission Award of those heirs from the time of the
10 Mahele.

11 So basically, what I'm saying is, the royal

12 patent is already secured. If anything the Office of
13 Hawaiian Affairs should be the one here in answering
14 for the interest of the royal patent in protecting
15 the heirs like Hewahewa, Konahea, as well as the
16 families.

17 So kind of touchy situation when I talk
18 about that, but when you have a Land Commission Award
19 and one royal patent, it even strengthens it more,
20 whether existing government today has to protect the
21 interest of the heirs' Land Commission Award because
22 it was followed by royal patent.

23 That's kind of what I learned, and within
24 the past I've been in land litigation for over
25 20 years now, so I know little bit.

McMANUS COURT REPORTERS 808-239-6148

156

1 VICE CHAIR SCHEUER: Thank you, Mr. Kapu.

2 CHAIRPERSON ACZON: Thank you. The next
3 testifier.

4 EXECUTIVE DIRECTOR: Deborah Mader.

5 CHAIRPERSON ACZON: Before we take her
6 testimony, we will take a five-minute break.

7 (Recess taken.)

8 CHAIRPERSON ACZON: We are back on record.

9 Mr. Orodenker, please call the next
10 witness.

11 EXECUTIVE DIRECTOR: Thank you, Mr. Chair,
12 the next witness is Deborah Mader, followed by Matt
13 Cearny.

14 MR. CEARNY: I saw that Deborah had stepped
15 out.

16 CHAIRPERSON ACZON: May I swear you in
17 first?

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

20 THE WITNESS: I do.

21 CHAIRPERSON ACZON: Please state your name
22 and address for the record.

23 THE WITNESS: Matthew Cearny, 748 Aulike
24 Street.

25 -o0o-

McMANUS COURT REPORTERS 808-239-6148

157

1 MATTHEW CEARNY
2 Was called as a public witness, was sworn to tell the
3 truth, was examined and testified as follows:

4 DIRECT EXAMINATION

5 THE WITNESS: I wanted to thank everybody
6 here today who educated me. I learned a lot being
7 here. I'm 11 years on Maui, and six years at you
8 Aulike Street. So there are about ten homes on
9 Aulike Street whose property goes into the that
10 Kulanihakoi Gulch, it's an average of 40 feet. I'm
11 one of the those properties. I'm a homeowner there.

12 And in its current state I feel like this
13 project would endanger our property. Based on the
14 fact that, just simple observation, of the frequency
15 and increasing intensity of storms that are being
16 generated.

17 And I'm there to stay. I'm a high school
18 teacher, I'm not going anywhere. And I feel like as
19 climate change sets in, if this project goes in as it
20 is, it will bring water damage to our houses.

21 The recent winter was extraordinary one by
22 my measure as six years, but also by the measure of
23 long-time residents who have been in the Kulanihakoi
24 Estate subdivision since it was built.

25 Our properties go about 40 feet into the

McMANUS COURT REPORTERS 808-239-6148

158

1 gulch, and we have about a ten-foot embankment that

2 drops down. It was back in December -- I don't know
3 the exact day -- but whatever, the storm was like
4 December 6th or so, I think that was a bigger deal
5 than the one that was previously mentioned in March
6 for us.

7 The water came within about four feet of
8 jumping the embankment on the magic river. It was a
9 powerful and terrifying storm. It was already
10 discussed how it brought cars and dumpsters. In my
11 part of the gulch we had like a concert speaker, you
12 know, like one of those things that has handles on
13 both sides. It just got washed there.

14 And then I went out of town, and I think
15 another storm came and took it away. I have no idea
16 where it went.

17 And, you know, so this is before 500,000
18 acres get paved over before us with a very vague
19 statement suggesting how they are going to guarantee
20 that predevelopment drainage flow will not exceed
21 post-development flow.

22 I've worked a little bit on top of being a
23 high school English teacher, as a historic
24 preservationist, so I've looked at EISs and I can't
25 see how this one would protect our properties. And I

1 would like to go on record in the event that
2 something does go in and our properties are damaged
3 by the development.

4 Just a side note to put on my teacher hat,
5 I don't see how putting in 200 properties is going to
6 solve our teacher shortage. It's much more systemic.
7 Actually, the recent DOE initiative to home grow
8 teachers is a much better way to stabilize our
9 teacher population. And this is Mac right here.

10 CHAIRPERSON ACZON: Any questions?

11 MR. SAKUMOTO: No questions.

12 MS. APUNA: No questions.

13 MR. HOPPER: No.

14 CHAIRPERSON ACZON: Commissioners?

15 COMMISSIONER CHANG: Just one question.

16 Mr. Cearny, were you contacted by the
17 Petitioner?

18 THE WITNESS: I am on the homeowners
19 association, and we do follow these events very
20 closely. I'm a very busy dad, and English department
21 head and Kekaulike High school, so I try to check

LUC 7-19-17 Kauai and Maui
22 those emails regularly.

23 I cannot recall any contact. If you would
24 like to contact our president, he's more on top of
25 it. He's a former fire chief and has a little more

McMANUS COURT REPORTERS 808-239-6148

160

1 time, he's retired.

2 COMMISSIONER CHANG: You adjoin the
3 property?

4 THE WITNESS: Yes. I do talk to Eric who
5 owns -- the owner of the property quite a bit. And,
6 you know, he's helpful. But, no, this -- the
7 Pi'ilani Promenade has not contacted me. And
8 honestly, I don't think it contacted our association.
9 I'm not certain though.

10 COMMISSIONER CHANG: Thank you.

11 CHAIRPERSON ACZON: Anybody else? Thank
12 you. Next testifier.

13 EXECUTIVE OFFICER: Next testifier is
14 Deborah Mader. Jill Engledow, followed by Allison
15 Miller.

16 CHAIRPERSON ACZON: May I swear you in
17 first?

18 Do you swear that the testimony you're

19 about to give is the truth?

20 THE WITNESS: Yes.

21 CHAIRPERSON ACZON: Please state your name
22 and address for the record.

23 THE WITNESS: My name is Jill Engledow. I
24 live at 80 Halili Lane, Kihei, Apartment 8H.

25 -o0o-

McMANUS COURT REPORTERS 808-239-6148

161

1 JILL ENGLEDOW

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

4 DIRECT EXAMINATION

5 THE WITNESS: I live I think just below
6 where the previous testifier lives. I live in the
7 Villas at Kenolio, which is a residential apartment
8 complex right on Kulanihakoi Gulch, and I am
9 concerned about the overall impact of a lot of
10 development that's planned for the mauka area.

11 When we -- as others have said, we already
12 have a really serious flooding issue. Every time it
13 rains heavily Upcountry, it doesn't have to be
14 raining in Kihei, but it's the mauka drainage that's

15 causing us problems.

16 And we already have, in addition to this
17 project, we have a high school, low income
18 apartments, and probably a few other things -- other
19 things next door, the Maui Lu Development. But there
20 is a lot of development planned for this area in the
21 near future.

22 What happens is Kulanihakoi Gulch has been
23 so silted in, that however deep it was made when they
24 did these housing developments along its edges, it's
25 now several feet higher. And when these big rains

McMANUS COURT REPORTERS 808-239-6148

162

1 come, we have like a chocolate river flowing by.

2 And last time there was a big one, I stood
3 on the edge of the gulch near my neighbor's condo,
4 and there was maybe a foot or two between that river
5 and the edge where it would have flooded into their
6 condos. And some of the condos on the other side of
7 the gulch were flooded by that rain.

8 That was the one that washed the dumpster
9 down not just to the beach, it was in the water until
10 somebody could drag it out of there.

11 There were deer and pigs caught in the

12 flood. There is, at the bottom of the road at
13 Kaonoulu Road where it meets off Kihei Road, there is
14 what I believe muliwai that used to be much bigger,
15 and I think it's silted in too.

16 It's like the whole system needs to be
17 dealt with. I'm concerned that this project is not
18 looking at the whole system, not integrated with
19 other developments within that area.

20 The water goes through that old muliwai
21 area, under the bridge, which has pretty much been
22 washed out a few times. Every time it rains that
23 intersection is completely flooded. There is no
24 passage on South Kihei Road from Kaonoulu onto South
25 Kihei Road, forget it. You can't go there. Cars

McMANUS COURT REPORTERS 808-239-6148

163

1 were washed all over the place in that last storm.

2 And then, of course, the water goes right
3 into the ocean which is where the ancient fishpond
4 is. As people have said, there's no more limu.
5 There's no more fish. The reefs are all dying. And
6 I think the silt has a lot to do with it.

7 This is my biggest concern, although I've

8 other concerns about this development. This is the
9 big one for me.

10 CHAIRPERSON ACZON: Any questions, parties?

11 MR. SAKUMOTO: No questions.

12 CHAIRPERSON ACZON: Commissioners? Thank
13 you.

14 EXECUTIVE DIRECTOR: Allison Miller
15 followed by K. Hewahewa.

16 CHAIRPERSON ACZON: May I swear you in?
17 Do you swear that the testimony you're
18 about to give is the truth?

19 THE WITNESS: Yes.

20 CHAIRPERSON ACZON: State your name and
21 address for the record.

22 THE WITNESS: Allison Miller. My address
23 is South Kihei Road, Kihei.

24 ALLISON MILLER

25 Was called as a public witness, was sworn to tell the

McMANUS COURT REPORTERS 808-239-6148

164

1 truth, was examined and testified as follows:

2 DIRECT EXAMINATION

3 THE WITNESS: So I work in marine education
4 as a marine naturalist. And I'm a student here at

5 UHMC studying sustainable science management.

6 I spent my first three semesters here
7 studying Hawaiian ecology, and recently earned my
8 certificate for the UH Marine Option Program.

9 I ask that you reject this EIS because it
10 does not address all necessary concerns. As I live
11 on South Kihei Road, I have many concerns about this
12 EIS, including impacts from the flooding, increased
13 traffic, and the need for low impact development on
14 Maui moving forward.

15 But I am here today to speak on behalf of
16 Maui's coral reefs. Hawai'i's economy largely based
17 on tourism, and it is coral reefs and beautiful
18 beaches that bring those tourists here. A couple
19 years ago we experienced a mass coral bleaching event
20 as the water temperature around Maui reached 84
21 degrees. The current Save Our Reefs is dismal, and
22 entire sections of reef have died off in some areas.
23 In the face of climate change, our coral reef
24 ecosystems are suffering from global sectors like
25 rising ocean temperatures and ocean acidification.

McMANUS COURT REPORTERS 808-239-6148

1 Hawai'i is home to many endemic species
2 that are found nowhere else on the planet. It is
3 estimated that 25 percent of our reef fish are
4 endemic. It is important as an island community that
5 relies heavily on our coral reefs for fishing and
6 tourism revenue to do everything that we can in order
7 to mitigate impacts from local stressors.

8 Sedimentation from the development process
9 alone is a threat to nearby reefs. Runoff is another
10 huge concern. The more roads and parking lots we
11 build, the more fertilizers and chemicals and
12 everything else that gets washed onto our reefs.
13 Excess wastewater and nitrates are also a threat to
14 the health of our coral.

15 There are many things that we can do on a
16 local level to help ensure our reefs are resilient to
17 global threats from climate change, and building a
18 commercial development this clothes to our coastline
19 is not one of them.

20 CHAIRPERSON ACZON: Any questions for the
21 testifier?

22 MR. SAKUMOTO: No questions.

23 CHAIRPERSON ACZON: Commissioners?

24 COMMISSIONER CABRAL: I could have asked

25 any number of people this. Were you notified? Were

McMANUS COURT REPORTERS 808-239-6148

166

1 there any community meetings about this project
2 coming up, or of that nature that you've been made
3 aware, been invited to come and given input into the
4 community at all?

5 THE WITNESS: Not about this, no.

6 COMMISSIONER CABRAL: Thank you very much.

7 CHAIRPERSON ACZON: Anybody else? Thank
8 you. Next testifier, please.

9 EXECUTIVE DIRECTOR: K. Hewahewa followed
10 by Mark Sheehan.

11 CHAIRPERSON ACZON: May I swear you in?

12 Do you swear that the testimony that you're
13 about to give is the truth?

14 THE WITNESS: Yes.

15 CHAIRPERSON ACZON: Please state your name
16 and address for the record.

17 THE WITNESS: Aloha everyone in attendance,
18 aloha to the LUC. My name Ko Hewahewa.

19 KO HEWAHEWA

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: I'm here with my family,

24

parents, brother, my children.

25

I'm a direct lineal descendant of the

McMANUS COURT REPORTERS 808-239-6148

167

1

Hapakuka Hewahewa, the recipient of Royal Patent

2

7447, and recipient of Land Commission Award 3237.

3

It's hard to find the genesis to begin with

4

for there is so much to say, so bear with me. I

5

first address the project and its developers.

6

For many moons foreigners been coming

7

ashore with foreign terms, concepts, terminologies

8

and ideas to not contribute to our community but to

9

take advantage of it.

10

For over 200 years these foreigners, not

11

all of them are bad, but been coming here to develop,

12

deplete and take advantage of our people and its

13

natural resources for personal interest and personal

14

gain. I see this as an act of colonialism.

15

So let me define colonialism. It's the

16

policy or practice of acquiring food or partial

17

political power and control over another country

LUC 7-19-17 Kauai and Maui
18 occupying it with settlers, and exploiting it
19 economically, socially and environmentally.

20 Another term came to mind. Gentrification.
21 It's the process of renovating or improving the
22 district so that it conforms to middle class taste.
23 Is this not you? Middle class or other any classes
24 here are far different from the mainland. You're
25 trying to improve what's best for you and where you

McMANUS COURT REPORTERS 808-239-6148

168

1 come from, but changing our landscapes to make a
2 selected few feel comfortable. And to make it feel
3 like the mainland does not fit here. Here we take
4 care and serve our land and our resources.

5 I see in no way this plan of a mega mall
6 serving the land and its resources and/or
7 contributing to our community. What I mean by
8 community is I'm talking about the flora, fauna and
9 minerals as well.

10 I hope the developers, investors, and all
11 participating business partners and parties are here
12 not to just hear but to listen.

13 Where is your water going to come from?
14 Sticking straws in wells in our land, or running

15 pipes from the watersheds all into dryland areas
16 doesn't make sense environmentally, and is not
17 sensible under any circumstance.

18 It doesn't matter how much money you put
19 into this environmental impact study or environmental
20 assessment, there will never be a right way. So
21 shame on the companies writing these studies, because
22 you know that there is no right way.

23 Many of the cultural sites have been
24 destroyed and obliterated by foreigners in the past
25 who came here trying to improve something that was so

McMANUS COURT REPORTERS 808-239-6148

169

1 purchase, to capitalize on out land and resources for
2 personal gain and interest.

3 I like to turn my attention to the LUC and
4 our community. One of the major cultural impacts
5 from this project will be the final destruction of
6 one of our main cultural sites of celestial
7 observation.

8 A surveyor's eye may easily miss the value
9 of these places, and may only see dried up dead
10 lands, land overran by cattle. It may look at those

11 it may have absolutely no cultural significance, but
12 through an eye of a descendant with passed down
13 generational knowledge.

14 I see its advantage point for one of the
15 most important aspects of our culture. I'm talking
16 about the importance of our moon, our stars and our
17 sky. This ahupua'a of Ka'ono'ulu is in a direct
18 alignment with Kealaikahiki. This channel is a
19 direct path to Tahiti, hence the name of the channel,
20 Kealaikahiki.

21 CHAIRPERSON ACZON: Please summarize.

22 THE WITNESS: The path to Tahiti.

23 So why was the Hawaiians the best
24 navigators on the planet? Because of their keen
25 observations and brilliance and knowledge of

McMANUS COURT REPORTERS 808-239-6148

170

1 celestials.

2 This place where the project wants to
3 develop is a place that for many generations has been
4 a university, a place of higher education and
5 observation that developed our most prominent
6 navigators. I stand here a testament of one with the
7 knowledge of kilo, and observer, a kilo can stand

8 here and explain to you how the colors of the sky to
9 determine the weather to come. A kilo could stand
10 here and tell you how the moon dictates the action of
11 the flora and fauna.

12 CHAIRPERSON ACZON: Please summarize.

13 THE WITNESS: My genealogy doesn't just
14 connect to the royal patent award, but it connects to
15 the stars. I didn't come here to just argue and
16 complain, but I want to state the facts and suggest
17 that you please refute the FEIS for it does not
18 adequately address --

19 CHAIRPERSON ACZON: Thank you. Any
20 questions? Commissioners?

21 COMMISSIONER CHANG: I'm sorry. Mr.
22 Hewahewa, were you contacted at all by the
23 consultants who prepared the Cultural Impact
24 Assessment for this project?

25 THE WITNESS: For the record, no, sir.

McMANUS COURT REPORTERS 808-239-6148

171

1 COMMISSIONER CHANG: And you -- what I
2 understand from your testimony your family, or this
3 land has cultural significance?

4 THE WITNESS: Absolutely.

5 COMMISSIONER CHANG: Are you aware of --
6 has there been practice, has families continued, or
7 have they practiced in the past this celestial
8 connection between the navigation and the land?

9 THE WITNESS: Practice, very much so in the
10 past, and currently practicing right now, that's
11 myself.

12 COMMISSIONER CHANG: Is this land critical
13 to that ongoing practice?

14 THE WITNESS: Definitely. Like testimony
15 before, a lot of these pohaku or these places, if
16 disturbed, will lose some of that -- we'll lose a
17 place to practice this.

18 COMMISSIONER CHANG: Are you aware that
19 there was a petroglyph on this site?

20 THE WITNESS: I am.

21 COMMISSIONER CHANG: Do you know what the
22 significance of that petroglyph may have been?

23 THE WITNESS: Not at the moment.

24 COMMISSIONER CHANG: So the conclusion of
25 the Cultural Impact Assessment was no traditional

1 cultural practice of this site.

2 THE WITNESS: I stand here to challenge
3 that.

4 COMMISSIONER CHANG: Thank you so much. I
5 appreciate your testimony.

6 CHAIRPERSON ACZON: Any more questions?

7 VICE CHAIR SCHEUER: Hewahewa, your
8 ancestor, this is the same Hewahewa who is Kahunanui
9 to Kamehameha?

10 THE WITNESS: Aye.

11 VICE CHAIR SCHEUER: I'm familiar with his
12 residency in Waimea, Oahu where he passed, about are
13 you aware at all of why this aina was awarded to him?

14 THE WITNESS: You might not be talking
15 about the same Hewahewa, but we're family. This
16 Hewahewa passed in 1837.

17 VICE CHAIR SCHEUER: Are you aware of the
18 reason for the selection or award of this aina?

19 THE WITNESS: You know, a lot of this stuff
20 was hidden from us. It's stuff that we got to dig
21 out, and they made it so hard for us to go and
22 find -- and I just want to share with everybody the
23 challenges of us to find our generational knowledge.
24 We got to go and seek it. Without money, it's hard.

25 But this stuff was passed down through generational

McMANUS COURT REPORTERS 808-239-6148

173

1 knowledge to seek and then finding.

2 Could you repeat that last question you
3 had?

4 VICE CHAIR SCHEUER: If you were aware --

5 THE WITNESS: The significance --

6 VICE CHAIR SCHEUER: Could share -- yes,
7 because when certain chiefs or other people were
8 awarded they had reasons, ties or other reasons for
9 securing awards that sometimes pointed to the
10 significance of a place.

11 THE WITNESS: The significance of the
12 place, like I stayed had earlier in my testimony, was
13 some of the celestial studies and also the fisheries.
14 But looking mauka is all kind of destroyed already,
15 but this place has the most bio diverse dryland
16 forest in the entire world. It was all destroyed by
17 cattle from the previous owners. A lot of resources
18 in there.

19 VICE CHAIR SCHEUER: Mahalo.

20 CHAIRPERSON ACZON: Commissioner Okuda.

21 COMMISSIONER OKUDA: Mr. Hewahewa, if I can
22 just ask this question.

23 Since the Hawai'i Supreme Court recognizes
24 in certain cases what they call a kama'aina witness
25 is an exception to the hearsay rule, but being more

McMANUS COURT REPORTERS 808-239-6148

174

1 specific here.

2 Have, in your family, were you told by your
3 elders that on this specific site, this specific
4 site, that in your family cultural practices actually
5 took place?

6 THE WITNESS: I was told by family members.

7 COMMISSIONER OKUDA: Would you mind sharing
8 so that our record is complete what family members --
9 you don't have to give the names, but if you can
10 describe where in your family tree these family
11 members told you that specific cultural practices
12 were taking place on this specific site.

13 THE WITNESS: If you look around me, saw my
14 family members. We all have generational knowledge
15 passed to us through kupuna.

16 COMMISSIONER OKUDA: Okay, so your
17 grandparents told you?

18 THE WITNESS: Friends, family, kupuna,
19 kumu.

20 COMMISSIONER OKUDA: Thank you very much.

21 CHAIRPERSON ACZON: Anybody else? Thank
22 you Mr. Hewahewa.

23 EXECUTIVE DIRECTOR: Mark Sheehan followed
24 by Kelly King.

25 CHAIRPERSON ACZON: Do you swear that the
McMANUS COURT REPORTERS 808-239-6148

175

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

2 THE WITNESS: Yes.

3 CHAIRPERSON ACZON: Please state your name
4 and address for the record.

5 THE WITNESS: My name is Mark Sheehan, 588
6 East Kuiaha Road in Haiku.

7 CHAIRPERSON ACZON: Please proceed.

8 MARK SHEEHAN

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: I would like too invite the
13 members of the Land Use Commission, while they're

14 here to please take a look at the vacant malls on the
15 way to the airport.

16 The Maui Market Place there on Dairy Road
17 has only a couple of stores remaining there, Office
18 Max and a pet shop, and Old Navy, but the big tenants
19 have already moved on. They will also see the Kmart
20 is another ghost mall. And that we have a very high
21 vacancy rate here.

22 I can't understand why the developers want
23 to build another gigantic mall and ignore the
24 community plan. The traffic impacts will be far
25 greater than I think has been considered in this EIS

McMANUS COURT REPORTERS 808-239-6148

176

1 because of all the other developments that are
2 happening between North Kihei and Makena. And that
3 should be taken into consideration.

4 One of the things that is never considered
5 is the social impacts, and I don't really have any
6 specific information for you about social impacts,
7 other than to say that when I look at what is
8 happening to this society, it seems to me that this
9 will have an impact. As a former school principal, I
10 would never put a mall right next to a school.

11 I want to speak specifically though to how
12 this violates the community plan. There was a
13 decision by the Intermediate Court of Appeals that
14 was decided on June 22nd, 2012, that basically says
15 that the community plans have the force of law.

16 The county, some people in the county
17 Planning Department don't believe so, but this was a
18 decision by the Intermediate Court of Appeals and
19 I'll leave this with the recording secretary if
20 anybody would like to look into it.

21 But it violates the specific language of
22 the community plan which calls for light industrial
23 use. While there is some light industrial use in
24 this particular plan, the amount of retail is a way
25 of basically bending the rules and is in violation of

McMANUS COURT REPORTERS 808-239-6148

177

1 the community plan.

2 Mostly warehousing and distribution
3 facilities are really what is called for in light
4 industrial, and yet less than half of the project is
5 planned for light industrial. So this project would
6 contribute to sprawl, and draw business away from the

7 core of Kihei that the community plan is trying to
8 create.

9 So for that reason alone, I think that you
10 should reject this Environmental Impact Statement
11 because it doesn't really conform with the community
12 plan.

13 CHAIRPERSON ACZON: Any questions for the
14 testifier?

15 MR. SAKUMOTO: No questions.

16 CHAIRPERSON ACZON: Commissioners? Thank
17 you. Next witness.

18 EXECUTIVE DIRECTOR: Kelly King followed by
19 Jeremy Konohia.

20 CHAIRPERSON ACZON: Do you swear that the
21 testimony that you're about to give is the truth?

22 THE WITNESS: I do.

23 CHAIRPERSON ACZON: Please state your name
24 and address for the record.

25 THE WITNESS: My name is Kelly King. I

McMANUS COURT REPORTERS 808-239-6148

178

1 live at 72 Kalolo Place in North Kihei.

2 CHAIRPERSON ACZON: Please proceed.

3 THE WITNESS: Thank you.

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

KELLY KING

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

DIRECT EXAMINATION

THE WITNESS: I am here as both an

individual who's been a long time resident of Kihei. I've been in Kihei for over 35 years in the same house that my husband and I built and raised two children in for over 31 years. And I also serve as the Kihei resident representative to the Maui County Council.

I also sit on the board of the Hawai'i

Technology Development Corporation, which is a state organization that has a site in the R and T park in Kihei that we try to rent out. It's been about 50 percent occupancy for many years, because of the vacancies throughout Kihei in retail commercial. There's not a huge demand for that right now.

I do want to say that I've been intensely involved in Kihei for many, many years, starting with the birth of my child who is now 31; and in the schools, in the parks, in local governance with the

1 Kihei Community Association back then. Some of you
2 may remember Jean Thompson, who was a beloved figure
3 as the President of the Kihei Community Association
4 back then.

5 And I've gotten involved because of the
6 need for things to happen, for stuff to get done and
7 for our community to be represented.

8 So I've been in the fight for
9 air-conditioning for our schools, in the fight for
10 second elementary school, which we eventually got.
11 Got so involved in the school system, that I ran for
12 the State Board of Education and got myself on that
13 board, back when it was an elected position.

14 So being involved in the community it
15 becomes very frustrating when these projects come up
16 without collaboration with our community. I watched
17 the original rendition of this project that was
18 matriculated into the Kihei Community Plan, flipped
19 drastically, and change into something else without
20 going through the same process that it originally
21 went through. It's changed again, but it's still not
22 the original project that it was accepted by the
23 Kihei-Makena Plan.

24 On the Maui County Council, I chaired the
25 planning committee, and so we are going through the

McMANUS COURT REPORTERS 808-239-6148

180

1 process of community plan reviews, which was woefully
2 slow up until this year, and we're finishing up the
3 Molokai Community Plan which is the entire Island of
4 Molokai right now. The next will be West Maui. The
5 next will be South Maui.

6 I met with the Kihei Community Association
7 yesterday, and Mr. Spence, and some of the folks from
8 planning were there, and I'm encouraging all
9 communities to not wait until we get around to doing
10 their plan, but to start the engagement now.

11 It really worries me and bothers me, and
12 it's sort of a "throw up your hands" situation when
13 you see a project like this come this far without
14 community engagement.

15 I'm trying to, as chair planning committee,
16 encourage all developers I talk to, to before you
17 even get to myself or County Council or talk to other
18 councilmembers to engage your community, and so I
19 haven't seen that.

20 CHAIRPERSON ACZON: Please summarize e.

21 THE WITNESS: I would urge this board TO
22 send the EIS back. Ask the developers to engage with
23 the community, because the EIS addresses a plan that
24 is really not acceptable.

25 CHAIRPERSON ACZON: Thank you. Any

McMANUS COURT REPORTERS 808-239-6148

181

1 question for the testifier?

2 MR. SAKUMOTO: No questions.

3 MS. APUNA: No.

4 MR. PIERCE: I have a question.

5 CHAIRPERSON ACZON: Go ahead.

6 CROSS-EXAMINATION

7 BY MR. PIERCE:

8 Q My name is Tom Pierce representing
9 Intervenors Maui Tomorrow and South Maui Citizens.

10 My question is as a councilmember, could
11 you explain why the Kihei Community Plan is one of
12 the plans that's important -- an important planning
13 document?

14 A It's important because we have a framework
15 called the Maui Island Plan, which kind of gives
16 growth boundaries. The growth boundaries are a

17 general guideline to me, and they do say where we
18 intend to eventually have growth.

19 But that doesn't mean that growth is going,
20 to happen this year, or even in the next five years
21 or the next ten years. It's up to the community,
22 within that framework, to look at our own
23 communities, community by community, and say where
24 the next growth should be. What is good for our
25 community. We have a lot of stuff happening in

McMANUS COURT REPORTERS 808-239-6148

182

1 Kihei. The high school probably being one of the
2 biggest thing. So that's going to impact our
3 community hugely.

4 As a person who's been working on that for
5 25 years when I actually thought my own kids might go
6 there some day, it's been a long haul. Nobody
7 doesn't want the high school. But all the projects
8 I've looked at since the high school has been funded,
9 have given impact statements that don't even include
10 the high school, and don't look at all of the other
11 developments that are coming down the pike.

12 So we need to look at our community
13 holistically. We're getting to a point -- and

14 personally for myself, I'm working with the community
15 on many projects having to do with drainage, with
16 signage, with cultural heritage, with mapping those
17 things out. And we're starting to come together
18 around this idea of Downtown Kihei, which is in our
19 community plan, starting to come together about an
20 idea of identity for Kihei, and having these other
21 things thrown at us by outside entities doesn't help.

22 So if I can, I wanted to read to you
23 straight from Chapter 280(b) which is entitled Code
24 of Ordinances. It says: This is the purpose and
25 intent of General Plan and Community Plans. This

McMANUS COURT REPORTERS 808-239-6148

183

1 chapter is designed to provide plans, clearly
2 identify provisions that are meant to be policy
3 guidelines and provisions that are intended to have
4 the force and effect of law.

5 So when our community puts hundreds of
6 hours -- and there were thousands of hours put into
7 Maui Island Plan -- and develops a plan for our
8 growth that we feel good about. We feel like it will
9 serve our next generations well, we do want it to

10 have force and effect of law.

11 So it's important that the projects that
12 come before bodies like this, match up with our
13 community plan, or at least come before the council
14 for an amendment so that the representative of the
15 people can decide if that an amendment should be
16 given.

17 CHAIRPERSON ACZON: Go ahead, Mr. Pierce.

18 MR. PIERCE: Yes, Mr. Chair, if I can ask
19 another question.

20 Q Ms. King, have you had a chance to review
21 any portions of the EIS?

22 A Just the overviews.

23 Q So one of the things that is said in there
24 is that it appears to be the position of the drafters
25 of the EIS that there's no consistency issue because

McMANUS COURT REPORTERS 808-239-6148

184

1 there is M-1, the area zoned M-1, light industrial.

2 Now, you as a County Council member are in
3 charge of -- the County Council is in charge of
4 zoning. So do you agree that because it is zoned M-1
5 industrial, light industrial, and apparently,
6 according to the drafters of the EIS, all the uses

7 that they're proposing are consistent with it, that
8 because of that, that ameliorates any problems or any
9 inconsistencies that may or might be in the community
10 plan?

11 A No, I don't. And I don't think the
12 community plan is just a zoning map. I think there
13 are a lot of other issues that we deal with as a
14 community besides just land use and zoning. And in
15 order to get to that end goal of having a whole,
16 healthy environmentally happy community, we have to
17 be able to look within those parameters, what land
18 use do we want to have there.

19 So the community designated, and the
20 original developer agreed to have that light
21 industrial development there. Somehow new people got
22 ahold of the property, and it's changed.

23 So, no, I think that the healthy thing to
24 do, and the smart thing to do, and I think the legal
25 thing to do is come back to the community and work

McMANUS COURT REPORTERS 808-239-6148

185

1 out a plan that works for everybody.

2 Q Mr. Chair, one more question.

3 Ms. King, as I understand it, I think I've
4 heard Director Spence talk about this before, is that
5 the growth boundary has moved mauka of Pi'ilani
6 Highway. Are you familiar with that?

7 A Right.

8 Q And you, as representative of Kihei, would
9 you see that because the growth boundary has moved,
10 that that should mean that the core urban usage
11 should be moved mauka of the highway?

12 A That might happen at some point, but when
13 you look at our infrastructure in Kihei, we cannot
14 support that now. Those growth boundaries are there,
15 that's fine, but it doesn't mean we have to fill in
16 all the growth boundaries immediately.

17 Q Do you believe that that type of
18 information needs to be addressed in the EIS?

19 A Absolutely. I think the infrastructural
20 information has to be addressed.

21 COMMISSIONER CABRAL: Since you're clearly
22 involved in the community, were you aware of, or have
23 you been invited to any community meetings that have
24 discussed this project?

25 THE WITNESS: Not before it's come before

1 this body. No, I haven't. I've had one meeting with
2 will the developer's representative in my office.

3 COMMISSIONER CABRAL: That wasn't a
4 community meeting. Thank you.

5 CHAIRPERSON ACZON: Commissioners? Anybody
6 else?

7 EXECUTIVE DIRECTOR: Next witness is Jeremy
8 Konohia followed by Hannibal Starbuck.

9 CHAIRPERSON ACZON: Do you swear that the
10 testimony that you're about to give is the truth?

11 THE WITNESS: Yes.

12 CHAIRPERSON ACZON: Please state your name
13 and address for the record.

14 THE WITNESS: Aloha, my name is Hannibal
15 Starbuck. I live at 294 Elilani Street in Pukalani.

16 HANNIBAL STARBUCK

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: I'm a lifelong resident of
21 Maui, and I've lived all over. I lived in Kihei from
22 '87 to '91 when I was finishing high school. Right
23 now I'm in Pukalani renting, and acknowledge the need

24 for affordable housing because we're renting and have
25 two working members in our ohana. Still hard to find

McMANUS COURT REPORTERS 808-239-6148

187

1 a house.

2 So I started looking at the FEIS at the
3 beginning of the meeting, but it's been a long time.
4 So I was able to find a couple things that stood out
5 to me. And the one thing is the drinking water. It
6 says that they need 171,000 gallons per day of
7 drinking water for this project, and it says that
8 there is .421 million gallons per day allocated from
9 the Iao Aquifer. Iao is up here. Kihei is way over
10 there (indicating).

11 And they also going to take some water from
12 Kamaole Aquifer, 81,000 gallons per day of
13 nondrinkable water.

14 So it doesn't list any alternatives. Yet
15 it does say that there is all these other projects,
16 and if you look on page 323, Table 16B in the
17 Appendix, a lot of them are residential, Maui Lu
18 Resort, Kihei High School, Kinalea Apartments
19 (phonetic), Downtown Kihei, Maui Research Technology

LUC 7-19-17 Kauai and Maui
20 Park, Honua'ula Affordable Housing Development.

21 The total that they need is 2.3 million,
22 right? And that's not available, obviously, for all
23 these projects.

24 And this just took me, you know, just in
25 this time skimming this over, it lists no

McMANUS COURT REPORTERS 808-239-6148

188

1 alternatives. It does say as noted .421 million
2 gallons per day, which is 421,000, if you're not
3 current in your metric conversion, basically asking
4 for 40 percent of what is available.

5 Kihei High School wants 185,000 per day,
6 and the -- well, Kihei residential is the one that's
7 currently on the table. They want more than is
8 available, and they're already in construction, I
9 think.

10 So it says here:

11 As noted in the FEIS .421 mgd of
12 groundwater can be allocated from the Iao Aquifer
13 System, therefore, all proposed projects in Table No.
14 16B will not be able to utilize drinking water from
15 the Iao Aquifer System. It is noted that only the
16 Kihei residential project has begun construction of

17 those listed in the table. And as development
18 occurs, each individual project will need to provide
19 a viable water source. Alternatives considered by
20 the projects in Table No. 16B include, but are not
21 limited to drilling wells within the Kamaole Aquifer
22 as a new water source, but as was noted, the Kamaole
23 water was going to be nondrinkable.

24 So the 2.3 million was drinking water. So
25 the water doesn't add up, and there is no

McMANUS COURT REPORTERS 808-239-6148

189

1 alternatives listed. It doesn't list anything about
2 priorities.

3 Is the project that's already under
4 construction going to get all of the .42 million and
5 there's none leftover?

6 So I'm just concerned about that, as
7 everybody on Maui is concerned about our water.

8 And that's all I'll say about that.

9 I do want to mention that if you go to Maui
10 Mall lots of commercial space open. Kaahumanu is
11 never full capacity that I've seen in any time
12 recently, not even at Christmastime.

13 CHAIRPERSON ACZON: Please summarize.
14 THE WITNESS: And that's all, thank you.
15 MR. SAKUMOTO: No questions.
16 MS. APUNA: No.
17 CHAIRPERSON ACZON: Commissioners? Thank
18 you, Mr. Starbuck.
19 EXECUTIVE DIRECTOR: Captain Jon Jon Tabon.
20 CHAIRPERSON ACZON: May I swear you in
21 first?
22 Do you swear that the testimony that you're
23 about to give is the truth?
24 THE WITNESS: Yes.
25 CHAIRPERSON ACZON: Please state your name
McMANUS COURT REPORTERS 808-239-6148

190

1 and address for the record.
2 THE WITNESS: My name is Jon Jon, a lot of
3 people know me as Captain Jon Jon. Kihei boy. My
4 address is 100 Honuea on the other side of Ali'i Lani
5 where I grew up.
6 JON JON TABON
7 Was called as a public witness, was sworn to tell the
8 truth, was examined and testified as follows:

9 DIRECT EXAMINATION

10 THE WITNESS: I'll let everybody know that
11 I'm on the water, on the shores, and I see every
12 morning for the past 40 years. I have seen the
13 decline of limu from one area to another, and it
14 always starts when the development starts.

15 We have so many problems right now and we
16 creating more. I don't understand. I'm not sure if
17 everyone notices how many trees has gone from our
18 shores because of the corals are dying. Dead coral
19 turns into sand. People say, oh, the water level is
20 rising, it's not, it's the ocean floor from all the
21 excess sand.

22 Now you don't have limu coming up on top,
23 being pulled from the rocks naturally from the waves
24 and currents. That's what used to stop the high tide
25 water from reaching land and uprooting all these

McMANUS COURT REPORTERS 808-239-6148

191

1 trees.

2 Now, we have this development on a major
3 gulch. I've seen it. Maui Lu, I've seen all that
4 area. The reef is dead. It's not dead, there is
5 always going to be some species that's going to

6 thrive. But what we have right now is, I mean Kihei,
7 if you look at it from aerial map, it was made up of
8 many, many fishponds, after fishponds, after
9 fishponds.

10 I'm assuming, you know, all allocated to
11 the ahupua'a of the island. Each one has their own.
12 I'm here speaking on behalf of the reefs that we have
13 here. I have four children. I was fortunate enough
14 to see all the fish that we used to see. You don't
15 see colors any more along the shore. I mean, you
16 don't see yellow. You don't see the manini,
17 aholehole. You don't see the kulas any more. That
18 tells you a lot, when the nocturnal fish don't even
19 come out, or you can't even see them, that tells you
20 a lot about what's going on.

21 You know, I just got back from the
22 Philippine Islands, and there is a very
23 high-pressured fishing, where dynamite fishing was
24 used and small ice. They band it. It's been a
25 little over a year. What they do have, however, is

McMANUS COURT REPORTERS 808-239-6148

192

1 the bottom of the food chain which is the limu.

2 In my understanding, and I don't have no

3 fancy marine biology paper to say I'm a marine
4 biologist, but what I do have is 40 years of being
5 watching these shores, fishing these shores every
6 single day -- well, not every single day, but, you
7 know, my wife won't let me. But almost every single
8 day.

9 But what they do have in the amount of
10 time, and how it relates my trip to the Philippines
11 Islands --

12 CHAIRPERSON ACZON: Please summarize.

13 THE WITNESS: I was there for three weeks
14 and what I have seen is in that short amount of time,
15 because they have the bottom of the food chain, there
16 was a lot of fish that I seen come back in that
17 short -- in that short amount of time.

18 One of the biggest impacts of every
19 development, and before so, for one, is I'm note sure
20 if everybody knows, I know, I notice, there is always
21 a fire before a development. It's the fastest way to
22 clear land.

23 CHAIRPERSON ACZON: Thank you.

24 THE WITNESS: So my concern is how is that
25 going to play out for one?

1 Secondly, how is it going to impact -- or
2 are you going to be -- is there going to be any
3 measures taken to protect the reef and assure that
4 there's no more --

5 CHAIRPERSON ACZON: Thank you, Mr. Tabon.
6 Any questions for Mr. Tabon?

7 MR. SAKUMOTO: No questions.

8 THE WITNESS: Thank you so much.

9 CHAIRPERSON ACZON: Commissioners? Mr.
10 Tabon, we have a question for you.

11 VICE CHAIR SCHEUER: Aloha. Just briefly.

12 You testified, if I understood you
13 correctly, that you've seen the decline of marine
14 species makai of particular developments; is that
15 correct?

16 THE WITNESS: Yes, absolutely.

17 VICE CHAIR SCHEUER: I don't know if you
18 are aware -- are you aware whether any of those
19 particular developments had best management practices
20 in place to control runoff?

21 THE WITNESS: No, I don't. I'm not aware
22 of that.

23 VICE CHAIR SCHEUER: Thank you very much.

24 COMMISSIONER CABRAL: Not just to yourself,

25 but to many people here, I really want to thank you

McMANUS COURT REPORTERS 808-239-6148

194

1 folks for taking the time, because it's all your time
2 too, and coming out and being willing to talk to us,
3 because we don't live here, yet we're burdened with a
4 really important decision in a lot of ways as things
5 happen. So I do appreciate the fact that that's
6 probably not a comfort level to sit here and look at
7 this whole row of people, so I do want to thank, not
8 just you, but everyone who's testified. So thank you
9 for your testimony.

10 COMMISSIONER CHANG: One more question.

11 Are you a commercial fisherman?

12 THE WITNESS: No, ma'am.

13 COMMISSIONER CHANG: So you fish for

14 pleasure, recreational fishing?

15 THE WITNESS: I'm a pro angler. Believe it
16 or not, I actually get paid to fish, and it's mostly
17 catch and release.

18 COMMISSIONER CHANG: You fish right in

19 front of this area?

20 THE WITNESS: I fish all of Kihei. I could
21 tell you where every rock is.

22 COMMISSIONER CHANG: Are there fishes makai
23 of this project area? Or is --

24 THE WITNESS: No, there is fish, okay. The
25 fish hasn't disappeared. None of the species has

McMANUS COURT REPORTERS 808-239-6148

195

1 gone extinct, it's just gone out of reach. They have
2 gone further out.

3 COMMISSIONER CHANG: Thank you very much.

4 CHAIRPERSON ACZON: Thank you. Anybody
5 else? Next testifier.

6 EXECUTIVE DIRECTOR: Judith Levy, Judith
7 Levy. Rose Reilley, Rose Reilley.

8 CHAIRPERSON ACZON: Do you swear that the
9 testimony that you're about to give is the truth?

10 THE WITNESS: I do.

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

13 THE WITNESS: My name is Cecilia Rose
14 Reilley, legally, and I live at 100 Kane Road in
15 Haiku.

LUC 7-19-17 Kauai and Maui
CECILIA ROSE REILLEY

16
17
18
19
20
21
22
23
24
25

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

DIRECT EXAMINATION

THE WITNESS: So I first moved to Hawai'i when I was ten, and have moved back and forth. And I've, you know, been -- I lived in New York. I lived in Florida, Texas, Colorado, California, and then back over here. So I've been -- and I was born in Ohio.

McMANUS COURT REPORTERS 808-239-6148

196

1
2
3
4
5
6
7
8
9
10
11
12

And so, you know, I'm talking with my co-worker the other day, and she is from Ohio. And she's -- so I was asking her, what's it like over there? And I've had a lot of stories, you know, over the years waiting stories and stuff, and getting to talk to people. And they're like, oh, they lit the river on fire.

There is like all these things. And she is like, there's nothing really to do there because all they have is shopping, and then -- so it's like commercial development and then residential development and everything is developed.

13 I'm also a massage therapist now. So I get
14 to go to a lot of different homes. And like, a lot
15 of these homes are filled with illegal vacation
16 rentals. Like, I swear, like, I look at Kihei, and
17 I'm like empty in so many places, those people are
18 just coming in. And they're like, you know, buy the
19 house for, you know, third, fourth home, make money.

20 Also, you know, the resources of really
21 beautiful people. So I would say that, you know,
22 everybody has brought it up, our commercial
23 development is really quite empty. And that we don't
24 want it and need it. You know, we are all set up.
25 We want to live sustainably.

McMANUS COURT REPORTERS 808-239-6148

197

1 And people come here for beauty of nature.
2 And we should provide that for them and give them
3 that sustainable experience of what it's like to be
4 in nature. They want to eat the fresh food, see all
5 the trees, and we can do things with that that would
6 be sustainably profitable for people, you know, that
7 we have things that we can really offer.

8 And so I would just like to say that I

9 consider a mega mall to be completely ridiculous.
10 And that I would say that we need to be innovative
11 and use technology that is way different than has
12 been used.

13 Everyone has seen the change and, you know,
14 like my mom lived here for 20 years. I've been
15 coming here. I lived on Kaua'i, and Kaua'i is so
16 nice with the protect the beach, actually like trees,
17 and then you have like development farther from the
18 beach. So when you're in the water and look over,
19 you see a beach and trees, instead of looking over
20 and seeing hotels. Thank you.

21 CHAIRPERSON ACZON: Thank you. Any
22 questions?

23 MR. SAKUMOTO: No questions.

24 MS. APUNA: No.

25 CHAIRPERSON ACZON: Commissioners? Thank

McMANUS COURT REPORTERS 808-239-6148

198

1 you.

2 EXECUTIVE DIRECTOR: I'll recall some of
3 the witnesses who didn't appear. Deborah Mader.
4 Amanda Tabon. Jeremy Konohia.

5 CHAIRPERSON ACZON: Anybody else from the

6 audience that wishes to testify?

7 MR. PIERCE: Dick Mayer was our expert
8 witness in the contested case, the Order to Show
9 Cause, which it's our position this is part of that.

10 What we've asked to do is Mr. Mayer is
11 prepared to give public testimony. If he's not
12 provided the opportunity, what we would like to do,
13 since you have given us the opportunity to call some
14 witnesses, we are going to keep that limited, keep it
15 as efficient as possible. We would like to call Mr.
16 Mayer since he was an expert.

17 CHAIRPERSON ACZON: That would be fine.

18 MR. PIERCE: Thank you. I think he won't
19 have to testify as a public person today.

20 CHAIRPERSON ACZON: Who else wants to
21 testify? Just go to the witness box. May I swear
22 you in?

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

25 THE WITNESS: Yes.

McMANUS COURT REPORTERS 808-239-6148

199

1 CHAIRPERSON ACZON: Please state your name

2 LUC 7-19-17 Kauai and Maui
and address for the record.

3 THE WITNESS: My name is Heali'i Kauhane,
4 (phonetic) and my address is 585 Linakon, or Second
5 Lane, Linakon Street.

6 CHAIRPERSON ACZON: Please proceed.

7 HEALI'I KAUHANE

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: So I would like to ask that
12 the Commission reject the EIS. You know, one of the
13 questions that comes to my mind is why does the water
14 come from. And I think that was already addressed.

15 So does the Environmental Impact Statement
16 address where the water is coming from? And how the
17 farmers who practice their cultural heritage in Iao
18 Valley are not able to get enough water while water
19 is being piped to a mall somewhere else?

20 I also know that when they built the
21 drainage system for the Wailuku River -- now what you
22 have is a funnel that takes all of the silt down into
23 the ocean. I live right on the ocean, and the ocean
24 continues to be brown down there. And I don't know
25 anything about Kihei, except when I go to the ocean

1 in Kihei, I cannot see the vibrant colors of limu
2 that I used to see as a boy, and I'm not even from
3 this island. I'm from Oahu, and same thing going
4 there now.

5 Captain Jon Jon, he said -- what he said
6 is, yeah, it's the bottom of the food chain, but you
7 need water for it to grow. And if sediment is
8 filling that reef, then you're not having any limu
9 growing, then not having any small fish eat, then not
10 having big fish eat the small fish, then you don't
11 have the humans practicing the cultural practice of
12 eating, but now they can go to the mall to go buy
13 clothes so that they can go to 808 Bistro or Cafe Ole
14 to buy food from somewhere else.

15 And then when the funnel effect, I know
16 that there is some engineer who went to school
17 somewhere, got a degree in engineering, past a bunch
18 of tests, got a job with an engineering firm, and
19 drew -- planned a waterway aside from the water's
20 natural path.

21 I don't know how many of you guys were
22 around during Hurricane Iwa. You guys all remember

23 Haione Valley? I don't know anybody knows where that
24 is. That's on Oahu. Big place for development.
25 Haione Valley, they moved the river to the side.

McMANUS COURT REPORTERS 808-239-6148

201

1 They caused the water to go over to the side. Right
2 after Hurricane Iwa destroyed, you know, 40 percent
3 of the island, there was a tropical storm behind it.
4 That wasn't a 50-year storm. That was a once in a
5 lifetime storm, but it happened twice.

6 I don't know who does the math with the
7 50-year storm, so --

8 CHAIRPERSON ACZON: Please summarize.

9 THE WITNESS: In that second storm the
10 water took its natural path. The natural path was
11 under the houses that were built on the development
12 that moved the river. Nobody knew it, because they
13 were all at work until their houses started caving
14 in.

15 I don't know if you remember the news,
16 there were cars, there were playground sets, there
17 were people's dogs and cats all getting washed into
18 the ocean. And it's not a 50-year storm.

19 CHAIRPERSON ACZON: Thank you. Any

20 questions?

21 MR. SAKUMOTO: No questions.

22 THE WITNESS: What, no questions?

23 CHAIRPERSON ACZON: Commissioners, any

24 questions? Thank you. Next testifier.

25 Do you swear that the testimony you're

McMANUS COURT REPORTERS 808-239-6148

202

1 about to give is the truth?

2 THE WITNESS: Yes.

3 CHAIRPERSON ACZON: Please state your name

4 and address for the record.

5 THE WITNESS: My name is Kapono

6 Makahanaloa-Antonez, and my address is 28 Laupapa

7 Place, Haiku.

8 KAPONO MAKAHANALOA-ANTONEZ

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: I just wanted to talk about

13 the cultural side of it all.

14 I wanted to speak about like my life

15 growing up a kanaka. I have native blood, and

16 growing up in this school system where I kind of
17 didn't really know my culture and identity too well.
18 You know, at the ending of my schooling I'm only now
19 starting to figure out my cultural and identity that
20 my ancestors have left behind for me. And if you
21 guys build this mall here -- I would love to go visit
22 this spot. I would love to go visit this place and
23 practice with everyone here. Doesn't matter who you
24 are, as long as you share that aloha.

25 And aloha is -- my definition -- not my

McMANUS COURT REPORTERS 808-239-6148

203

1 definition, but a lot of Hawaiians' definition of
2 aloha is the essence of relationships in which each
3 person is important to every other person for a
4 collective existence.

5 So if we're not collectively existing on a
6 pono scale where everything is right, there's no
7 aloha by definition. So I just wanted to bring that
8 to everyone's awareness, because we do live in
9 Hawai'i, and we do want to practice aloha.

10 And I just feel like the EIS isn't
11 following that protocol here. And that's pretty much

12 all. We don't need another Oahu here, that's another
13 thing as well.

14 And seems like everyone has done their
15 homework, and they can tell you that it's going to
16 impact the environment majorly.

17 So, yeah, I'm opposed. Definitely don't go
18 with the EIS on this one. Mahalo.

19 CHAIRPERSON ACZON: Thank you. Any
20 questions?

21 MR. SAKUMOTO: No questions.

22 CHAIRPERSON ACZON: Commissioners? Thank
23 you.

24 Just to let everybody know that we are
25 going to finish the public testimony today and recess

McMANUS COURT REPORTERS 808-239-6148

204

1 and continue tomorrow. So next testifier, please.

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

4 THE WITNESS: Yes.

5 CHAIRPERSON ACZON: Please state your name
6 and address for the record.

7 THE WITNESS: I'm Deborah Mader, live
8 Moolio Place in Kihei. This is part of my family.

9

DEBORAH MADER

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

12

DIRECT EXAMINATION

13

THE WITNESS: Boys, you recognize this

14

video?

15

MADER BOY 1: Yes.

16

THE WITNESS: What's happening that day

17

when we shot this video? Do you remember anything?

18

MADER BOY 1: It was like all these -- it

19

was like after a flood when there was like all these

20

like rocks like washed away, like.

21

THE WITNESS: Is the land normally dry

22

where you had seen the water come through?

23

MADER BOY 1: Yes.

24

THE WITNESS: Would you call the area a

25

gulch?

McMANUS COURT REPORTERS 808-239-6148

205

1

MADER BOY 1: I would.

2

THE WITNESS: That's fair.

3

So on the day after the rain, it rained a

4

lot of Upcountry, right? It poured some in Kihei,

LUC 7-19-17 Kauai and Maui
5 but not like for days, right?

6 MADER BOY 1: Yeah. No.

7 THE WITNESS: So when the water rushed
8 through this whole area, was the water able to flow
9 from the mountains to the ocean in its proper path,
10 or was there stuff in the way? Was it rerouted?

11 MADER BOY 1: Rerouted.

12 THE WITNESS: What rerouted it?

13 MADER BOY 1: Stuff.

14 THE WITNESS: Like cement and like poles
15 and stuff?

16 MADER BOY 1: Yes.

17 THE WITNESS: And like fences and things?
18 Okay, so this is part of the Kulanikai (phonetic)
19 Gulch, and developers in the past in Kihei said best
20 practice management. We're going to help control the
21 water. It doesn't work. And this happened in
22 December, and it's not the first time, and it won't
23 be the last, and it's still not fixed. And damage is
24 still there.

25 But a car actually got swept off the road

McMANUS COURT REPORTERS 808-239-6148

206

1 and pushed up against this barrier (indicating)

2 because the water couldn't flow properly.

3 So my concern about the project and EIS
4 being that you cannot control water all the time with
5 manmade solutions such as this. And I don't think
6 the EIS has taken this into consideration at all.

7 The flooding we have had in North Kihei
8 year after year -- we used to live on Kulanihakoi
9 Street in South Kihei. So that road flooded several
10 times and still continues to do so, because of
11 Environmental Impact Studies in the past didn't take
12 certain things into account.

13 We live it. We see it. The road has
14 become impassable. And not even if there's a drop of
15 rain in Kihei, it's from what's happening up the
16 mauna.

17 So I hope that you deny this Final EIS
18 study, as lengthy as it is, and challenge them to put
19 a lot more thought and consideration into what
20 they're doing.

21 And also to kanaka out there, I hope to
22 look up and see some of you on this board, because I
23 think it's important for kanaka maoli to be part of
24 land making decisions on Maui.

25 CHAIRPERSON ACZON: Commissioners? Thank

1 you. Next testifier. Anybody else?

2 EXECUTIVE DIRECTOR: Albert Perez.

3 CHAIRPERSON ACZON: May I swear you in
4 first? Do you swear that the testimony that you're
5 about to give is the truth?

6 THE WITNESS: Yes.

7 CHAIRPERSON ACZON: Please state your name
8 and address for the record.

9 THE WITNESS: Albert Perez, 55 North Church
10 Street, Wailuku.

11 CHAIRPERSON ACZON: Please proceed.

12 ALBERT PEREZ

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

15 DIRECT EXAMINATION

16 THE WITNESS: I'm director of Maui Tomorrow
17 Foundation. My background is master's in planning
18 from UH, and I have previously worked for Office of
19 Planning for the state and Maui County Planning
20 Department.

21 I have reviewed many EISs, and I have never

22 seen one that is so large with so little useful
23 content. Rather than describing the impacts, it's
24 largely is a self-serving recitation of the benefits
25 of the project, which is specifically prohibited in

McMANUS COURT REPORTERS 808-239-6148

208

1 Hawai'i Administrative Rules 11-200-14.

2 An EIS draws its meaning from the
3 conscientious application of the EIS, and shall not
4 be merely a self-serving recitation of benefits and
5 rationalization of the proposed action.

6 Unfortunately, that is exactly what they
7 have done with this EIS. The Applicant does not use
8 the incredible length of this EIS to fully describe
9 the impact of this largely undefined project, or to
10 discuss the clear conflict of this proposal with
11 Kihei-Makena Community Plan.

12 For example, the EIS's treatment of the
13 land use plans, it picks and chooses items that
14 support the project, but ignores or minimizes
15 conflicting policies. A good EIS would consider
16 both.

17 The other section of those Hawai'i
18 Administrative Rules talks about EIS style. It says:

19 Preparer shall make every effort to convey
20 the required information succinctly in a form that's
21 easily understood.

22 This is over 4,000 pages long, and it was
23 preceded by -- a couple weeks prior -- by something
24 else that I haven't heard of called a pre-Final EIS.
25 That was another 4,000 pages. We had to go through

McMANUS COURT REPORTERS 808-239-6148

209

1 over 8000 pages.

2 It's certainly not succinct, instead it
3 presents an undue burden to people who would like to
4 thoroughly review it. If it's accepted by the LUC,
5 then in the future it will not be a useful tool for
6 decision-makers to understand the impacts of the
7 proposed order because of its length.

8 Also the conceptual bubble map that is the
9 only idea of what we have is what the project is
10 going to be like is not adequate to determine the
11 impacts. To claim that they have evaluated the
12 maximum build-out of the most intensive possible use
13 within the bubble, doesn't allow us to determine
14 appropriate mitigation.

15 We don't know what they're doing. One
16 bubble says, light industrial, business, commercial.
17 Which is it? Light industrial uses have very
18 different impacts than business commercial uses.
19 They need to evaluate specific uses so we can
20 determine their impacts.

21 With regard to flooding, you've heard South
22 Kihei Road is one of the worst flooding areas on
23 Maui. County drainage standards do not prevent
24 flooding when we get greater than 50-year storms.

25 The EIS needs to talk about flooding and

McMANUS COURT REPORTERS 808-239-6148

210

1 offshore sedimentation impacts when we get bigger
2 storms than that, 100-year storms. Just because
3 you're using best management practices doesn't mean
4 there will never be any impact.

5 CHAIRPERSON ACZON: Please summarize.

6 THE WITNESS: I would just like to say one
7 more thing, and that there is a Hallstrom Group
8 economic study cited in the EIS about commercial
9 space. It was done 2013 and it showed a Kihei floor
10 area vacancy rate of 10 percent, but conditions have
11 changed. There was a 2016 Collier study that shows

12 rate of 31 percent. So that information needs to be
13 updated in the EIS.

14 We urge you to reject this EIS to its many
15 inadequacies and do a better job.

16 CHAIRPERSON ACZON: Thank you. Any
17 questions?

18 MR. SAKUMOTO: No questions.

19 CHAIRPERSON ACZON: Commissioners? Vice
20 Chair Scheuer.

21 VICE CHAIR SCHEUER: I asked a
22 representative from the Maui Chamber of Commerce
23 whether they had ever opposed a development.

24 Has Maui Tomorrow ever supported a
25 development?

McMANUS COURT REPORTERS 808-239-6148

211

1 THE WITNESS: Actually, we have. We have
2 supported the Waikapu Country Town, which came before
3 this Commission fairly recently.

4 We feel that that EIS was done in full
5 spirit of compliance with the EIS law.

6 VICE CHAIR SCHEUER: Thank you.

7 CHAIRPERSON ACZON: Anybody else? Thank

8 LUC 7-19-17 Kauai and Maui
you. Next testifier. Anybody else? Last call.

9 If not, this concludes the public testimony
10 portion for this docket.

11 I want to thank everybody for their
12 patience and for committing to the time limit that we
13 imposed.

14 Tomorrow we will start with Petitioner's
15 presentation at 8:30. We are in recess for the day
16 and see you tomorrow.

17 (The proceedings adjourned at 5:30 p.m.)

18
19
20
21
22
23
24
25

McMANUS COURT REPORTERS 808-239-6148

212

1 CERTIFICATE
STATE OF HAWAII)
2) SS.
COUNTY OF HONOLULU)
3

4 I, JEAN MARIE McMANUS, do hereby certify:

5 That on July 19, 2017, at 2:00 p.m., the
6 proceedings contained herein was taken down by me in
7 machine shorthand and was thereafter reduced to
8 typewriting under my supervision; that the foregoing
9 represents, to the best of my ability, a true and
10 correct copy of the proceedings had in the foregoing
11 matter.

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

15 Dated this 19th day of July, 2017, in Honolulu,
16 Hawaii.

17

18

19 /S/ Jean Marie McManus
20 JEAN MARIE McMANUS, CSR #156

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

LAND USE COMMISSION
STATE OF HAWAII
July 20, 2017
Maui Arts & Cultural Center
Morgado Meeting Room
One Cameron Way
Kahului, Maui, Hawai'i 96732-1137

ACTION

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

To consider acceptance of Pi'ilani Promenade North, LLC's and Pi'ilani Promenade South, LLC's Final Environmental Impact Statement in support of their Motion for Order Amending the Findings of Fact, Conclusions of Law, and Decision and Order Dated February 10, 1995, which reclassified approximately 88 acres at Ka'ono'ulu, Makawao-Wailuku, Maui, Hawai'i.

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 EDMUND ACZON, Chair
3 JONATHAN SCHEUER, Vice Chair
4 ARNOLD WONG, Vice Chair

5 COMMISSIONERS:

6 GARY OKUDA
7 LINDA ESTES
8 NANCY CABRAL
9 DAWN CHANG
10 LEE OHIGASHI

11 DIANE ERICKSON, ESQ.
12 Deputy Attorney General

13 STAFF:

14 DANIEL ORODENKER, Executive Director
15 RILEY K. HAKODA, Planner/Chief Clerk
16 BERT K. SARUWATARI, Planner

17 RANDAL SAKUMOTO, ESQ.
18 LISA CATALDO, ESQ.
19 Attorneys for Petitioner Ka'ono'ulu Ranch

20 CURTIS TABATA, ESQ.
21 BENJAMIN MATSUBARA, ESQ.
22 Attorneys for Honua'ula Partners, LLC

23 TOM PIERCE, ESQ.
24 Attorney for Intervenors

25 MICHAEL HOPPER, ESQ.
Corporation Counsel County of Maui
WILLIAM SPENCE, Director County of Maui
ANN CUA, Planner
Attorney for Maui County Department of Planning

DAWN APUNA, ESQ.
Deputy Attorney General, State of Hawai'i
RODNEY FUNAKOSHI, Planner
Attorney for State Office of Planning

INDEX

1	INDEX	
2	INTERVENOR'S WITNESSES:	PAGE
3	MARK HYDE	
	Direct Examination/Intervenor	6
4	Cross-Examination/Petitioner	18
	Cross-Examination/Honua'ula	19
5	Redirect Examination/Intervenor	25
6	DANIEL KANAHELE	
	Direct Examination/Intervenor	27
7	Cross-Examination/Petitioner	37
	Recross-Examination/Petitioner	60
8	RICHARD MAYER	
9	Direct Examination/Intervenor	64
	Cross-Examination/Honua-ula	92
10	Redirect Examination/Intervenor	104
11	LUCIENNE DE NAIE	
	Direct Examination/Intervenor	109
12	Cross-Examination/Petitioner	124
13	COUNTY OF MAUI WITNESSES:	
14	WILLIAM SPENCE	
	Direct Examination/County	150
15	Cross-Examination/Petitioner	164
	Redirect Examination/County	178
16	PETITIONER WITNESSES:	
17	JORDAN EDWARD HART	
18	Direct Examination/Petitioner	204
19	DARREN UNEMORI	
	Direct Examination/Petitioner	231
20	Cross-Examination/Intervenor	263
21	JUANITA KANEHAILUA WOLFGRAMM	
	Direct Examination/Petitioner	275
22	Cross-Examination/Intervenor	288
23	ERIC FREDRICKSON	
	Direct Examination/Petitioner	303
24	TOM W. HOLLIDAY	
25	Direct Examination/Intervenor	330

1 CHAIRPERSON ACZON: Good morning.

2 This is the July 20th, 2017 portion of the
3 Land Use Commission meeting A94-706 Ka'ono'ulu Ranch
4 to consider the acceptance of the Final EIS.

5 Yesterday we had concluded the public
6 testimony for this docket, and will now hear the
7 parties' presentation of their cases.

8 The Chair to would like to remind the
9 parties and the public that per HRS 11-200-23(d) that
10 in the event that the agency fails to make a
11 determination of acceptance or nonacceptance within
12 30 days of the Final EIS, then the statement shall be
13 deemed accepted.

14 The Chair also would like to note for the
15 parties and public that from time to time I'll be
16 calling for a short break, at least an hour in
17 between. Please use the microphones when you're
18 speaking.

19 I understand that the parties agreed that
20 we're going to switch around the presentation of
21 cases. The Intervenor is going to go first, followed
22 by the county, followed by OP, and lastly Petitioner.

23 Are we all in agreed?

24 MR. SAKUMOTO: Yes, Mr. Chairman.

25 MS. APUNA: Yes.

1 MR. HOPPER: No objection.

2 MR. PIERCE: Intervenors are in agreement.

3 CHAIRPERSON ACZON: Thank you.

4 I also want to ask the parties and
5 Commissioners that their questions should be limited
6 to the Petitioner's Final EIS, and should not go into
7 the merits -- Petitioner's Motion to Amend LUC's
8 Decision and Order in this docket. So to kind of get
9 the hearing going.

10 Mr. Pierce, please proceed to provide the
11 Commission with your comments on Petitioner's Final
12 EIS.

13 MR. PIERCE: What I propose to do today is
14 we'll be calling first Mark Hyde, and then Daniel
15 Kanahale, and then Dick Mayer, who is our expert, and
16 then Lucienne de Naie, and preserve some closing
17 comments for myself at end of the day.

18 CHAIRPERSON ACZON: Four witnesses?

19 MR. PIERCE: Calling Mark Hyde.

20 CHAIRPERSON ACZON: May I swear you in
21 first?

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

24 THE WITNESS: I do.

25 CHAIRPERSON ACZON: Please state your name

1 and address for the record.

2 THE WITNESS: My name is Mark Hyde, and I
3 reside at 4320 East Waiola Loop in Kihei.

4 CHAIRPERSON ACZON: Please proceed.

5 MARK HYDE

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

9 DIRECT EXAMINATION

10 BY MR. PIERCE:

11 Q Good morning. If you could just tell the
12 Commissioners a bit about your background.

13 A I have a political science degree, law
14 degree. I've served as a law clerk to Santa Clara
15 County Superior Courts. I've had a private practice
16 of law in Silicon Valley for 16 years.

17 Thereafter, I became the CEO of a health
18 maintenance organization in California. Served in
19 that capacity for 11 years. Moved here 13 years ago.
20 Put my boys in high school here, and have been
21 engaged in many civic organizations and activities.

22 Q What is your capacity with the South Maui
23 Citizens for Responsible Growth?

24 A I'm the President, Chairman of the Board
25 and one of the founders of the organizations.

1 Q Why was that organization created?

2 A It was created specifically as a
3 consequence of the proposed mega mall development
4 back in 2012 where members of the community realized
5 that there needed to be an organization that could
6 bring litigation to address some of the concerns that
7 were raised by that development.

8 At the time I believe I was on the board of
9 KCA, Kihei Community Association, but it really is an
10 organization that is designed to represent the entire
11 community, and it really wasn't a suitable
12 organization for commencing any kind of that
13 activity.

14 Q How did South Maui Citizens for Responsible
15 Growth become involved in the petition area?

16 A Well, the impotence -- I'm going to back up
17 just a second to answer your question.

18 The impotence came from an article that
19 appeared in the Maui News in January of 2012. It
20 announced that the largest shopping center of Maui
21 County was going to be built on Pi'ilani Highway,
22 coupled by developer documents indicating that the
23 intersection of Kaonoulu and Pi'ilani would have the
24 highest traffic counts of any place in the county
25 which is important for development purposes.

1 That was a shock to the community. I
2 attended a Kihei Community Association meeting about
3 two months later at which Mr. Spence and our
4 councilmember were present, and they advised the
5 standing-only room that the mega mall was fully
6 entitled. There was nothing anybody could do about
7 it. And we were chided for not having spoken up at
8 the time we had an opportunity to speak to the
9 project.

10 I was goded by a community member to dig
11 deeper into this because it just didn't seem right,
12 given that no one knew about it. I flew to Honolulu
13 and I read the LUC file, reporter's transcript and
14 the clerk's transcript. And what I found in that
15 file was that they had presented -- the ranch had
16 presented to this body --

17 Q And when you say the ranch, who are you
18 speaking of?

19 A That was the prior Ka'olo'ulu Ranch
20 represented to this body, and it was approved to
21 develop a 123 lot light-industrial park on the
22 property.

23 Q That was in 1995?

24 A That's correct.

25 As a result of that, I brought back to Maui

1 this information. I presented it to the Planning
2 Director and the Director of Economic Development for
3 Maui County, and I recommended that they enforce the
4 Land Use Commission order, because under state law
5 that is the only obligation of the county. And they
6 refused to do it.

7 As a consequence, then we formed South Maui
8 Citizens for Responsible Growth. We partnered with
9 Maui Tomorrow and Daniel Kanahele. And we brought an
10 intervention action here to challenge that project.

11 Q What was the basis of the challenge? And
12 that was called a Motion for Order to Show Cause?

13 A That's correct.

14 Q What was the basis for that challenge?

15 A The basis for the challenge was three-fold.

16 One, that the project that was being
17 developed was not substantially in compliance with
18 the representations made to the LUC in 1995.

19 Number two, that the developer's of that
20 project had failed to file public progress reports
21 that would inform the community of what it was that
22 they were doing.

23 And third, that the order provided for the
24 construction of a frontage road which was not part of
25 the developer's plans.

1 Q And the Land Use Commission in 2012 and
2 2013 had hearings on this motion for an Order to Show
3 Cause?

4 A Yes, by a five to four vote the Commission
5 found that there was substantial likelihood that
6 there was noncompliance with the order, and set the
7 matter for a contested case hearing.

8 Q They found that as part of the contested
9 case hearing, right?

10 A That was subsequent. First you had to get
11 through the Order to Show Cause.

12 Q In other words, your point is that they
13 granted the Intervenor's Motion to Conduct an Order
14 to Show Cause Hearing?

15 A That's correct.

16 Q What were the results of the Order to Show
17 Cause Hearing?

18 A It was heard over three days in November.
19 Decided, I believe, in January, February, 2013. This
20 body found that the developers were in violation of
21 the 1995 order for failing to develop the property as
22 represented.

23 CHAIRPERSON ACZON: Does this have
24 something to do with acceptance of the EIS?

25 MR. PIERCE: Mr. Chair, I apologize, but I

1 felt, because all of the Land Use Commissioners here
2 were not here in 2012 and 2013 --

3 CHAIRPERSON ACZON: I think the
4 Commissioners read all the records.

5 MR. PIERCE: We are pretty much wrapped up
6 with that.

7 It also helps, Mr. Chair, for the purposes
8 of Intervenor's explaining what their analysis is of
9 the current project.

10 Q So after that happened, at that point, Mr.
11 Hyde, the Pi'ilani asked for a stay of the contested
12 case hearing, right?

13 A Right.

14 Q And then they said that -- they asked for
15 the stay if they filed a motion to amend, and also
16 they planned to file an EIS?

17 A Correct.

18 Q With respect to that, Pi'ilani has only a
19 portion of the property, right?

20 A That's true.

21 Q And then Honua'ula still is an owner of
22 another portion of the property as they were back
23 then, right?

24 A That's correct.

25 Q So for today's purposes we're only focused

1 on the Pi'ilani portion, although to the extent that
2 you think it's necessary to explain how that relates
3 to the Honua'ula side of the property, feel free to
4 explain that to the Commission.

5 So based upon that, you've now explained
6 South Maui Citizens' involvement, why they got
7 involved.

8 Now, we have the EIS before us. And what I
9 want to get into is your analysis of the EIS.

10 Have you reviewed the EIS?

11 A I've reviewed portions of it that were of
12 particular interest to our organization.

13 Q Did you make comments on the Draft EIS?

14 A Yes, I did.

15 Q Did they respond to your comments?

16 A Yes.

17 Q Did you feel that your comments were
18 appropriately responded to?

19 A No.

20 Q Why don't you go ahead and tell us -- I
21 guess one of the things that also goes back to the
22 original project, would you describe to us what the
23 proposed action is in the EIS?

24 A Well, that's difficult, quite frankly.
25 It's one of the issues that came up earlier. Pardon

1 me for going back.

2 One of the issues in the 1995 order was
3 what did they really represent to the Commission.
4 And there was an effort to convince the Commission at
5 the hearing in 2012 that a 123 lot light-industrial
6 park is the same thing as a four lot mega mall.

7 And they represented that, well, they just
8 said it was a concept really, even though it was very
9 detailed.

10 So with that background, when I look at
11 what they're presenting to you now, which is a bubble
12 map, it's very unclear as to what it's going to be.
13 I don't think they even know what it's going to be
14 quite frankly.

15 Take, for instance, the component of the
16 project that is supposedly for light industrial.
17 It's light industrial/commercial. What does that
18 mean?

19 I had a meeting with the developer prior to
20 the preparation of the statement. They said we don't
21 know that there is going to be any light industrial
22 on the property. I said why don't you connect the
23 light industrial with the property to the north?
24 That's a light industrial area, would make a great
25 transition between the two. Oh, we're not going to

1 do that.

2 Then you look at south side of the property
3 and it's business/commercial, but I think it's really
4 retail. But who knows what it's going to be?

5 Q So do you think the EIS adequately
6 describes the proposed action?

7 A Absolutely not. When I think forward, say
8 three years from now, maybe this thing gets
9 approved -- let's say this gets approved. And they
10 start building whatever they're building. How would
11 you ever grab onto what's happened to say this is
12 what you represented to the Commission, because it's
13 just totally unclear.

14 Q In your comments on the Draft EIS, did you
15 discuss the Kihei-Makena Community Plan?

16 A That's been my key focus in this project.

17 Q What was your concern with the community
18 plan?

19 A My concern goes to how this county plans
20 its lands, and how do you retain your promise to the
21 people about how your community is going to be
22 developed.

23 And this project legally and factually is
24 completely at odds with the Kihei-Makena Community
25 Plan. And the discussion of that is so sparse, and

1 I've raised the issues with them legally if got great
2 detail. I've talked about the Gatri versus Blaine.
3 Talked about Leone vs. County of Maui. I've talked
4 about the purpose of community plans. The wording of
5 the community plan. The explicit way in which the
6 community plan bakes in this particular light
7 industrial project in a unique way, unlike any other
8 piece of property in South Maui, because of the
9 nature and the history of the community plan.

10 You see, the ranch came to you in 1995 and
11 got approval to build a 123 lot light-industrial
12 park. Then it went to the county and got baked
13 into -- because it had to, you ordered that they get
14 a community plan amendment; ordered that they get
15 light-industrial zoning, which they did.

16 They went to the county and they presented
17 the same 123 lot light-industrial park plan to the
18 county, and got light industrial zoning.

19 MR. SAKUMOTO: Mr. Chairman, I think the
20 ten-minute time limit has been exceeded.

21 CHAIRPERSON ACZON: We didn't put any time
22 limit on the witnesses.

23 MR. SAKUMOTO: I'm sorry, I thought I
24 understood that the Intervenor's witnesses were going
25 to be given ten minutes as opposed to the three

1 minutes.

2 CHAIRPERSON ACZON: I wasn't aware of that.

3 MR. SAKUMOTO: I'm sorry, I misheard the
4 request that Mr. Pierce made then. I thought he was
5 asking for additional time for his -- that would be
6 ten minutes for each of his four witnesses.

7 CHAIRPERSON ACZON: If they decided to be
8 public witness, they had to abide by the three
9 minutes.

10 MR. SAKUMOTO: Okay.

11 VICE CHAIR SCHEUER: I would appreciate
12 focusing on the EIS as much as possible. We do have
13 a lot to go through today.

14 MR. PIERCE: Thank you, Commissioners, for
15 your patience, and we are wrapping up.

16 Q So why is, on Page 270 of the Final EIS --
17 I'm going to read a quote.

18 It says: The County of Maui has
19 interpreted the Pi'ilani Promenade project as
20 complying with the KMCP, as the KMCP provides that
21 the goals and objectives are guidelines to the
22 ultimate implementation of the plan. End of quote.

23 Do you agree with that?

24 A Absolutely not. That's legally and
25 factually incorrect, and I'll tell you why.

1 Legally this is a very unique situation
2 because twice Hawai'i courts have ruled that the
3 Kihei-Makena Community Plan specifically has the
4 force and effect of law in Gotry and in Leone. And
5 uniquely the County of Maui was a party to both of
6 those decisions. They're bound by that finding and
7 by that law.

8 So to make the statement in the EIS
9 document that they're just suggestive is really
10 incorrect and unsupportable.

11 Furthermore, factually this plan speaks
12 specifically to this property, and it talks about all
13 development being makai of the highway in four
14 distinct areas on pages 17 and 18 of the plan.

15 And on page 18 it explicitly says that:
16 This piece of property is to be used for light
17 industrial use with only minimal commercial
18 intrusion, and only then to serve the interest of the
19 light industrial users.

20 So factually it's very specific. Those
21 words are not aspirational. Those words are very
22 specific and enforceable.

23 Q Is it your understanding that the LUC
24 Chapter 205 of the LUC law requires consistency with
25 the community plan?

1 A Absolutely.

2 Q Do you have anything further that you would
3 like to tell the Commissioners?

4 A No. Thank you for your time and interest.

5 CHAIRPERSON ACZON: Any questions for the
6 witness?

7 MR. SAKUMOTO: Just one question for you.

8 CROSS-EXAMINATION

9 BY MR. SAKUMOTO:

10 Q So your testimony about the KMCP, if I'm
11 hearing you correctly, focuses on the apparent
12 inconsistency between the zoning code and the KMCP;
13 is that correct?

14 A There is no inconsistency between the
15 zoning and the KMPC. The inconsistency lies in this
16 project, which does not abide by the explicit
17 language of the KMPC.

18 Q What parts of the project were you
19 referring to?

20 A The entire thing. If there was any
21 exception, it might be a small component of the light
22 industrial, if there is light industrial, but I think
23 that's vague.

24 Q I'm sorry, was that your answer?

25 A Yeah.

1 Q Are you saying then that the relationship
2 of the community plans in general, not talking about
3 the KMCP particularly, as it relates to the zoning
4 code in general, apply islandwide?

5 A I believe the holding in the Gatri case and
6 Leone case do apply more broadly to other community
7 plans, but I have not -- I've not read those plans
8 and those two cases were specific to our plan.

9 Q Thank you.

10 A You're welcome.

11 MS. APUNA: No questions.

12 MR. HOPPER: No questions.

13 CHAIRPERSON ACZON: Mr. Tabata.

14 MR. TABATA: Yes. Thank you, Mr. Chair.

15 CROSS-EXAMINATION

16 BY MR. TABATA:

17 Q Mr. Hyde, are you aware of any other land
18 uses in the Kihei-Makena region that you believe is
19 inconsistent with the Kihei-Makena Community Plan?

20 A I don't have any knowledge of that, no. I
21 haven't done that kind of a broad scan.

22 Q So, okay.

23 So this project is the only project that
24 you are aware of that you believe is inconsistent
25 with the community plan?

1 A Let me say this. I believe you represent
2 Honua'ula.

3 Q Yes. I'm sorry, my name is Curtis Tabata.

4 A I think your project is also inconsistent
5 with the plan.

6 Q Thank you.

7 This project is zoned M-1 light industrial,
8 that's my understanding.

9 A That's correct.

10 Q Are there -- is there any inconsistency --
11 does this project have any inconsistency with that
12 zoning designation?

13 A I believe it does. I think the county will
14 tell you that it doesn't.

15 We've debated this, and this was raised in
16 the discussion with the developer that if you read
17 the county code, which says that light-industrial
18 zoning is intended mostly to be common light
19 industrial uses, warehousing, light assembly, that
20 sort of thing, mostly defined in the dictionary as
21 more than half.

22 The way the county interprets that is they
23 completely ignore that, and I think they ignore
24 logic, quite frankly, and they allow any kind of
25 development basically in a light-industrial zone

1 except for heavy manufacturing. And therefore,
2 light-industrial zones become chaotic zones,
3 unpredictable. You can do B-1, B-2, B-3. You can do
4 apartments. You can do just about anything you want
5 to do, and of course, that's why they want it.

6 Yeah, I think that there is inconsistency
7 there, and there's lack of enforcement by the county.
8 I've discussed this with Mr. Spence.

9 Q So when you say that they allow B-1, B-2,
10 B-3 and apartments, isn't it true that the zoning
11 code specifically allows those uses in those other
12 zoning districts?

13 A Yes.

14 Q B-1, B-2, B-3, apartments. So it's an
15 expressed right?

16 A I think you have to read it in conjunction
17 with the introduction, and with the concept of what
18 does light industrial mean. If you ask somebody on
19 the street what would you expect to find in a
20 light-industrial zone, if the person was told
21 clothing shops, and that's it, I think they would
22 find that rather odd.

23 And that's why the introduction to the
24 whole definition of light industry is to be mostly
25 these common kinds of light-industrial uses.

1 Q Thank you, Mr. Hyde.

2 A You're welcome.

3 CHAIRPERSON ACZON: Thank you.

4 Commissioners, any questions? Commissioner Okuda.

5 COMMISSIONER OKUDA: Mr. Hyde, you
6 understand that, since you're a lawyer, that the
7 issue here is sufficiency of the Environmental Impact
8 Statement, not the merits of the project.

9 Do you agree with that?

10 THE WITNESS: Absolutely.

11 COMMISSIONER OKUDA: In fact, the Supreme
12 Court in Kaleikini, K-A-L-E-I-K-I-N-I, versus
13 Yoshioka, Y-O-S-H-I-O-K-A, 128 Hawai'i 53 at page 67,
14 which is a 2012 case said that one of the issues here
15 is whether or not the Environmental Impact Statement,
16 and I quote:

17 Has been compiled in good faith and sets
18 forth sufficient information to enable the
19 decisionmaker to consider fully the environmental
20 factors involved, and to make a reasoned decision
21 after balancing the risks of harm to the environment
22 against the benefits to be derived from the proposed
23 action, as well as to make a reasoned choice between
24 alternatives.

25 You agree that that's the law that applies

1 here?

2 THE WITNESS: That sounds great, yeah.

3 COMMISSIONER OKUDA: Can you tell me
4 without argument, because argument might come at a
5 later stage about whether or not the project should
6 be approved or not under the circumstances at that
7 point in time, but can you give us a list, without
8 argument, about what items of information are missing
9 in this final or proposed Final EIS?

10 THE WITNESS: Yes, thank you.

11 What's missing is a robust discussion, a
12 balanced discussion of the legalities with regard to
13 this project compared to the Kihei-Makena Community
14 Plan. There is no acknowledgement of Gatri. There's
15 no acknowledgement of Leone. There's no discussion
16 of those cases.

17 And furthermore, as a matter of law, those
18 cases are res judicata vis-a-vis these Applicants.
19 This is not argument, I don't believe. They have a
20 duty to define how their project fits within the
21 policies and laws that govern the area. And the
22 community plans is just that.

23 So you need a robust discussion about that.
24 And for them to not acknowledge that they are bound
25 by a Supreme Court decision, they are bound by a

1 Court of Appeals decision that finds that the plan
2 that they dismiss as merely being suggestive, is
3 unreasonable in the extreme.

4 COMMISSIONER OKUDA: I'm just looking for a
5 list. So there is no discussion of these appellate
6 cases. No discussion of the affect on the community
7 plan.

8 Is there any other on information, and just
9 a list, of what else you believe should have been in
10 the EIS?

11 THE WITNESS: Yes.

12 I will expand on that just a bit, if I may.

13 Because there's no acknowledgment that the
14 plan is binding, there is no real discussion of the
15 impact this project will have on the future
16 development of Kihei. Specifically, retail
17 commercial development in the plan to address
18 existing sprawl was limited to four distinct areas on
19 pages 17 and 18 of the plan, which they don't really
20 address, to control growth, to build a sense of
21 place, and to reduce the automobile centrality of the
22 community.

23 We heard yesterday, Jay Kringsman testified
24 that if this project goes forward, which is like a
25 range fire on the other side of the highway --

1 CHAIRPERSON ACZON: The Commissioner is
2 just asking for the list. Can you provide that list
3 so we can move on?

4 THE WITNESS: I think I would leave it
5 there.

6 COMMISSIONER OKUDA: Thank you very much.
7 I was just looking for a list, because arguments on
8 merits is a different time and place.

9 CHAIRPERSON ACZON: Commissioners,
10 questions?

11 Mr. Pierce, are you done with the witness?

12 MR. PIERCE: Just a short follow up.

13 REDIRECT EXAMINATION

14 BY MR. PIERCE:

15 Q So does the Kihei-Makena Community Plan
16 include specific language dealing with the Petition
17 area?

18 A Yes.

19 Q Was that information provided in the EIS?

20 A Not as to this piece of property.

21 Q Are you able to read that information into
22 the record, please? It's fairly short, isn't it?

23 A Yes.

24 Q And please let us know which page from the
25 KMCP you're reading from.

1 A Page 18, paragraph K:

2 Provide for limited expansion of light
3 industrial services in the area South of Ohukai and
4 mauka of Pi'ilani Highway, as well as limited
5 marine-based industrial services in areas next to
6 Ma'alaea Harbor. Provide for moderate expansion of
7 light industrial use in the Central Maui Baseyard
8 along Mokulele Highway. These areas should limit
9 retail business or commercial activities to the
10 extent that they are accessory or provide service to
11 the predominant light industrial use. These actions
12 will place industrial use near existing and proposed
13 transportation arteries for the efficient movement of
14 goods.

15 And I should point out that light
16 industrial is defined in the plan as the following:

17 This is for warehousing, light assembly,
18 service and craft-type industrial operations, page
19 55.

20 Q And, Mr. Hyde, in closing, why is the EIS
21 inadequate with respect to its analysis of community
22 planning and consistency with community planning,
23 which is one of the requirements it has to address
24 both under EIS law as well as under the Land Use
25 Commission's rules?

1 A The EIS gives no serious consideration to
2 the things that I just read. It gives no
3 consideration to the law. And it's in violation of
4 the plan, straight forward.

5 Q Thank you. Thank you, Mr. Chair.

6 CHAIRPERSON ACZON: Thank you. Please
7 proceed with your presentation.

8 MR. PIERCE: Our next witness is Daniel
9 Kanahele.

10 CHAIRPERSON ACZON: May I swear you in
11 first?

12 Do you swear that the testimony that you're
13 about to give is the truth?

14 THE WITNESS: Yes.

15 CHAIRPERSON ACZON: Please state your name
16 and address for the record?

17 THE WITNESS: My name is Daniel Kaleoaloha
18 Kanahele. I'm a resident of South Maui. I live in
19 the moku of Honua'ula, in the ahupua'a of Pai'ahu
20 (phonetic).

21 CHAIRPERSON ACZON: Please proceed.

22 DANIEL KANAHELE

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

DIRECT EXAMINATION

1
2 BY MR. PIERCE:

3 Q Are you one of the Intervenors in the
4 contested case?

5 A Yes, I am.

6 Q How did you end up being one of the
7 Intervenors?

8 A It happened in my drive-through office at
9 home. I was at a meeting with some people. We were
10 discussing other issues in South Maui, and the topic,
11 of what was called back in 2012, the mega mall, came
12 up.

13 It had been in the media, been on social
14 media. We got curious about it, and decided to look
15 up some information on the internet. I brought out
16 my old mini-laptop Toshiba, the only connection to
17 the internet in my house, and we looked up the
18 decision order, Findings of Facts, Conclusions of
19 Law, which was on record for the state. And there
20 were lots of red flags that suddenly popped up.

21 It seemed that what was being proposed was
22 not consistent with the decision order that came from
23 the LUC state in 1995, February 1995.

24 So that made us very curious, and so some
25 of us began to do research and look through public

1 documents, like Mark said. And that's how I became
2 involved.

3 My personal involvement was based on three
4 things: The importance of transparency; the
5 importance of following the law; and the importance
6 of giving people voice in what happens in the area
7 they live in terms of land use. And I felt that this
8 project, in my view, had failed all three of these
9 personal criteria for what is pono.

10 Q Do you live in the Kihei area?

11 A Yes, I do.

12 Q How long have you lived there?

13 A I lived there full-time since 2009.

14 Actually live in the house my parents built. I'm
15 second generation in that house. And my father is
16 from Maui. His parents were from Maui. Their
17 parents were from Maui. I have lineal connection to
18 Maui going back hundreds of years.

19 Q Could you describe for the Commissioners a
20 bit further about your relationship to the Petition
21 area, and also your cultural practice, whether you
22 conduct cultural practices?

23 A Well, it's pretty simple. From a cultural
24 perspective, I believe that all the residents of
25 Maui, for example, which include myself, have a

1 kuleana, a duty, responsibility and moral obligation,
2 if you will, to malama, to take care of, to protect
3 the natural and cultural resources of the communities
4 that they live in for the benefit of present and
5 future generations.

6 And to add to that, the need to exercise
7 one's rights and liberties as a citizen of that
8 community.

9 So I'm very active in my community. I work
10 there in South Maui. I go to church there. I work
11 in youth programs. I'm a scout leader. I'm a member
12 of my neighborhood board member. I'm a member of the
13 community board. I'm also the liaison for Maui
14 Cultural Lands, which is the grassroots Land Trust
15 Organization founded here in Maui, which has as its
16 mission to stabilize, protect and preserve Hawaiian
17 cultural resources.

18 Q Have you worked on identifying cultural
19 sites before?

20 A Yes, I have.

21 Q Can you describe to the Commissioners a
22 little bit of your background?

23 A One of my practices is a kahuna o maka
24 (phonetic), which is the art and practice of
25 observation. And it comes natural for Native

1 Hawaiians, because a lot of what we know in terms of
2 our cultural practice comes from observation, comes
3 from observing patterns, and how things are
4 interconnected and the web of life.

5 For me -- some people study the changing
6 seasons or weather patterns or ocean patterns, I
7 study cultural landscapes. And I've been doing this
8 for many years. I have learned how to find and
9 identify cultural historic properties by walking the
10 land.

11 And just, for instance, how do you do that?
12 For example, when you're looking for cultural sites,
13 you go during the dry season. My particular focus is
14 in South Maui leeward side, dry side. So I go during
15 the dry season, go during different times of day
16 because the light, the quality of light enables you
17 to find cultural sites much better, certain times of
18 day, certain times of the year. I'm just sharing my
19 cultural practice.

20 I am a gulch walker, because many cultural
21 sites are found in and around gulches. I look for
22 prominences, high points that have excellent
23 viewplanes, because the chances of finding cultural
24 sites in those areas or features are very, very high.

25 So that just gives you a short explanation

1 of a kahuna o maka, using observation to find
2 patterns and connections between things.

3 And the purpose of that is for us to become
4 better stewards of the land, to know how to better
5 manage our resources so that we don't deplete them,
6 that we don't cause them to collapse. We protect
7 them for future generations.

8 That's a very short summary of why this
9 practice is important. And it's practiced by all
10 cultural practitioners. All cultural practitioners
11 have to use the powers of observation, sensory and
12 nonsensory to understand the interconnectedness and
13 relationship of things, and how everything works
14 together towards harmony.

15 Q Mr. Kanahale, have archaeologists confirmed
16 your cultural identification of sites?

17 A I worked on the Honua'ula project, also
18 known as the Wailea 670 project, for many years, and
19 I was able to personally identify many cultural
20 features and cultural sites which are now included in
21 their Archaeological Inventory Survey for that
22 project. I worked many years up there doing kahuna o
23 maka stuff.

24 Q Have you been on the Petition area that is
25 involved with this EIS?

1 A Yes.

2 Q What are your concerns with -- I would like
3 for you to talk about how you were involved in the
4 EIS process, leading up to the Cultural Impact
5 Assessment and the cultural evaluation in the EIS?

6 A Well, I'm like many of those that shared
7 their testimony yesterday in terms of cultural
8 practice. I engaged early on, and going back to
9 2012, when I heard about the proposed project, aka,
10 the mega mall. That was the nickname it had back
11 then.

12 In 2012 I pulled the 1994 Archaeological
13 Inventory Survey that was done for the Ka'ono'ulu
14 Light Industrial Park, and read it. I read that
15 document in 2012. And then I read subsequently, the
16 CIA, Cultural Impact Statement that was done in 2004.
17 Very short document. Just a very few pages. There
18 weren't any interviews at all. Had very, very really
19 substantive information in that. So I tried to
20 educate myself by reading those documents.

21 I also have done cultural accesses to the
22 land, because I believe it's impossible to know a
23 place without actually walking it; without actually
24 touching, feeling, seeing, hearing what's there,
25 without actually feeling it. That's how you get to

1 know a place. That's how you begin to make
2 connection. That's how you begin to realize that we
3 as kanaka are part of that family album, those
4 cultural landscapes. Cultural landscapes are a
5 combination of manmade and nature made things.

6 Q Did you seek out to be interviewed during
7 the Cultural Impact Analysis?

8 A I was. I was asked to be interviewed,
9 because they saw that I was participating. I had
10 submitted comments on behalf of Maui Cultural Land
11 for the Environmental Pin Notice. I submitted
12 comments on the Draft EIS. I attended the first
13 consultation, cultural consultation meeting held on
14 February 2014, with the developers and their cultural
15 consultant, or their consultant Eric Fredrickson, who
16 is here today, and present were many of the lineal
17 descendants, cultural practitioners and others who
18 had knowledge of this area. So I participated.

19 To answer your question, yes. I was
20 invited by Hana Pono to participate in an interview
21 in the Cultural Environmental Impact and was one of
22 those interviewed.

23 Q Did you reach a conclusion -- based upon
24 your experiences and knowledge, did you reach a
25 conclusion as to whether the project that's being

1 proposed now that's in the EIS, whether it was going
2 to impact -- have a cultural impact?

3 A Absolutely. I submitted several pages in
4 my comments to the Draft EIS of the cultural impacts
5 the project would have.

6 Q And what was -- what does the Cultural
7 Impact Statement, impact analysis say with respect to
8 whether or not there's a cultural impact?

9 A Well, I read the CIA that was included in
10 the Final EIS. And there is a statement that's a
11 summary, their summary. And bottom line their
12 summary, it's the last sentence of the summary says:

13 Whatever cultural practices or resources
14 were practiced there in ancient time have long been
15 abandoned and paved over in the construction of
16 modern day Kihei.

17 So you disagree with that statement. It's
18 not true. Cultural practices continue in the project
19 area. They have not been abandoned. Cultural
20 resources that provide for cultural practices exist
21 there too. They have not been paved over, at least
22 not yet.

23 Q So, Mr. Kanahale, as a cultural
24 practitioner, do you believe the developers have
25 fulfilled their obligations with respect to the EIS

1 law to properly document and analyze the cultural
2 activities associated with the Petition area?

3 A No, I think they have some more homework to
4 do. I think there are other people that need to be
5 interviewed for the Cultural Impact Assessment.

6 I think not all the sites have been
7 documented. Eric is a wonderful archaeologist. And
8 in our February 2014 consultation meeting, we asked
9 for a site visit. He was very excited about that.
10 He was very excited to hear what we, lineal
11 descendants and cultural practitioners, had to say
12 about the sites that they had discovered.

13 Unfortunately, that site visit didn't occur
14 until two weeks after the Archaeological Impact
15 Statement was accepted by State Historic Preservation
16 Division. They said we could have a site visit, but
17 it occurred several years later after the AIS had
18 already been accepted, which kind of befuddles me,
19 because wouldn't you want to also hear from these
20 lineal descendants and cultural practitioners before
21 you the fact is accepted?

22 But unfortunately it was accepted. It is
23 what it is. But we are here to say that there is
24 more information. There's much more that needs to
25 be -- you know, the purpose of the historic review

1 process, among others, is to increase our
2 understanding and knowledge of the history of this
3 area. That process is not complete.

4 I have more to share, and I know there are
5 many others who testified yesterday who have more to
6 share. So there is more work to be done.

7 Q Thank you.

8 CHAIRPERSON ACZON: Any questions for the
9 witness?

10 MS. CATALDO: I have some, Your Honor,
11 Chair.

12 CHAIRPERSON ACZON: You have only have one
13 minute now. (Laughter.)

14 CROSS-EXAMINATION

15 BY MS. CATALDO:

16 Q Mr. Kanahale, good morning.

17 I understood you to say that you
18 participated in several cultural consultation
19 meetings with the developer's representatives; is
20 that correct?

21 A Well, one main meeting, and a site visit
22 that come to mind.

23 Q Was Mr. Oshiro, who testified yesterday,
24 was Basil Oshiro at that meeting?

25 A Yes, he was.

1 Q And you referred to lineal descendants. Do
2 you mean Hewahewa?

3 A I don't know if they're of that particular
4 line. I know Brian Naeole (phonetic), who was -- I
5 don't know if he testified or not -- he's a lineal
6 descendant. And then Auntie Lani Florence, also a
7 lineal descendant, and so, you know, Brian was there.

8 Q Of Hewahewa, lineal descendants of
9 Hewahewa?

10 A I don't know if they're lineal descendants
11 of Hewahewa.

12 Q Prior to your involvement, or your
13 awareness of the project in 2012, from the time you
14 moved back home in '09 to '12, did you have any
15 involvement with the project site?

16 A Adjacent. I'm a gulch walker, lack of a
17 better word. I love walking gulches. I've walked
18 Kulanihakoi Gulch. I've walked Ka'ono'ulu Gulch.
19 That little gulch on their property that they say,
20 'a'ole, that doesn't have a name. I call Ka'ono'ulu
21 Gulch. I've walked that gulch, and Wahiaawa Gulch
22 (phonetic) just because they're an oasis for native
23 plants and animals. And as Uncle Les has often said,
24 they're the heart of Maui. Gulches are the heart of
25 Maui for many reasons.

1 And there are all the sites. I never go up
2 a gulch where I didn't find several sites ever in
3 South Maui.

4 So I walk those. One is on the property,
5 that little gulch, I call it Ka'ono'ulu Gulch, but
6 the EIS doesn't give it a name. Brian Naeole
7 (phonetic) calls it Ka'ono'ulu Gulch.

8 And I know on our site visit in 2016 Eric
9 Frederickson called it Ka'ono'ulu Gulch.

10 Q Kulanihakoi Gulch is off the property.

11 A It's to the south of the property, yeah.

12 Q Have you looked at USGS maps and identified
13 a Ka'ono'ulu Stream, but off of the property?

14 A I have looked at some of the GS maps, and
15 you know, there are some debate about where exactly
16 that stream is, that gulch is. But I just go by what
17 I've heard those who have been there for many years,
18 like Brian Naeole. He was a paniolo on the ranch,
19 and they called it Ka'ono'ulu Gulch, that very same
20 gulch, back in the day. That's just the name that
21 I've heard others call it.

22 Q Did you have an opportunity to review 1994
23 AIS?

24 A Yes, I read it. It's very small document.
25 Read it in less than an hour.

1 Q Were you familiar with Mr. Fredrickson's
2 conclusion that the gully that you've been calling
3 Ka'ono'ulu Gulch was likely post contact ranch era
4 possibly related to erosion control?

5 A I've heard that.

6 Q The first time you walked that gulch was
7 when?

8 A I think prior to 2012. I can't remember
9 when.

10 Q How many times?

11 A Several. And there are features in that
12 gulch. On the property, there are features in there.

13 Q You are aware that the property has had a
14 history with cattle ranching in the last 100 years?

15 A Yes.

16 Q Are you familiar with fires in that area
17 that have resulted in heavy equipment being brought
18 on for creation of fire breaks?

19 A Well, you know, there has been some impact
20 to the land, whether it's caused by heavy equipment
21 being brought on for fire control, or by ranching
22 activities, what have you. There's obvious
23 disturbance on that land.

24 Q Military activities that may have involved
25 firing ranges, mechanized equipment being used?

1 A I've heard that that may have happened
2 there.

3 Q And are you familiar with the late 1970s
4 installation of a 36-inch pipe diagonal across the
5 property?

6 A Yes. And I've seen maps where it's located
7 on the property, the transmission line.

8 Q You would agree that was a significant
9 construction project?

10 A Yes. It's long, but narrow. You know, if
11 you look at the 88 acres, it's a very small
12 percentage of the property that was impacted by the
13 pipe.

14 Q How do those types -- the nature and the
15 scope of those types of disturbances impact
16 observations of the property from a cultural
17 perspective?

18 A Well, you take that into account. Manmade
19 impacts have occurred since the first person set foot
20 on this land, and it of course changed the landscape.
21 So you take that into account. But fortunately a lot
22 still remains despite manmade disturbances or animal
23 made disturbances. There's still a lot left,
24 especially on undeveloped land like this is.

25 Q You identified, or you indicated that

1 cultural practices were occurring on the property.

2 A Yes.

3 Q What specifically are those practices?

4 A You know, some of the testifiers yesterday
5 referred to objects that are connected to things,
6 patterns that occur in the sky. And so I have seen
7 people practice -- I'm not a papakea (phonetic) hoku.
8 I'm not one that knows a lot about star practices.
9 But I have seen that practice that they're using
10 specific sites in order to reference things that
11 occur, like solstices and equinoxes, setting and
12 rising of the sun different times of year, and its
13 connection to other things, other islands, for
14 example. The connectedness of things.

15 Q When was the first time you saw those
16 practices taking place on the property?

17 A 2012, 2013, somewhere in that range. Maybe
18 2013.

19 Q You were interviewed for the CIA?

20 A I was.

21 Q Did you indicate those practices in your
22 testimony?

23 A I indicated my practice.

24 Q Which is walking the land?

25 A It's walking the land. I look at the land

1 as a place -- I look at it as a library, and the
2 cultural sites are like books. I'm a library rat. I
3 wait outside the library in Kihei until it opens at
4 10:00 and then I go in.

5 It's sort of like this place. This place
6 had been closed for a long, long time, but now the
7 library is open. Now kanaka like me have an
8 opportunity to go in and read those books, the
9 mo'olelo that comes in through those sites. And
10 that's a practice.

11 The thing about cultural practices is that
12 they bring wai ha, bring life -- they awake the land
13 and bring life back to the land in a very real way.
14 And that's happening, because kanaka -- I have an
15 opportunity to do cultural practices beginning to
16 connect, and this is happening on that project area.

17 Q Is your understanding of the cultural
18 practices of objects connected to patterns in the
19 sky, those are objects on the ground?

20 A Yes, connected to the aka shadow, they call
21 it.

22 Q Would that practice be affected by the
23 significant ground disturbance that has occurred on
24 the property for, say, the last 100 years?

25 A Well, would disturb a lot of reference

1 points that on the ground. And that's pretty common
2 in a lot of cultural landscapes. You have references
3 on the ground that connect to things that happen
4 above.

5 Sometimes what the aka shadow, or the
6 celestial objects above actually determine what's
7 built on the ground. The Hawaiians did that as a
8 cultural practice.

9 Q Did you, when you were interviewed for the
10 CIA, did you provide any names to the CIA preparer?
11 Names of people that might be aware of cultural
12 practices?

13 A I don't know if I did that in the CIA, but
14 I definitely did in the Draft EIS. I recommended
15 that all those who were at the consultation meeting,
16 all those lineal descendants, be contacted and
17 interviewed. And I believe I -- yeah.

18 Q And they came to the cultural consultation
19 meeting?

20 A They were at the cultural consultation
21 meeting, and it was recommended in the comments I
22 submitted to Draft EIS that those people be contacted
23 and put -- possibly interviewed for the cultural
24 impact, the updated, or whatever they call it.
25 Because there was one done in 2004, but there weren't

1 any interviews whatsoever.

2 And there was another one done for the
3 Draft EIS and it had two interviews. But the people
4 that were interviewed, were interviewed for another
5 project. I believe it was for the hospital, not
6 related to the project area.

7 One was Paula Kalanikau (phonetic), who I
8 know. And I spoke to her, I asked her, "Were you
9 ever interviewed for this?" And she said, "I don't
10 ever remember being interviewed for the -- " maybe
11 they cut and pasted her interview, and put it in the
12 DEIS CIA.

13 And then the new one that came out, which
14 is much more robust, has about 300-plus pages, more
15 interviews in it. But the thing is, that CIA, that
16 robust CIA, the public never had an opportunity to
17 review that, because that came out in the Final EIS.
18 Which, you know, the public review is closed.

19 So that it is kind of unfortunate that this
20 information came out, and there was no opportunity
21 for the public. Maybe you would have gotten more
22 people coming out of the woodwork as the word
23 spreads, right? People find out through word of
24 mouth.

25 Q So you have had the opportunity to look at

1 the supplemental CIA?

2 A Yes.

3 Q And did you see the page in there where it
4 indicated who was contacted to participate? There
5 were about 20 folks named.

6 A I don't recall specifically. Be happy to
7 look at those if you have those, if you have them on
8 you right now.

9 Q Do you recall, at least, that you had the
10 recollection when you reviewed the supplemental CIA,
11 that the names that you provided had been contacted?

12 A I know that Basil was one, Basil Oshiro. I
13 know that Brian Naeole was one, so they did contact
14 some of those people, yes.

15 Q Thank you, no further questions.

16 A You're welcome.

17 CHAIRPERSON ACZON: Ms. Apuna, any
18 questions?

19 MS. APUNA: No questions.

20 MR. HOPPER: No questions.

21 CHAIRPERSON ACZON: Mr. Tabata?

22 MR. TABATA: No questions.

23 COMMISSIONER OHIGASHI: This has -- I'm not
24 too sure if it has anything to do with your
25 testimony, but I think one of the responses, one of

1 your concerns was an unpermitted segmentation of the
2 development took place and there was need for more.

3 THE WITNESS: Segmentation?

4 COMMISSIONER OHIGASHI: Segmentation.

5 THE WITNESS: I think that was one of the
6 comments in the Draft EIS that I made.

7 COMMISSIONER OHIGASHI: I was wondering,
8 could you expand on that? What do you mean by that;
9 and how does it relate to the EIS?

10 THE WITNESS: Well, what's on the table
11 here is 88 acres, right? And it seems that the EIS
12 is mostly about the Pi'ilani Promenade development,
13 and the other 13 acres belongs to Honua'ula project,
14 it's connected to that, where affordable housing is
15 supposed to be built.

16 So the question I was raising was, has that
17 project undergone an environmental review like the
18 rest of the 75 acres. And so I was -- and I don't
19 know where -- I know that the EIS for the Honua'ula
20 project didn't really cover a lot of information
21 about their off-site project, and so I was hoping
22 that there would be more comments with regards to the
23 possible segmentation of a project that was connected
24 to the 88 acres, but didn't seem like it was fully
25 reviewed in the Draft EIS.

1 COMMISSIONER OHIGASHI: How would that
2 affect your estimation of whether or not the EIS is
3 complete or not?

4 THE WITNESS: Well, I think -- well, as I
5 said earlier, when I got involved in this process,
6 one of the things I was most concerned as a citizen
7 of the community, resident, that there be this
8 following of the law, the rule of law. And that all
9 parties would be subject to that, including the
10 13 acres should have an environmental review too.
11 And I didn't feel that had.

12 For the public, right, so the public would
13 know. The public would have an opportunity to
14 comment on any impacts that that project would have
15 in terms of whatever, drainage, cultural, traffic and
16 so on, so forth. So that was a concern I have.

17 COMMISSIONER OHIGASHI: Do you believe that
18 the Cultural Impact Assessment adequately covered the
19 88 acres, or 75 acres, or 13 acres? Multiple choice
20 there.

21 THE WITNESS: No, I would say none. It
22 hasn't adequately covered.

23 COMMISSIONER OHIGASHI: I'm not talking
24 about substance, just talking about addressing the
25 concerns.

1 THE WITNESS: No.

2 COMMISSIONER OHIGASHI: Can you expand on
3 that or not?

4 THE WITNESS: I think I have in my comments
5 thus far, that the conclusion of the EIS is that
6 there are no cultural practices, they have been
7 abandoned. And that the cultural sites have been
8 paved over. And that's not true.

9 There should be a more robust -- actually,
10 I think there should be a new draft AIS done, which
11 includes the entire project. Instead of sort of
12 these -- sort of the AIS -- I mean, Eric is a great
13 archaeologist, but it's sort of a patchwork of
14 things. Should be a 21st Century AIS should be done
15 for that project.

16 COMMISSIONER OHIGASHI: Thank you.

17 THE WITNESS: That's what I think.

18 CHAIRPERSON ACZON: Commissioners?
19 Commissioner Chang.

20 COMMISSIONER CHANG: Aloha, Mr. Kanahale.
21 Just a couple of questions.

22 You said that you practice your kahuna o
23 maka. Does that from your family where other members
24 of your family also have that practice?

25 THE WITNESS: I don't know. You know, a

1 lot of what we do is based on DNA and moku auau, and
2 I didn't know all my grandparents. I was raised in a
3 very Western framework, and really -- I didn't really
4 come to a sense of who I was as kanaka until much
5 later in life when I started studying native plants,
6 native medicine. When I started studying cultural
7 landscapes.

8 This all resonated with me. It touched me
9 to the core. So part of being this practice of
10 kahuna o maka has a lot to do with your moku auau,
11 and your genealogy. And sometimes there is a -- I
12 call it ho'omana, where does the power, where does
13 the mana come from in a place.

14 And there's three P's, place, presence and
15 practice. Three P's. For example, this place has a
16 presence, there is mana there. And why is there mana
17 there? That's ho'omana. Where does the mana come
18 from? Some of that mana may come from my genealogy,
19 moku auau. May come from this particular site of
20 ceremonial, or there may be iwi nearby or water on
21 the ground. Something that makes this place have
22 this mana.

23 Then there is practice. Place, presence
24 and practice. Practice brings life back to the land.
25 It awakens the land -- it also awakens the kanaka.

1 You saw a lot of awakened kanaka yesterday, young
2 people making that connection to the land.

3 So some of it comes from us naturally
4 because, yes, of our genetics. So a lot of what I do
5 I'm sure has to do with who I'm connected to, who my
6 ancestors were, and the things -- it's in me. It's
7 in my DNA.

8 COMMISSIONER CHANG: Mahalo for that.

9 And your family has lived generations in
10 this area?

11 THE WITNESS: Well, my family is in Hana,
12 Kaupo, all over this island.

13 COMMISSIONER CHANG: And let me ask you,
14 how were you contacted for the Cultural Impact
15 Assessment?

16 THE WITNESS: Well, I was contacted by Kimo
17 Keokapalehua (phonetic). He's a friend of mine. And
18 he was at the consultation meeting, he was there. He
19 was on the site visit. And so it was -- I think it
20 was after the site visit, shortly after the site
21 visit he asked if I would do an interview.

22 COMMISSIONER CHANG: And you shared with
23 him some of your own practices?

24 THE WITNESS: Yeah. I call it walking the
25 land.

1 COMMISSIONER CHANG: And you've actually
2 walked this land as well?

3 THE WITNESS: Many times.

4 COMMISSIONER CHANG: And you've walked
5 other lands as well?

6 THE WITNESS: The whole island. I did a
7 kahupuni (phonetic), I did the 2009 March around the
8 island, and then did it in 2014. I learned a great
9 deal by walking. More people should get out of their
10 cars and walk the land, they'd learn a lot.

11 COMMISSIONER CHANG: In your experience,
12 and not necessarily just on this land, but your
13 experience as a -- I'll call you a cultural
14 practitioner because you seem to have been doing this
15 for awhile, and it's within your own DNA, but has it
16 been your experience that at times Native Hawaiians
17 practice, their continued practice, has been impacted
18 by their ability to access a particular area?

19 THE WITNESS: Well, let me put it this way.
20 I was a competitive swimmer in high school, so if I
21 go to the district park in Kihei, aquatic park, it's
22 closed, I can't get in there, I can't swim.

23 But once it's open, the resource is there
24 for me to swim. I jump in and I start swimming
25 because I love swimming.

1 The same thing here. You have to have
2 access to cultural resources in order to have
3 practice. That's why cultural resources -- there is
4 no practice without cultural resource.

5 COMMISSIONER CHANG: With respect to the
6 conclusion that they have been abandoned, has it been
7 your experience that in areas where now access is
8 open, cultural practitioners have come back to
9 exercise their practice?

10 THE WITNESS: Yes. I see it all the time.

11 COMMISSIONER CHANG: In your experience --
12 and again, even beyond just this property -- have you
13 found cultural resources that have been beneath
14 agricultural lands where people have what they have
15 planted below where there has been previous
16 development? Have you found subsurface historic
17 properties, even though the surface of the area has
18 been developed or used?

19 THE WITNESS: Most of my cultural practices
20 occurred on the leeward side on developed lands, and
21 a lot of times on lava flows, and so those tend to
22 not be used for ag purposes, maybe cattle ranching,
23 cattle ranching has more impact. This is the dry
24 side of the island, not much water to grow much. So
25 I see -- you're asking me are there things under the

1 ground? I am sure there are things. Look at
2 Moku'ula, it's under the ground. It was buried,
3 still there. Going to be dug up some day.

4 COMMISSIONER CHANG: One of the conclusions
5 was that there has been activity above the area, the
6 ranching, military use, but has it been your
7 experience that, notwithstanding those modern day
8 post contact activities, that there could be
9 subsurface features, historic properties below them?

10 THE WITNESS: Could be. Depends how much
11 soil you have. It's area -- I don't know how much
12 subsurface, how deep the soil goes down there, could
13 be. There's a lot of midden there I know that. And
14 there may be midden under the ground. The fact that
15 there is a lot of midden scatter is significant
16 because this traditionally was known as a barren zone
17 where not much cultural activity was thought to
18 happen.

19 But nowadays, that view, that
20 archaeological view has changed. Midden is a
21 significant indicator of activity, and there are many
22 midden scatters there in that place.

23 COMMISSIONER CHANG: It appears that there
24 is a gulch that goes through. We've heard a lot of
25 testimony yesterday about the flooding.

1 Do you know whether there were practices up
2 mauka or historic sites that may be up mauka that may
3 also flow down these gulches? You know a lot about
4 gulches.

5 THE WITNESS: When you say, sites that have
6 been --

7 COMMISSIONER CHANG: Historic properties,
8 have you seen anything that has come down from mauka
9 area through the gulches?

10 THE WITNESS: I know there are sites that
11 exist in the mauka area because I've walked up mauka
12 on these gulches. There's always sites. It's just
13 like incredible. If you want to find cultural sites,
14 you walk the gulches.

15 You go up above on the sides, you'll find
16 them there. Maybe not in the bottom because a lot of
17 the water comes down there, so why would you put an
18 actual cultural feature in that area? But along the
19 sides, the slopes of the gulch.

20 COMMISSIONER CHANG: What kinds of
21 resources are you aware of that exist on this
22 property?

23 THE WITNESS: Well, you know, of the things
24 I relate to, studies maybe the stars, studies of
25 celestial events that occur, that's not my kuleana,

1 not my area of expertise. Others are experts in that
2 area. So I'm aware of that. Some of these young
3 people obviously are aware of that that testified to
4 you yesterday.

5 COMMISSIONER CHANG: With this project in
6 your mind, if it is developed, impact the ability to
7 continue using or to protect these resources? And if
8 this is not your kuleana, that's okay too.

9 THE WITNESS: The short answer is yes.
10 When I first read the 1994 AIS, nothing was planned
11 to be preserved, all destroyed except for the
12 petroglyph that was removed from the site, which is
13 significant that there was a petroglyph there. That
14 kind of shocked me that nothing was going to be
15 preserved.

16 But in a way doesn't surprise me, because
17 so little of our history has been preserved in what
18 has now been developed in Kihei. So that makes what
19 is left so much more important.

20 So if what's left is going to help continue
21 the cultural practice of people who know about the
22 stars and celestial events, I think it should be
23 protected. I think it should be included within
24 whatever is developed there and not destroyed.

25 So there should be talks about preserving

1 these special areas.

2 COMMISSIONER CHANG: So some of the -- in
3 the Cultural Impact Assessment as well as
4 Archaeological Inventory Survey they identified
5 pohaku, some stone features, and attributed those to
6 be related to military use.

7 Do you have any opinion about that?

8 THE WITNESS: I don't know, I'm not an
9 expert on that. But it'd be good to bring someone
10 out there who could determine whether that's
11 something that's been constructed by post contact
12 tact, perhaps by the military.

13 Depending how it's constructed, because
14 ancient construction, there was a definite way they
15 built things. So someone who built walls had an
16 opportunity to look at that they, could say, yes,
17 this was a traditional way of building; or no, this
18 is not a traditional way and you could be more
19 conclusive as to whether something is military, or
20 not, rather than just saying, yeah, it's military.

21 COMMISSIONER CHANG: Are you aware of
22 any -- we heard testimony that there is a Land
23 Commission Award Royal Patent Grant with this
24 property.

25 Do you know the family that's related to

1 that property?

2 THE WITNESS: I know one of them, I know
3 Elden Liu, and he's someone that the developers have
4 --

5 COMMISSIONER CHANG: Do you -- I'm sorry.

6 THE WITNESS: I know -- I'm surprised he
7 wasn't here.

8 COMMISSIONER CHANG: Do you know whether he
9 was contacted for the Cultural Impact Assessment?

10 THE WITNESS: I don't know. I would be
11 surprised if he wasn't, because his name has come up
12 many times.

13 COMMISSIONER CHANG: Has it been your
14 experience that Hawaiians sometimes are reluctant to
15 come forward?

16 THE WITNESS: Absolutely, very reluctant.
17 They have been burnt, taken advantage of. They share
18 their knowledge, and people and take and use their
19 knowledge in ways that are inappropriate. So
20 sometimes they're very reluctant to share cultural
21 practices where they practice.

22 They're very reluctant to share their moku
23 auau, how they're connected to lands because they
24 have this history of distrust with the powers that
25 be. I call that being burnt.

1 COMMISSIONER CHANG: Mahalo for that
2 definition.

3 Let me -- in your opinion, the Cultural
4 Impact Assessment concluded, and I know -- concluded
5 that there are no traditional customary practices
6 being exercised. They've been abandoned, and
7 therefore there would be no impacts.

8 What is your opinion of that conclusion?

9 THE WITNESS: I made myself available from
10 2012. I've submitted comments. I've been at
11 cultural consultation meetings. I've been at site
12 visits. I did the CIA, where I stated that a
13 cultural -- I mean, what do you have to do to get in
14 the EIS that there is cultural practice there?

15 How much more clear does one have to be? I
16 think I've been very clear, and yet after all of
17 this, despite all of my efforts, it's still the
18 bottom line is all cultural practices have been
19 abandoned, and it's not true. It's not true.

20 COMMISSIONER CHANG: I appreciate that.
21 Thank you so much for your testimony.

22 CHAIRPERSON ACZON: Commissioners, any more
23 questions? Mr. Pierce, are you done?

24 MR. PIERCE: I'm done.

25 MS. CATALDO: May ask a couple follow-up

1 questions?

2 CHAIRPERSON ACZON: Please be quick because
3 we are going to break.

4 RECROSS-EXAMINATION

5 BY MS. CATALDO:

6 Q Did you participate in the discussion about
7 the preservation of certain sites identified in the
8 AIS as well as two unmarked sites?

9 A Yeah, some of them. I was one of those
10 that was on the site visit. And the purpose of the
11 site visit, after the acceptance of the AIS, which
12 doesn't make sense, was to identify sites and to
13 share your mana'o about sites. So all of us at the
14 site had opportunity to share thoughts.

15 Q I wanted to make sure you were aware -- I'm
16 not sure you are from your testimony -- but in the
17 Final EIS on pages 92 and 93, there is a commitment
18 to preserve nine sites, seven that are -- that you,
19 and I believe Ms. De Naie identified, as well as two
20 additional unmarked sites that weren't identified in
21 the AIS. The developer had agreed to preserve those
22 sites. Are you aware of that?

23 A I am somewhat aware of it. I would love to
24 see it on the map.

25 Let's put it this way. Let's put it on the

1 map, you're going to preserve these sites. Where are
2 the sites in relationship to your project? That
3 speaks volumes.

4 We are going to preserve sites. Put it on
5 the map, draw X's, and this is where the project is
6 going to be, to work with that.

7 Q Understood. Understood that in this
8 project that will be the subject of further
9 discussion. But the commitment to preserve has been
10 made.

11 A That's great.

12 Q And do you understand that as a result of
13 your walking the site with Mr. Fredrickson, despite
14 the fact that SHPD had already accepted the 2015 AIS,
15 that sites were submitted for data recovery?

16 A Well, if that was included in the AIS --
17 was it included in the AIS?

18 Q Correct.

19 A And that was published in the Final EIS?

20 Q Correct.

21 A And that did not give the public an
22 opportunity to comment on that, because then we
23 skipped a step there, didn't we?

24 Q I'm not sure I understand.

25 A I'm saying the opportunity -- the public

1 missed an opportunity to comment on a study that was
2 done as part of the EIS and should have been part of
3 that, opportunity for the public.

4 You say put in the Final EIS, and the
5 public doesn't have -- maybe we have an opportunity
6 at this meeting, but it's a huge document, 4,000
7 pages. Public didn't have adequate time to review
8 the additions to the AIS that came after the fact
9 that the draft was done, and now we are in the pre
10 Final EIS.

11 BY MR. SAKUMOTO:

12 Q Mr. Kanahale, you understand that the EIS
13 process is very structures, correct, for the --

14 A I'm not an expert on the EIS, but looking
15 at it seems very structured.

16 Q The comment -- the ability to comment on
17 the EIS documents arises when you have a chance to
18 look at the Draft EIS, as you did, correct?

19 A Yes.

20 Q And so you did comment on that?

21 A I did.

22 Q And in response to comments that the
23 developer receives, the developer is then -- or the
24 let's say the Petitioner is then obliged to respond
25 to those comments; is that correct?

1 A The Petitioner, okay, yes.

2 Q And sometimes responding to those comments
3 requires the Petitioner to request further
4 investigation to provide an intelligent response?

5 A Okay.

6 Q And so in that case -- I'm asking a
7 question, not trying to put words in your mouth --
8 but you seem very familiar with the EIS process
9 having participated in this.

10 A A few, yeah. Not been a lifelong thing,
11 but I have read a few.

12 Q So would you, I guess, acknowledge that in
13 response to comments received to the documents
14 attached to the Draft EIS, the developer then had to
15 have further investigation done to provide something
16 to the Final EIS?

17 A Okay.

18 Q And there is, in the process of the Final
19 EIS, no further public comment period except for
20 opportunity such as this.

21 A Right.

22 Q Thank you.

23 CHAIRPERSON ACZON: Thank you, Mr.
24 Kanahale.

25 We will take five-minute break.

1 (Recess taken.)

2 CHAIRPERSON ACZON: Back on the record.

3 Mr. Pierce, please call your next witness.

4 MR. PIERCE: Dick Mayer.

5 CHAIRPERSON ACZON: May I swear you in
6 first?

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

9 THE WITNESS: Yes.

10 CHAIRPERSON ACZON: Please state your name
11 and address for the record.

12 THE WITNESS: Richard, also know me as Dick
13 Mayer. My address is 1111 Lower Kimo Drive, Kula.

14 CHAIRPERSON ACZON: Please proceed.

15 RICHARD MAYER

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

19 DIRECT EXAMINATION

20 BY MR. PIERCE:

21 Q Good morning, Mr. Mayer.

22 A Good morning.

23 Q Have you previously testified in this
24 contested case?

25 A Yes, I have.

1 Q Were you testifying as an expert witness?

2 A Yes.

3 Q You gave your testimony that was before the
4 Commission found violations of the conditions of the
5 Ka'ono'ulu Ranch Decision and Order?

6 A Yes.

7 Q Can you just -- I think most of the
8 Commissioners know you, but could you please just
9 describe your background and experience, knowledge?

10 A Several things. One I was former Planning
11 Commissioner for Maui County. I also was the Vice
12 Chair of Maui Island General Plan Advisory Committee,
13 which drew up the Urban growth boundaries, Rural
14 growth boundaries.

15 Presently work as a coordinator for all the
16 community associations on Maui. And I taught at the
17 college here next door for 34 years, and now retired.
18 I taught economics and geography.

19 Q Have you been qualified before as an
20 expert?

21 A Yes, I have.

22 Q In other administrative hearings?

23 A In several both before LUC and other
24 bodies.

25 Q Have you had a chance to review the Final

1 EIS?

2 A Large portions of it, but not all of it.

3 Q What's your general evaluation of whether
4 the developer has met the EIS requirements?

5 A I don't believe they have met them, and I
6 can give I can examples later on ways that they did
7 not.

8 Q Okay.

9 Let's start with the community planning
10 side. And first if you could explain what your
11 experience is with community planning here on Maui.

12 A I was also -- I didn't mention -- I was
13 also the Vice Chair of the Community Plan Advisory
14 Community for my own area Upcountry, Maui,
15 Makawao-Kula-Pukalani.

16 As I said, I was on the G path, which
17 meant -- and also prior to even the Maui Island Plan
18 being developed, the County of Maui hired me to
19 evaluate the experts who were putting together the
20 sections of the Maui Island Plan to look at their
21 material and see what things were in there and not in
22 there, and give recommendation, so that they could
23 give feedback to the experts over the years. This
24 was back at the very beginning of that process.

25 Q Would you describe yourself as having a lot

1 of experience on Maui with the community planning
2 process?

3 A Yes. As I said, I was on the Planning
4 Commission back in the '70s, and have been on several
5 of the county boards and commissions.

6 Q I'm going to ask you -- I'm going to read
7 something from the EIS, page 270 of the FEIS. This
8 is a discussion of whether or not the project is
9 consistent with the community plans and zoning.

10 And the statement is made:

11 The County of Maui has interpreted the
12 Pi'ilani Promenade project as complying with the
13 KMPC -- the KMPC is the Kihei-Makena Community
14 Plan -- and I'll start over just to make sure you've
15 got that straight.

16 To County of Maui has interpreted the
17 Pi'ilani Promenade project as complying with the
18 KMCP, as the KMCP provides that the goals and
19 objectives are guidelines to the ultimate
20 implementation of the plan.

21 Do you agree with this assessment made in
22 the FEIS?

23 A I don't believe they're just guidelines.
24 The community plans are actually, I think, law.
25 They're adopted by the county council that put into

1 an ordinance. They're both, in some cases
2 guidelines, but in some cases they're actual law.

3 And as I have been told and understand it,
4 there's sometimes when words like, things are
5 encouraged, protect the coral refers or whatever.
6 Those are guidelines.

7 When it says something "shall" be done or
8 something is "prohibited", that means it's law.

9 And I think that's been borne out in the
10 county council chambers when a project has come up
11 and something was prohibited, community plans were
12 declared law, not just guidelines.

13 Q Also, if you could tie this in.

14 What do you understand -- do you think that
15 the EIS has sufficiently described the proposed
16 action?

17 And, of course, "the proposed action" is a
18 term of art in the EIS law.

19 Are you familiar with that?

20 A Yes.

21 Q Okay.

22 What is the -- what is the -- do you think
23 that the EIS is sufficiently described in the
24 proposed action here?

25 A Not well. I think what you have is a

1 bubble map that's very conceptual, as opposed to
2 something that's detailed in giving information. And
3 there are many elements that are missing in that
4 bubble that I think are critical to understanding
5 what this project is going to be.

6 Let me give some examples of that. We
7 don't know the acreage of each of those bubbles. We
8 don't know the heights of proposed buildings.

9 I think particularly important thing that's
10 missing are the roads that will be within that
11 project. We know one central road that will be an
12 extension off of the highway. But beyond that, we
13 have no idea what the roads will be, and
14 consequently, we have no idea what the intersections
15 are going to be.

16 This is extremely important. And I would
17 like to just mention an example to help illustrate
18 that.

19 If a developer came to the LUC and said we
20 want to put up a 30-acre shopping center, this is
21 what we are going to do. And we will have two exits,
22 or one exit, or three exits from that, and this is
23 how it's going to interact with the highway just
24 outside.

25 You would then look for a TIAR for those

1 various intersections of how the shopping center will
2 interact.

3 Well, none of that is provided in this
4 document that you have before you. And not only do
5 you not have the intersections there, but across the
6 street from that big shopping mall there is a new
7 housing project being proposed, and another mall
8 being proposed across the street, plus potentially
9 another housing project.

10 All of that would have to be interacted --
11 we have to know what the interactions were whether it
12 would be safe for residents in those housing
13 projects. There are going to be two housing
14 projects. One with 226 units and one with 250 units.
15 476 housing unit across the street from this very
16 large mall.

17 What is going to be the ability of people
18 to go back and forth across the street to get to the
19 mall? Will there be intersections? Will it be
20 signalized? Those are all the details that would be
21 in the TIAR that's totally missing in a conceptual
22 bubble diagram of these things.

23 Those are just some of the things. We
24 don't know the building heights that will be there.
25 We don't know how the two housing projects -- this

1 housing project that is being proposed on this
2 particular 75-acre site is going to interact with the
3 with the other housing project on the 13-acre site
4 next door.

5 Will there be connections? Will there not
6 be connections? Will there be roads between the two.
7 None of that is provided.

8 So there's a total lack of any detail in --
9 the requirements of the EIS law is a detailed project
10 description, including maps, technical data,
11 economic, cultural, et cetera. And I would expect
12 traffic and all the other things would be needed in
13 order to understand what exactly is going on within
14 the project.

15 TIA studies that were done, were external
16 to this project, and are important -- and even there
17 there's some information that we'll maybe be able to
18 get into.

19 Q Thank you.

20 Question for you, follow-up question. You
21 talked about the community plan. Have you -- the EIS
22 says that the proposed action, which is not fully
23 defined, according to your testimony, it says:

24 The proposed action is consistent with the
25 zoning for the property.

1 Can you talk to the Commissioners about
2 your opinion as to whether the EIS adequately
3 addresses that?

4 A It avoids the subject. It says that will
5 be a decision the LUC will have to make at a later
6 date. Let me give the background why I think it does
7 not comport with the county zoning.

8 The county zoning law 19.24, the light
9 industrial zoning which would describe this project,
10 and it now has the ability to have that's called
11 pyramid zonings. So not only will the light
12 industrial be allowed, but you could have some other
13 businesses and commercial establishments, and also
14 even apartment complex could be put in there.

15 But it has a very keyword that the
16 developer, in this case, the EIS document, totally
17 tries to avoid mentioning, and that is it has to be
18 mostly -- and I emphasize the word "mostly" -- mostly
19 light industrial.

20 This bubble diagram doesn't give a lot of
21 details what is going to be in those bubbles, but the
22 diagram shows that the whole right-hand side is going
23 to be business/commercial, no light industrial. The
24 left-hand side shows a housing project, another
25 business/commercial, which is most of that site, and

1 also a light industrial section in the corner, which
2 is not just light industrial, but it's light
3 industrial, business/commercial.

4 So possibly the entire left side, the north
5 side of that project, would be business commercial
6 retail and housing. No light industrial at all.

7 So the word "mostly" is being violated --
8 would be violated in the zoning law.

9 Q Thank you.

10 I want to talk next about an area that you
11 have experience in, according to your testimony,
12 which is economics.

13 Do you think that the direct and indirect
14 economic impacts of the development were adequately
15 assessed and appropriately assessed in the EIS?

16 A I do not.

17 The study that was done, that is being
18 relied on now in this new EIS is a 2013 study, which
19 takes a look at the business climate, looked at back
20 then. It has not been updated.

21 And since then, as has been pointed out by
22 some other witnesses, the number of stores on Maui
23 have closed, retail stores, Kmart, Borders, Sports
24 Authority, Savers and others.

25 Down in Kihei, some of the areas now have

1 high -- not occupancy, the opposite of occupancy,
2 vacancy rates. So the result is that this project
3 will be coming in with a large shopping center and
4 could doom many other areas.

5 The developer of the new Kihei Downtown
6 area, which has gone through all its approvals, done
7 all the right things, has gotten the community plan,
8 the zoning, SMA, everything is ready -- they're ready
9 to build now. That project might be doomed if this
10 project were to go in, and yet the EIS does not
11 examine the interaction of the proposed big
12 commercial project with these other areas, and the
13 fact that they're large vacancy rates already in a
14 number of places.

15 Q On an unrelated be subject in terms of what
16 is planned for Kihei, can you tell the Commissioners
17 when the last community plan process happened in
18 Kihei?

19 A The last process was back in 1997-8, that
20 period of time, approximately. It was adopted as one
21 of the regular community plan updates. Maui Island
22 has six community plans, the South Maui area was done
23 around '98.

24 The new process is now about to begin.
25 Maui Island Plan, which I was the vice chair of the

1 General Plan Advisory Committee, set the framework
2 for all the community plans on Maui. It was an
3 attempt to look at the whole island, so different
4 areas could relate to each other. And we set up
5 Urban growth boundaries.

6 And beginning late this year, the first of
7 those community plans will be established for West
8 Maui. The Planning Department is well along in
9 setting that up. The Advisory Committee will be set
10 up this year.

11 That will be immediately followed by the
12 South Maui one. So the South Maui Community Plan
13 will be set up. And Advisory Committee of the whole
14 community will be established.

15 And what is very important, and it was not
16 mentioned in the EIS at all, that this will be a real
17 effort by whole South Maui community, and then the
18 council, which will have to adopt the community plan.
19 They will look at all the various things that have
20 happened since 1998, and will be able to say we need
21 more commercial. We need more industrial. We need
22 this. We need that. What the traffic pattern should
23 be. Where we shut put limits on growth.

24 The Urban Growth Boundary was established
25 by the Maui Island Plan to be an outer limit. And

1 the idea was that if we have no outer limits on
2 communities, infrastructure may have to go to some
3 very extensive areas. Everything from electric
4 lines, sewer lines, to waterlines, to school bus
5 routes, et cetera.

6 So the growth boundaries were meant to be a
7 constraining element, but it did not mean that the
8 Urban Growth Boundary was to be filled in with
9 development. It was meant to be -- so the outer
10 limit where a developer, a landowner may come in and
11 get approvals.

12 This particular site of the proposed
13 project is within the Urban Growth Boundary. It's
14 designated light industrial at present, and it will
15 be up to the community in the next year or two. As
16 they go through the community plan process, they will
17 look at this and say, we still want to keep it light
18 industrial. We think, no, it should be half
19 commercial, half this. It should be a housing
20 project. They will be able even to say, we will take
21 the light industrial away. That has happened at
22 times when community are done, that certain projects
23 that maybe ten, 20 years ago, thought of as being
24 viable or desirable, can be removed.

25 So it's even theoretically possible that

1 the community and the county council will say, no, we
2 no longer think this is an appropriate area for a
3 development. I think that's unlikely. I think it's
4 likely that it will probably remain as a light
5 industrial area, but that's my opinion, and it will
6 be up to the community and the County council to
7 decide what's in that new community plan.

8 Q So with respect to the information you're
9 providing, Mr. Mayer, can you link that now to
10 whether or not the EIS provides adequate information
11 for decisionmakers with respect to what the planning
12 is for Kihei-Makena area?

13 A I don't think they've looked beyond their
14 own project as to what's desirable or not desirable.
15 They're trying to take a piece of land that was
16 designated in the community plan and the zoning as
17 light industrial, and now want to convert it over
18 largely to business/commercial -- it was light
19 industrial designated -- to business/commercial and
20 the segment over for housing.

21 And the housing area, people keep talking
22 about it's an affordable housing project. Actually
23 the county requirement would be that only 56 units of
24 affordable housing would be built on that land. The
25 other 160, 170, approximately, would be market-priced

1 housing. So it's not really an affordable housing
2 project.

3 The community plan could come along and say
4 that this area should be an affordable housing area.
5 Could do a number of things, which is speculative on
6 my part as to what they may say.

7 Q Another part of the EIS deals with jobs.

8 Can you discuss the adequacy of the EIS's
9 evaluation of the jobs created or lost from the
10 proposed action?

11 A I think it's very weak in this area. They
12 describe a lot of dollar amounts that will be
13 expended for various things, construction. But I
14 think the Commission, if they're saying what we
15 really would like to see is a stimulus to get more
16 jobs done, my thinking is that if you were to build
17 the present community plan designation of light
18 industrial, 123 units, which was proposed for this
19 property, you probably would have more construction
20 jobs than building a number of big box stores as a
21 retail thing.

22 Q Why is that?

23 A Well, I think it's a simple of construction
24 to put one big warehouse type building, like say a
25 Home depot or Walmart, what have you. Those kind

1 of -- that would be multiple light industrial
2 projects with a lot of internal plumbing and
3 fixtures, electrical systems, and all those -- I
4 think it would probably provide more jobs
5 construction-wise to put up that kind of a center
6 than -- maybe that's why you had very few
7 construction workers here yesterday testifying
8 because I think they may have realized that this is
9 not necessarily going to be providing them with more
10 jobs.

11 But the second part of that is, once -- if
12 you're going to make a choice between the two
13 operations, which will have more employment and
14 better employment after, let's say, the two scenarios
15 were to take place. One, the light industrial
16 complex, the other largely business/commercial
17 project. My guess is that the light industrial would
18 have better paying jobs, more skilled people,
19 full-time workers; whereas if it was a retail
20 shopping center, you will have lower paid jobs, and
21 you probably will have lot of part-time people,
22 students after school will get some employment, but
23 those will be much less employment.

24 And so the income generated by the
25 employees will probably be less in a retail complex

1 than it would be under the existing community plan
2 designation. The EIS talks nothing about those kind
3 of ratios.

4 Q Thank you.

5 So that is the problem with how the EIS
6 fails to present that?

7 A The EIS totally ignores those kinds of
8 considerations.

9 Q The EIS does talk about pedestrian access,
10 which was an issue that was raised back in the
11 initial hearings.

12 Can you discuss whether the EIS adequately
13 discusses how pedestrian access will be provided, and
14 whether or not it will be safe?

15 A There are two areas here. One is
16 internally within the project; second, externally
17 from the project to the rest of the community.

18 Internally, as I said, there is no
19 indication of what roads, what the intersections will
20 look like. There is some schematic diagrams of the
21 road, main road going true the project, and whatever,
22 but nothing about where the crosswalks will be,
23 whether they'll be signalized, to what degree it will
24 be safe.

25 Externally, it's mentioned there will be a

1 connection along Pi'ilani Highway. And immediately
2 adjacent to the project is the new high school that's
3 going to be built, and there's a bridge right now
4 that goes over the gulch between those two projects.
5 There's almost no walkway between the two things, and
6 so the state or the highways department, put in --
7 It's in Appendix M-1.

8 Appendix A of M-1. This is quoting:

9 Pi'ilani Promenade shall provide
10 satisfactory pedestrian connections between the
11 project and Kihei High School.

12 The Final EIS provides no details of what
13 that access would be, how it would be constructed,
14 rather it makes a statement, we'll work with the
15 state. We'll help them design it. That would leave
16 it up to the state then to pay for it. None of that
17 is clarified.

18 The state, I think, is looking that the
19 developer would put that access in between the high
20 school and shopping center. I could well imagine
21 that many high school students after going to
22 classes, they would want to work at that shopping
23 center, or shop at the shopping center, as teenagers
24 very often want to do, and they will have at present
25 a very, very unsafe transit between the two.

1 There's also a new housing development
2 being built across the street from the shopping
3 center, 86 unit affordable housing project that's
4 been already adopted, and it's fully entitled. And
5 the transit between that housing complex and the
6 shopping center I think is not adequately covered in
7 the EIS as to how they'll will be able to go.

8 Q Thank you.

9 On the subject of housing, does the EIS
10 adequately assess the impacts of the proposed housing
11 for the Pi'ilani project?

12 And here, I guess, I would also ask you to
13 include a discussion of whether or not it adequately
14 addresses the housing that's proposed on the other
15 portion of the Petition area, still part of the
16 Petition area which is owned by Honua'ula?

17 A I don't believe it does. What we will have
18 is total of 476 units if both projects are built out
19 as being proposed, but we don't know, particularly on
20 this piece, how big those buildings will be.

21 Is it going to be two or three large
22 apartment complexes. Are there going to be a
23 multiple 10, 12 units? So we don't know what kind of
24 traffic pattern. We don't know anything about the
25 parking.

1 One place in the document it says this will
2 be non-vehicle, no vehicle. I'm not even sure what
3 that means in this case. Obviously, if you've got
4 all these people, many of whom will have to commute
5 to work, there should be some access from those
6 houses for people getting to work, driving to work,
7 driving to school.

8 We have no idea where the school buses will
9 be. Will there be adequate parking areas for
10 these -- for 476 units? And that means everything
11 from elementary schools, middle schools and the high
12 school, et cetera.

13 So we have some real unknowns about these
14 two housing projects next to each other, and the
15 impacts that will be coming from those, and the
16 impacts to those housing projects.

17 Q In your opinion, has the EIS adequately
18 addressed the housing, the impacts from the housing,
19 both the positive and the negative impacts?

20 A I don't believe it has discussed any
21 impacts.

22 Q Going onto -- one of the issues that you
23 talk about with the housing was traffic. And have
24 you reviewed the TIAR, that's one of the appendices?

25 A Yes, I have.

1 Q What's your evaluation of the analysis in
2 the TIAR, with respect to the proposed action?

3 Once again, I would ask for you to, in
4 light of the fact that the proposed action is
5 ambiguous, identify how that might affect the TIAR.

6 A I think the TIAR makes an effort. They've
7 got pages and pages, hundreds and hundreds of pages
8 of diagrams and whatever.

9 I'm not sure how they derived the number of
10 vehicles that will be coming into or out of the
11 shopping center, since there's no knowledge about how
12 big with the retail -- other than the square footage
13 of the retail establishments.

14 We don't know whether these are big box
15 stores, whether these are boutique type
16 establishments. We don't know anything. So there's
17 going to be a real range of traffic depending on the
18 type of commercial operations that go on there.

19 Similarly for the housing. It talks about
20 the housing as some one bedroom, some two bedroom,
21 some three bedrooms. The difference between a
22 one-bedroom house and a three-bedroom house means
23 that you might have two or three times as many people
24 in a three-bedroom house. So the number of vehicles
25 coming in and out of the housing area would be

1 unknown. That's just within the project.

2 We don't know the draw that this project
3 will have to bring people into the community. Will
4 there be visitors who may come from a shuttle bus
5 from a hotel? Are there going to be cars?

6 So they went ahead and created this very
7 elaborate TIAR. But what they did was they
8 self-defined the region that they would look at as
9 being sort of half a mile -- three-quarters a mile
10 north, and three-quarters a mile south of their
11 project.

12 But the R&D park, for example, they say
13 that's beyond our area. We're not going to put that
14 into our detailed analysis.

15 And the big A&B project which is now under
16 construction, 600 houses just to the north of the
17 project, also was left out in terms of their detailed
18 analysis.

19 So they create something else called
20 "background" thing, and then mentioned several other
21 projects in South Maui, the Makena project, the
22 Wailea Resort project, the Wailea 670 project, as
23 well as the R&D park. So that's all going to be part
24 of a background type of thing, and then they try to
25 make an assessment on that.

1 Those are really not just background. The
2 Makena project has just been approved by the county
3 council. And we know the exact number of units, the
4 maximum number of units that will be going into that
5 project. Wailea, it's very clear how many acres they
6 have.

7 Wailea 670, we know exactly the number of
8 units, 1150 units on the project. So all of these
9 projects are very clearly defined.

10 And I think the critical thing to look at
11 when you look at this traffic -- this highway,
12 Pi'ilani Highway is a cul-de-sac. It's a long 11,
13 12, 13-mile long cul-de-sac from North Kihei all the
14 way down to Makena, but it stops.

15 So everything that goes down has to come
16 back up. Everybody who lives on that road, will have
17 to use the same road to get their food, their
18 supplies, their gas, everything else will all pass by
19 the shopping complex that's being proposed.

20 And the TIAR took a look at the traffic on
21 that thing, and then they concluded that it would be
22 F traffic.

23 Q What does that mean?

24 A This is level of service. They concluded
25 that the -- not just one F, but several F's along

1 different intersections, but the one, let's say,
2 right in front of their complex, which they feel that
3 they will have to upgrade, even after they do the
4 upgrades in 2032, when fully built out -- let me try
5 to read the sentence here if I can find it here.

6 Despite -- I don't have the exact wording.
7 They say that it will be F level of service for that
8 particular intersection after it's done.

9 The implication -- to answer your question.
10 They rate intersections A, B, C, D, E, F with A to D
11 considered by the state HDOT to be acceptable, in
12 other words, it's not necessarily desirable level D,
13 but it's acceptable. E and F are not acceptable.

14 In this case, the F rating obviously means
15 that it's very unacceptable to have that kind of
16 delay.

17 The problem is we got emergency vehicles.
18 As I said, this is a cul-de-sac. Emergency vehicles,
19 that's police, fire, ambulance services needing to go
20 along passing several of these intersections which
21 will have very bad level of service ratings.

22 It will potentially cause some serious
23 health concerns or other emergency concerns,
24 depending what it was, ambulance or fire, all along
25 this highway. They try to get around that by saying

1 that the vehicles will have the ability to regulate
2 the lights, and have preference on the lights going
3 through, but still if there's a backup of traffic,
4 it's going to cause delays even for those vehicles to
5 maneuver around through an intersection where traffic
6 is blocked up.

7 Q Does the EIS adequately address the
8 mitigation steps that they're proposing to deal with
9 the level of service of F?

10 A They are indicating that they're going to
11 be putting in some left-turn lanes, right-turn lanes,
12 double lanes. They're indicating that they're going
13 to be putting in signalization, and things of that
14 sort.

15 But despite all the mitigations that
16 they're claiming that they will be putting in, it
17 still will be level F, like in frank.

18 Q Thank you.

19 A One other thing.

20 Even the formulas that they used in the
21 document, they have some fancy formulas with the
22 letter X and the letter T, but they do not explain in
23 the EIS how they derived their formula.

24 Q Why is that an issue for decisionmakers?

25 A It's an issue because it's unclear to the

1 public, and probably to LUC members, unless they're
2 traffic experts, they would not understand how those
3 various numbers were derived, and what how the
4 calculations were made. That's on page 40, Table 13
5 of Appendix M-1.

6 Q Did you comment on the EIS?

7 A Yes.

8 Q Did they respond?

9 A I got 40p-plus pages of response letters.
10 I started reading it, and I noted a number of places
11 where it was deceptive to me. It was something's --

12 Q Let me start with this.

13 What do you understand the EIS law requires
14 or drafter to do in comment responses?

15 A They should give clear responses that --
16 and they should reflect good answers to the issues
17 that I raised, and explain those things. Not sure
18 what else you'd want --

19 Q Okay.

20 But in this instance, did the responses
21 meet the requirements, in your opinion, of what is
22 necessary for a transparent -- EIS to be used by
23 decisionmakers?

24 A No. And I'll just give one example.

25 When they talk about the area, the area on

1 the lower left of the bubble diagram, so-called light
2 industrial/business/commercial, in the response to me
3 they just refer to that as a light industrial area.
4 Assuming that there would be -- they don't mention
5 business/commercial, and that was something that was
6 also -- many of the people who wrote sections in the
7 appendices all refer to that area as light industrial
8 as if they were told, oh, that's going to be a
9 light -- they never mentioned that that area --
10 there's no requirement that it would be light
11 industrial, because they put half light industrial,
12 half business/commercial in that area. It could be
13 all business/commercial.

14 So that happened in several places in the
15 responses to me.

16 Q So the responses are only as good as long
17 as light industrial is built there?

18 A Yes, only as good as the light industrial
19 being built there.

20 Q And they did not respond at all to the fact
21 that they were also proposing commercial for the
22 area?

23 A They did not mention that in the response
24 to me.

25 Q There was testimony yesterday about

1 flooding in the area. Did you have testimony that
2 you wanted to provide Commissioners about the
3 adequacy of the EIS with respect to flooding?

4 A It's not an area I have any expertise in.
5 I mention it as an issue. And I think other people
6 are much better qualified than I am to respond to
7 that part of the EIS.

8 Q Okay.

9 And then also did you have any concerns
10 with the way OEQC published the Final EIS?

11 A Yes. It's something actually in their
12 document. When they ask the developer to provide
13 comments, to provide their EIS to be published in the
14 document, they have a statement in there that I think
15 is -- should be, and I would urge the LUC to contact
16 the OEQC office on this where it says:

17 Comments are not taken on this action.

18 That's the wording that they put into their
19 official posting of this document.

20 Q This was in the Environmental Bulletin?

21 A In the Environmental Notice, and that's
22 misleading to the public. Someone reading that
23 Environmental Notice may say, well, no sense coming
24 to a meeting like this and giving testimony, because
25 they're not going to take any comments.

1 I would urge that that sentence be changed
2 somehow or other to give the public the impression
3 that if they wish to comment at a hearing on the EIS,
4 they can make the comments as many people did
5 yesterday. But there may have been many others, pro
6 and con, who may not have done anything feeling that
7 that directive is clear that nobody can comment.

8 Q Thank you, Mr. Mayer.

9 CHAIRPERSON ACZON: Any questions, for Mr.
10 Mayer, Petitioner?

11 MR. SAKUMOTO: No questions.

12 MS. APUNA: Nope.

13 MR. HOPPER: No.

14 MR. TABATA: We will be quick.

15 CROSS-EXAMINATION

16 BY MR. TABATA:

17 Q I think I missed this. What is the area of
18 your expertise that you're testifying to?

19 A I've reviewed -- 20 years I reviewed --

20 MR. PIERCE: If I may, I will just add. I
21 looked back at the transcript, Mr. Chair, last night,
22 and when I went through the process of submitting the
23 qualifications for Mr. Mayer, there seemed to be a
24 consensus where they did not want to go through the
25 qualification process, so I just want to have that on

1 the record that that was from the transcript before.
2 It was based obviously upon Mr. Mayer's overall
3 arching qualifications. We did not narrow that down
4 at that point. I just want to have that for the
5 record. And I have no problem with the questions.

6 CHAIRPERSON ACZON: So noted.

7 Q (By Mr. Tabata): Are you an expert in the
8 area of Environmental Impact Statement and reviews?

9 A For over 20 years I was asked by the
10 Environmental Center at UH-Manoa to review
11 Environmental Impact Statements here on Maui. I had
12 a lot of experience. They kept trusting me. They
13 kept sending over documents on highway, schools, all
14 kinds of projects to be reviewed, and I did that
15 professionally for about 20 years.

16 Q Thank you.

17 So approximately how many EIS's under
18 Chapter 343 have you reviewed?

19 A Dozens of them, many dozens of them. Some
20 I would get and they would send to me, and I would
21 just send it back. I see nothing in here.
22 Relatively trivial response, it looks very good.

23 In others I actually wrote very long
24 details. Points such as testimony I've given today
25 on an environmental -- where I analyze things pro and

1 con.

2 Q Approximately how many times have you
3 testified like you're testifying today regarding the
4 acceptance of an EIS under Chapter 343 HRS?

5 A Wasn't my job to accept or not accept. I
6 would describe the strengths and weaknesses in the
7 document. Areas that I think had been left out.
8 Things that should have been included. And try to
9 raise for the Environmental Center -- their job at
10 that time -- the Environmental Center that was merged
11 at Manoa with one of the other departments.

12 Q I'm sorry, Mr. Mayer. I wasn't
13 specifically referring to that job that you held.
14 Talking about in the last recent past, maybe the last
15 five years, have you testified like you're testifying
16 today regarding the acceptance of an EIS?

17 A Just a few months ago before the same body
18 the Waikapu Town meeting EIS came up before the body.
19 And I was one of the testifiers, and I basically said
20 this is a very good EIS document.

21 I then qualified that and said but there
22 are some areas that could be strengthened with regard
23 to traffic. I would urge that a condition be added
24 to the acceptance on that, but overall I said that it
25 was a very good EIS.

1 Q Thank you.

2 CHAIRPERSON ACZON: Commissioners,
3 questions?

4 COMMISSIONER OKUDA: Mr. Mayer, are you
5 being compensated for your time and work in this
6 matter?

7 THE WITNESS: Absolutely not.

8 COMMISSIONER OKUDA: Thank you. No further
9 questions.

10 CHAIRPERSON ACZON: Commissioner Cabral.

11 COMMISSIONER CABRAL: Thank you.

12 Other people might be able to answer this,
13 but you seem to have variety of experiences.

14 There's been numerous references to the
15 community plan, and the fact that the community plan
16 developed, and then it's adopted by the council, and
17 then the community plan would become more so law, not
18 a suggestion, but actual law.

19 In the preparation for that community plan,
20 am I correct to assume that everybody in the
21 community is notified that there's going to be
22 meetings held to develop that plan? I mean, so it's
23 really -- I mean, it's not just the county offices
24 developing that. Is it a community effort to have
25 that plan developed?

1 THE WITNESS: Let me briefly say. It goes
2 through several stages. I'll try to be very brief.

3 The Planning Department will take a look at
4 the existing community plan, and will do some
5 analysis, try to get updates on population, on jobs,
6 on transportation, various areas.

7 They will then put together a draft, an
8 update of the community plan. The county council and
9 the mayor will then select an advisory committee from
10 the community, nine members selected by the council,
11 four by the mayor, to review this.

12 They will then hold public meetings, and
13 those meetings will go on in the evening, not daytime
14 meetings, in the evenings for the public to come in.

15 And my experience as having been vice chair
16 of one of those community plans, we have very
17 extensive public testimony from the community. It's
18 in the newspaper when the meetings are held. The
19 meetings are reported back to the community.

20 A lot of input from members. In fact, one
21 of the problems is, we get so much public testimony,
22 that very often we don't have time to discuss all the
23 details.

24 COMMISSIONER CABRAL: I understood that.

25 THE WITNESS: Make a long story short, they

1 make recommendations, update the draft that was given
2 by the council -- by the planning department, that
3 goes to the Planning Commission. Planning Commission
4 then has six months to get whole review, make their
5 recommendations.

6 The three versions, the original draft by
7 the department, the recommendations of the citizens
8 advisory committee, and the recommendations of
9 planning all go to the county council, where it's
10 further reviewed, hearings are held, mostly by the
11 council during the day time, unfortunately, but they
12 do hold meetings in the community as well, and they
13 will eventually then adopt the community plan.

14 COMMISSIONER CABRAL: Notification for
15 these various meetings both at the community level as
16 well as when the county offices themselves put it
17 together and they're having their hearings, how are
18 people notified of that? Is that just through the
19 local publication? Through websites? Is there any
20 effort to actually notify the landowners of a
21 specific area through tax -- you know how to send
22 them a tax bill. Is there any effort to send them
23 any other kind of notification?

24 THE WITNESS: Things have changed -- the
25 last series of community plans were done in the

1 1990's, so we did not have the social media. We
2 didn't have lots of different things. So letters
3 would go out to people. The Maui News is the
4 newspaper record on the island. It has been very
5 good over the years in publishing that the community
6 plan is going to be reviewed. There's going to be
7 meetings coming up.

8 After some meetings have been held, they
9 will usually write a long article, as you may have
10 seen, for example, in today's paper, a long article
11 in Maui News about your meeting yesterday here,
12 followed -- but in that article they also indicated
13 that there would be continuation of that meeting this
14 morning?

15 So the paper has been very good about
16 alerting the public. And that goes out to most homes
17 on Maui. In addition now with social media it's much
18 to get the word out.

19 COMMISSIONER CABRAL: Then I'll conclude
20 with a question.

21 So if I was a large landowner in the area
22 of concern or the consideration is being given, I
23 would be able to know when a community meeting was
24 going to happen if I wanted to participate in
25 discussing the plans of the future? And then -- so

1 it's available from what you've said.

2 And then the second thing, once a decision
3 is made and it becomes adopted, anybody in the
4 community can get hold of that information through
5 county records, it's all available to everyone in the
6 public?

7 THE WITNESS: It's on the county website.
8 It's available through any other means -- you can go
9 up to the Planning Department and read the document
10 paper if you don't have web access.

11 It's widely available. And any landowner
12 who would want to know how his or her property is on
13 the plan, and -- but I think the point was made
14 yesterday by the County Councilwoman Kelly King, it's
15 not just the map, it's the text that's very, very
16 important.

17 And so a landowner would not only want to
18 look at the map that shows where his or her parcel
19 is, but would also want to read the text to see what
20 recommendations, what recommendations are law, and
21 what are guidelines that would affect their property.

22 COMMISSIONER CABRAL: Thank you very much.

23 COMMISSIONER CHANG: Chairman, I have no
24 questions.

25 CHAIRPERSON ACZON: Vice Chair Scheuer.

1 VICE CHAIR SCHEUER: Are you sure,
2 Commissioner Chang?

3 THE WITNESS: I have no culture.

4 VICE CHAIR SCHEUER: Mr. Mayer, I'm trying
5 to sort out in my mind the relationship between the
6 requirements in an EIS for discussion of compliance
7 between a proposed project and the community plan
8 with a separate set of requirements for the Land Use
9 Commission at the time of decision-making on the
10 merits of a project we are to consider the
11 relationship of a project to a community plan. So my
12 set of questions are going in that direction.

13 I understand your testimony to say, be
14 focused on arguing that the EIS does not adequately
15 discuss the relationship of this project to the
16 community plan. Is that correct?

17 THE WITNESS: That's correct.

18 VICE CHAIR SCHEUER: Now, there are
19 apparently differences of opinion about whether or
20 not this proposed project complies with the community
21 plan, is that also correct?

22 THE WITNESS: Yes.

23 VICE CHAIR SCHEUER: And I understand the
24 Maui County Department suggests that it is compliant
25 with the community plan, but you and other testifiers

1 believe it is not?

2 THE WITNESS: That's correct.

3 VICE CHAIR SCHEUER: What kind of
4 discussion in the EIS do you believe would be
5 sufficient, given the differing opinions, to address
6 the relationship of this project to the community
7 plan? This was to be an EIS you reviewed that says,
8 yeah, okay.

9 THE WITNESS: I think it's so far -- this
10 project that's being proposed with the EIS is so
11 different from what the community plan is designating
12 for this area, that they almost can't talk about it.

13 The community plan says specifically that
14 retail areas should be makai of the highway, and they
15 designate very clearly four areas.

16 The community plan says, for example, that
17 in a light industrial area, commercial establishments
18 and businesses are allowed, but only to support the
19 light industrial area. Let me give an example of
20 that.

21 VICE CHAIR SCHEUER: Let me, if I may.

22 So if the EIS had had the discussion that
23 said, the proposed project does not comply with the
24 community plan, or there are people who believe the
25 proposed plan is not in compliance with the community

1 plan for these reasons. Then you would feel that the
2 EIS was adequate in discussing those issues?

3 THE WITNESS: Got some negatives in there.

4 VICE CHAIR SCHEUER: This is why I wanted
5 to ask some questions.

6 So let me step back.

7 We could propose building a new harbor on
8 this island by detonating a nuclear bomb, and it's
9 technically possible to do a legally correct EIS for
10 it, right? It will create a lot of jobs. It might
11 also have some health affects.

12 But it's technically possible to do an
13 acceptable EIS for this project as proposed,
14 presumably.

15 How would the discussion of its
16 relationship to the community plan be discussed in an
17 adequate EIS?

18 THE WITNESS: I can't imagine how this
19 proposal could comply with the community plan. And
20 they would have a great difficulty saying that it
21 does, because the community plan very simply says
22 this should be light industrial.

23 The area -- the definition of light
24 industrial is given in the community plan as
25 warehousing and assembly, so they could try to say

1 something, that somehow a shopping mall is a form of
2 industry. Yeah, it's the retail industry if you want
3 to look at it that way. But that's usually not what
4 we think of as light industrial which is warehousing
5 and small time manufacturing.

6 VICE CHAIR SCHEUER: For LUC purposes, when
7 we will later, if for a moment you assume we accepted
8 an EIS for this project, and later then we have to
9 consider the relationship of the proposed project to
10 the community plan.

11 It would be possible to have that kind of
12 discussion in an EIS that would inform our
13 discussions later on about the relationship of the
14 proposed project to the community plan.

15 THE WITNESS: I don't see how you could
16 accept the EIS without looking at that issue. It
17 would be just again -- I'm not sure I follow.

18 VICE CHAIR SCHEUER: Yeah, I'm not sure I'm
19 being effective in my question.

20 THE WITNESS: And in addition to that are
21 the same issues with zoning.

22 CHAIRPERSON ACZON: Anybody else,
23 Commissioners?

24 Mr. Pierce, are you done with the witness?

25 MR. PIERCE: Followup, please, Mr. Chair.

REDIRECT EXAMINATION

1
2 BY MR. PIERCE:

3 Q Stay on this topic of the community plan.
4 On page 28 -- and you'll probably recall this once I
5 describe it -- on page 28 of the EIS there's a
6 section called "unresolved issues".

7 And this says: The table below provides
8 the list of unresolved issues associated with the
9 project.

10 And a number of these are identified. One
11 of them, number two, is: Compliance with the
12 Kihei-Makena Community Plan. There are a few others
13 that I may actually want to hit on, but let's focus
14 on number two for now.

15 And this goes back to Commissioner Cabral's
16 questions, based on your understanding of the
17 community plan process. One of the things that an
18 owner can do is, if they have inconsistency with the
19 community plan, is they can seek a community plan
20 amendment; is that right?

21 A That's correct.

22 Q Just very briefly explain to the
23 Commissioners very briefly how that happens?

24 A The landowner can go to the county and make
25 an application for community plan amendment. It

1 doesn't have to wait for the regular reviews, the
2 decennial reviews of the community plan. They would
3 then have to go to the Planning Commission. They
4 would hold hearings. The Planning Commission would
5 then make a recommendation to the county council that
6 this community plan should be changed or modified,
7 and any applicant -- any landowner can do that for
8 their particular parcel.

9 Q In this instance, we had Ka'ono'ulu Ranch,
10 the original owner of the Petition area that said
11 they wanted to do a light industrial project, and one
12 of the conditions that the LUC place on it, they said
13 you need to go get a community plan amendment.

14 A Yes.

15 Q And they went out and got it. In fact,
16 they got a very specific requirement that Ka'ono'ulu
17 Ranch wanted, identifying their specific project for
18 light industrial; is that right?

19 A Correct.

20 Q So then the property subsequently sold to
21 both the Pi'ilani owners as well as Honua'ula. They
22 are now obviously talking about something --

23 MR. SAKUMOTO: Is there a question, or is
24 he testifying for Mr. Mayer?

25 CHAIRPERSON ACZON: Redirect your question.

1 Q (By Mr. Pierce): So before I was
2 interrupted, the question is:

3 In this instance, we have two landowners.
4 They are proposing light industrial, but they also
5 are proposing other things that you've identified as
6 commercial.

7 If they feel that there is an inconsistency
8 issue, one of the options they have is like the
9 Ka'ono'ulu Ranch, is go seek a community plan
10 amendment; is that right?

11 A Correct.

12 Q So when the EIS talks about an unresolved
13 issue, and saying -- in fact, do you recall anywhere
14 in the EIS where one of the pieces of information
15 provided to decisionmakers was the possibility that
16 the owner could seek a community plan amendment.

17 Did they ever mention that in here?

18 A Not that I know of.

19 Q Instead, they refer to it as an unresolved
20 issue; is that right?

21 A That's right.

22 Q And what is the problem for decisionmakers
23 with respect to the adequacy of EIS by identifying
24 something in an EIS document, that's supposed to be
25 done at the earliest practicable time, and for the

1 purpose of informing decisionmakers, what is the
2 problem, based upon your experience and knowledge,
3 with identifying it as and unresolved issue?

4 A It needs resolution. It should have been
5 done earlier on. I would think they should have done
6 that initially, have gotten a community plan
7 determination that would be consistent with the
8 project that they are proposing.

9 Q And I'll identify another unresolved issue
10 that's identified. Number three on page 25 of the
11 EIS is preservation of archaeological sites.

12 What is the problem with not identifying
13 the location now, or how it's going to be preserved?

14 Why is there a problem in the EIS for
15 calling that an unresolved issue?

16 A The archaeological sites is an area beyond
17 my expertise. I don't know what the rules would be
18 with regard to the State Historical Office, et
19 cetera. I don't know the sequence in which that
20 happens.

21 Q What about number five, which is on page 26
22 of the EIS. Pedestrian connectivity to Kihei High
23 School. What is the problem with identifying that as
24 an unresolved issue in the EIS?

25 A The cost of putting that in is something

1 that should have been resolved so that the
2 Commissioners approving the EIS would be able to say
3 we know that the state has the money to put in a new
4 bridge, widen the highway, put something else in, or
5 they're going to leave it up to the developer of this
6 project to do that, and they have made no commitment
7 to fund that project. We don't know the cost of the
8 project. And they have made no effort to say that
9 whatever the cost is, we will provide that bridge,
10 widening of the bridge, whatever would be decided
11 would be needed.

12 So it's unresolved in the sense we don't
13 know how the pedestrian are going to be taken care
14 of.

15 Q Thank you.

16 CHAIRPERSON ACZON: Thank you. Are you
17 done with the witness? Thank you, Mr. Mayer.

18 VICE CHAIR WONG: Mr. Chair, I would like
19 to move to go into executive session to consult with
20 the board's attorney on questions and issues
21 pertaining to the board's duties, powers, privileges
22 and liabilities regarding these issues.

23 COMMISSIONER OKUDA: Second the motion.

24 CHAIRPERSON ACZON: It's been moved and
25 seconded to go into executive session. Those in

1 favor say "aye". Opposed? Motion carries.

2 (Executive Session.)

3 CHAIRPERSON ACZON: Back on record.

4 Mr. Pierce, please call your next witness.

5 I understand this is the last witness?

6 MR. PIERCE: That's correct.

7 CHAIRPERSON ACZON: How long will it be?

8 MR. PIERCE: Our goal is to get through
9 very quickly.

10 CHAIRPERSON ACZON: May I swear you in,
11 please?

12 Do you swear that the testimony that you're
13 about to give is the truth?

14 THE WITNESS: I do.

15 CHAIRPERSON ACZON: Please state your name
16 and address for the record.

17 THE WITNESS: Lucienne de Naie. I live at
18 320 Dora Faith Road in Haiku.

19 CHAIRPERSON ACZON: Please proceed.

20 LUCIENNE DE NAIE

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

24 DIRECT EXAMINATION

25 BY MR. PIERCE:

1 Q Good morning.

2 Could you describe -- your here on behalf
3 and you're testifying on behalf of Maui Tomorrow?

4 A I am.

5 Q Maui Tomorrow is one of the Intervenors?

6 A It is.

7 Q What is your position with Maui Tomorrow?

8 A I'm the President of the Board of
9 Directors.

10 Q Could you describe -- the reason you're
11 testifying is to talk about the adequacy whether or
12 not the EIS is for the Pi'ilani project is adequate.

13 And the question I would like for you to
14 first answer for the Commissioners is your background
15 and experience to give that type of testimony.

16 A Well, I'm just an ordinary citizen, but for
17 many, many years, over 40 years, I've been reading
18 environmental impact reports in California where I
19 was a Regional Planning Commissioner, and
20 Environmental Impact Statements here in Hawai'i for
21 the 30-some years that I've lived here in Hawai'i.

22 I have done this because I've been a
23 volunteer with various citizen groups. That's how I
24 got elected to be Regional Planning Commissioner in
25 San Diego in California. I was President of the town

1 council. And, of course, it was my kuleana to have
2 to read some of these documents and write comments on
3 them. So I am a self-trained analyst. I was an
4 English major in school, University of California.
5 So that goes to show what public education can do,
6 you can actually read the reports after you take some
7 training in the university system.

8 Q So roughly how many EIS's would you say
9 you've reviewed and commented on?

10 A Oh, my gosh, scores, scores and scores, and
11 many, many, many here in Maui.

12 I've been on the board of Maui Tomorrow on
13 and off since 1995, and I was one of the four or five
14 people that often was given the task of reading and
15 reviewing, sometimes as a team effort, these
16 different documents.

17 I've also served on many boards and
18 commissions here where you had to read these kinds of
19 documents. I served on the General Plan Advisory
20 Committee. I've served on advisory group on the
21 relocation of the Honoapi'ilani Highway, reviewing
22 their EIS preparation notice.

23 So I've done this. I actually served on
24 the Land Use Commission Advisory Panel for Reform a
25 few years ago. So I read a lot of these documents.

1 Q And you mentioned that sometimes you're
2 reviewing in a team. Are you sometimes collaborating
3 or working on a team with professional experts such
4 as engineers or surveyors?

5 A Yes, I do. I turn to folks who have
6 engineering degrees. I've worked with hydrologists.
7 I've worked with folks --

8 VICE CHAIR SCHEUER: We're not qualifying
9 people as experts, right?

10 MR. PIERCE: That's correct, however, I do
11 think, Mr. Chair and Commissioners, that the weight
12 of the testimony of any of our witnesses is going to
13 be based upon their background.

14 I don't want to belabor, but I did want to
15 make sure the Commissioners were aware of the
16 background.

17 VICE CHAIR SCHEUER: And I very much
18 appreciate. I'm just also cognizant of the time that
19 we have for making a decision today.

20 MR. PIERCE: Understood. I'll speed up.

21 Q The other thing I do want to ask though
22 very quickly, if could you briefly just say, because
23 you are going to be testifying regarding cultural
24 issues in the EIS, what's your background, and why
25 are you competent to talk about cultural issues.

1 A Well, I have been taken in to a number of
2 different organizations that are involved with
3 cultural activities. Like I am a member of the Aha
4 Moku Council for my area. I am invited to other 'Ahu
5 Moku meetings, like the one from Kula Kai.

6 I was taken by several cultural
7 practitioners who have now passed on, Renee Silva,
8 Uncle Ed Lindsey. They kind of trained me how to
9 look for cultural sites. How to recognize things. I
10 don't know why, but I'm very grateful because it's
11 something I'm deeply interested in, and have done a
12 lot of research on. I've read many AIS's.

13 Q Have you been on the Petition area?

14 A Yes, I have.

15 Q Have you been there with cultural
16 practitioners?

17 A I have.

18 Q The Commissioners already heard a lot of
19 testimony from cultural practitioners. If you could
20 describe in summary what your understanding of the
21 cultural importance of the site is?

22 A Well, what I've heard from cultural
23 practitioners is, unlike as described in the EIS,
24 this is a vacant area with no particular use, that's
25 a quote from the engineering report.

1 This is an area that is held in high
2 esteem. It was claimed by a very high chief,
3 Hewahewa. It connects with the fishpond that is on
4 the National Historic Register, the Ko'ie'ie
5 Fishpond. The ahupua'a of Honua'ula is small, but it
6 has a tremendous number of drainages in the upper
7 area, probably more than any other place in South
8 Maui.

9 And so it was a place -- this particular
10 parcel had two gulches bordering it. And the
11 Kulanihakoi Gulch, which is quite deep now, was not
12 that deep in ancient times. It was not even that
13 deep 40 years ago, according to practitioners. It
14 has been scoured out by the flooding and so forth of
15 recent years.

16
17 So this is like a delta, and this is why so
18 many cultural sites were found here in relationship
19 to other areas right above the Pi'ilani Highway, and
20 it's why probably the petroglyph stone was here. It
21 probably was a marker of a trail or some sort of way.

22 Petroglyphs are all along Kulanihakoi
23 Gulch. That indicates that people traveled in that
24 area, and traveled mauka-makai.

25 Q And you've read the cultural impacts that

1 are identified in the Cultural Impact Assessment
2 that's in the EIS?

3 A Yes, I have.

4 Q Do you agree with the conclusions that were
5 reached in the CIA?

6 A I am very sad to see the conclusions that
7 were reached. I attended every one of the meetings
8 with cultural practitioners. In fact, I helped Mr.
9 Jencks organize the first one. I invited families
10 that I thought would be involved. It was my hope,
11 and I very strongly feel that Mr. Fredrickson is a
12 great archaeologist and wants to do a good job here.

13 But to hear from people that they have
14 cultural practice; to hear from people that these
15 sites are important to them; and then to come up
16 with -- I will quote.

17 It is the finding of the current analysis
18 that there are no specific valued cultural,
19 historical or natural resources within the project
20 area, nor are there any traditional and customary
21 Native Hawaiian rights being exercised within the
22 project area.

23 That is just not true. And the folks who
24 prepared this document were provided with information
25 that could have been used to draw different

1 conclusion, and for whatever reason, they chose not
2 to.

3 So to me the EIS has failed the test of
4 providing the information that was provided to the
5 preparers to the Applicants and their
6 representatives.

7 Q And the CIA and the EIS in general has
8 identified some mitigation that the developers are
9 willing to do.

10 Can you describe whether that appears to be
11 adequate, based upon what you understand was the
12 input from the cultural practitioners?

13 A Well, it appears, on Volume 1, page 89
14 states:

15 Applicants heard from community members on
16 the site visit that certain sites are valued and
17 important.

18 Now, why they then issued a statement in
19 their Cultural Impact Statement that was released
20 long after this site visit that there was nothing
21 there, I don't know. And they're willing to go
22 consult with myself and Daniel Kanahale.

23 I think because we both wrote a letter to
24 State Historic Preservation saying that the AIS
25 needed a lot more work.

1 I don't know if this body is aware, but in
2 the draft AIS, the Draft Archaeological Survey, that
3 was in the Draft EIS, it just said nine of the 19
4 sites were destroyed. That they weren't there any
5 more. That was not true.

6 That's why Daniel and I, immediately after
7 that came out, wrote this letter to State Historic.
8 And we knew that the sites were not being seen
9 because the area was overgrown. We knew the
10 archaeologist did not mean to imply that they were
11 destroyed. But they needed to go back down when the
12 grass was lower. And they did, and they found the
13 remains of the sites. Two had impacts, and several
14 others had some impacts, but they were all still
15 there in some form, and that was corrected in the
16 Final EIS.

17 But if you were a member of the public, and
18 you read the Draft EIS, you'd say, well, nothing
19 here. There were 19 sites, 9 are now destroyed, and
20 they're going to do data recovery on a lot of them.
21 Sounds good, they're no impacts. Well, that is just
22 not the case.

23 So to me, the FEIS didn't really adequately
24 explain any of that. And it's not -- the idea that
25 these sites would be protected in someway, there is

1 not a single design in the EIS, in their design
2 alternatives, that shows any allowance for protecting
3 of cultural sites. There's no map that identifies
4 where these cultural sites are.

5 And it's my understanding from the brief
6 discussions I've had with the Applicant's reps, that
7 the idea is to kind of move the sites where they
8 might be more convenient, and that would be the
9 compromise.

10 Because the tremendous amount of grading,
11 the entire natural landscape of these parcels is
12 going to be completely altered, from what I
13 understand.

14 Q The agencies that will be decisionmakers
15 using this EIS will have to apply the Ka Pa'akai
16 analysis. Can you describe or explain to the
17 Commission whether or not you feel that the EIS
18 sufficiently provides sufficient analysis for an
19 agency to actually be able to apply the Ka Pa'akai
20 analysis?

21 A I do not. Ka Pa'akai is pretty simple. It
22 says: Are there valued or natural cultural sites?
23 And people informed them that there are valued
24 natural and cultural sites. The little gulch,
25 Ka'ono'ulu Gulch being one of the sites that's

1 natural but is very valued culturally.

2 Is there any practice associated with these
3 sites? Well, there is practice associated with these
4 sites. I've witnessed it. Other people have
5 testified to it. It is there. It is real.

6 The second thing is: Will the project
7 impact this? And I would have to conclude it would
8 if there's not one design alternative that shows any
9 cultural sites being preserved. All we have is like
10 two or three sentences in the EIS, and that's what
11 we're going to rely on.

12 And there is no acknowledgment in Cultural
13 Impact Assessments spanning from 2013 to 2017 that
14 there's going to be, you know, valued cultural sites
15 there and cultural practice. I don't think it meets
16 the Ka Pa'akai test.

17 The third thing you're supposed to do is
18 say how you can mitigate. Well, I guess those two
19 sentences saying they will consult and discuss with
20 Daniel and I, who it shouldn't be with Daniel and I.
21 They should follow the whole process of the 6E
22 process and actually redo the AIS. Give Mr.
23 Fredrickson, who is an excellent archaeologist, a
24 chance to update his excellent earlier work.

25 It's just -- it doesn't meet the standard,

1 in my humble opinion.

2 Q You heard Mr. Kanahale's testimony. He
3 talked about how much the CIA changed between the
4 Draft EIS and the Final EIS?

5 A Oh, yeah.

6 Q If you could just very briefly just
7 identify, based upon your experience and knowledge,
8 working with EIS's, why you feel that doesn't meet
9 the procedural requirements of Chapter 343.

10 A Well, when you read an EIS, you're
11 expecting that the majority of information -- it says
12 at the earliest practicable time you'll present this
13 information. So, of course, you would expect that
14 minor things would be added later, maybe even
15 sections. I'm proud that many EIS's have added many
16 things that I've submitted as testimony, but it's not
17 like a complete shift to go from a nine-page Cultural
18 Impact Assessment that interviews two people who
19 weren't even interviewed for the project, and that's
20 what people see, and an EIS that says nine sites have
21 been destroyed, which wasn't the truth, and that's
22 all people have seen.

23 And then four years later you come out with
24 a Final EIS, that has an AIS that says, oh, yeah,
25 actually all those sites have been relocated, and

1 actually another site is being recorded, and actually
2 we have a couple of memos, that maybe there's some
3 other testing we will do on some other sites that
4 citizens have pointed out.

5 All of this has happened in between. It
6 didn't happen in 2017. It happened in 2014, 2015.
7 They knew a lot of this stuff before the Draft EIS
8 was even published. It could have been in the Draft
9 EIS.

10 I just see that as sort of a sneaky kind of
11 thing to make sure that people didn't really know
12 what is going on. And then you put it in the Final
13 EIS and say it's here now, and great.

14 Q One other thing Mr. Kanahale talked about
15 was the cultural consultation process.

16 Based upon your experience working with the
17 State Historic rules, and also with EIS rules, do you
18 think the consultation process was adequate in the
19 EIS?

20 A Well, you know, the rules of Chapter 6E,
21 you know, Chapter 13-276, whatever it is, are about
22 consulting with knowledgeable and interested people.

23 So the archaeologist and the folks from
24 Hana Pono who did the CIA, it was brought to their
25 attention that there were interested and

1 knowledgeable people before the EIS was issued. And
2 they could have -- and before SHPD signed off on any
3 final revised AIS.

4 Now, the AIS was revised to include more
5 area that hadn't been surveyed before. This area
6 turned out didn't really have any other sites, but as
7 part of that new process, a review of the previously
8 recorded sites was included. And that's where the
9 nine sites were kind of like found again basically.

10 So the process has not really been
11 followed. The consultation should have been folded
12 into that AIS process, and it should have been folded
13 into the CIA process before the EIS. They have just
14 held off -- in fact they did hold off on the EIS for
15 a few months. They should have held off more.
16 Gotten all that in. Gotten all that to State
17 Historic. Had it reviewed. And then issued an EIS
18 that actually told about the real cultural use and
19 the cultural sites there.

20 Since they didn't, I just can't conclude
21 that the EIS process has been followed. In fact,
22 it's even more confusing. There were like three
23 separate iterations of the Cultural Impact Assessment
24 in the Final EIS. The middle one done by Hana Pono,
25 after Daniel Kanahale was interviewed, concluded that

1 some sites should be preserved. In fact, in spite of
2 the fact that a lot of damage had been done to the
3 land, some sites should be preserved, and the
4 developer should work with people.

5 But the final updated one that was done by
6 Cathleen Dagher and Michael Dega (phonetic), so a new
7 firm got involved. They interviewed several more
8 people, they concluded -- like not the mayor -- I
9 mean it's so confusing to the general public.

10 CHAIRPERSON ACZON: Can you answer the
11 question? You want to move on?

12 Q (By Mr. Pierce): The final thing is, with
13 respect to the gulches that are either on or adjacent
14 to the property, can you talk about the flooding, in
15 your opinion, as to whether the hydrological studies,
16 and the analysis of impacts from the development are
17 adequately addressed in the EIS?

18 A They are not.

19 The Applicant always reminds people that
20 the Kulanihakoi Gulch is not on the property. That
21 is true, but it's a major feature of that property.

22 The engineering report clearly acknowledges
23 that at the present time, all the drainage flow from
24 the property, flows directly into the Kulanihakoi
25 Gulch.

1 I've also heard the reps of the project say
2 that they're doing everything that the county
3 requires. But to prepare for a one-hour 50-year
4 storm isn't going to cut it in this area, especially
5 under our current weather conditions.

6 So more analysis should have been provided
7 based on the fact that this is an extremely
8 flood-prone area downslope. Other projects that have
9 developed in this area, actually mauka of the
10 highway, have had to do off-site drainage
11 improvements in order to be okay with the Army Corps
12 of Engineers.

13 The county doesn't always ask for a lot.
14 They have to follow their own laws. But this project
15 should do more than what the county requires. Other
16 projects are starting to do that. It should have
17 been discussed in the EIS, and it just wasn't.

18 MR. PIERCE: Thank you, Mr. Chair.

19 CHAIRPERSON ACZON: Any questions,
20 Petitioner?

21 MS. CATALDO: Yes, Mr. Chair, thank you.

22 CROSS-EXAMINATION

23 BY MS. CATALDO:

24 Q Ms. de Naie, I want to make sure I
25 understand your framework of reference.

1 You were introduced as someone talking
2 about cultural issues, but you were talking about
3 also the AIS, the Archaeological Impact Statement.

4 You mentioned that with the cultural
5 issues, cultural practitioners had taken you under
6 their wing. Has any archaeologists likewise taken
7 you under their wing, or do you have formal training
8 in archaeology?

9 A I do not have formal training. I did take
10 an anthropologist class in college. And I have been
11 taken under the wing of several archaeologists. Boyd
12 Dixon used to call Ed Lindsey and I all the time to
13 go and look at sites. He was the archaeologist for
14 the SHPD here back in the '90s.

15 And I've worked fairly closely with Theresa
16 Dunham on some projects. We co-authored -- well, I
17 was hired to author a book, and she was hired to do
18 the archaeological review part of the book.

19 I've worked with Allison Chin. I've worked
20 with several archaeologists over the years, just, you
21 know, going out, walking around, holoholo, checking
22 stuff out.

23 Q When was the first time you walked the
24 project site?

25 A Oh, many years ago. I would say maybe 2009

1 or something like that, yeah.

2 Q For what purpose?

3 A Because of the gulches. I'm like Daniel.
4 I'm often Daniel's companion on these gulch walking
5 tours, and very interested in what's in the gulches.
6 I've walked most of the gulches of South Maui.

7 Q Is that Kulanihakoi Gulch?

8 A Yes, Kulanihakoi Gulch.

9 Q Which is off the property.

10 A Yes, but you can go right up the banks and
11 you can be right along that property, yeah.

12 It was not all fenced off, as I recall, at
13 that time. I don't think they put the other fence
14 along the gulch up at that point.

15 Q So access was not denied?

16 A It was cultural access. Daniel took me
17 along to take pictures. I had a camera; we were
18 there.

19 Q You went on-site, I guess is what I'm
20 trying to understand.

21 A Yes, yes.

22 Q Since '09, how many times have you been on
23 the property?

24 A Dozens.

25 Q And dozens -- I don't mean to -- 12, 24,

1 36, 48?

2 A Not 48, maybe 25 times, something like
3 that.

4 Q And how many of those times were you
5 on-site with a representative of the developer?

6 A Twice.

7 Q And how many times were you there with Eric
8 Fredrickson?

9 A Once with Eric.

10 Q So the other approximately 22 times, you
11 were there with cultural practitioners?

12 A Yes, for observing the full moon, observing
13 the equinox, eclipses, you know, the Pleiades, the
14 makahiki. You know, it's a beautiful site. People
15 thing it's a nothing plates. It's really -- you're
16 not in Kihei any more when you walk on that land.
17 It's quite a beautiful place.

18 Q Nobody denied you access those
19 approximately 22 times?

20 A It was cultural access. Nobody asked.
21 It's under PASH rights. People who want to exercise
22 their cultural rights, you know, like that.

23 Q When was the first time you observed an
24 equinox from the project site?

25 A Equinox I think was in 2014 or around in

1 there, 2014, maybe 2013. I'm sorry, I don't have a
2 timeline in front of me.

3 Q Other than walking the gulches, what was
4 the first time that you participated in a cultural
5 practice on-site?

6 A I'm sorry, I don't know the exact year. I
7 mean, to me walking the gulch and going up and
8 finding things, and being in examine commune with
9 them is a spiritual practice.

10 Q Understood.

11 So the question is, other than that --

12 A You know, like a gathering or something
13 like that. I don't really know. It was probably
14 within the last five years.

15 I'll tell you a funny story though.

16 Q If I could get through my questioning.

17 With the cultural practitioners that took
18 you under their wing, did anybody talk about this
19 project site previously?

20 A Actually Ka'ono'ulu, as an area, was
21 mentioned by Mr. Silva as being very important. He
22 was friends with Charlie Keau (phonetic) who did a
23 lot of work down at the ocean area of this area.

24 Q How about this particular 75-acre parcel?

25 A No. More in general that that gulch was a

1 very culturally important gulch, Kulanihakoi, yeah.

2 Q Kulanihakoi Gulch, the gulch that is off
3 the project site?

4 A Yes, that adjoins the project site. There
5 is a thin strip between that and the project site,
6 like 15 feet.

7 Q You've listed some, but can you list for me
8 all the cultural practices you understand are taking
9 place on the site presently?

10 A Observation of weather patterns.
11 Observation of celestial phenomenon. Observation of
12 bird life, like the pueo. Identification of
13 significant pohaku that hold cultural significance,
14 that when people are around them, they just start
15 being flooded with reminders of their ancestors.

16 Little hard to explain, but, you know, it's
17 a very individualistic thing.

18 Q Anything else?

19 A Gathering.

20 Q Of what?

21 A Of medicinal plants like uhaloa. Very
22 ubiquitous, but it's a great place to gather the
23 uhaloa.

24 Q Have you ever seen anyone gathering?

25 A Yes.

1 Q When?

2 A One of our accesses. Someone had a sore
3 throat, and some of the hualoa was gathered to take
4 back.

5 Q Within the last five years?

6 A Yes.

7 Q That one time occurrence, is that the one
8 time you've seen gathering?

9 A That's the one time I've witnessed, but the
10 person who was gathering lived not far away, and my
11 guess is they might gather there other times.

12 Q They did not indicate that to you?

13 A Well, I didn't grill them.

14 Q Did you ask?

15 A No.

16 Q Anything else in cultural practice?

17 A Awa ceremonies to reawaken the connection
18 to some of the sites.

19 Q You participated in one?

20 A Yes.

21 Q As part of the celestial --

22 A No, separately, separately. And there was
23 also a group that gathered in the small gulch,
24 Ka'ono'ulu Gulch, and it had rained, and the pools
25 there had water, and they did a ceremony thanking for

1 the water coming to the land.

2 You know, it's kind of hard to characterize
3 all this stuff. It's people doing what they feel.

4 Q You're aware that Mr. Lee was interviewed
5 by Kimoqueo?

6 A Yes.

7 Q Have you read that interview?

8 A I haven't read the whole thing. I think I
9 read parts of it. It was very small print.

10 Q Did you read where Mr. Lee indicated that
11 it was not his intention to stop the development, but
12 he would like preservation?

13 A Yes, I read that in the summary. Yes.

14 Q What did you understand Mr. Lee's
15 description of the cultural practice to be?

16 A Mr. Lee went on the site visit with the
17 archaeologist and shared a great deal of information,
18 and really urged people not to look at the sites as
19 this is just a little stack of stones, but to view it
20 in cultural context that it is marking a relationship
21 between the earth, the clouds, the weather patterns,
22 the rise or fall of different stars or planets.

23 And this is what his traditional
24 knowledge -- and he is not alone -- I've talked to a
25 number of other cultural practitioners who feel the

1 same way. Mr. Chad Kane.

2 Q Where is Mr. Lee from?

3 A He lives in Oahu. His family on his mom's
4 side is from Lahaina.

5 Q You, I think were here, when I was speaking
6 with Mr. Kanahale, and I asked, in his opinion, if
7 the significant amount of activity on the property,
8 cattle ranching, heavy equipment for firebreaks,
9 military training for several years. I didn't
10 mention to him, but cleanup activity from unexploded
11 ordinance following World War II, and the
12 installation of the pipe, if that sort of activity on
13 the property would affect the stones being used for
14 observation might impact interpretation of certain
15 places on the property.

16 I believe Mr. Kanahale said, yes, that
17 might impact. What is your response?

18 A Well, I've hiked many places that have had
19 disturbances over the years, and with cultural
20 practitioners. And probably the most general thing I
21 could say about that is that they feel that the land
22 holds things at different depths.

23 Of course, you know, humans take their -- I
24 mean like at Kaho'olawe. Look at the money we're
25 putting into restoring Kaho'olawe. It was a bombing

1 target for how many years? It's still a worthwhile
2 place. Every cultural practitioner that I have
3 talked to about these places that has some
4 disturbance feels that that does not negate their
5 real value as a place for cultural practice or
6 cultural work.

7 Q I suppose my question was more focused.
8 Explain to me -- do you understand the
9 celestial navigation or celestial observation?

10 A Well, of course, I am not a Hawaiian, and I
11 was not trained in these things, but I've listened to
12 both Mr. Lee, to Mr. Kane who has a preserve on Oahu,
13 Barbers Point area, and both of them are very
14 eloquent about this, that stones are not placed
15 haphazardly. That they actually connect. When you
16 stand at a stone, you then see certain patterns from
17 being at that particular position, whether it's a
18 stack of rocks, a natural formation that's been
19 augmented.

20 And this is a traditional knowledge. When
21 you go to 'Ahu Moku meetings and you hear the amount
22 of knowledge. It's like we live in two different
23 world's, what people know through their culture, and
24 what we know through Western science.

25 It's an amazing divide. And as a

1 non-Hawaiian, I'm just very humbled to be there at
2 the table to be able to listen.

3 Q So if the earth-moving activity on the
4 property, through scores of years, impacted
5 placements of things, placements of rocks, what is
6 the conclusion as to the historic practice, the
7 traditional practice of celestial observation?

8 A Well, if you've walked the rock, you would
9 know, a great deal of that property has not been
10 disturbed. It's natural rolling hills with no
11 evidence of bulldozing. It's more like the edges and
12 the middle where they put the pipeline across.

13 But like Daniel said, it's narrow bands,
14 there are areas that are very pristine, that still
15 have cultural sites very evident that are not
16 scarred, that have never been impacted by a
17 bulldozer.

18 So I just think that there's enough there
19 that you're going to have a working cultural
20 landscape system there.

21 Q Let's turn to the AIS.

22 You are aware that in the 2015 AIS,
23 approximately 18 sites were identified?

24 A Well, in the 2015 they identified the
25 original 19 sites that were still on the land, the

1 petroglyph stone having been removed. And said that
2 two of those were pretty much so altered that they
3 were considered destroyed. And then they recorded
4 one additional new site, which Daniel Kanahale and I
5 had found and sent picture to the State Historic.

6 And Mr. Fredrickson visited and said, yes,
7 this is absolutely a historic site, has evidence of
8 cultural use, and it will be recorded.

9 Q So 18 sites?

10 A 18 sites.

11 Q How many of those sites are submitted for
12 data recovery?

13 A Nine, I believe, at the last I looked, or
14 maybe ten if there's going to be additional data
15 recovery at the new site.

16 Also data recovery proposed at the site
17 along Ka'ono'ulu Gulch.

18 Q There are 12 sites for data recovery, and
19 the developer has, along the gulch that you're
20 indicating is Ka'ono'ulu Gulch, which doesn't have
21 any historic --

22 A Like Daniel, this is what old cowboys call
23 it.

24 Q So 13 of the sites for data recovery, over
25 70 percent of the sites, were you aware of that?

1 A Yes. And data recovery does not ensure any
2 preservation at all. There's no commitment to
3 preservation with recovery.

4 Q It's the first step, though, in
5 identifying -- with further data recovery --

6 A If you had read as many AIS's as I had,
7 ma'am, you would know, it's usually the last step.

8 Q Data recovery is for archaeologists, the
9 most intensive archaeological evaluation available;
10 is that right?

11 A Actually an in depth Archaeological
12 Inventory Survey that has sufficient subsurface
13 testing so that you can do the significance criteria
14 when it's supposed to be done at that part of the
15 process is far more desirable.

16 Q Is it your testimony that that was required
17 here?

18 A It's the 6E process that significance --
19 when this was given significance review in 1994, Mr.
20 Fredrickson did the very best he could with the
21 information that was available. He did not know
22 about the multiple sites upslope from here. He did
23 not know -- he had probably not a lot of support to
24 support -- to preserve any of the sites, except the
25 petroglyph. And he did note that, wow, there aren't

1 a lot of sites that are found here above in the
2 barren zone, so that makes these more significant.

3 Q Ms. De Naie, I want to be very clear.

4 Is it your testimony that the 2015 AIS does
5 not meet legal standard?

6 A It was accepted by State Historic. I'm not
7 going to criticize them, but I feel that they could
8 do a better job.

9 Q Thank you.

10 CHAIRPERSON ACZON: Ms. Apuna.

11 MS. APUNA: No questions.

12 CHAIRPERSON ACZON: Mr. Hopper. Mr.
13 Tabata.

14 MR. TABATA: No questions.

15 CHAIRPERSON ACZON: Commissioners?

16 COMMISSIONER CHANG: Let's start off where
17 we just left off on data recovery.

18 Data recovery is a form of mitigation?

19 THE WITNESS: It is.

20 COMMISSIONER CHANG: Normally in an AIS
21 different forms of mitigation include data recovery.
22 What's generally the -- I know we are going to have
23 an archaeologist, so I don't want to get into too
24 much detail, but data recovery is generally not the
25 preservation of the resource.

1 THE WITNESS: It can leave to preservation
2 if extraordinary things are discovered, but it
3 generally says, okay, we've done this. It's enough.
4 State Historic can feel they've done their job.

5 COMMISSIONER CHANG: Another form of
6 mitigation is preservation?

7 THE WITNESS: And avoidance. Designing
8 things into your project so that the culture is
9 respected, which I think is what practitioners are
10 asking for here.

11 COMMISSIONER CHANG: Most of the sites in
12 the AIS were identified for data recovery, 70
13 percent?

14 THE WITNESS: Yes.

15 COMMISSIONER CHANG: You mentioned Chad
16 Kane. Why was Chad Kane called to the site?

17 THE WITNESS: Actually he's not visited
18 this site, but visited nearby, and showed me
19 formation of stones. He says now, this may look like
20 nothing, but this is actually an alignment that
21 someone would use as part of their navigational
22 practice, and part of their observing of how the
23 planets would rise and fall, and being able to align.

24 He said at certain elevations, you can see
25 things, and South Maui, the south facing shores and

1 leeward sides are those places where those practices
2 were utilized and taught to others as well.

3 COMMISSIONER CHANG: He was not called to
4 participate --

5 THE WITNESS: No, it was not on this site.
6 I'm just saying that Michael Lee is not the only one
7 to say that certain pohaku actually have a connection
8 to navigation and observing celestial phenomena,
9 there are others as well.

10 COMMISSIONER CHANG: You mentioned that you
11 have accessed the site. And you mentioned PASH
12 access.

13 Did you have to ask for permission to
14 access the site, or were cultural practitioners
15 permitted to go onto the site at will?

16 THE WITNESS: Well, it's never really been
17 clearly defined, but the people I went with said
18 we're exercising our PASH rights to come to a place
19 and have cultural practice and do no harm.

20 COMMISSIONER CHANG: Has the landowner
21 required you to get access through them?

22 THE WITNESS: I believe at one point Mr.
23 Jencks, who is not the landowner, but is a
24 representative of the landowner said, well, give me a
25 call if you guys are going to go out there.

1 CHAIRPERSON ACZON: Do you have any more
2 questions?

3 COMMISSIONER CHANG: During the cultural
4 consultation process, were you interviewed for the
5 Cultural Impact Assessment?

6 THE WITNESS: No, I was not.

7 COMMISSIONER CHANG: During the cultural
8 consultation meetings, were notes taken of those
9 meetings?

10 THE WITNESS: Well, yes. I think the notes
11 were published in the appendix in the Final EIS.

12 COMMISSIONER CHANG: Were the participants
13 of that cultural consultation process given an
14 opportunity to see those notes?

15 THE WITNESS: Well, if they got the Final
16 EIS, I guess they were. The people who were
17 interviewed probably were given an opportunity to
18 review their interviews. I can't speak to that. I
19 know Mr. Elden Liu, who's a lineal descendant,
20 refused to have his interview published.

21 COMMISSIONER CHANG: You identified several
22 cultural resources on the site. You went through the
23 analysis with your counsel about Ka Pa'akai.

24 So you identified cultural resources that
25 are on the site?

1 THE WITNESS: Yes, there are existing
2 cultural resources on the site, and lots of midden
3 and stone tools and coral tools. There's all kinds
4 of things. You see new things every time go there.

5 COMMISSIONER CHANG: You mentioned
6 medicinal plants, uhaloa.

7 THE WITNESS: Yes.

8 COMMISSIONER CHANG: Are there other
9 resources on the site that you have not identified?

10 THE WITNESS: That's a good question. You
11 put me on the spot, Commissioner. There probably
12 are. Guess I'm a little nervous and can't think of
13 everything right now.

14 There probably are others. When you talk
15 to more people, you find out more things. And I have
16 not talked to every single person who's accessed the
17 site?

18 COMMISSIONER CHANG: And you've
19 acknowledge, you're not a cultural practitioner
20 yourself, but you have been trained by other cultural
21 practitioners?

22 THE WITNESS: Yeah. Well, I'm not of the
23 Hawaiian cultural, so I'm not a Hawaiian cultural
24 practitioner. I'm a person who respects Hawaiian
25 culture.

1 COMMISSIONER CHANG: And in your -- and
2 you've identified -- you stated that the project will
3 have an impact on continued practice of these, or
4 access to these valuable resources?

5 THE WITNESS: Well, they're going to be,
6 probably, if they're not destroyed, they are going to
7 be relocated to someplace where it's convenient.
8 That doesn't have cultural integrity in the eyes of
9 most cultural practitioners. And there's no
10 discussion of cultural practice. It's off the table,
11 just says there is none.

12 So it's a little hard to know where the
13 Final EIS, when are we going to know about how the
14 cultural practice is going to be dealt with?

15 COMMISSIONER CHANG: Again, I just want to
16 confirm your testimony has been that the conclusion
17 in the CIA was that there are no traditional
18 customary practices on the project site?

19 THE WITNESS: I read you the quote from the
20 CIA, from the 2017 version, yes, that's their
21 conclusion.

22 COMMISSIONER CHANG: And my understanding
23 is you disagree with that conclusion?

24 THE WITNESS: I and all the other folks who
25 testified do disagree with that, yeah.

1 COMMISSIONER CHANG: The AIS identified,
2 and you spoke about Kulanihakoi Gulch, which is not
3 on the project site?

4 THE WITNESS: No, A few feet away from the
5 project boundary.

6 COMMISSIONER CHANG: But from a very
7 traditional cultural practice, were people bound by
8 TMKs?

9 THE WITNESS: No. No, this property had
10 these two waterways, and the Ka'ono'ulu Gulch is not
11 someone's drainage. It is shaped like a natural
12 waterway. It has blue rock formations in it. It's a
13 very special place, and it was shaped by water. And
14 it went all the way down to the ocean.

15 COMMISSIONER CHANG: In reading the AIS, it
16 states that the Kulanihakoi Gulch served as a
17 corridor for inland and precontact times.

18 Based upon in your experience, would you
19 agree with that?

20 THE WITNESS: Absolutely I would. There's
21 petroglyphs all along it. I've seen a number of
22 them. That indicates people walked and left their
23 mark, yes.

24 COMMISSIONER CHANG: Are you aware of the
25 Land Commission Award that was on this property?

1 THE WITNESS: To Hewahewa, yes. Mr. Elden
2 Liu, who is a direct descendant of Hewahewa, has
3 tried to petition for some recognition that his
4 family never actually completely abandoned that
5 award. He has his paperwork.

6 I have not seen his paperwork, but he
7 believes very strongly that he should have a voice.
8 He doesn't want to disrupt the project. He just says
9 something useful should be here like a hospital.

10 COMMISSIONER CHANG: You are not an
11 archaeologist. Is it your experience that in many
12 instances where there are Land Commission Awards, it
13 is an indicator of precontact or previous habitation?

14 THE WITNESS: Oh, yes. And there's much
15 evidence of habitation here. It is described as
16 temporary habitation. But, you know, it's hard to
17 know. This area has had a lot of floods over it.
18 There could have been like 20 times as much shells
19 and coral and rounded pebbles and flakes and evidence
20 of human habitation there, as we found when it was
21 first surveyed in 1994.

22 COMMISSIONER CHANG: In your experience,
23 where there is habitation, did maka'ainana or
24 commoners generally bury their family members where
25 they lived?

1 THE WITNESS: Yes. Kihei is famous for
2 people finding burials when they go to put in their
3 new house. In fact, Vernon Kalanikau, who testified
4 yesterday, has like a little map of all the burials
5 that were just found around where his family lives
6 just downslope from here.

7 COMMISSIONER CHANG: I have no more
8 questions.

9 CHAIRPERSON ACZON: Let me ask the other
10 Commissioners. Vice Chair Scheuer, followed by
11 Commissioner Cabral.

12 VICE CHAIR SCHEUER: Good morning.

13 You testified about your expertise both on
14 cultural matters, Ka Pa'akai analysis, as well as on
15 EIS's in general.

16 THE WITNESS: Yes.

17 VICE CHAIR SCHEUER: There are -- there's a
18 requirement that the EIS look at cumulative impacts
19 of a project.

20 THE WITNESS: Yes, there is.

21 VICE CHAIR SCHEUER: Are you aware of this
22 EIS having any cumulative impact analysis on cultural
23 issues?

24 THE WITNESS: Well, I think it was neatly
25 sidestepped by having all the cultural analysis,

1 which is supposed to be the Cultural Impact
2 Assessment, conclude that there's nothing of value,
3 and there's no one using the lands, kind of means you
4 don't have to talk about any cumulative impacts.

5 VICE CHAIR SCHEUER: Do you believe that an
6 analysis of impacts on cultural practices from a
7 proposed development is supposed to be limited to
8 what is directly on that site?

9 THE WITNESS: No, I do not believe that.
10 Because this site deeply connects to what is below
11 it. There's a muliwai. There is a natural lagoon
12 that functioned as a fishery.

13 VICE CHAIR SCHEUER: By below, you mean
14 makai?

15 THE WITNESS: Makai, yes.

16 And the two gulches that frame this
17 property, the one that passes right through it, and
18 the one on its border, actually originally met at the
19 mouth of that muliwai, which is probably why that
20 lagoon was there.

21 I discovered through hearing the stories at
22 'Ahu Moku meetings, that there are folks who live in
23 the Kihei area who believe there is a mo'o associated
24 with that gulch, and that there's underground
25 passageways, and the mo'o lived in the muliwai area.

1 And there was a certain rock that was
2 associated with that mo'o. These are all things I
3 have heard. I am not competent to say how verified
4 they are. But these are people's families' stories
5 that are associated but do not make it into theses
6 kind of reports because people don't go and make
7 people comfortable to talk about these things.

8 VICE CHAIR SCHEUER: There has been a bunch
9 of discussion during the public testimony portion.
10 People stating that there were certain well-known
11 Native Hawaiian families associated with this area
12 who were not consulted during the process.

13 Is that your understanding as well?

14 THE WITNESS: Well most of the Hewahewa
15 were not consulted. Mr. Brian Naeole who is a
16 descendant of Hewahewa attended several of the
17 meetings and both of the site visits. I don't
18 believe there is any interview from him in the CIA.
19 And he's a very gentle person. You know, he's not
20 very pushy.

21 VICE CHAIR SCHEUER: Do you know if there
22 were attempts to contact him or others?

23 THE WITNESS: I do not know. I think he
24 was listed as some of the people who were contacted.
25 There was a long list. There is a standard issue

1 people that they always contact, Office of Hawaiian
2 Affairs, and Auntie Thelma, different people, and
3 then there were a few individuals as well.

4 VICE CHAIR SCHEUER: Thank you.

5 CHAIRPERSON ACZON: Commissioner Cabral.

6 COMMISSIONER CABRAL: Actually my question
7 might be for the Petitioner.

8 You had earlier referenced that there's, I
9 think you said, eight sites are going to be preserved
10 in the development plan that's being looked at now.

11 Are those the types of sites that she's
12 referring, to which she has referenced 18 or
13 something that had been located, are those different
14 concepts, or are we talking about the same type of
15 preservation? And what kind of preservation would it
16 be of a site?

17 MS. CATALDO: I apologize. 18 sites are
18 identified in the AIS as having archaeological
19 findings. Of those --

20 CHAIRPERSON ACZON: Are you going to go
21 over that on your presentation?

22 MS. CATALDO: I can.

23 COMMISSIONER CABRAL: Thank you.

24 CHAIRPERSON ACZON: Anybody else? Mr.
25 Pierce.

1 MR. PIERCE: Intervenors have no further
2 questions, and I want to thank you permitting us for
3 having these witnesses testify.

4 CHAIRPERSON ACZON: We are going go with
5 County of Maui, but before that, I just want to
6 inform everybody that it is the Commissioners'
7 intention to finish and make decision today. So if
8 you have any flight reservations to change, you can
9 do it during lunchtime. And I probably, maybe half
10 hour, we are going to take a short break.

11 So, Mr. Hopper, please proceed with your
12 presentation.

13 MR. HOPPER: It is the county's position
14 with respect to the community plan zoning issues is
15 that at this time the Commission has a decisionmaking
16 criteria under the Hawai'i Administrative Rules that
17 will determine whether or not the document is
18 acceptable.

19 That is separate from the criteria for
20 determining if the Motion to Amend should be granted,
21 which does include a consideration of the Community
22 Plan, County General Plan, and Maui Island Plan. But
23 because these issues were discussed, the Community
24 Plan issue, the zoning issue, I would like to call
25 William Spence hopefully briefly to go over some of

1 the issues that have been discussed.

2 CHAIRPERSON ACZON: May I swear you in
3 first?

4 Do you swear that the testimony you're
5 about to give is the truth?

6 THE WITNESS: Yes, I do.

7 CHAIRPERSON ACZON: Please state your name
8 and address for the record.

9 THE WITNESS: My name is William Spence.
10 You know what? I can't even give you my business
11 address -- One Main Plaza in Wailuku.

12 CHAIRPERSON ACZON: That will fine.

13 THE WITNESS: I go there every day.

14 WILLIAM SPENCE

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

18 DIRECT EXAMINATION

19 BY MR. HOPPER:

20 Q Mr. Spence, could you state your current
21 position with the county of Maui?

22 A I'm the Planning Director for county.

23 Q How long have you held that position?

24 A Since 2011.

25 Q And prior to that, could you briefly go

1 over your time spent with the Planning Department and
2 your work experience?

3 A I started with the Planning Department in
4 1992, and spent ten years there as a staff planner.

5 I was responsible for virtually all aspects
6 of virtually all functions within that department,
7 including processing discretionary permits, changes
8 in zoning.

9 I was also the staff planner for a number
10 of the community plans which are currently in effect.

11 Q And as your role of Planning Director, you
12 submitted a Position Statement with respect to the
13 acceptability of the Final EIS for this project?

14 A Yes, we did.

15 Q And the letter which you submitted July 14,
16 2017, states that the department recommends approval
17 based on HAR 11-223 Hawai'i Administrative Rules. I
18 wanted to read that section briefly which does
19 outline the acceptability criteria for the Commission
20 to review when determining whether or not to accept
21 an EIS.

22 It states: 11-223, Subsection A.

23 Applicability of a statement shall be
24 evaluated on the basis of whether the statement in
25 its completed form, represents an informational

1 instrument which fulfills the definition of an EIS,
2 and adequately discloses and describes all
3 identifiable environmental impacts and satisfactorily
4 responds to review comments.

5 So when you reviewed the EIS, did you
6 essentially review, based on areas within the
7 county's jurisdiction, as well as the responses to
8 county agency comments?

9 A That's correct.

10 Q And you recommended approval of the Final
11 EIS?

12 A Yes. I believe it adequately addresses,
13 certainly for the county, what it needs to address.

14 Q And to clarify and continue on a point that
15 I have discussed earlier.

16 At this stage the Commission is being asked
17 to accept this Final EIS. In order to accept the
18 Final EIS, there was some discussion of community
19 plan and zoning compliance.

20 In order to accept the Final EIS, does the
21 Land Use Commission have to determine that the
22 project is consistent with the County General Plan or
23 Kihei-Makena Community Plan?

24 A My understanding of the Administrative
25 Rules, there is no requirement for the acceptance

1 of -- consistency with the Community Plan, Maui
2 General Plan documents in order to accept the EIS.

3 Q So at this point, did you read the analysis
4 in the document in the Final EIS regarding the
5 Community Plan compliance, as well as General Plan
6 and Maui Island Plan compliance?

7 A Yes, I did.

8 Q Did you believe that those sections
9 adequately discuss the project in the ways in which
10 it, the Community Plan and those other plans, relate
11 to the project?

12 A Yes. They spent -- the document spends
13 some 70 pages discussing General Plan compliance;
14 33 pages specifically to the Community Plan.

15 And then also under the unresolved issues,
16 they also discuss what so many have testified before,
17 that they believe that this project doesn't comply
18 with the Community Plan, but that is all disclosed.

19 Q You also mentioned that it is disclosed
20 that there is an ongoing dispute with the Intervenors
21 as to whether or not the project is in compliance
22 with the Community Plan?

23 A That's correct.

24 Q And this is something for the Commission to
25 consider in your view in its Motion to Amend

1 proceedings?

2 A Yes. Since there's no requirement with
3 acceptance of an EIS, there is most definitely that
4 requirement that the Commission consider the county's
5 general plans, community plans, et cetera, in their
6 decisionmaking process for an amendment.

7 Q And so that would be done should the EIS be
8 accepted at a future proceeding in which the Motion
9 to Amend would be considered?

10 A That's correct.

11 Q And at this time, the department has not
12 stated a position on whether the Motion to Amend
13 should go granted; is that correct?

14 A That's correct.

15 Q Again, that would be done should the EIS be
16 accepted in a hearing scheduled for that?

17 A That's correct.

18 Q That would also allow the county to call
19 witnesses, present evidence, and cross-examine other
20 party's witnesses?

21 A That's correct.

22 Q I wanted to go over a discussion a bit in
23 the Kihei-Makena Community Plan of the various land
24 use designations in the plan.

25 Are you generally familiar with land use

1 designations that are set forth in community plans?

2 A Yes, I'm very familiar with them.

3 Q Those designations, are they generally --
4 they're generally like one or two sentence
5 descriptions for the land use categories and
6 definition?

7 A That's correct. Our community plan, each
8 one of our community plans has a map, what we refer
9 to as a Land Use Map.

10 Those maps -- all the properties within the
11 county have some kind of designation. They can be
12 designated agriculture. They could be single family,
13 light industrial, hotel, commercial, all those kinds
14 of things.

15 And then within the back of each one of the
16 plans, there's a very brief description of that
17 particular designation.

18 Q And so I'm reading from page 54 of the Land
19 Use Map section of the Kihei-Makena Community Plan.
20 There's various designations, as discussed, one or
21 two sentence descriptions of what's in those
22 designated areas; correct?

23 A Correct.

24 Q Do you believe that those descriptions are
25 intended to be an exhaustive list of all of the

1 permitted uses within those districts?

2 A No. They cannot be a definitive list of
3 all the uses allowed.

4 Q In fact, one of the designations on page 54
5 of the plan is single family. And the description of
6 that area is: This includes single family and duplex
7 dwellings.

8 Are those the only two uses that are
9 allowed within a single family designated area in the
10 Land Use Map?

11 A No. Assuming that the property has gone
12 ahead and obtained zoning for that designation -- and
13 that's part of how you implement your community
14 plans, is you look at your plan. You go, okay, this
15 area is intended for this particular use. Say in
16 this case, single-family residential.

17 The county council, by ordinance, would
18 adopt residential zoning for the property. And then
19 all the uses within that zoning are permitted.

20 Some of the uses other than single-family
21 residences would be parks and playgrounds, truck
22 gardens. We're getting into urban agriculture these
23 days. We want to encourage those kinds of uses.

24 Child care, day care, schools, public
25 facilities, ohana units. You know, we have otherwise

1 known as AD use or accessory dwellings. Those are
2 not considered single-family dwellings. Those are
3 accessory to the primary dwelling on the property.

4 Those are allowed under the zoning code
5 that are not specifically named within the community
6 plan. Also bed and breakfast, home occupations. We
7 could go on.

8 Q So the point being that the descriptions in
9 the community plan land use map are not intended to
10 go over every possible permitted use in that
11 district?

12 A No, they are not intended for that.

13 Q That is true also, in your opinion, of the
14 light industrial community plan designated area?

15 A That is correct.

16 Q Now, light industrial area states, this is
17 for warehousing, light assembly, service and craft
18 type industrial operations.

19 Are other uses, in your view, also allowed
20 in that district based upon the light industrial
21 zoning classification?

22 A Yes. Our light industrial zoning code is a
23 tiered zoning code. It's a very old code, and I've
24 admitted that I don't know how many times publicly.

25 It allows not only the light industrial

1 uses, which are considered more -- considered the
2 most intense uses because of noises and odors and
3 whatnot. It also allows other uses that are
4 considered less intense, which would include business
5 uses, from our different business districts, B-1,
6 B-2, B-3. You can do --

7 So in addition to the light industrial
8 uses, you can also do the business uses, which would
9 include offices, retail space, any of the other
10 things you would find within a business district
11 category. That district also allows for apartment
12 buildings.

13 Q So because the light industrial -- you're
14 looking to the light industrial zoning for influence
15 of what uses may be allowed in the light industrial
16 community plan designated area?

17 A Yes. And when, as said, when the council
18 goes and implements the plans by zoning, we would
19 consider that once that zoning is in place, all the
20 uses within that particular land use district are
21 allowed as a right.

22 Q So it's your understanding that commercial
23 uses and apartment uses are considered allowed in the
24 light industrial community plan designated area?

25 A Yes.

1 Q Is this an interpretation that is
2 consistent with past Planning Directors and the
3 Planning Department?

4 A Since -- I started with the Planning
5 Department in 1992 and that was the case then.

6 I'm aware of previous Planning Directors
7 also, because just discussion with colleagues within
8 the department, that was also the practice before I
9 got there.

10 So for a number of decades now this has
11 been the practice and interpretation.

12 Q And in fact, in your Position Statement to
13 the Commission, you note several areas within the
14 county -- actually multiple areas where commercial
15 uses such as commercial shopping centers, as well as
16 apartment projects, are situated in light industrial
17 community plan designated areas; is that correct?

18 A That's correct.

19 Q Among them include, based on your letter,
20 Maui Marketplace, Kihei Gateway, the Lahaina Gateway.
21 And, in fact, the area right next to the Petition
22 area, which is designated light industrial in the
23 community plan, is a shopping center; correct?

24 A That's correct.

25 It's not exactly a shopping center, but

1 it's an area developed that has a mixture of light
2 industrial, and more commercial type uses. There is
3 retail. There's small businesses. There's some
4 industrial uses, and it's all mixed up.

5 There's also, because the zoning allows for
6 the other uses, the business districts allow schools.
7 We also have our charter school that is located in
8 that area.

9 Q That's the area, you drive on Pi'ilani
10 Highway headed back to airport, you look on the right
11 there, you can see that area that you're referencing?

12 A That's correct.

13 Q Moving on a bit to the zoning issue.

14 There was discussion of light industrial
15 zoning, I believe Mr. Mayer testified, and Mr. Hyde
16 testified that the light industrial zoning ordinance
17 requires that, though commercial uses are listed as a
18 permitted use, the ordinance requires that the
19 property -- that a property only have up to
20 50 percent of the property in commercial use.

21 In your mind, has that ever been the
22 interpretation of that ordinance by either, you as
23 Planning Director, or you any other previous Planning
24 Director in the history of the County of Maui?

25 A No, we have never interpreted it that way.

1 And having witnessed projects go before the
2 county council for light industrial zoning, that's
3 also not the case.

4 Q In fact, from time to time, if a project
5 would go before the county council for a zoning to
6 light industrial, would the department recommend
7 conditions limiting the amount of commercial use that
8 could be done on the property?

9 A Yes.

10 Q You're aware of cases where that's
11 happened?

12 A Yes. Specifically this particular
13 property, when my predecessor Brian Miskay
14 (phonetic), who also was before this Commission when
15 back in '95, whatever, when he went before the county
16 council, he made a recommendation that they should
17 limit the amount of --

18 Q Mr. Spence, just to back up a little bit.
19 You're talking about when Ka'ono'ulu Ranch,
20 in the late '90s, went before the Planning Commission
21 and the Maui County Council for a change in zoning
22 from that property's previous designation of
23 agriculture to light industrial -- I think it was
24 project district, actually, to light industrial.

25 That the issue of the amount of commercial

1 use that could be done on the property was an issue
2 that was discussed at the Planning Commission and
3 Maui County Council level?

4 A That's correct.

5 The director at that time made
6 recommendations that there be a limitation on the
7 amount of commercial that could be done. And the
8 county council chose not to put any conditions on it.

9 Q And the reason the limitations are required
10 was because --

11 MR. PIERCE: Mr. Chair, I'm just going to
12 object because I'm not hearing any analysis on how
13 the EIS is adequate or inadequate.

14 In fact, we constrained ourselves to that
15 as much as we possibly could. What I'm hearing now
16 are the issues that would be discussed at the Motion
17 to Amend stage?

18 MR. HOPPER: I would have much rather kept
19 him to those issues, but those were the issues
20 discussed on the direct testimony of the previous
21 witnesses.

22 CHAIRPERSON ACZON: Redirect your questions
23 to the EIS acceptance.

24 MR. HOPPER: Certainly.

25 Q So just noting for the record, when the

1 change in zoning was granted without any conditions
2 with respect to limiting commercial uses of the
3 property.

4 A That's correct.

5 Q And the discussion earlier about, from the
6 testifiers of the Intervenors that the light
7 industrial zoning limits the commercial use of the
8 property to 50 percent of the property or less, you
9 would not agree with that analysis?

10 A No, I would not.

11 Q In fact, B-1, B-2, B-3 business district
12 uses and apartment uses in the county zoning district
13 are listed as permitted uses; correct?

14 A That's correct.

15 Q And that should be distinguished from an
16 accessory use, which would be with accessory to a
17 predominantly permitted use?

18 A That's correct.

19 If there was that kind of limitation within
20 the zoning code, that would appear in the standards,
21 and there was no such limitation listed in the
22 standards of the code.

23 Q Thank you, Director Spence. I have no
24 further questions subject to redirect.

25 CHAIRPERSON ACZON: Any questions,

1 Petitioner?

2 MR. SAKUMOTO: Just a couple questions.

3 CROSS-EXAMINATION

4 BY MR. SAKUMOTO:

5 Q Director Spence, are you aware of the
6 letter contained in the FEIS written by the prior
7 director Mike Foley?

8 A Yes, I am.

9 Q On the subject of the zoning code and KMCP?

10 A Yes.

11 Q Are you also aware of the declaration
12 provided by another prior Director Jeff Hunt on this
13 same topic?

14 A Yes, I am.

15 Q Are those two documents consistent with the
16 position that you just articulated?

17 A Yes. As stated, it's consistent with what
18 I just stated, but also the Planning Department's
19 practice, and previous directors prior to my
20 employment at the county in 1992.

21 Q In fact, to your knowledge, have you ever
22 known the county to have taken a different position?

23 A No.

24 Q Thank you.

25 CHAIRPERSON ACZON: Ms. Apuna?

1 MS. APUNA: No questions.

2 MR. PIERCE: No questions.

3 MR. TABATA: No questions.

4 CHAIRPERSON ACZON: Commissioners?

5 Vice Chair Scheuer, followed by
6 Commissioner Cabral.

7 VICE CHAIR SCHEUER: Mr. Hopper, I have
8 questions about the county's allocation of water to
9 this project. Would Mr. Spence be the person to ask
10 this?

11 MR. HOPPER: We would generally refer that
12 to our -- if we were in a district boundary amendment
13 proceeding, we would have the director of the
14 Department of Water Supply to answer that type of
15 question.

16 VICE CHAIR SCHEUER: The reason I brought
17 it up, I believe Mr. Spence to say he coordinated the
18 review of county's agency responses to the EIS.

19 MR. HOPPER: You can certainly ask the
20 question.

21 VICE CHAIR SCHEUER: In the EIS it
22 indicates there is not going to be any impact to the
23 Iao Aquifer from the freshwater use of this project,
24 because the water -- there's still water available
25 from the Iao Aquifer that is unallocated.

1 THE WITNESS: That's my recollection. I
2 remember reading that in the document. I would have
3 to look specifically at it.

4 VICE CHAIR SCHEUER: So my confusion has to
5 do with the water will be provided through the
6 Central Maui Service System, Central Maui Service
7 Area, correct?

8 THE WITNESS: I understand that drinking
9 water will be provided from the Central Maui System,
10 and nonpotable water will be provided from a well
11 on-site.

12 VICE CHAIR SCHEUER: That is my
13 understanding as well.

14 But it is also my understanding that the
15 Central Maui Service System does not only use water
16 from the Iao Aquifer; is that correct?

17 THE WITNESS: I would have to defer that to
18 the water director.

19 VICE CHAIR SCHEUER: My understanding is
20 that there are county wells in the Waihe'e Aquifer,
21 the Iao Aquifer, and treated surface water.

22 THE WITNESS: I know -- I'll give you my
23 non-expert knowledge on the county's water system. I
24 know there are wells scattered, distributed
25 throughout this aquifer.

1 How much comes from each one, how much
2 feeds into the system going to Kihei, I can't tell
3 you.

4 VICE CHAIR SCHEUER: So if I understood
5 your responses to the first questions from Mr. Hopper
6 correctly, you were indicating that you felt that, at
7 least in regards to the parts of the EIS you had
8 reviewed, the EIS was adequate.

9 THE WITNESS: Yes.

10 VICE CHAIR SCHEUER: So what I'm trying to
11 understand is that there were comments related to
12 water service, which is provided by the County of
13 Maui, and the EIS says there's no impact on the Iao
14 Aquifer from this new use, but there is no indication
15 in the EIS that this water will actually be coming
16 from the Iao Aquifer as opposed to surface water
17 treatment plant, proposed future water treatment
18 plant or the Waihe'e Aquifer.

19 THE WITNESS: I don't understand the
20 question.

21 VICE CHAIR SCHEUER: Let me try it again.

22 The EIS states that there will be no impact
23 from the proposed use, because there's unallocated
24 water from the Iao Aquifer.

25 But there is no way to say that the water

1 that will be delivered to this project is actually
2 coming from the Iao Aquifer, as opposed to a
3 different source on the Central Maui Service System,
4 correct?

5 THE WITNESS: If the water director was
6 here, he would correct me, but I believe they refer
7 to the Iao Aquifer as this area right up behind us
8 (indicating).

9 If they refer to the Iao Aquifer -- it
10 covers a large area, it's not just Waihe'e, or not
11 just Iao Valley. There are a number of wells which
12 would serve this system to its transported to Kihei.
13 I don't claim to be a water expert.

14 VICE CHAIR SCHEUER: That's why I prefaced
15 my question with inquiry to Mr. Hopper about whether
16 you were the right person to ask.

17 Thank you very much.

18 COMMISSIONER CABRAL: Hopefully this is an
19 easy one.

20 I was given a map from a testifier
21 yesterday, but I do have the plat map, the TMK tax
22 map in front of me on my screen here, as well as a
23 number of other maps.

24 There is a side that is undeveloped. But
25 what I'm looking at on the left side is the

1 development, in this aerial photo I can see
2 buildings.

3 Can you let me know what is -- is that is
4 light industrial or industrial-type development to
5 the left on my map?

6 THE WITNESS: Okay. So you're referring to
7 where you can see it's developed? I'm looking on
8 that on the left, to the north.

9 Yes, that is the light industrial area that
10 has been referred to that does have a mixture of
11 uses.

12 COMMISSIONER CABRAL: Thank you very much.

13 CHAIRPERSON ACZON: Commissioner Ohigashi,
14 followed by Commissioner Chang.

15 COMMISSIONER OHIGASHI: I think the
16 intervenors have argued that the use of the property,
17 or the proposed use of the property is important in
18 determining what impacts so a proper FEIS can be
19 done.

20 And some of the intervenors seem to argue
21 that they're lacking specificity on the amount of the
22 use, or the type of exact uses that will be placed
23 upon it to prepare a Final EIS.

24 What is your position with regard to
25 whether or not the Applicant, Petitioner have

1 provided sufficient amount of detail on the uses to
2 form the basis of the different studies that have
3 been done including the drainage studies, for
4 example?

5 THE WITNESS: I think that's -- I'm sure
6 that the Applicant's representative will get into
7 that in much more detail. However --

8 COMMISSIONER OHIGASHI: I'm asking the
9 county's position.

10 THE WITNESS: I think it provides adequate
11 information. You can estimate from the types of
12 uses, the general ground -- how much ground is
13 covered, your impervious surfaces. How much parking
14 is required. All those things, that would all go
15 into your drainage reports, and how to take care of
16 that additional runoff, et cetera.

17 COMMISSIONER OHIGASHI: So are you saying
18 then that more specificity will not yield a better
19 Final EIS?

20 THE WITNESS: I don't think I said that.

21 If you got down to the very colors that the
22 buildings are going to get painted and --

23 COMMISSIONER OHIGASHI: I'm not talking
24 about colors. I'm talking about where the placement
25 of the buildings are. What lot coverage would be

1 taken into account. I think there was mention as to
2 what exactly are the calculations regarding the
3 specific. How those are calculated. What is the
4 total build out? The amount of facilities that are
5 used.

6 I'm just trying to get an idea of the
7 county's position with regard to the sufficiency of
8 the proposal, the Petitioner's proposal.

9 THE WITNESS: As it is, I believe it's
10 adequate for the purposes of analyzing impacts. If
11 there was more specificity, if we put the buildings
12 on the site and everything, you know, that detail
13 would provide additional information.

14 COMMISSIONER OHIGASHI: Since this project
15 has been -- the total amount of the original boundary
16 amendment appears to be 88 acres. And this is coming
17 in with 75 acres.

18 Is there a difference that should be
19 attributed to an EIS if we were considering the whole
20 88 acres?

21 THE WITNESS: I know, as a part of EIS, and
22 I'm not trying to put words in Commissioner's mouth.
23 I'm assuming you're referring to the Honua'ula
24 property that is also going to come in for amendment.

25 I know they're going to have to address the

1 cumulative. So they're going to have to also weigh
2 in on that. I know there is an accumulative impact
3 section of this EIS.

4 Right at the moment, I know they address
5 it. I'm not -- I did not study that part of it in
6 depth.

7 If you want a clearer answer, I would be
8 happy to give that to you.

9 COMMISSIONER OHIGASHI: From my
10 understanding is that you haven't studied it, and you
11 don't have an answer.

12 THE WITNESS: I know that they've
13 addressed --

14 COMMISSIONER OHIGASHI: That's why I'm not
15 asking a follow up.

16 CHAIRPERSON ACZON: Any other questions?
17 Commissioner Chang followed by Commissioner Okuda.

18 COMMISSIONER CHANG: Thank you, Mr. Spence.
19 Appreciate your testimony today.

20 Let me just follow up with Commissioner's
21 questions about cumulative impact.

22 I notice there's a proposed project mauka,
23 I think Kihei Mauka. What is the status of that
24 project, because that seems to be a very large
25 project?

1 THE WITNESS: The Maui Island Plan, the
2 Maui Island Plan adopted in 2012 was the very first
3 time that Maui County has set growth boundaries.
4 That basically those growth boundaries say, if we're
5 going to grow, if there's going to be new housing and
6 new jobs, et cetera, new commercial, these are the
7 areas that they're going to be in. They're not going
8 to be outside of that.

9 So Kihei land use pattern, my personal
10 opinion is unfortunately it's linear along the
11 coastline. It should have gone more mauka-makai
12 direction.

13 But if Kihei is going to grow, if the
14 population projections come true, we're going to need
15 extra room to grow. And that plan designates where
16 additional growth is going to take place.

17 One of those projects is the Kihei Mauka
18 project. I believe it's owned by Haleakala Ranch.
19 And there is -- within that Maui Island Plan there is
20 a description of how many homes, et cetera. That's
21 not very far along at this point.

22 I don't know -- I have not spoken to the
23 ranch or their consultants on what their plans are.

24 COMMISSIONER CHANG: I'm wondering for
25 purposes of the adequacy of the EIS, Maui County has

1 identified that as an area for growth. And my
2 understanding, there's it's a huge, 1500 units.

3 Is that -- the question asked, in your
4 opinion, is the EIS adequate? Is that a
5 consideration that we need to look at? Because I
6 would assume that that would impact traffic, water,
7 just about every aspect of the EIS would need to look
8 at a large project such as that.

9 What's the cumulative impact of all of
10 these projects in this area including such a project
11 that size?

12 THE WITNESS: Well, I think it would be
13 highly speculative. I'm not sure how we can --

14 COMMISSIONER CHANG: It's not reasonably
15 foreseeable?

16 THE WITNESS: No. To the extent that I can
17 say that the residents who will live in those homes
18 will need places to shop and those kinds of things.

19 COMMISSIONER CHANG: So not reasonably
20 foreseeable.

21 There were several witnesses who talked
22 about -- and I'm sorry I don't have the code in front
23 of me -- but they said mostly light industrial.

24 Is that a term of art in your code "mostly"
25 or is that something else?

1 THE WITNESS: That comes out of our purpose
2 and intent of the light industrial zoning district.

3 COMMISSIONER CHANG: Do you have an
4 interpretation of what does that mean, "mostly"?

5 THE WITNESS: That's something that we
6 address direct from Mr. Hopper that it's not -- that
7 has never been interpreted as saying -- as saying you
8 must do 51 percent, or anything like that.

9 Once the zoning is granted, you have a
10 list -- there are a list of permitted uses, and you
11 are allowed to do those uses within that district.

12 If there was to be some kind of limitation,
13 there's different sections in the code, and one of
14 them is the standards where it lists the setbacks and
15 heights and those kinds of things. There would be
16 some kind of limitation within that.

17 COMMISSIONER CHANG: Final question.

18 I assume as a Planning Director, are you
19 the accepting agency for a lot of EIS's?

20 THE WITNESS: Actually rarely. It will be
21 our Planning Commission who's most often the agency.

22 COMMISSIONER CHANG: But you would do
23 reviews of the EIS's?

24 THE WITNESS: Yes.

25 COMMISSIONER CHANG: In your opinion, is

1 The cultural Impact Assessment adequate for purposes
2 of this EIS?

3 THE WITNESS: I can't comment on that. We
4 have a lot of documents come through our office. I
5 cannot review each and every one of them to the best
6 degree that I would like.

7 I depend on our planning staff, and they
8 review.

9 COMMISSIONER CHANG: Thank you very much.

10 CHAIRPERSON ACZON: Commissioner Okuda.

11 COMMISSIONER OKUDA: Thank you, Mr.

12 Chairman, Commissioner Ohigashi asked most of my
13 questions. I just have a couple of hopefully minor
14 questions.

15 Does the EIS tell us how much square
16 footage of retail space is going to be added by this
17 project?

18 THE WITNESS: How much retail space is
19 added?

20 COMMISSIONER OKUDA: Is going to be added?

21 THE WITNESS: Yes, it does.

22 COMMISSIONER OKUDA: Have you considered
23 whether or not the EIS adequately discusses the
24 affect of the added square footage of retail space
25 on, for example, retail taking place in -- I think it

1 was described as Downtown Kihei, the Downtown Kihei
2 area.

3 THE WITNESS: It discusses it. It notes
4 that other projects are around that have approvals.
5 This Downtown Kihei project is one of those. I don't
6 know how much it goes into -- I mean, the competing
7 impacts of, you know, what affect they're going to
8 have on each other or anything.

9 COMMISSIONER OKUDA: That's where I'm
10 going. So are you able to really render an opinion
11 about whether or not this Final EIS adequately
12 discusses the impacts on, for example, the Downtown
13 Kihei retail area? If you don't have an opinion on
14 that, that's fine.

15 THE WITNESS: I don't have an opinion on
16 that. I know they have a marketing study that says
17 there's room.

18 COMMISSIONER OKUDA: Sure, but you don't
19 really have an opinion -- well, I think your
20 testimony speaks for itself.

21 Final thing is, so I'm clear about your
22 response to Commissioner Chang's question. You don't
23 have an opinion about the adequacy of the Cultural
24 Impact Assessment, correct?

25 THE WITNESS: I am not a cultural expert.

1 I don't believe I'm qualified to say whether that's
2 adequate or not. We rely on SHPD and other agencies
3 to determine that kind of adequacy.

4 COMMISSIONER OKUDA: Thank you very much
5 for taking your time, and we know you've attended
6 these hearings, and I know you're a busy person, so
7 thank you very much.

8 CHAIRPERSON ACZON: Mr. Hopper, do you have
9 any followup?

10 MR. HOPPER: Just briefly.

11 REDIRECT EXAMINATION

12 BY MR. HOPPER:

13 Q Following up on Mr. Ohigashi's question
14 about analysis of building footprint areas and things
15 like that.

16 Is that level of detail something you
17 generally see in EIS documents for a district
18 boundary amendment at this level?

19 A I don't think it should be, but very often
20 the questions center around that kind of detail.
21 Everybody wants to know. And I didn't mean to make a
22 snide remark about the color of the buildings, but
23 that's the level of detail people would like to see
24 in these kinds of documents.

25 And I don't think that that level of detail

1 is necessarily relevant to analyzing the impacts.

2 MR. HOPPER: That's all I have.

3 CHAIRPERSON ACZON: Thank you. Thank you,
4 Mr. Spence. We will take a half hour break for
5 lunch. So we'll be back 1:00 o'clock, 1:05.

6 (Noon recess taken.)

7 CHAIRPERSON ACZON: We're back on the
8 record. If you guys are eating, please continue, I
9 don't mind. Just when it's your turn to participate,
10 kind of take a break. Our court reporter might have
11 a hard time understanding what you're saying. So
12 please continue to eat.

13 We're back on record. Ms. Apuna, please
14 offer your comments.

15 MS. APUNA: The purpose of this hearing is
16 for this Commission to determine acceptance of the
17 Draft Final EIS for the Pi'ilani Promenade project.

18 An LUC accepted Final EIS is a required
19 component of a proper District Boundary Amendment
20 Petition filing pursuant to Hawai'i Administrative
21 Rules Section 15-15-50(e)(11). The requirements of
22 the proper EIS filings are provided under HRS Chapter
23 343 and HAR Chapter 11-200.

24 In a letter dated October 7, 2014, OP
25 provided its comments and concerns on the Draft EIS

1 to the Petitioners. The Petitioners subsequently
2 addressed OP's comments and concerns in the Final EIS
3 that is before this Commission today.

4 Among OP's comments and concerns that were
5 addressed by Petitioner include discussion of
6 sustainability under the Hawaii State Plan, Petition
7 area location within the Hawai'i Coastal Zone
8 Management Area, development phasing, traffic
9 mitigation, energy and housing.

10 The Petitioner's amendment, in addition to
11 the Draft EIS, satisfactorily addressed OP's specific
12 comments and concerns.

13 Based on concerns raised by yesterday's
14 public testimony and today's testimony, Petitioner
15 may want to supplement the docket record on cultural
16 resources in preparation for its Motion to Amend the
17 Decision and Order.

18 Also while there is no detailed site plan,
19 a description of uses are sufficiently detailed for
20 district boundary amendment or amendment thereof,
21 which is basically to consider reclassification from
22 Agriculture to Urban.

23 Case law states that neither HRS Chapter
24 343, nor the Administrative Rules of Chapter 200
25 indicate the level of detail or specificity that

1 could be included on any given subject.

2 The statute and rules are designed to give
3 latitude to the accepting agency as to the content of
4 each EIS. Thus, what's required in one EIS may not
5 be required in another, based upon the circumstances
6 presented by the particular project.

7 Accordingly, the standards to consider the
8 sufficiency of an EIS, unquote, rule of reason, is
9 that an EIS may not be exact to the point of
10 discussing all possible details bearing on the
11 proposed action, but will be upheld as adequate if it
12 has been compiled in good faith and sets forth
13 sufficient information to enable the decisionmaker to
14 consider fully the environmental factors involved,
15 and to make a reasoned decision after balancing the
16 risk of harm to the environment against the benefits
17 to be derived on the proposed action, as well as to
18 make a reasoned choice between alternatives.

19 Finally, OP appreciates the interest shown
20 by all testifiers. We are here today to determine
21 not whether the Motion to Amend the District Boundary
22 Amendment should be granted, but only whether the
23 proposed Final EIS should be accepted.

24 With respect to the Final EIS, the document
25 appears to be legally sufficient. Certain issues

1 will be examined further before deciding the Motion
2 to Amend the District Boundary Amendment. But that
3 is a question for another day.

4 The Office of Planning supports the request
5 for acceptance of the Final EIS. Thank you.

6 CHAIRPERSON ACZON: Any questions?

7 MR. SAKUMOTO: No questions.

8 MR. HOPPER: Because it was a statement by
9 counsel, I'm not sure if we're allowed to ask
10 questions.

11 MR. PIERCE: No questions from Intervenors.

12 CHAIRPERSON ACZON: Commissioners, any
13 questions for Office of Planning?

14 VICE CHAIR WONG: OP, I got a question.

15 So you said that the EIS suffice in your
16 opinion. So the question I have is, as the Office of
17 Planning and the position is you're taking part of
18 leaving everything for the state to decide, correct?

19 MS. APUNA: Yes.

20 VICE CHAIR WONG: So I was wondering if you
21 took into account the issues of the DOE's interest on
22 this? Especially if you know, let's say the Kihei
23 High School comes up, how is the kids going to cross
24 the road and all that, secondary impacts. Was that
25 taken into account with your review?

1 MS. APUNA: Yes. The DOE provided its
2 comments, and the Petitioner responded.

3 As far as specifics, regarding -- you're
4 saying that traffic impacts in the area, I believe
5 that the Petitioners will continue working with the
6 Petitioner, but I don't know if that specific issue
7 as far as traffic impacts on the school was
8 addressed.

9 VICE CHAIR WONG: Maybe I'll ask the
10 Petitioner on this. Thank you.

11 CHAIRPERSON ACZON: Commissioners?

12 COMMISSIONER CHANG: I have a question.

13 So as I understand the Office of Planning's
14 position, while they recommend to the Petitioner that
15 they supplement their Cultural Impact Assessment
16 based upon the testimony that you've heard to date,
17 it is OP's position that the EIS is still adequate
18 and you support the approval of the EIS?

19 MS. APUNA: Yes, that's correct.

20 COMMISSIONER CHANG: The EIS document
21 should be a full disclosure document. Is that
22 correct?

23 MS. APUNA: Yes.

24 COMMISSIONER CHANG: In OP's opinion, based
25 upon the testimony regarding cultural practices,

1 regarding potential cultural sites, regarding whether
2 there's a clear identification and participation of
3 people who may have knowledge of the area, including
4 practices or other sites, is it OP's position that
5 that is not necessary for the adequacy of the EIS?

6 MS. APUNA: I believe the Petitioner, in
7 drafting the EIS, and going through the process,
8 making comments and responding to them, that they
9 made a good faith effort in preparing the AIS and the
10 Cultural Impacts Assessment.

11 I think certainly the testimony that was
12 provided, it adds to those studies. And, I mean,
13 it's like the Lima Ola situation, right? That you
14 say that the EIS is deficient. I don't think that's
15 accurate. I think that they have put forth in a good
16 faith effort the information that was required.

17 If there is additional information, such as
18 the testimony that was provided, I think that is a
19 good way to put a spotlight on that, and that
20 Petitioner has the opportunity to supplement for
21 purposes of the Motion to Amend.

22 COMMISSIONER CHANG: I don't mean to put
23 Office of Planning on the spot, as we will ask the
24 Petitioner the same level of questioning, but the
25 Cultural Impact Assessment concluded that there's no

1 traditional customary practices, that whatever was
2 occurring on the property has been abandoned.

3 In your opinion, is that a good faith
4 effort in light of what we've heard over the last
5 day?

6 MS. APUNA: I think that's a difficult
7 question.

8 The EIS is supposed to provide information
9 as a resource document. It's not supposed to say
10 that this is everything that's out there, I don't
11 think. But I think it's a process, and I think the
12 process today and that follows, is about continuing
13 to provide a complete record.

14 So I think that we can still accept the EIS
15 while still adding to the record for this Commission,
16 it should go forward for the Motion to Amend.

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

19 CHAIRPERSON ACZON: Commissioner Okuda.

20 COMMISSIONER OKUDA: Thank you, Chair.

21 I know, counsel, you talked about, in your
22 presentation, sounds like standards that the LUC
23 should apply in evaluating this EIS; correct?

24 MS. APUNA: Yes.

25 COMMISSIONER OKUDA: I would like to just

1 read a portion out the Kaleikini versus Yoshioka
2 case, which is 121 -- excuse me -- 128 Hawai'i 53 at
3 81 to 82 of the Hawai'i Reports.

4 My question to you is whether or not this
5 statement of the Hawaii Supreme Court accurately sets
6 forth the standard, and what we should be looking at
7 when evaluating an EIS.

8 And I quote: The EIS process shall
9 involve, at a minimum, identifying environmental
10 concerns, obtaining various relevant data, conducting
11 necessary studies, receiving public and agency input,
12 evaluating alternatives, and proposing measures for
13 avoiding minimizing, rectifying or reducing adverse
14 impacts.

15 An EIS is meaningless without the
16 conscientious application of the EIS process as a
17 whole, and shall not be merely a self-serving
18 recitation of benefits and a rationalization of the
19 proposed action.

20 Is that an accurate statement of what we
21 are supposed to consider in evaluating an EIS, not
22 only in this case, but in other instances?

23 MS. APUNA: I haven't done a thorough
24 reading of Kaleikini versus Yoshioka, but I generally
25 would agree with that statement.

1 COMMISSIONER OKUDA: So if that's what the
2 Hawai'i Supreme Court has said we are to do, and
3 we're supposed to make sure that the EIS is not
4 merely a self-serving recitation of benefits and a
5 rationalization of the proposed action, we better
6 follow what the Supreme Court says; correct?

7 MS. APUNA: Correct.

8 COMMISSIONER OKUDA: Thank you. No further
9 questions.

10 CHAIRPERSON ACZON: Vice Chair Scheuer.

11 VICE CHAIR SCHEUER: Aloha. I just want to
12 follow up on a statement of yours.

13 You referenced the very recently concluded
14 Lima Ola Docket as a parallel situation, but I just
15 want to clarify.

16 In Lima Ola, the Land Use Commission was
17 not the accepting agency for the EIS, correct?

18 MS. APUNA: Correct.

19 VICE CHAIR SCHEUER: And we were not making
20 a determination of adequacy of the EIS in that
21 docket; correct?

22 MS. APUNA: That's correct.

23 VICE CHAIR SCHEUER: And in that docket,
24 after the county had already accepted the EIS, the
25 county produced a large number of cultural

1 practitioners who all were unanimous in stating that
2 the impacts of any cultural practices on that site
3 would be minimal; correct?

4 MS. APUNA: Correct.

5 VICE CHAIR SCHEUER: And that's different
6 than what we have here?

7 MS. APUNA: Yeah. I think my only point is
8 that the information that came up during Lima Ola to
9 supplement some of the cultural studies, I don't
10 think that necessarily renders the EIS in that case
11 deficient for an illegal finding there.

12 So here I think that, again, the Commission
13 has the opportunity to listen to, if Petitioner so
14 decide to supplement that record, to make it full
15 enough for consideration under the Motion to Amend.

16 VICE CHAIR SCHEUER: Thank you for that
17 clarification.

18 CHAIRPERSON ACZON: Anybody else? Thank
19 you, Ms. Apuna.

20 If you don't mind, I would like to hear
21 from Honua'ula's representative before you proceed
22 with your presentation.

23 Mr. Tabata, I apologize, I skipped you.

24 MR. TABATA: Honua'ula does support the
25 acceptance of the EIS, and I would just like to

1 supplement some of the legal standards that OP had
2 discussed in the Price v Obayashi case at 81 Hawai'i
3 171, the Supreme Court made it clear that the
4 sufficiency of an Environmental Impact Statement is a
5 question of law, and it's not a factual determination
6 to be made regarding the adequacy of an EIS. And
7 that the only question presented is whether the EIS
8 complies with applicable statutory mandates, such as
9 chapter 343 and the EIS rules.

10 Now, the Kaleikini that Commissioners Okuda
11 discussed laid out a list of minimum inquiries to be
12 made. I would only add to that that a part of the
13 Rule of Reason Test is that the EIS need not be
14 exhaustive.

15 So you may not have all the alternatives
16 stated, or you may not have all of the mitigation
17 measures that people can think of stated, but so long
18 as there's a good faith effort to identify those
19 elements, the EIS should be accepted.

20 Now, the significance of a question of law
21 versus a question of fact, I would say that if you
22 have Findings of Fact, then you would have to delve
23 into the conclusions that were reached in the various
24 studies, the cultural, the engineering, the water
25 supply. And if you agreed or disagreed with those

1 conclusions as a body, you would memorialize those in
2 your Findings of Fact.

3 In other words, because you're not making
4 factual findings, your determination as to the
5 conclusions of these subject matters is not an issue
6 to be determined today. What you're looking at are
7 the statutory and regulatory requirements, and you're
8 making a legal decision.

9 So if you clearly disagree with some of the
10 conclusions that have been set forth in the written
11 EIS, then that is something to be said on a different
12 day at the Motion to Amend and not at this time.
13 That's my reading of the case.

14 And, again, we support the acceptance of
15 the EIS.

16 CHAIRPERSON ACZON: Any questions for Mr.
17 Tabata? Vice Chair Scheuer.

18 VICE CHAIR SCHEUER: Mr. Tabata, you would
19 contend that even if we saw something to be clearly
20 erroneous in the EIS, that wouldn't be a matter for
21 our consideration?

22 MR. TABATA: The case law says you have the
23 latitude to determine adequacy. There is a certain
24 amount of latitude.

25 But the case law also says that the EIS has

1 to assist you in making a decision. It doesn't say
2 it has to assist you in making an approval. That's
3 what we're ultimately seeking, but legally, for
4 today, you're looking at the adequacy of the EIS, not
5 the sufficiency of the evidence.

6 VICE CHAIR SCHEUER: If there is a
7 conclusion that is clearly erroneous, is my question,
8 in the EIS, and it's obvious that it's clearly
9 erroneous, that would not be something that we could
10 take into consideration?

11 MR. TABATA: I think that's something you
12 would take into consideration for the ultimate
13 decision-making.

14 VICE CHAIR SCHEUER: But we would accept
15 the EIS as adequate even though it contained
16 something that was clearly erroneous?

17 MR. TABATA: Adequate is an effort in its
18 preparation, not adequate in its conclusion. That's
19 the major distinction between a legal conclusion and
20 a factual finding, in my opinion.

21 The conclusion whether or not there are any
22 cultural practices taking place, whether you agree
23 with that or not, is for a different day, not for
24 today.

25 CHAIRPERSON ACZON: Commissioner Chang

1 followed by Commissioner Estes.

2 COMMISSIONER CHANG: Obviously you can see
3 this is something that we all feel very strongly
4 about.

5 Mr. Tabata, wouldn't you agree that the LUC
6 is bound by the constitution, and that as we review
7 the EIS, that we have a constitutional obligation,
8 and notwithstanding there will be a Motion to Amend,
9 and looking at the merits of the project.

10 But if we were to accept the EIS as
11 adequate as it stands right now, which is
12 inconsistent with the testimony that has been
13 provided, clearly as Commissioner Scheuer said, the
14 conclusion of the Cultural Impact Assessment, which
15 is beyond a regulatory, it is a constitutional
16 mandate that we have an affirmative obligation to
17 preserve and protect traditional customary practices.

18 It has been brought to our attention that
19 the process upon which they may have prepared the
20 CIA, and the conclusion, is not supported by the
21 facts, that if we were to proceed and adopt and
22 approve the FEIS, don't you believe that we would be
23 subject, if a lawsuit is filed, that we would be
24 subject to having our ruling overturned based upon an
25 on constitutional violation that the record does not

1 support the conclusion?

2 MR. TABATA: You're bound by the
3 constitution and the supreme court case law to
4 consider those customary and traditional practices
5 under the constitution. I believe that goes to the
6 final decision-making process.

7 The adequacy of the EIS at this point is
8 different from whether or not you agree with its
9 conclusions. That's different.

10 So if they have made a good faith effort in
11 producing these documents, these studies, the
12 witnesses, their responses, then that is sufficient
13 for the EIS process, which is not whether or not you
14 agree with its conclusion.

15 COMMISSIONER CHANG: And even
16 notwithstanding the conclusion, based upon what we've
17 heard over the last two days, is it your opinion that
18 they've made a good faith effort, that the document
19 is adequate in light of what has been shared to date?

20 MR. TABATA: Good faith is a subjective
21 standard, as far as I can tell. They have produced,
22 according to the witnesses, a 4,000-page document,
23 multiple studies. And for some disciplines, multiple
24 studies for a single discipline, repeatedly
25 attempting to study the various issues.

1 Without any other evidence to the
2 otherwise, I would say it's good faith. They've made
3 an attempt, produced these studies, they're going to
4 put their witnesses on the stand even today, my
5 understanding. I haven't heard anything otherwise.

6 Again, it's to help you make a decision.
7 It's not to say you're going to approve it, the
8 ultimate decision and the Motion to Amend, but it is
9 them going through the process of identifying the
10 impacts. Maybe not identifying all impacts, but
11 identifying the impacts for certain subject matters.

12 If they miss a subject matter completely,
13 say there's no traffic study whatsoever, then I would
14 say there's a problem. But they have done the
15 studies, the necessary studies for the necessary
16 subject matters, and I believe it's a good faith
17 attempt.

18 At this point you may not agree with their
19 conclusions therein, but they have gone through the
20 process, and like OP said, the Petitioner may want to
21 supplement certain studies. They may want to do more
22 work, which is their right to do so, if they have
23 enough time before the Motion to Amend is heard.

24 So I think it's significant. I think it's
25 important that we look at what we are doing today

1 legally, versus how we feel about the various subject
2 matters that have been testified, whether or not we
3 actually agree with what's been said today
4 substantive-wise.

5 COMMISSIONER CHANG: Thank you for your
6 response.

7 CHAIRPERSON ACZON: Commissioner Estes
8 followed by Commissioner Okuda.

9 COMMISSIONER ESTES: So it's your position
10 that we only have one thing to do, and that is to
11 decide whether or not we think a good faith effort
12 was made, regardless of what conclusions may have
13 been, or anything left out, that our only thing is to
14 decide whether or not a good faith effort is made;
15 that's your position?

16 MR. TABATA: I believe that's what the law
17 states, Commissioner, yes.

18 CHAIRPERSON ACZON: Commissioner Okuda.

19 COMMISSIONER OKUDA: Mr. Tabata, I do agree
20 with you that we're not here today to debate or to
21 decide the ultimate conclusion whether this is a good
22 project or not a project.

23 I just disrespectfully disagree with you
24 that the standard is simply good faith. I believe,
25 and you cited Price versus Obayashi, O-B-A-Y-A-S-H-I,

1 Hawai'i Corporation, which is 81 Hawai'i 171, a 1996
2 Hawaii Supreme Court case.

3 But I believe in that case the Supreme
4 Court said it's not only good faith as the test, but
5 it's also sufficiency of the information.

6 And if you just indulge me and let me read
7 this one statement:

8 Supreme Court said, basically, the EIS will
9 be upheld as adequate if it has been compiled in good
10 faith, and sets forth sufficient information to
11 enable the decisionmaker to consider fully the
12 environmental factors involved, and to make a
13 reasoned decision after balancing the risks of harm
14 to the environment against the benefits to be derived
15 from the proposed action, as well as to make a
16 reasoned choice between alternatives.

17 So it's not only good faith, but it's also
18 basically sufficiency of the information so that we
19 can make the decision.

20 Do you disagree with my reading of this
21 case, or disagree that this is an accurate statement
22 of the law?

23 MR. TABATA: That was an accurate statement
24 of a portion of that paragraph that you're reading
25 from. And I would also add to that, or just repeat

1 that the EIS need not be exhaustive to the point of
2 discussing all possible details.

3 That precedes the section that you just
4 quoted.

5 So I'm not saying this is an easy decision
6 for the Commission, but there is these considerations
7 that need to be made. You're going to find somebody
8 that's going to be able to identify something that
9 was missed. That's going to happen no matter what,
10 every EIS. That's why, I believe, the Supreme Court
11 threw this language in that it need not be
12 exhaustive.

13 I don't envy your position in making this
14 judgment call, but from our point of view, we believe
15 it's adequate.

16 COMMISSIONER OKUDA: And I don't disagree
17 with you that the EIS, to have an EIS that would
18 withstand appellate review, it doesn't have to cover
19 everything under the sun that everybody here and
20 elsewhere says it's got to cover.

21 But you do agree that we do have the
22 discretion to decide, based on the applicable
23 standard, that the EIS might be deficient in giving
24 us enough information to make a reasoned decision?
25 I'm not saying the Cultural Impact Assessment is

1 deficient or not, I'm not saying that.

2 For example, since that was mentioned by OP
3 as something that might be supplemented and looked
4 at, if we come to the conclusion that the CIA was in
5 fact not sufficient for us to make a reasoned
6 decision, whatever that decision might be, that's a
7 basis of us exercising discretion to respectfully ask
8 that the EIS be not accepted, correct?

9 MR. TABATA: The law does state that you do
10 have the latitude to make that decision, yes.

11 COMMISSIONER OKUDA: Thank you, Mr. Tabata.

12 CHAIRPERSON ACZON: Anybody else?

13 Commissioners? Thank you, Mr. Tabata.

14 CHAIRPERSON ACZON: Mr. Sakumoto, please
15 proceed with your comments.

16 MR. SAKUMOTO: Thank you, Mr. Chair.

17 We've handed out a hard copy of a slide
18 show. We have the slides on the screen behind me. I
19 apologize to the people behind me who need to turn
20 around to see it, but it is up on the screen, which
21 is the same thing that is in front of each of the
22 Commissioners right now.

23 So if you will, I would like to go through
24 the slides as quickly as I can, and then following
25 that, we would like to have our planner, Mr. Jordan

1 Hart, provide some testimony, and followed by several
2 of our expert consultants.

3 CHAIRPERSON ACZON: How many do you think
4 you're going to be calling?

5 MR. SAKUMOTO: I believe after Mr. Hart,
6 four or five at the most.

7 VICE CHAIR SCHEUER: Mr. Chair, with your
8 discretion. There's no page numbers on any of these
9 slides in the handouts that we have, so I would like
10 to just have the opportunity to ask you to note what
11 slide we're on, so that if we have questions later,
12 we can refer to that.

13 MR. SAKUMOTO: Absolutely. So we're on
14 slide one which is the title slide.

15 VICE CHAIR SCHEUER: Thank you, I'm clear
16 on that part.

17 (Slide show.)

18 MR. SAKUMOTO: Pi'ilani Promenade North and
19 South, LLC, the Petitioners in this docket are
20 requesting this Commission to deem the Final
21 Environmental Impact Statement submitted to the
22 Commission on June 27, 2017, to be acceptable under
23 the standards set forth in Chapter 343 of the Hawaii
24 Revised Statutes.

25 As has been stated several times today, the

1 focus us of today's proceeding is not whether the
2 contemplated Pi'ilani Promenade project should be
3 allowed to proceed or not, but rather whether the
4 FEIS document before you properly discloses the
5 impacts of the contemplated project.

6 Turn to slide two, please.

7 MS. CATALDO: The proposed 74.87-acre
8 project site is located in Kihei, mauka of the
9 intersection of Kaonoulu Road and Pi'ilani Highway.

10 The project boundary is adjacent to the
11 Kihei Commercial Center to the north, Kulanihakoi
12 Gulch to the south, Pi'ilani Highway to the west, and
13 ranch land to the east extending up to Kula.

14 MR. SAKUMOTO: Slide number three.

15 The project site is comprised of Tax Map
16 Key Nos.: 3-9-001, parcels 16 and 170 through 174,
17 which are owned by the Petitioners.

18 Slide number four.

19 MS. CATALDO: The project site is in the
20 State Urban Land Use District. As shown on this
21 slide, the project site is bordered by land in both
22 the Urban, Agricultural Land Use District.

23 MR. SAKUMOTO: Slide number five.

24 As shown on this slide, the project site is
25 zoned M-1 light industrial under the Maui County

1 Zoning Code.

2 Slide number six.

3 MS. CATALDO: The next slide shows the
4 location of the project site within the Growth
5 Boundaries of the Maui Island Plan Directed Growth
6 Map.

7 MR. SAKUMOTO: Slide number seven.

8 And I'm going to go through the next five
9 slides rather quickly.

10 As you can see from these next several
11 slides, and as you may recall from your site visit to
12 the property, the property is quite dry and arid. It
13 was at one time used for cattle ranching, and doing
14 during World War II it was use by the military for
15 training programs.

16 We're now on Slide 13, which is titled
17 "Project History".

18 MS. CATALDO: The project site is a portion
19 of a larger site that was part of a petition for Land
20 Use District Boundary Amendment that was filed with
21 the Land Use Commission by Kaonoulu Ranch on July 6,
22 1994. This Petition was assigned Docket No. A94-706.

23 The Petition was to reclassify the land
24 from the Agricultural District to the Urban District.
25 The 1994 Petition area was 88 acres.

1 This 88-acre site included the current
2 project site. At that time Kaonoulu Ranch proposed
3 to develop 123 lot commercial and light industrial
4 subdivision.

5 The Petition area was subdivided into seven
6 lots. Of those lots, six of the lots are affected by
7 this FEIS. Maui Industrial Partners, LLC, sold the
8 seventh lot to Honua'ula Partners, LLC, in 2009.

9 Honua'ula Partners is not related or in any
10 way connected with Pi'ilani Promenade, and does not
11 share any common ownership, members, shareholders or
12 control with Pi'ilani Promenade.

13 MR. SAKUMOTO: Slide No. 14 titled "Site
14 Plan".

15 The proposed project has evolved since the
16 original development plan, developed in 2011 by
17 Eclipse Development for the Petitioner. The original
18 plan proposed approximately 695,000 square feet of
19 retail space, with approximately 3,700 parking
20 stalls, with development concentrated in two major
21 commercial development areas, with substantial paved
22 parking lot separating them.

23 As shown in this slide, the Pi'ilani
24 Promenade will involve the development of a mixed-use
25 project consisting of retail, office,

1 business/commercial, light industrial, multi-family,
2 and a public/quasi-public use, referring specifically
3 to the MECO substation.

4 It is anticipated that the project will be
5 constructed in two phases as market conditions
6 warrant.

7 Phase I is the Pi'ilani Promenade North
8 development, which will include development of
9 100,000 square feet of business/commercial uses, 226
10 rental apartments, and 57,558 square feet of light
11 industrial use.

12 Phase I will also include construction of a
13 segment of future Kihei Upcountry highway, and
14 improving the intersection of Kaonoulu Street and
15 Pi'ilani Highway, which provides access to the
16 project.

17 Phase II is the development of Pi'ilani
18 Promenade South, which will consist of 430,000 square
19 feet of business/commercial space.

20 Right now we'd like to provide the
21 Commission with a general overview of the FEIS
22 document itself. And to help us with this, we would
23 like to call upon Mr. Jordan Hart, the President of
24 Chris Hart & Partners.

25 CHAIRPERSON ACZON: May I swear you in

1 first?

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

4 THE WITNESS: I do.

5 CHAIRPERSON ACZON: Please state your name
6 and address for the record.

7 THE WITNESS: Jordan Edward Hart, and my
8 address is 115 North Market Street in Wailuku.

9 CHAIRPERSON ACZON: Please proceed.

10 JORDAN EDWARD HART

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

14 DIRECT EXAMINATION

15 THE WITNESS: As part of this process, we
16 did do, what I feel, is a thorough community outreach
17 process, beginning around the time of the EIS, EISPN.

18 There was a series of meetings with the
19 Kihei Community. There was a meeting on
20 November 5th, 2013. There was 150 community members
21 in attendance, and at that meeting there was a
22 discussion of the initiation of the preparation of
23 this Final EIS and the process that we were
24 undertaking.

25 There were also series of meetings with

1 other groups, the Maui Chamber of Commerce, the
2 Native Hawaiian Chamber of Commerce, Maui Contractors
3 Association, and the Maui Nutrition and Physical
4 Activity Coalition.

5 We also conducted a series of other
6 meetings, including a site visit. And I do want to
7 clarify the record. There was testimony that
8 happened yesterday about people who weren't allowed
9 access to the site or didn't participate on site
10 visits.

11 There was, in the context of archaeological
12 concerns, there was initial meeting that was
13 organized by one of the testifiers today. And it was
14 in February 25th, 2014, to discuss the archaeological
15 concerns.

16 Following that, later on in the process,
17 there was a site visit. Basil Oshiro was at that
18 site visit. That was in January 22nd of 2016. We
19 walked the entire site at that time, identified sites
20 that were of interest.

21 Later on, there was a meeting in April of
22 2016. At that meeting there was a list of interested
23 sites that were passed from community members to
24 Chris Hart & Partners. And Basil Oshiro was at that
25 meeting as well. Lucienne de Naie was at that

1 meeting.

2 And then there was also two other meetings
3 that were with the 'Ahu Moku Council, Kula Makai
4 Group. They were organized by that group, and we had
5 meeting at those meetings with them at their venue.

6 January of 2017 was at the Kihei Charter
7 School. That was actually in the timeframe where the
8 supplemental CIA was being prepared. There was a
9 discussion about the letters inviting people to
10 participate in that process. And we had a specific
11 discussion about certain people who were in
12 attendance. Brian Naeole was one who had received an
13 invitation.

14 And there was an encouragement by me for
15 everyone to participate in that process, and also to
16 provide us with names of individuals who could
17 further participate.

18 Later after the early version of the Final
19 EIS was circulated to interested parties, we did have
20 an additional meeting with 'Ahu Moku Council
21 organized by the Kula Makai Group at their venue at
22 Lokulani Intermediate School in Kihei where we
23 further discussed the results of the CIA and how the
24 process went, as well as recapping the discussion
25 about participation in the CIA at the time that those

1 invitations were going out.

2 There were also additional meetings that
3 happened during the Draft EIS process. And those
4 included analysis of environmental issues, and then
5 also meetings with individuals who were interested in
6 economic issues.

7 MS. CATALDO: Commissioners, if I could
8 address what I think have been several questions
9 related to the CIA as it relates to who has been
10 contacted.

11 I believe Ms. de Naie, in her testimony
12 referred to what was a long list in the Supplemental
13 CIA. That appears on page 32. The Supplemental CIA
14 is Appendix I-1. There are approximately 20 names
15 that were recipients of letters primarily, sometimes
16 called, sometimes emails, seeking their comments and
17 participation.

18 Mr. Oshiro was contacted and did provide an
19 interview, along with his wife. Keeaumoku Kapu was
20 also contacted. He responded to the preparer of the
21 CIA by providing two names, Basil Oshiro. And,
22 again, Mr. Oshiro was contacted, and a Mr. Kanonohi
23 Lee who did not respond. He did not provide any
24 additional names of local kupuna for followup.

25 During the Supplemental CIA process there

1 were efforts to contact and discuss with two lineal
2 descendants of Hewahewa, Mr. Elden Liu, who was in
3 fact interviewed, and when his summary was presented
4 to him for his determination that it accurately
5 reflected, Mr. Liu at that time indicated that he did
6 not wish to include his summary in the Supplemental
7 CIA.

8 MR. PIERCE: Mr. Chair, I just have a
9 procedural question.

10 We have Mr. Hart present, and I'm now
11 hearing the attorney who appears to be testifying.
12 So I just don't understand exactly what happened
13 procedurally.

14 CHAIRPERSON ACZON: Will you explain?

15 MR. SAKUMOTO: Yes, Mr. Chair.

16 This is part of our presentation, which I
17 think we are make jointly with Mr. Hart. I think
18 there are a lot of things that came up over the last
19 two days that I think warrant clarification, and we
20 would like to make sure that the record is very clear
21 on those points.

22 So if the Commission would indulge us,
23 allow us to make this part of the presentation as a
24 joint effort with Mr. Hart. Once that's done, we
25 will be calling expert witnesses who would be

1 testifying as any witness would.

2 CHAIRPERSON ACZON: Commissioners, do you
3 guys have any objections on that.

4 COURT REPORTER: I can't hear you.

5 COMMISSIONER OHIGASHI: I asked if it was
6 like their opening statement.

7 CHAIRPERSON ACZON: I will allow it,
8 proceed.

9 MR. PIERCE: If I may, just for the record.
10 The one thing that it appears that the
11 attorney is seeking to present factual information
12 instead of argument. So I just want to be clear that
13 the attorney -- none of us will be able, as Mr.
14 Hopper mentioned before, we won't be able to question
15 the attorney because the attorney, I assume, does not
16 want to become a witness.

17 So what we have is, we have -- it's just
18 important for the Commission to understand that what
19 the Petitioner is seeking to do right now is to
20 present argument, not facts.

21 CHAIRPERSON ACZON: We'll give you a chance
22 to rebut later. We will continue.

23 MS. CATALDO: Thank you, Chair. And by way
24 of further explanation, everything that I am talking
25 about appears in the CIA and the Supplemental CIA.

1 I'm not adding to argument or adding to fact. It is
2 already, as I understand, in the record.

3 CHAIRPERSON ACZON: So noted. Please
4 proceed.

5 MS. CATALDO: Between the pages of 30 and
6 36 of the Supplemental CIA, which sets forth the
7 efforts to contact and engage the community in
8 cultural meetings, consultation, particular 32 to 36,
9 what is seen is the preparer of the CIA, the
10 Supplemental CIA, sought to communicate, to contact
11 everyone whose name she was provided. Thank you.

12 THE WITNESS: One other thing I wanted to
13 add. At the January 17th and the May 17th 'Ahu Moku
14 meeting, Keeaumoku was in attendance at those
15 meetings as well, and Lucienne de Naie was also at
16 those meetings.

17 My next slide.

18 The EISPN was published in September 23rd,
19 2013. The Draft EIS was published August 23rd, 2014.
20 At that point we were in the process of completing
21 further investigation to respond to comments.

22 In this timeframe, two adjustments happened
23 to the project team. The first regarding traffic,
24 our consultant was Mr. Phillip Rowell. He became
25 significantly ill to the point where he was unable to

1 continue his analysis and reply to comments. At that
2 point the project needed to identify and select a new
3 traffic consultant. The traffic consultant of SSFM
4 was identified and selected and they prepared a
5 completely new TIAR in order to complete that
6 process.

7 Additionally, in the context of the
8 Cultural Impact Assessment report, we received
9 comments from members of the general public, as well
10 as LUC staff on the desire to see additional
11 interviews. The anticipated quantity of those
12 interviews was significant to the point where
13 anticipated additional assistance was going to be
14 needed to complete all of those.

15 At that point Scientific Consultant
16 Services was brought into the project team in order
17 to prepare a supplemental CIA.

18 A Final EIS was published July 8, 2017, and
19 here we are at LUC hearing.

20 Next slide is a series of studies that were
21 prepared in support of our Final EIS. There is an
22 Environmental Site Assessment, Botanical and Flora
23 and Fauna Survey, an Air Quality Survey.

24 I'm not going to go ahead and read all the
25 updates, but I wanted to convey that those studies

1 were adjusted and updated as we received additional
2 information and comments from the general public and
3 agency.

4 An Acoustic Study, and Archaeological
5 Inventory Survey, Archaeological Monitoring Plan,
6 Cultural Impact Assessment Report. And as I
7 mentioned, a Supplemental Cultural Impact Assessment
8 Report.

9 A Baseline Assessment of Marine Water
10 Chemistry and Marine Biotic Communities. An Economic
11 and Fiscal Impact Assessment. A Preliminary
12 Engineering Report. A Traffic Impact Assessment
13 Report and a Supplemental Traffic Impact Assessment
14 report, as well as a Soil Investigation Report, and a
15 Water Service Report.

16 Some of the general conclusions of those
17 studies as there will be additional studies of others
18 that are not focused on here.

19 The Botanical and Fauna Survey concluded
20 that there are no rare or protected plant or animal
21 species on or near the property.

22 The Air Quality Survey indicated that by
23 employing mitigation measures during construction,
24 long-term impacts on the air quality would be
25 negligible after construction.

1 With the Acoustic Study it was determined
2 that residences that may be affected by the increase
3 in traffic noise have adequate setbacks that result
4 in acceptable noise levels.

5 Traffic Impact Analysis Report determined
6 that application of the proposed improvements will
7 improve the level of service and traffic movements to
8 meet an acceptable standard.

9 Engineering Report determined that a
10 drainage plan will result in downstream stormwater
11 discharge at rates that do not exceed current levels
12 and comply with Maui County's Drainage Rules. No
13 additional potable water source beyond the county
14 water meters are needed to implement the project

15 Soil Investigation Reports that Lots 2A, 2C
16 and 2D can be developed to support mass grading of
17 the site if the recommendations of the report are
18 followed.

19 The Water Service Report determines that
20 adverse impacts are unlikely so long as the proposed
21 action stays within its water allocation.

22 Cultural Impact Assessment Report
23 determines that there are no known cultural practices
24 or resources in the project area.

25 Supplemental Cultural Impact Assessment

1 determines that there are no specific valued
2 cultural, historical or natural resources within the
3 project area, nor any traditional and/or customary
4 Native Hawaiian rights being exercised within the
5 project area. To the extent concerns are raised
6 regarding flooding or drainage, please refer to the
7 Engineering Report in the Final EIS.

8 Baseline Assessment for Marine Chemistry
9 and Marine Biotic Communities determines that the
10 proposed project will not have a significant negative
11 or even measurable affect on the water quality or
12 marine biota in the coastal ocean offshore of
13 property. Changes to the marine environment due to
14 the project will likely be undetectable.

15 Economic and Fiscal Impact Analysis
16 determines that the Kihei-Makena Corridor is
17 under-serviced with commercial, industrial and
18 residential inventory. Development of the project
19 will generate approximately \$450 million in economic
20 activity, and 2,933 worker-years of jobs, with the
21 stabilized operation at 729 million in economic
22 activity and 6,626 worker-years annually statewide.

23 MR. SAKUMOTO: That concludes the testimony
24 for Mr. Hart, Mr. Chairman.

25 CHAIRPERSON ACZON: Any questions for Mr.

1 Hart?

2 MS. APUNA: No.

3 CHAIRPERSON ACZON: Mr. Hopper?

4 MR. HOPPER: No, Mr. Chairman.

5 CHAIRPERSON ACZON: Mr. Tabata?

6 MR. TABATA: No, thank you.

7 CHAIRPERSON ACZON: Mr. Pierce?

8 MR. PIERCE: No questions.

9 CHAIRPERSON ACZON: Commissioners? Vice
10 Chair Wong.

11 VICE CHAIR WONG: Mr. Hart, I guess you
12 helped put together this EIS, correct?

13 THE WITNESS: That's correct.

14 VICE CHAIR WONG: So the question I have
15 is, we're talking -- this is all the information that
16 was provided talked about the major impacts to the
17 area.

18 Was there ever an account to the secondary
19 impacts, such as fire or police?

20 THE WITNESS: There was an analysis of
21 impact on police and fire.

22 VICE CHAIR WONG: Were they asked to give
23 input?

24 THE WITNESS: They did provide comment on
25 the project.

1 VICE CHAIR WONG: I'll check it out. What
2 page?

3 CHAIRPERSON ACZON: Anybody know?

4 MS. CATALDO: Page 113.

5 VICE CHAIR WONG: Would that also include
6 hospitals, medical?

7 THE WITNESS: I don't believe we received a
8 comment regarding hospital. There was an analysis of
9 medical impacts, but I don't believe we received a
10 comment from a hospital organization.

11 VICE CHAIR WONG: Thank you.

12 CHAIRPERSON ACZON: Commissioner Ohigashi.

13 COMMISSIONER OHIGASHI: Mr. Hart, did you
14 review the 1995 -- or Environmental Impact Statement
15 relating back to the 1995 project in preparing this
16 Environmental Impact Statement?

17 THE WITNESS: I didn't personally review
18 it. Much production work was done by staff, and may
19 review portions of that report, but I didn't
20 personally review that '95 EIS.

21 COMMISSIONER OHIGASHI: To the extent you
22 have any knowledge about that, could you tell me what
23 kind of specificity, and the description of the
24 project was in that EIS in 1995, if you know?

25 THE WITNESS: No, I couldn't tell you the

1 specificity. I can reply that in the preparation of
2 this Final EIS, the way we analyzed the impacts for
3 the project was by projecting a maximum volume of
4 square footage of uses, and by using those maximum
5 volume of square footage of uses you can derive all
6 of the other impacts for the technical studies that
7 relate to those various uses.

8 COMMISSIONER OHIGASHI: I notice in one of
9 your alternatives, there's no action alternative that
10 you mention. You mentioned it could be built as 123
11 unit, like originally planned warehouse; is that
12 right?

13 THE WITNESS: My understanding is that
14 there was that determination.

15 COMMISSIONER OHIGASHI: But that's one of
16 the alternatives that you address.

17 THE WITNESS: Yes, that's correct.

18 COMMISSIONER OHIGASHI: Was that 123 units
19 laid out in the proposal, in the original proposal in
20 '95?

21 THE WITNESS: It was.

22 COMMISSIONER OHIGASHI: Was the EIS on that
23 original proposal show the original layout of 123 --

24 THE WITNESS: Excuse me, I'm sorry.

25 COMMISSIONER OHIGASHI: Can I finish the

1 question, and you can talk later?

2 My question is simple. Is that, when the
3 warehouses laid out in their proposal?

4 THE WITNESS: It's my understanding that
5 there wasn't an EIS at that time, but I have seen the
6 layout for the project at that time.

7 COMMISSIONER OHIGASHI: Was that layout for
8 the project in the Boundary Amendment proceeding?

9 THE WITNESS: That layout was presented
10 previously, I believe.

11 COMMISSIONER OHIGASHI: That's all I
12 wanted.

13 CHAIRPERSON ACZON: Vice Chair Scheuer,
14 followed by Commissioner Chang.

15 VICE CHAIR SCHEUER: I'm going to try my
16 questions about water again.

17 On page 18 of your slide show, which I
18 believe is the previous page from what's on display,
19 bottom of the page you note under Water Services,
20 adverse impacts are unlikely so long as the proposed
21 action stays within its water allocation.

22 On page 16 of the EIS, the potential impact
23 is identified of a hydrologic impact to the Iao
24 Aquifer from withdrawal of 171,000 gallons per day of
25 drinking water.

1 Later on the page, it states under the
2 paragraph boldfaced, with why mitigation measures
3 where selected, it states:

4 The issuance of water meters for the
5 project by the DWS carries the implicit approval by
6 the DWS of Pi'ilani Promenade's use of the Iao
7 Aquifer system for drinking water.

8 Is there any other evidentiary basis for
9 that statement in the EIS?

10 THE WITNESS: I'm not aware that there is.

11 VICE CHAIR SCHEUER: Are you familiar with
12 the Central Maui Service System of the Department of
13 Water Supply?

14 THE WITNESS: I am somewhat familiar with
15 it, yes.

16 VICE CHAIR SCHEUER: Are you familiar with
17 the various sources of water for that system?

18 THE WITNESS: Not all of them, but I am
19 aware of the system.

20 VICE CHAIR SCHEUER: You're aware that it
21 takes surface water from the Wailuku River, formerly
22 known as the Iao Stream, into a treatment plant?

23 THE WITNESS: I don't know the full
24 operation of the County of Maui's water system.

25 VICE CHAIR SCHEUER: You're aware that it

1 has wells within the Iao Aquifer?

2 THE WITNESS: I am aware of that, yes.

3 VICE CHAIR SCHEUER: Also wells within the
4 Waihe'e Aquifer that are connected to that system?

5 THE WITNESS: Yes.

6 VICE CHAIR SCHEUER: Is there any way, or
7 any information that determines -- is there any
8 information that determines that the water being
9 provided to this project is coming from the Iao
10 Aquifer groundwater, rather from Waihe'e or from
11 surface water?

12 THE WITNESS: I don't know if there is a
13 method to determine that.

14 VICE CHAIR SCHEUER: Is there a possible
15 way to determine what the impacts would be if you
16 don't know where the water is coming from?

17 THE WITNESS: My understanding is the
18 intent of that statement is to say that the approved
19 water meters have an allocation that's already set
20 aside, and that allocation is within the sustainable
21 yield of the aquifer. And so that by using those
22 three three-inch meters that are allocated for the
23 project site, you're not exceeding the existing set
24 aside sustainable yield for the aquifer.

25 VICE CHAIR SCHEUER: So when you talk about

1 unallocated yield in the Iao Aquifer, you're actually
2 talking about water that has not been permitted by
3 the State Water Commission, correct?

4 THE WITNESS: I believe I was talking about
5 water that the county has access to but hasn't issued
6 meters for.

7 VICE CHAIR SCHEUER: But that's not
8 actually what is stated in the EIS, correct?

9 MR. SAKUMOTO: I'm sorry to interrupt. We
10 will have our project engineer also testify shortly
11 after we're done here.

12 VICE CHAIR SCHEUER: Okay. Nothing
13 further, thank you -- actually, sorry, another.

14 As a professional planner, can you comment
15 on any general rules of practice regarding the
16 freshness or staleness of information that can be
17 used for an adequate EIS? After how much years, for
18 instance, does a TIAR become stale?

19 THE WITNESS: In general, my understanding
20 is approximately three years.

21 VICE CHAIR SCHEUER: What about an economic
22 analysis.

23 THE WITNESS: Well, I don't know the
24 specific deal of the economic analysis.

25 VICE CHAIR SCHEUER: AND you are aware that

1 the Hawai'i Supreme Court has ruled that certain
2 EIS's, the files can become stale after a certain
3 period of time?

4 THE WITNESS: I'm aware of that.

5 VICE CHAIR SCHEUER: This project is
6 proposed for build-out under an unknown number of
7 years; is that correct?

8 THE WITNESS: No.

9 VICE CHAIR SCHEUER: Phase I, immediately;
10 Phase II shortly thereafter; Phase III when market
11 allows?

12 THE WITNESS: Yeah, generally.

13 VICE CHAIR SCHEUER: Might the adequacy of
14 this document to predict impacts not be fully useful
15 if, let's say, it's 20 years from now that Phase II
16 is implemented?

17 THE WITNESS: I think something like that
18 is foreseeable.

19 VICE CHAIR SCHEUER: Thank you.

20 CHAIRPERSON ACZON: Commissioner Chang.

21 COMMISSIONER CHANG: Just a couple of
22 questions. I appreciate seeing the community
23 meetings as it appears as if you guys have had
24 several meetings to discuss this with the community.

25 The meeting that you had on November 5th,

1 2013, you said attendance of about 150 people.

2 What was presented to the community as far
3 as a plan? Were you asking them for comments on the
4 project?

5 THE WITNESS: No, at that time it was
6 basically at the initiation -- well, we weren't in
7 the Draft EIS process. We were -- we had issued the
8 EISPN, and so I think that the way the project was
9 presented was an opportunity for people to broad
10 comment, and certainly if they were providing written
11 comments, and certainly within the Draft EIS process
12 that would be received.

13 But my understanding of the intent of it
14 was to let the community know that we were preparing
15 this process. Engage with them. Provide an
16 opportunity to meet with them and discuss the project
17 with the project consultants and experts, and express
18 opinions, concerns and/or gather information on their
19 own.

20 COMMISSIONER CHANG: Do you recall what was
21 presented to the community to solicit the comments?

22 THE WITNESS: I recall that there was some
23 conceptual level diagrams that were shown.

24 COMMISSIONER CHANG: Is it similar to -- is
25 it this site plan? Or was it greater detail?

1 THE WITNESS: I can't recall specifically
2 what the diagram that was shown at that meeting.

3 COMMISSIONER CHANG: Do you think it was in
4 more detail this?

5 THE WITNESS: I don't -- I recall that
6 there were conceptual level renderings that were
7 being shown, perspective renderings, and things like
8 that. But I believe that that appeared later towards
9 the drafting -- submittal of the Draft EIS.

10 COMMISSIONER CHANG: And it was -- and it
11 was based upon this that you had asked the community
12 to provide comments on the proposed impact of the
13 project?

14 THE WITNESS: Well, that wasn't during the
15 Draft EIS comment period. It was basically
16 engagement with the community to let them know that
17 we were preparing this process and we were beginning,
18 and that we were going to be submitting the Draft
19 EIS.

20 So the Draft EIS was the commencement of
21 the comment process. And I believe that that meeting
22 was more intended to let people know what we were
23 doing, what we were preparing to do as far as
24 beginning the EIS process.

25 COMMISSIONER CHANG: Do you recall what

1 meeting did you hold to inform the public about the
2 proposed project? And what did you share with them?

3 THE WITNESS: Do you mean during draft --

4 COMMISSIONER CHANG: Right, during the
5 drafting of the -- I guess what I'm trying to get at
6 is what kind of information was provided to the
7 community for purposes of soliciting useful
8 information as you prepared your EIS?

9 THE WITNESS: Well, I would say that the
10 Draft EIS was the primary piece of information that
11 we provided to the community.

12 But we did have -- certain members of the
13 community emerged as people who were more interested
14 than the general public, and we did have a series of
15 more intimate meetings with those people.

16 But in general the main piece of
17 information that we provided to the general public
18 for solicitation of comment was the Draft EIS.

19 COMMISSIONER CHANG: When you held your
20 meetings on the cultural consultation, did you attend
21 those?

22 THE WITNESS: I didn't attend all of them.
23 I attended the 'Ahu Moku meetings on January 2017 and
24 May 2017, as well as the site visit on January 22nd,
25 2016.

1 COMMISSIONER CHANG: Do you recall whether
2 any notes were taken of those meetings and then
3 distributed to the attendees?

4 THE WITNESS: No, I don't recall that.

5 The first time we went to the 'Ahu Moku
6 meeting, it was the first time that I had been to one
7 of their meetings. And it was, I would say, somewhat
8 informal. There wasn't a presentation.

9 I just stood up and let them know where we
10 were at in the process. At that time we were
11 preparing the Supplemental CIA, and talked to
12 everybody about what we were trying to do as far as
13 get increased interviews.

14 And there was a discussion with an
15 individual who had received the invitation to be an
16 interviewee, and I encouraged him to participate, but
17 there was no meeting minutes or anything like that.

18 COMMISSIONER CHANG: I want to make sure
19 I'm asking the right person. You didn't prepare the
20 CIA or the Archaeological Inventory Survey?

21 THE WITNESS: No, I did not.

22 COMMISSIONER CHANG: The last question I
23 wanted to ask you is, for purposes of the Land Use
24 Commission, at present it is one project area, which
25 includes both the Pi'ilani Promenade as well as the

1 smaller -- is it the Honua'ula Partners? But this
2 EIS is only covering Pi'ilani Promenade?

3 THE WITNESS: That's correct. There is
4 some studies that analyzed the area as well, but my
5 understanding is that Honua'ula Partners are
6 preparing their own EIS to analyze their own impacts.
7 And there are -- it's presumed going to be the
8 analysis of cumulative impacts, just as the way we
9 did do cumulative impacts.

10 COMMISSIONER CHANG: I guess I'm just
11 wondering for procedurally for LUC, we really only
12 have one project site, and we are going to have two
13 EIS's; is that your understanding?

14 THE WITNESS: That's my understanding of
15 what is going to happen.

16 COMMISSIONER CHANG: Maybe that is more of
17 a procedural question we need to talk about later.
18 It's just not really clear for me how we have one
19 project site, LUC Boundary Amendment was based upon
20 one large project site.

21 But now we've got without a formal, I
22 guess, bifurcation, so I guess that is a question we
23 will need to ask later. That's it.

24 CHAIRPERSON ACZON: Vice Chair Wong.

25 VICE CHAIR WONG: Just a general question

1 so we don't ask the wrong question to the wrong
2 individual.

3 Can you give the list of your witnesses and
4 who's going to do what, so at least we know?

5 MR. SAKUMOTO: Thank you, Commissioner
6 Wong.

7 We will be calling Darren Unemori, who is
8 our project engineer, and he will be testifying on a
9 number of different matters, including drainage and
10 coastal flooding.

11 We will be calling Juanita Wolfgramm, who
12 is our traffic engineer. And she will be testifying
13 on traffic-related matters.

14 We will be calling Mr. Tom Holliday, who is
15 our economic feasibility and market study expert.

16 MS. CATALDO: And also Eric Fredrickson who
17 prepared the AIS.

18 VICE CHAIR WONG: Thank you.

19 COMMISSIONER CHANG: Will you be presenting
20 the author of the Cultural Impact Assessment, or will
21 Mr. Fredrickson be answering those questions?

22 MS. CATALDO: We will not be presenting a
23 separate author of the CIA. Mr. Fredrickson may
24 speak on some of the issues that may have been
25 raised, including iwi, the Drainageway A.

1 COMMISSIONER CHANG: With respect to the
2 preparation of the Cultural Impact Assessment, you
3 will not be having the author presented as a witness,
4 is that correct?

5 MS. CATALDO: That is correct,
6 Commissioner.

7 CHAIRPERSON ACZON: Commissioner Okuda.

8 COMMISSIONER OKUDA: Thank you, Mr. Chair.

9 Mr. Hart, looking at the EIS page 24,
10 paragraph C, which is headed "Alternatives
11 Considered", there is a discussion there about the no
12 action alternative, correct?

13 THE WITNESS: Yes.

14 COMMISSIONER OKUDA: Is there anywhere in
15 the Environmental Impact Statement where the benefits
16 of the "no action alternative" is discussed?

17 THE WITNESS: I think there is -- let's
18 see.

19 We did a more thorough discussion of the
20 "no action alternative", 42, 44, and 45.

21 Whether or not there is a discussion of the
22 benefit for not developing this area, I don't think
23 that there is in the context of its location within
24 the Land Use Designation of the property.

25 COMMISSIONER OKUDA: So the closest that we

1 would come to is the discussion at pages 42 through
2 45?

3 THE WITNESS: I believe, yes.

4 COMMISSIONER OKUDA: But you're saying
5 there's no specific discussion about the specific
6 benefits of the "no action alternative". Is that
7 your testimony? I don't want to put words in your
8 mouth, so you tell me.

9 THE WITNESS: I believe that's the case,
10 yes.

11 COMMISSIONER OKUDA: So there is no
12 discussion, for example, on the benefit to, for
13 example, the Downtown Kihei retail concept from the
14 "no action alternative", is that correct or not
15 correct?

16 Let the record reflect you're consulting
17 with one of your staff people, which is fine, we just
18 want to get information.

19 THE WITNESS: I apologize.

20 Yeah, that is discussed on page 44, which
21 was mentioned.

22 COMMISSIONER OKUDA: Thank you, I have no
23 further questions.

24 CHAIRPERSON ACZON: Mr. Sakumoto, are you
25 done with this witness?

1 MR. SAKUMOTO: Yes, Mr. Chair.

2 CHAIRPERSON ACZON: We're going to take a
3 five-minute break.

4 (Recess taken.)

5 CHAIRPERSON ACZON: We're back on the
6 record. Please continue.

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

8 We would like to call Darren Unemori to the
9 witness stand.

10 CHAIRPERSON ACZON: May I swear you in
11 first?

12 Do you swear that the testimony that you're
13 about to give is the truth?

14 THE WITNESS: Yes, I do.

15 CHAIRPERSON ACZON: Please state your name
16 and address for the record.

17 THE WITNESS: Darren Unemori. My work
18 address is 2145 Wells Street in Wailuku.

19 CHAIRPERSON ACZON: Please proceed.

20 DARREN UNEMORI

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

24 DIRECT EXAMINATION

25 BY MR. SAKUMOTO:

1 Q Mr. Unemori, where do you work?

2 A I work at Warren Unemori Engineering in
3 Wailuku.

4 Q What is your position with Warren Unemori
5 Engineering?

6 A I'm a senior civil engineer there. I'm
7 also corporate vice president and one of the
8 company's directors.

9 Q Do you have a college and graduate degrees
10 in civil engineering?

11 A Yes, I do. So I have a Bachelor's degree
12 and a Master of Engineering degree from the
13 University of California at Berkeley.

14 Q What about professional licenses, do you
15 hold any?

16 A Yes, I do. I'm a licensed civil engineer
17 since 1993, licensed in the State of Hawaii.

18 I'm also a licensed land surveyor, and I am
19 also a licensed or registered with the Land Court of
20 the State of Hawaii.

21 Q Does licensure as an engineer require
22 passing any additional tests, or are there any work
23 requirements related?

24 A Yes. In the State of Hawaii licensure as a
25 civil engineer requires graduation from an accredited

1 university, four years of practical work experience
2 under a civil engineer, and also passing two written
3 examinations.

4 Q Are you a member of any professional
5 engineering organizations?

6 A Yes, I am. The American Society of Civil
7 Engineers, and the National Society of Professional
8 Engineers, Hawai'i Chapter.

9 Q How many years of professional experience
10 do you have in infrastructure planning and design for
11 large scale infrastructure and land development
12 projects in Maui?

13 A This year would mark 28 years.

14 Q What are some of the land development
15 projects that you've worked on in Maui, let's just
16 say over the last five years?

17 A In the last five years, I've been involved
18 heavily in the completion of the Kahalani, Wailuku
19 Project District, which is a large Urban Project
20 District in Wailuku.

21 I'm also been heavily involved in
22 development in the Maui Lani Project District, which
23 is 1000-acre urban development in Kahului, Maui.

24 Let's see, that's been most of my last five
25 years.

1 Q Were you involved with the Maui Research &
2 Technology Park?

3 A Thank you, yes.

4 So I've -- I also assisted the Maui
5 Research & Technology Park with their rezoning
6 effort, which was successful, I think, a couple years
7 ago.

8 Q Thank you.

9 Have you ever testified before the State
10 Land Use Commission?

11 A Yes, I have, twice before.

12 Q Do you recall which docket they were?

13 A I'm reading from my CV it's --

14 CHAIRPERSON ACZON: Mr. Sakumoto, will you
15 be calling for him as an expert?

16 MR. SAKUMOTO: Yes, Mr. Chair.

17 CHAIRPERSON ACZON: We have to qualify him.

18 MR. SAKUMOTO: I will be doing that, yes.

19 Thank you.

20 A To continue, Docket A0-754 in 2005, and
21 Docket A10-77 in 2013.

22 Q At this time -- well, let me ask one more
23 question.

24 In those dockets, what were you recognized
25 as an expert in?

1 A In civil engineering.

2 MR. SAKUMOTO: Mr. Chair, at this time I
3 would like to ask that the Commission recognize Mr.
4 Unemori as expert in the field of engineering.

5 CHAIRPERSON ACZON: Any objections from the
6 parties?

7 MS. APUNA: No objection.

8 MR. HOPPER: No objection.

9 MR. PIERCE: No objection.

10 MR. TABATA: No objection.

11 CHAIRPERSON ACZON: No objections, Mr.
12 Unemori is going to be an expert witness on
13 engineering.

14 MR. SAKUMOTO: Thank you, Mr. Chair.

15 Q Mr. Unemori, did you prepare the
16 Preliminary Engineering Report attached to the Final
17 EIS as an appendix?

18 A Yes, I did.

19 Q Based on your education and experience as a
20 professional civil engineer, and your analysis of the
21 off-site and on-site runoff, what is your conclusion
22 as to the hydrologic impact on the downstream
23 properties resulting from the proposed development?

24 A Okay. So when we did the analysis, we
25 basically looked at the two flows that affect the

1 project area. The off-site flows, which represent
2 the lands up above the project which drain through
3 the project; and also the project lands themselves,
4 which would urbanize, and thereby increase the
5 runoff.

6 In the case of off-site flows, we are
7 proposing to pass those through the project, and
8 therefore, not change those project flows from
9 existing levels.

10 The post development, or after development
11 flows for on-site flows, we would construct
12 improvements for detention basins and filtration
13 systems and other things that would address the
14 impact of the off-site flows, and therefore,
15 downstream there would be no increase, and therefore
16 no impact.

17 Q Let's take each component separately.

18 Let's talk about the off-site runoff first.

19 A Okay.

20 Q Please explain to the Commission what is
21 off-site runoff and where does it flow in this
22 instance?

23 A In this specific instance, the off-site
24 flows I'm referring to are coming from the lands that
25 are above the project site, outside the project lands

1 but above the project site. It measures about
2 471 acres, pasture lands owned by Haleakala Ranch and
3 Ka'ono'ulu Ranch. These flow into, what I term in my
4 report, Drainageway A, which is a small gully that
5 bisects the project.

6 Those flow into the gully across the
7 project, and enter a pair of culverts at Pi'ilani
8 Highway. They then cross down below the highway and
9 join the larger stem of Kulanihakoi Gulch about
10 500 feet below the highway.

11 Q Is the diagram that -- it's in the slides
12 right after General Conclusions, Commissioners.

13 Does that help depict what you just
14 described?

15 CHAIRPERSON ACZON: What page is that?

16 MR. SAKUMOTO: I believe that's 20.

17 CHAIRPERSON ACZON: Is that the slide that
18 you've got up on the screen there that you're
19 referring to?

20 MR. SAKUMOTO: Yes.

21 A Yes, it does. It depicts the larger
22 watershed, actually, in which the Promenade project
23 resides.

24 Down at the bottom there, that little
25 yellow dot is the Promenade area, project area to

1 scale within that watershed. And if you notice on
2 the left-hand side of that watershed there's a
3 marked-out area.

4 Q Mr. Unemori, why don't we hand you a laser
5 pointer so that we can all see what it is you're
6 referring to. This is a big picture.

7 Maybe you can start off again by explaining
8 what is this large pink area, and then get to what I
9 think you were talking about before, the 471 acres.

10 A My laser pointer seems to be out of range
11 here.

12 (Discussion off record.)

13 So if you'd point to the large pink area
14 generally -- sorry about that.

15 The large pink area where the red dot is
16 circling, represents a 15 square mile area, the
17 watershed for Kulanihakoi Gulch, that drains to the
18 ocean. It starts at a ridge behind Haleakala Crater
19 and comes 15 miles down to the ocean. Again,
20 15 square miles.

21 Near the very bottom of that pink area,
22 there is a little yellow area, that is the Pi'ilani
23 Promenade project site examined in the FEIS to scale
24 within that watershed, the little yellow dot.

25 I guess slightly to the left and above it

1 there is a hatched, crosshatched area within the pink
2 that is part of the larger pink area. That
3 represents the 471 acres that I'm referring to as
4 off-site -- as the origin of the off-site flows I was
5 referring to that essentially flow into Drainageway A
6 and pass through the project site in that small
7 gully.

8 Q So just to restate. The storm runoff from
9 approximately 471 acres of undeveloped land mauka of
10 the project area is then conveyed to the project
11 property through what is labeled Drainageway A, and
12 then to the eastern boundary of the project area; is
13 that correct?

14 A That's correct.

15 COMMISSIONER CABRAL: Excuse me. I have a
16 question, but it will help me since I'm into maps.

17 On this, (indicating) which is impossible
18 to see there (indicating), the pink/red comes down,
19 your 471 acres. And then there is a section that's
20 yellow with little bit of green in it. That is the
21 subject property; is that correct?

22 THE WITNESS: Yes. So the yellow area
23 that's at the very base of that pink area, that's
24 Pi'ilani Promenade.

25 COMMISSIONER CABRAL: So it's not that --

1 it's not that that is not part of this largest
2 floodway or waterway of concern, the yellow does not
3 mean there's no water there, it's a mountain or
4 something, it means it's the property?

5 THE WITNESS: Oh, definitely. The pink
6 area generally shows you the broad outline of the
7 area which drains into Kulanihakoi, of which Pi'ilani
8 Promenade is also a part of it.

9 COMMISSIONER CABRAL: Thank you.

10 Q (By Mr. Sakumoto): Just to complete the
11 path of the water.

12 Once the runoff crosses the eastern
13 boundary Drainageway A, continues across the project
14 area in and east/west direction; is that correct?

15 A Yes, so it crosses the project in an
16 east/west direction, yes.

17 Q And it goes to a -- did you say a culvert?

18 A Yes. There's a culvert at Pi'ilani Highway
19 which crosses the highway, passes the water under the
20 highway.

21 Q And once it passes under Pi'ilani Highway,
22 what happens thereafter?

23 A It continues downhill, and about 500 feet
24 below the Kulanihakoi Bridge, about 500 feet below
25 the highway, that portion of Drainageway A connects

1 to the main Kulanihakoi Channel down below the
2 highway.

3 Q In terms of off-site runoff, could you
4 please explain -- I'm sorry, we just did that.

5 Let's talk about on-site runoff.

6 Could you summarize your findings on
7 on-site runoff once the project is developed?

8 A Okay. So in urbanizing the project, paving
9 it, creating roof tops, that sort of thing, there's
10 usually a spike in the flow of rate of runoff,
11 because of the all the impervious surfaces you
12 create. That's the primary impact of development as
13 far as hydrology and drainage.

14 So to deal with that, we recommend a series
15 of improvements, in this case detention basins,
16 drainage basins aboveground and underground,
17 principally, as well as an urban-type storm drain
18 system with inlets and pipes underground, which
19 together function to reduce the flow rate back to
20 what it originally was.

21 In other words, if the project wasn't
22 there, we match that flow rate. So thereby, the
23 on-site post-development site is basically no worse
24 hydrologically, as far as sending water downstream,
25 than the original undeveloped site.

1 Q Is this, basically what you just described,
2 a county standard or county requirement when it comes
3 to developing property in Maui?

4 A Well, the county requirement is really a
5 performance requirement. And basically it's don't
6 make the drainage conditions worse. So in other
7 words, don't release more after development than
8 exists before development.

9 So that's the performance standard. What I
10 described was the way arrived at the performance
11 standard, the way we meet performance standard.

12 Q Let's talk about coastal flooding for a
13 minute.

14 Figure 2-2 in your report indicates that
15 while the project is itself not in a flood zone, it
16 is located upstream of a coastal area which is prone
17 to flooding.

18 Can you explain, using this map,
19 Kulanihakoi Gulch Watershed, where the runoff, which
20 causes this coastal flooding, comes from?

21 A So as I was explaining earlier, the
22 Pi'ilani Promenade project, that 79 acres, sits
23 within a much, much larger watershed that fills
24 Kulanihakoi Gulch every time it rains.

25 So that 15-square mile area, 9,600 acres,

1 if you are looking at it in acres, is where the water
2 comes from that floods the Kihei Coast, that low
3 lying flat coastal area that's near Maui Lu and those
4 adjoining areas, that the testifiers yesterday were
5 complaining about.

6 And that's a recognized problem. And
7 that's what -- that large watershed is where the
8 water is coming from. So it's not just the little
9 yellow dot, it's the entire big red area.

10 Q What does the -- relative to that big red
11 area, what does Pi'ilani Promenade project site
12 represent percentage-wise?

13 A It's less than one percent. I think on the
14 exhibit there I calculated a .8 of a percent, 8/10th
15 of a percent of the total area that drains to the
16 coast.

17 Q Is it your opinion that Pi'ilani Promenade
18 project site either now or post-development, would
19 contribute significantly to flooding?

20 A Although it is a contributor, because it
21 lies within the watershed, it is by no means the
22 controlling factor in the flooding.

23 Q Can anything be done about the flooding, in
24 your opinion?

25 A Well, so very recently, I think last month,

1 the Department of Public Works, Maui County
2 Department of Public Works released their Pre-Final
3 Drainage Master Plan for actually Kihei. And within
4 that document is a plan to basically deal with the
5 flooding situation that the Kihei residents have been
6 complaining about and has long been known.

7 They describe in there, I believe it's four
8 phases of improvement done over 20 years, costing
9 about \$57 million. That would, if implemented,
10 eliminate the flooding problem that everybody is
11 worried about.

12 It's a regional issue, and that is the
13 regional solution to deal with it. That's what can
14 be done.

15 Q Thank you.

16 There was testimony earlier about the fact
17 that this project has water meters.

18 Do you know how many water meters the
19 project has?

20 A Yes. The project was issued three 3-inch
21 diameter water meters by Maui County Department of
22 Water Supply.

23 Q And I don't want to steal your question,
24 but I want to be sure that this information is
25 provided.

1 There was a question about the impacts of
2 this project on the Iao Aquifer. Do we know anything
3 about that? Is it within our ability to know
4 something about that, given that we have these county
5 issued water meters?

6 A Could you clarify the question? When you
7 say "we", you mean Pi'ilani Promenade?

8 Q Does Pi'ilani Promenade -- is Pi'ilani
9 Promenade in a position to know the impact on the Iao
10 Aquifer based on the fact that the county has given,
11 or has issued three water meters?

12 A No. It would be very difficult for
13 Promenade to determine the impact of a system that is
14 managed by Maui County Department of Water Supply,
15 basically a separate entity which it does not
16 control. I think that answers your question.

17 Q Last question.

18 There were several people who testified
19 earlier about a 50-year storm standard.

20 A Yes.

21 Q And I assume there is 100-year storm
22 standard. Have these standards been applied in your
23 report to either on-site or off-sites to the project?

24 A Yes. Yes, they have been.

25 The standards themselves originate with

1 Maui County Department of Public Works, who has
2 regulatory jurisdiction for developments in the Maui
3 County, and in this area in particular.

4 Their drainage standards specify for
5 areas -- where you're analyzing areas that are larger
6 than 100 acres, you use basically a 100-year storm
7 for analysis.

8 For areas that are smaller, you use a
9 50-year storm for analysis.

10 So it's basically a prescribed analysis,
11 and if there's -- that's the origin of the 50-year
12 number.

13 Q What about the 100-year standard, when is
14 that utilized?

15 A Again, the 100-year standard is applied in
16 situations where you're dealing with a hydrologic
17 analysis of an area larger than 100 acres, in this
18 case it's applied to the off-site areas.

19 Q I'm sorry, I missed that the first time.
20 I have no further questions.

21 CHAIRPERSON ACZON: Any questions?

22 MS. APUNA: No questions.

23 CHAIRPERSON ACZON: Any questions for the
24 witness?

25 MR. HOPPER: No, Mr. Chair.

1 CHAIRPERSON ACZON: Mr. Pierce?

2 MR. PIERCE: One moment.

3 CHAIRPERSON ACZON: Mr. Tabata?

4 MR. TABATA: No questions.

5 CHAIRPERSON ACZON: Commissioners? Vice
6 Chair Scheuer.

7 VICE CHAIR SCHEUER: Aloha. I have a
8 series of questions. That'll give Mr. Pierce some
9 time.

10 And I'm a little confused now by the
11 questions from counsel about could you make an
12 assessment of the impact on the Iao Aquifer from this
13 project.

14 We qualified you as a witness in civil
15 engineering, or in engineering in general, but not on
16 impact analysis; correct?

17 THE WITNESS: Yes.

18 VICE CHAIR SCHEUER: So it's a bit outside
19 your expertise anyway, the impact of water
20 withdrawals on ecosystems or --

21 THE WITNESS: Definitely that kind of
22 thing, yes.

23 VICE CHAIR SCHEUER: Okay. That said, the
24 EIS actually does identify the withdrawal of water as
25 a potential impact. Isn't that correct? On page 16.

1 THE WITNESS: I'm sorry, I'm very familiar
2 with the engineering report, I'm not so familiar with
3 the earlier statements in the --

4 VICE CHAIR SCHEUER: I tried to ask
5 questions earlier about water on the main EIS, then I
6 was asked to wait for you to come as the witness.

7 So when do I get to ask these questions?

8 MR. SAKUMOTO: I don't know that we have a
9 witness that will be able to answer that specific
10 question.

11 Like I mentioned, we have Mr. Unemori, our
12 engineer. We had the EIS preparer, Mr. Hart. We
13 don't have any other experts left today that we could
14 probably call, other than the ones I just mentioned.

15 VICE CHAIR SCHEUER: Okay. Let me move off
16 of the water well issue then for a second.

17 When you testified about the diagram that
18 is still up behind us -- what page number is it?

19 Page 20 of the PowerPoint, you include a
20 calculation that says this is .8 percent of the
21 watershed.

22 THE WITNESS: The area represented by
23 Pi'ilani Promenade, yes.

24 VICE CHAIR SCHEUER: But area is only one
25 component of what its contribution would be to

1 drainage to the coast, correct?

2 THE WITNESS: Certainly, yes.

3 VICE CHAIR SCHEUER: What are some of the
4 other impacts or factors that impact drainage?

5 THE WITNESS: In the case of -- in the
6 context of flood control and drainage for this
7 particular watershed, really the land use in the form
8 of how much hard impermeable surface is present,
9 underlying soils, I guess.

10 VICE CHAIR SCHEUER: How much precipitation
11 the area typically gets. Distance from the coast.
12 If a drop of rain that's falling at the top of the
13 watershed has a greater chance of infiltrating, than
14 a drop of rain right next to the coast.

15 THE WITNESS: Actually, the location of
16 that drop of water doesn't matter as much as where in
17 the watershed you're measuring flow.

18 VICE CHAIR SCHEUER: But if we're measuring
19 flow at the coast, closer to the coast, precipitation
20 that falls closer to the coast does have a greater
21 impact?

22 THE WITNESS: I guess if I could clarify
23 the situation there.

24 If I were to measure the runoff coming off
25 of Pi'ilani Promenade at the coast, and I measure it

1 at the highway, it would still be the same number.

2 But if I look at the watershed, as I go up
3 the hill, the watershed gets smaller, the area that's
4 contributing, so then the flow would increase until
5 it reached the maximum at the coastline.

6 VICE CHAIR SCHEUER: I'm just trying to get
7 to the point of .8 percent is a measurement of area,
8 not a measurement of the impact of this area on the
9 coast?

10 THE WITNESS: Yes. So it's the amount of
11 runoff generated would not be directly proportional
12 to just this area. You would have to consider other
13 factors in there.

14 VICE CHAIR SCHEUER: Thank you. I'll take
15 a break.

16 CHAIRPERSON ACZON: Vice Chair Wong.

17 VICE CHAIR WONG: Looking on page 21,
18 that's the next slide for everybody. That's your
19 drainage issue, right? I mean where the water is
20 going to flow and all that; is that correct?

21 THE WITNESS: I think it's the diagram of
22 predevelopment flows, if I'm not mistaken.

23 VICE CHAIR WONG: So there is that box or
24 rectangular side up on the top right, that's not part
25 of your study?

1 THE WITNESS: So, yeah, on your screen I
2 think there's a yellowed in area. So that yellowed
3 in area is the area which the study considered.

4 The little white notch there is actually
5 the 13-acre Honua'ula parcel that's not included in
6 this engineering report.

7 VICE CHAIR WONG: This is a layman's
8 question.

9 How could you not take that portion that
10 the water look like it's going through, as part of
11 the study?

12 THE WITNESS: I guess what -- I do consider
13 that area, but I don't consider it developed. So
14 imagine if I'm going to do an impact analysis of the
15 site, I base the analysis on what changes. So the
16 yellow area is what changes. The white area doesn't
17 change.

18 So the impact I'm looking at, the
19 difference between before and after, is really
20 looking only at what changes after I urbanize the
21 yellow area. So I can kind of selectively control
22 which areas I view as being urbanized and which are
23 not.

24 VICE CHAIR WONG: So that white area would
25 still be grass and dirt and all that, while the

1 yellow would be all cement -- not all, but something
2 like that?

3 THE WITNESS: Yeah. So I only look at the
4 change occurring within the yellow area.

5 VICE CHAIR WONG: So the impacts are just
6 for this project?

7 THE WITNESS: For the Pi'ilani project,
8 yes, that's correct.

9 VICE CHAIR WONG: Thank you.

10 CHAIRPERSON ACZON: Commissioner Ohigashi.

11 COMMISSIONER OHIGASHI: Have you been
12 retained to do the drainage report for Honua'ula?

13 THE WITNESS: Yes.

14 COMMISSIONER OHIGASHI: So you know what
15 they're planning on the Honua'ula property, right?

16 THE WITNESS: Yes.

17 COMMISSIONER OHIGASHI: With that
18 knowledge, you didn't include that as part of your
19 drainage report in this project?

20 THE WITNESS: Oh, so the reason that --

21 COMMISSIONER OHIGASHI: I'm just asking, is
22 that true?

23 THE WITNESS: No, that's not the reason.

24 COMMISSIONER OHIGASHI: I'm just asking if
25 it's true you didn't include that.

1 THE WITNESS: Yes, that it is not included,
2 yes.

3 COMMISSIONER OHIGASHI: Now, you can tell
4 me. I just want to do lawyer.

5 THE WITNESS: I understand.

6 So the Engineering Report for Pi'ilani
7 Promenade specifically looked only at Pi'ilani
8 Promenade, it didn't look at Honua'ula. That was
9 looked at as separate analysis. So it was not
10 included in the Engineering Report for Pi'ilani
11 Promenade.

12 COMMISSIONER OHIGASHI: But it is mauka?

13 THE WITNESS: So it's on the mauka north
14 corner, yes.

15 COMMISSIONER OHIGASHI: Of the first phase?

16 THE WITNESS: It's its own project, but
17 it's mauka of the first phase of the Promenade,
18 that's correct.

19 CHAIRPERSON ACZON: Commissioner Chang.

20 COMMISSIONER CHANG: We're going to go
21 down -- I'm going to continue on. We are all adding
22 onto this discussion.

23 For purposes of our review of the adequacy
24 of the EIS, we need to look at, or we are expecting
25 the Petitioner to look at cumulative secondary

1 impacts.

2 So is your conclusion that the drainage
3 plan will result in downstream stormwater discharges
4 at rates that do not exceed current levels and comply
5 with the Maui County Drainage Rules.

6 Is that only based upon the Pi'ilani
7 Promenade project?

8 THE WITNESS: Yes. So the conclusion of
9 the preliminary Engineering Report, which only
10 focused on the Pi'ilani Promenade project, comes to
11 that conclusion specifically for the Pi'ilani
12 Promenade project.

13 COMMISSIONER CHANG: Were you asked to look
14 at other projects to determine cumulative and
15 secondary impacts?

16 THE WITNESS: Not in any specific way.

17 COMMISSIONER CHANG: If you were, are you
18 aware of other projects in this area?

19 THE WITNESS: I am aware of one other
20 project that affects this watershed. And that
21 particular project is mitigating itself, just like
22 Pi'ilani Promenade is.

23 So it has no cumulative impact on Pi'ilani
24 Promenade. And the project I'm talking about is the
25 Maui Lu development down on the coast.

1 COMMISSIONER CHANG: Would your conclusion
2 change if there are other projects reasonably
3 foreseeable around this area within this Kulanihakoi
4 Gulch Watershed? If there are other projects within
5 the near vicinity, would your conclusion change if
6 you were asked to do an assessment of the cumulative
7 impacts of all of these projects?

8 THE WITNESS: So if I were asked to do a
9 cumulative assessment of all these projects, and
10 these projects are all held to essentially the same
11 standards as Pi'ilani Promenade, in other words,
12 don't make the situation worse, don't release
13 anything more than you currently release, there
14 actually would be no cumulative impact, because all
15 these developments would mitigate their own impact
16 on-site, just like Pi'ilani Promenade.

17 So downstream at the mouth of the river,
18 you don't see the affects of development, because
19 they are taken care of before it crosses the makai
20 border boundary of the project.

21 COMMISSIONER CHANG: What kind of
22 mitigation measures are they taking to contain the
23 drainage within their respective properties?

24 THE WITNESS: Let me give you Pi'ilani
25 Promenade as an example.

1 So when we deal with the development of a
2 site, what we're really do is we're improving the
3 ability of water to flow off it. We pave the parking
4 lots, we roof the buildings, very hard impermeable
5 surfaces that move water very quickly.

6 As a result, what happens after you develop
7 a site like that, is the water speeds up. It gets
8 off the site very fast. So what you see is an
9 increase in the flow rate. And what we do to counter
10 that, is we come up with ways to slow it down again.

11 So a good analogy would be this. If you
12 took a five-gallon bucket of water and poured it into
13 your bathroom sink, small sink. And you take that
14 five-gallon bucket, you fill it up to the top, and
15 you dump it on your sink, it would overflow your
16 sink.

17 If you took that same five-gallon bucket
18 and poured it slowly into the sink so it doesn't
19 overflow, you're getting rid of the same amount of
20 water, but you're doing it over a longer period of
21 time.

22 And that's effectively what a detention
23 basin does. So that's the way we mitigate the flow
24 coming off-site. It's a way of time shifting the
25 water so that it doesn't move fast, we slow it down.

1 COMMISSIONER CHANG: I am a layman. I'm
2 going to do what Commissioner Wong does often, in
3 layman's terms, I can see that if all the projects
4 are proceeding at different times.

5 If you have multiple projects constructed
6 at the same time, and you have a large flooding
7 coming down, wouldn't that potentially have a greater
8 impact than all of these different projects
9 cumulatively have a greater impact because they're
10 all constructing within a close time period and
11 everybody is throwing water on the sink at the same
12 time?

13 THE WITNESS: If you're talking about just
14 that limited temporary construction period, that's
15 probably the most vulnerable point, because there you
16 don't have your permanent drainage improvements in
17 place yet. You're still building the basins and
18 pipes and other things that are going to slow down
19 the water. And you've taken off the ground cover
20 because you're grading and all that.

21 So during that temporary period of time,
22 that three months, four months, six months, that is a
23 very vulnerable time. So we would normally put in
24 site management practices, things like silt fences,
25 shape the ground so that the water runs into smaller

1 basins, temporary basins. They're smaller temporary
2 features that are very vulnerable to very, very large
3 storms, like a 50-year storm.

4 So we do have to take that chance during
5 the construction period, because it does take time to
6 build some of these facilities.

7 In the construction phase, you're correct,
8 if you had a whole bunch of projects that are
9 constructing at the same time and a big storm came
10 along, it would create something of a vulnerability.

11 Once those sites are all completed, and
12 they all have their own required mitigation, like
13 County of Maui requires where you have to drain the
14 bucket slowly into the sink, then downstream you
15 don't actually notice any difference, because
16 everybody has taken care of their -- you know it
17 speeds up, but it slows down before it leaves the
18 site.

19 Overall, in theory, it should, as long as
20 there is no nothing going on, it should -- everyone
21 should mitigate their own flow to preexisting levels.

22 Now, that doesn't mean the flooding problem
23 goes away, because we have still got all that land
24 sending all that water down there. So it's possible
25 to create no impact from your project, but you still

1 have this preexisting flooding problems.

2 So until you deal with it on a regional
3 level, like Department of Public Works is trying to
4 do, you don't solve the problems for the guys down at
5 the bottom.

6 COMMISSIONER CHANG: You were talking about
7 the \$56 million, that would be the regional
8 improvements, but you were not asked to do a
9 cumulative analysis, only to look at the impact of
10 the Pi'ilani Promenade with respect to drainage?

11 THE WITNESS: Yes, for the specific
12 Preliminary Engineering Report. We did not
13 deliberately look at cumulative analysis, but in
14 answer to your question of what a cumulative analysis
15 would show as far as hydrology and drainage, if those
16 county requirements were met, that's effectively what
17 I would see.

18 Correctly applied, I should see no
19 difference with that watershed more developed, than
20 less developed because all of those projects would
21 have had to mitigate themselves, just like Pi'ilani
22 Promenade is required to do.

23 COMMISSIONER CHANG: And assuming that
24 they're not all constructing at the same time, during
25 that vulnerable period?

1 THE WITNESS: Again, the vulnerable period
2 would probably be the one instance that if you were
3 to get hit by hurricane or something, you probably
4 would see a larger release, because, again, we're
5 kind of on our way to getting everything in place
6 that needs to be in place, but we're not quite there
7 yet. So it would be an unfortunate at situation.

8 But you're correct, that would be the one
9 vulnerable period in a development.

10 COMMISSIONER CHANG: Thank you very much.

11 MR. SAKUMOTO: Commissioner Chang, if I
12 could just direct you to page 320 of FEIS, there is
13 in Table 16a an analysis of other nearby
14 developments, and the runoff from those projects.

15 So you're asking about other projects in
16 the area. This table accounts for Kaiwahine Village,
17 Maui Lu Resorts, Kihei High School, Kenolio
18 Apartments, et cetera.

19 COMMISSIONER CHANG: Did Mr. Unemori, who
20 is your expert, did he provide a separate cumulative
21 analysis given all those other projects?

22 MR. SAKUMOTO: I'm not aware that this came
23 from Mr. Unemori. I'm just saying the cumulative
24 analysis is in the FEIS.

25 COMMISSIONER CHANG: Thank you very much.

1 CHAIRPERSON ACZON: Commissioner Okuda.

2 COMMISSIONER OKUDA: Just a couple short
3 questions dealing with information being provided for
4 us to consider in the Environmental Impact Statement.

5 Calling your attention to Slide 21 of the
6 PowerPoint slide, there's a map, and you testified
7 that the yellow portion is the portion that is
8 covered by your report, correct?

9 THE WITNESS: Yes, that is the focus of the
10 study area considered by the analysis.

11 COMMISSIONER OKUDA: And then there's a
12 little notched piece in white, you've also been
13 retained to prepare a similar analysis for that
14 portion, correct?

15 THE WITNESS: Yes, I have.

16 COMMISSIONER OKUDA: Was there any reason
17 -- let me back up.

18 Are you going to use, or are you planning
19 to use the same methodology and expertise that you
20 used in preparing the report for the yellow portion,
21 as to the little white portion of the other owner?

22 THE WITNESS: Yeah. The method for
23 analysis is pretty much proscribed, so it would be
24 the same type of analysis.

25 COMMISSIONER OKUDA: Was there anything

1 that prevented you from providing us or providing a
2 report or appendix to the Environmental Impact
3 Statement which would have provided an analysis, a
4 drainage analysis for the entire parcel, so that we
5 can have perhaps a more full and complete
6 understanding of the options and the risk, benefits
7 and relevant facts, because we don't have a
8 bifurcation so far on the record, and we're dealing
9 with an order that covers an entire parcel.

10 I'm just trying to find out if there is
11 something practical or legal that's preventing you
12 from doing so, or it just turned out this way?

13 THE WITNESS: Exactly because of the way
14 the process, it just turned out that this Promenade
15 analysis was separate. But there is no technical
16 reason why such an analysis cannot be done as you
17 described.

18 COMMISSIONER OKUDA: You do agree that if
19 we are looking at a decision which may affect an
20 order which covers, not only the yellow portion, but
21 affects an order which originally covered this entire
22 portion, indicating a boundary line on slide page 21,
23 you could understand why, at least a few of us, might
24 have a concern that we might not have enough
25 information to have a legally sustainable

1 Environmental Impact Statement?

2 THE WITNESS: I understand the concern.

3 I can also tell you, although I don't have
4 it written in this report, I can tell you the answer
5 that I would find, or you would see in the analysis.

6 COMMISSIONER OKUDA: I think I probably
7 could anticipate what that answer is, but the problem
8 is we're dealing with a semi-judicial record here,
9 and it's what's in the record that controls us, even
10 though there might be other things. But thank you
11 very much for your testimony, appreciate it.

12 CHAIRPERSON ACZON: Anybody else?

13 Mr. Pierce, are you ready for your
14 questions?

15 CROSS-EXAMINATION

16 BY MR. PIERCE:

17 Q My first question is, and tell you I'm
18 looking at the Preliminary Engineering Report, that's
19 what I'll be referring to. I just have those page
20 numbers in front of me.

21 One of things I see is a table, and one of
22 the questions I have is page 796, which refers to
23 on-site storm flows. But there is a table. And I
24 think that's -- there may actually be a picture
25 that's similar to that in these, I'm not sure, but it

1 a shows Drainageway A and a Drainageway B, which
2 appear to be natural drainageways currently.

3 Then there's Kulanihakoi Gulch as well.

4 A Yes.

5 Q So the way I understand it is that the
6 intention is, as part of the improvements to the
7 property, is to move Drainageway A and B; is that
8 right, or change the path?

9 A Realign it, yes. That's correct.

10 Q And then I understand it's going to be
11 going more along, I guess, the south side of the new
12 road?

13 A Yes, it will follow East Ka'ono'ulu Street.

14 Q Are you planning on retaining any of that
15 water, or just passing it through your property
16 before it goes to the 102-inch highway culvert that's
17 shown on your map?

18 A The water that you're seeing coming out of
19 Drainageway A and B are effectively the opposite
20 flows that I referred to earlier, and those would be
21 strictly a pass through affair.

22 The only detention that occurs is for the
23 on-site water.

24 Q And with Drainageway B flows into
25 Drainageway A before it goes across the Honua'ula

1 parcel and Pi'ilani parcel; is that right?

2 A In the post development?

3 Q No, predevelopment. I'm looking at Figure
4 2-3.

5 A It converges with Drainageway A, and flows
6 across the Honua'ula parcel.

7 Q Drainageway A -- is that one of the things
8 with the testimony was related to the cultural
9 resources there, and that it is a cultural resource
10 itself.

11 Was there any attempt to seek to leave
12 Drainageway A in its current location?

13 A Let's see. Not while I was familiar
14 with -- not while I was working on this project.
15 There may have been other considerations prior to
16 2010 before I picked up the current version of this
17 project.

18 Q And there is no analysis in your PER where
19 it would be permitted to stay in its current
20 location?

21 A Definitely not in the PER, no.

22 Q The area where Drainageway A goes currently
23 would ultimately be paved over where there would be
24 buildings there, some kind of hardened surface area?

25 A Yes, that's the assumption of the report.

1 Q And then Drainageway A, is it safe to say
2 that it's not a tight stream, but it's actually more
3 a broader sheet flow aspect going across the
4 property?

5 A Drainageway A changes in size, depending on
6 where you are along it. In some cases the
7 drainageway is very shallow and flat. In other areas
8 it's a little more well-defined.

9 On the Honua'ula parcel, it's more -- the
10 upper portion of it is shallow and flat. So it does
11 resemble sheet flow, but there is a definite flow
12 line for that drainageway.

13 Q And currently in predevelopment conditions,
14 it is being captured by an existing 102-inch culvert?

15 A Yes. It enters that culvert at the
16 highway.

17 Q And the post-development, after it's
18 rerouted and goes further south and down the road, it
19 will also go through the 1002-inch culvert?

20 A Essentially ends up at same highway
21 culvert.

22 Q The water that's coming off of the road
23 that is being planned, the one that's actually going
24 to become, I guess, be conveyed to the county and
25 state, and become a public road.

1 Is that -- are you including in your
2 analysis, capturing the water from that and dealing
3 with that water?

4 A The water that comes directly over the East
5 Ka'ono'ulu Street is captured and held in the
6 detention basins.

7 Q It is not held in the detention basins?

8 A It is not.

9 So it will go into the state highway -- the
10 highway culverts.

11 Q And that's that 102-inch culvert you're
12 referring to?

13 A Ultimately, yes.

14 Q So that road will be built with no analysis
15 of the water impacts?

16 A No. Actually, if you are talking impact,
17 the water that is shed by the road, the water that is
18 shed by the on-site developments, basically are all
19 considered in the analysis.

20 And what is essentially done, is because of
21 the ability to capture water on that road is much
22 more limited, what we have done is we basically
23 increased the capture on the two adjoining developing
24 lots to basically offset the road.

25 So we end up zeroing everything out at the

1 makai boundary.

2 Q So you're taking more than you would have
3 before in order to make up for the road?

4 A Yes. So the private developments take up
5 more than the public roads.

6 Q So in other words, you're saying that the
7 amount of water flow from the 102-inch culvert is not
8 going to change, even though it now has Drainageway A
9 and B redirected, and even though you're going to
10 have a paved road, fairly large paved road going
11 towards the culvert?

12 A That's correct.

13 Q And so the detention basins, there is three
14 detention basins identified on your Figure 2-4, and
15 one detention pond. Those are designed for a 50-year
16 flood?

17 A The report analyzes them with a 50-year
18 storm, yes.

19 Q Do they have the capacity to handle a
20 100-year flood?

21 A The 100-year flood would be in excess of
22 what the County of Maui requires, but there is no
23 technical reason why they could not.

24 Q But have you done the calculations to know
25 that it actually can handle a 100-year flood?

1 A Well, the size of the facility that we
2 provide is based on the requirement, the performance
3 requirement that we have to meet. So if the
4 performance requirement is raised to 100-year storm,
5 then we would provide a larger facility.

6 Q You would have to provide at that time?

7 A Yeah, so we're not fixed to the 50-year
8 storm.

9 Q But your analysis is based upon what the
10 county is requiring, which is a 50-year flood and for
11 one hour; is that right?

12 A Yes, so the analysis contained in the
13 Engineering Report looks at that 50-year situation.

14 Q So right now the detention system that you
15 have is not designed to handle greater than a 50-year
16 one-hour event?

17 A The analysis presumes a 50-year storm. The
18 factual facility hasn't really been designed yet.
19 It's really just a -- initial sizing was come up to
20 exemplify what size storage capacity we need to
21 capture the 50-year storm.

22 Q That's all the developer is promised is to
23 build for 50-year one-hour storm event at this time?

24 A I don't believe that's a promise. I think
25 the developer will build the facilities that he's

1 required to build.

2 Q But at this time you're not anticipating
3 that the county is requiring a 100-year flood event,
4 right? Because you didn't include it in here, right?

5 A So up to this point, the greatest
6 requirement that has been asked of the developer is
7 to meet the county drainage standard, which criteria
8 for this particular size site is the 50-year one-hour
9 storm.

10 Q Then did you evaluate in your PER what the
11 current capacity, based upon existing developments,
12 and the ones that you know about in the area that
13 would be affected, did you evaluate what is the
14 current capacity of the 102-inch highway culvert, the
15 one that's going to be taking drainageway A and B?

16 A Yes, we did.

17 Q What was your understanding of its capacity
18 to handle the current, plus the cumulative affects
19 that are known to be happening there in the
20 foreseeable future?

21 A We found, in looking at highway culvert and
22 the post-development situation, that the existing
23 culverts are actually a little bit bigger than they
24 need to be.

25 So there is no problem using the existing

1 culverts as a conduit to pass the 100-year flow under
2 the highway.

3 Q So we were hearing testimony yesterday that
4 folks were saying that the -- well, I guess the next
5 question would be is, if you evaluated the culvert,
6 did you evaluate the drainageways themselves and
7 their capacity to handle the water drainageways makai
8 of the culvert?

9 A The drainageways, if you're referring to
10 Kulanihakoi --

11 Q Correct.

12 A -- it is -- we did not analyze it, because
13 it's not specifically on the project. But FEMA has,
14 Federal Emergency Management Agency has analyzed that
15 channel as part of its Flood Insurance Rate Program,
16 and they have found that channel too small for the
17 flow that it would carry in a 100-year storm.

18 Q Is the developer proposing to be a
19 contributor to dealing with that issue under your PER
20 analysis?

21 A No, under the PER analysis there is no --
22 there are no improvements proposed on Kulanihakoi
23 Gulch.

24 Q And then I see the drainageway, the
25 diverted Drainageway A and B, plus the water that

1 will be coming from the new road, the East Ka'ono'ulu
2 Road, that is going to be going through the culvert,
3 and then across an undeveloped property that I
4 believe is owned by the Betsill Brothers, are you
5 familiar with that, the one that's just makai of the
6 highway?

7 A You're describing the correct route, I'm
8 not certain of the current ownership that you
9 mentioned.

10 Q Did you include or evaluate what happens to
11 that water after it passes through?

12 Now, I'm not focused on Kulanihakoi. I'm
13 focused on that portion of the drainageway before it
14 gets to Kulanihakoi. I see it's mauka of a developed
15 area, but it's going across undeveloped land.

16 A No, we did not do an analysis below the
17 highway culverts.

18 CHAIRPERSON ACZON: How many more questions
19 have you got?

20 MR. PIERCE: I'll make it quick.

21 Q Mr. Jordan Hart was talking before about
22 the phases of the development. Will all the
23 detention basins be put in during the first phase?

24 A I believe the detention basins would
25 normally go in with the improvements associated with

1 each phase, so probably first set of basins
2 associated with Phase I would go in with Phase I,
3 Phase II, et cetera.

4 Q Do you have any idea how many 50-year flood
5 events that we've had in the last five years in South
6 Kihei?

7 A Not specific -- not that specifically. In
8 other words, I don't know of the storm events we've
9 had, which would equate to the 50-year storm
10 analysis.

11 Q Were you aware that the prior project, the
12 light industrial park project actually was designed
13 in a more park-like setting to keep more water
14 on-site?

15 A Do I know if that was the case?

16 Q Yes.

17 A I do not know.

18 CHAIRPERSON ACZON: Do you have any more
19 questions?

20 Mr. Pierce, do you have any more followup?

21 MR. PIERCE: No, Mr. Chair.

22 CHAIRPERSON ACZON: Mr. Sakumoto, do you
23 have any more for the witness?

24 MR. SAKUMOTO: No further questions for
25 this witness.

1 CHAIRPERSON ACZON: Thank you, Mr. Unemori.
2 Vice Chair Wong.

3 VICE CHAIR WONG: Mr. Chair, I want to move
4 to go into executive session to consult with the
5 Board's attorney on questions and issues pertaining
6 to the Board's powers, duties, privileges and
7 liabilities regarding this issue.

8 CHAIRPERSON ACZON: Any second?

9 COMMISSIONER OKUDA: Second.

10 CHAIRPERSON ACZON: Moved and seconded to
11 go into executive session. Those in favor say
12 "aye", opposed? Motion carries.

13 (Executive session.)

14 CHAIRPERSON ACZON: We're back on record.
15 Mr. Sakamoto, please continue.

16 MR. SAKUMOTO: Thank you, Mr. Chair. We
17 would like to call Juanita Wolfgramm to the stand.

18 CHAIRPERSON ACZON: Do you swear that the
19 testimony that you're about to give is the truth?

20 THE WITNESS: Yes.

21 CHAIRPERSON ACZON: Please state your name
22 and address for the record.

23 THE WITNESS: Juanita Kanehailua,
24 K-a-n-e-h-a-i-l-u-a, Wolfgramm, W-o-l-f-g-r-a-m-m.

25 CHAIRPERSON ACZON: Please continue.

JUANITA KANEHAILUA WOLFGRAMM

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

DIRECT EXAMINATION

BY MR. SAKUMOTO:

Q I'm going to ask her a series of questions
to qualify her as an expert.

Where do you work?

A SSFM International.

Q What is your position at SSFM
International?

A I am a traffic engineer, and I'm in the
SSFM Strategic Services Group.

Q As a traffic engineer at SSFM, what type of
work do you do?

A I perform transportation corridor studies,
traffic impact analysis studies. I even do -- well,
the traffic impact studies, I do it for either
residential developments, commercial, health care
facilities, schools or even mix use centers.

I also do transportation management plans
and traffic signal designs. But I primarily work on
the traffic impact analysis studies.

Q Could you summarize your post high school

1 education?

2 A I graduated from the University of Hawai'i
3 at Manoa in two degrees. I have a Bachelor of
4 Science in civil and environmental engineering, and
5 Bachelor of Arts in the Hawaiian language.

6 Q To become a traffic engineer, do you first
7 need to be a civil engineer?

8 A Yes.

9 Q With focus in traffic?

10 A Yes.

11 Q Are you licensed as a professional engineer
12 by the State of Hawaii?

13 A Yes. I obtained my civil engineering
14 license in 2014 at the State of Hawaii.

15 Q Can you briefly describe for the Commission
16 the process to obtain a license as a professional
17 engineer in Hawai'i?

18 A Yeah. You need to get your Bachelor's
19 Degree at an accredited college. From there you need
20 to take an engineering and training, or fundamental
21 exam once you get your degree. If you pass, then you
22 need to be supervised under a licensed engineer for
23 four years.

24 Once you do that, you can apply to take
25 your professional engineering exam. You also need to

1 provide verification from your supervisors if the
2 Board of Hawai'i, if they review your application,
3 and they think it's okay, then you can take your
4 test. And if you pass that, then you become a
5 certified -- you become a licensed engineer.

6 Q Are you a member of any professional
7 organizations?

8 A Since 2015 I've been a member of the
9 Institute of Transportation Engineers.

10 Q 2015?

11 A Oh, sorry, 2005, sorry.

12 CHAIRPERSON ACZON: Mr. Sakamoto, for the
13 period of time, if the parties and Commissioners have
14 no objection, how many more expert witness you going
15 to be calling?

16 MR. SAKUMOTO: After Ms. Wolfgramm, two
17 more.

18 CHAIRPERSON ACZON: Can we stipulate for
19 them to be expert witness?

20 MR. SAKUMOTO: We would like to qualify
21 each of them as expert witnesses. Did I
22 misunderstand the question?

23 CHAIRPERSON ACZON: Can we stipulate that
24 the three will be expert witnesses?

25 MR. SAKUMOTO: Certainly.

1 CHAIRPERSON ACZON: Just tell me what area
2 they going to be.

3 MR. SAKUMOTO: That's fine with me.

4 CHAIRPERSON ACZON: Parties?

5 MR. PIERCE: Mr. Chair, on behalf of
6 Intervenors, I have no problems with us taking it one
7 at a time, and for purposes of this witness, no
8 objection stipulating for her being an expert.

9 CHAIRPERSON ACZON: OP?

10 MS. APUNA: No objection.

11 MR. HOPPER: No objection.

12 MR. TABATA: No objection.

13 CHAIRPERSON ACZON: Commissioners? If
14 there is no objection, just stipulate that all
15 remaining witnesses will be expert.

16 COMMISSIONER CHANG: I think Intervenor was
17 just stipulating one at a time.

18 MR. PIERCE: I'll try to do it very
19 quickly. I just want to know who the testifier is a
20 little bit more. I'm sorry, I don't quite have that.
21 We're okay with this witness right now.

22 CHAIRPERSON ACZON: We just kind of bring
23 in the witness, and have Mr. Sakumoto identify what
24 kind of expertise they have rather than go through
25 all those things. Is that okay?

1 MR. PIERCE: I anticipate we will have no
2 problem with it, but I would like for there to be an
3 offer of who the witness is beforehand. I'm
4 certainly fine with that.

5 CHAIRPERSON ACZON: We just did that.
6 Let's try it again.

7 MR. SAKUMOTO: The witnesses after Ms.
8 Wolfgramm are Eric Fredrickson, and he will be an
9 expert in archaeology. Mr. Tom Holliday, an expert
10 in economic impact analysis and market studies.

11 CHAIRPERSON ACZON: Is that okay?

12 MR. PIERCE: Okay, no objection on those.

13 CHAIRPERSON ACZON: Any other objections?

14 MR. TABATA: No objection.

15 CHAIRPERSON ACZON: Commissioners? Thank
16 you. Please proceed.

17 MR. SAKUMOTO: Thank you, Mr. Chair.

18 There will be six slides associated with
19 Ms. Wolfgramm's testimony. They're the six slides
20 next in order in your packet, starting with the one
21 titled "traffic".

22 BY MR. SAKUMOTO:

23 Q Are you familiar with the Phillip Rowell
24 and Associates' TIAR dated June 6, 2014, attached as
25 appendix to the Draft EIS?

1 A Yes.

2 Q When SSFM was initially contacted by the
3 Applicant, what was the status of the Phillip Rowel
4 TIAR?

5 A Phillip Rowell provided his TIAR to the
6 State Department of Transportation for their review
7 and their comments.

8 DOT provided their comments, but Mr. Rowell
9 wasn't able to address their comments because he was
10 unable to, because he was sick.

11 Q So SSFM was asked to complete the work
12 needed to have the TIAR accepted by the DOT?

13 A Yes.

14 Q Were there any particular aspects of the
15 Phillip Rowell TIAR that SSFM believed required
16 updating, given the time that had elapsed between the
17 draft of Mr. Rowell's report from 2014 and the time
18 of SSFM's engagement?

19 A Yes. The comments received from DOT needed
20 to be addressed. And then because of the passage of
21 time, we felt that we -- that traffic counts needed
22 to be updated; new real estate developments in the
23 surrounding area needed to be taken into account; and
24 that DOT'S latest background model for Maui, the Maui
25 Long Range Land Transportation Plan needed to be

1 incorporated.

2 There is a figure up there, and it shows
3 six of the ten intersections that we studied.
4 They're the same ten intersections that Phillip
5 Rowell studied, so we took additional counts there in
6 2016 and then -- yeah.

7 Q Were you here yesterday to hear the
8 testimony, and today as well?

9 A Yes, I was.

10 Q And there were several comments that were
11 made regarding projects that were supposedly not
12 taken into account in your study.

13 Did you, in fact, take into account other
14 projects as part of your study?

15 A Yes. The next slide.

16 So the Figure 3 shows the development in
17 the nearby areas that we took into account, and these
18 include Kaiwahine Village up north. And then there's
19 Maui Lu Resort, Kihei High School, Kihei Residential,
20 Downtown Kihei, that's across development off of
21 Pi'ikea Avenue.

22 We also included Honua'ula off-site
23 affordable housing, and the Maui Research and
24 Technology Park. Also included was Wailea and
25 Makena, the resort, and that was included because --

1 I don't know if I'm getting too technical here, I
2 might be babbling. I apologize.

3 In the Maui Long Range Transportation Plan
4 they take in all these forecasts for developments,
5 and that -- Wailea and Makena were included in that,
6 and so we accounted for those developments that are
7 coming up, yeah.

8 Q Both the Phillip Rowell TIAR and the SSFM
9 Supplemental TIAR used the term LOS.

10 What does LOS mean?

11 A LOS is abbreviation for level of service.
12 In general LOS is summarized in seconds of delay. It
13 is an operational analysis rating system using
14 traffic engineering to measure the effectiveness of
15 vehicular roadway operating conditions.

16 Up there is a table showing the level of
17 service and the delay for each letter. So there's
18 six LOS, ranging from A to F.

19 A is defined as being the least interrupted
20 flow conditions with little or no delay.

21 LOS F is defined as conditions where
22 extreme delays exist. The delay for LOS F is more
23 than 80 seconds at a signalized intersection, and
24 more than 50 seconds at an unsignalized intersection
25 or intersection that's controlled by a stop sign.

1 Q Your Supplemental TIAR indicates that the
2 AASHTO's guidelines from a policy on geometric design
3 of highways and streets, states that the appropriate
4 LOS for an urban arterial or collector is LOS D or
5 better; is that correct?

6 A Yes, that's correct. That's a guideline
7 that is nationally used.

8 Q Do these guidelines provide a definition of
9 LOS D?

10 A No, the definition can be found in the
11 Highway Capacity Manual.

12 Q How does the Highway Capacity Manual define
13 LOS D?

14 A Signalized intersection, if you look up at
15 that table, LOS D is 35 seconds to 55 seconds. And
16 then at a stop-sign controlled intersection, it's
17 25 seconds to 35.

18 Did I just say that? Is that right? Okay.

19 Q Is Pi'ilani Highway an urban arterial?

20 A Yes, it is. And that's the classification
21 from the State Federal Aid System.

22 Q The Supplemental TIAR uses two different
23 future points in time: 2025 and 2032; is that
24 correct?

25 A Yes.

1 Q And what do these two years represent?

2 A 2025 is the year that the project is
3 anticipated to be 50 percent complete; and 2032 is
4 when it's 100 percent complete.

5 Q Would you summarize for the Commission in
6 lay terms what the anticipated LOS will be for the
7 project in 2032?

8 A Okay. The analysis indicated that in 2032
9 with the project, as well as all the other
10 developments that we accounted for, the intersections
11 that Ohukai, at Pi'ikea Avenue, and Kaonoulu Street
12 resulted in LOS F during the p.m. peak hour.

13 It also resulted in LOS F at Kaonoulu
14 Street during weekend peak hour. The a.m. peak hour
15 resulted in LOS E -- you know, it's approaching F,
16 but it's not there yet -- at the intersection of
17 Kulanihakoi Street, at Ohukai Street and Pi'ikea
18 Avenue.

19 LOS E also resulted in the weekend peak
20 hour at the intersection of Ohukai Street.

21 The four other signalized intersections
22 were all at LOS D or better during all three peak
23 hours that we analyzed.

24 Q Does the Highway Capacity Manual provide
25 suggested mitigation measures when they are

1 anticipated delays in traffic?

2 A No. The Highway Capacity Manual does not
3 provide suggested mitigation measures. The
4 professional practice is to look at ways to add
5 capacity to mitigate the anticipated delays in
6 traffic.

7 This can be done by adding lanes, such as a
8 turn lane or a through lane, or adjusting the signal
9 timing, whether increasing the cycle length, or the
10 green time for an approach, or even modifying the
11 phasing, whether it can be split phase, where you
12 have one street go at one time and then another
13 street go at another time, or you give it green hours
14 for like the left-turn lanes.

15 The synchro model that we used is designed
16 to do this, and we can adjust these type of factors
17 and see how it effects the operation at the
18 intersection. The Signal Traffic Software is
19 accepted by DOT as an appropriate tool to use to
20 determine the intersection operations.

21 Q Does the SSFM Supplemental TIAR
22 incorporates these types of practical mitigation
23 measures?

24 A Yes, it does.

25 Improvements at the intersection at

1 Pi'ilani Highway and Kaonoulu Street include adding a
2 traffic signal. It will also be extending Kaonoulu
3 Street mauka of Pi'ilani Highway. And the layout of
4 the lanes will be changed. So southbound, that's
5 going towards Wailea, you'll get two left-turn lanes,
6 two through lanes, and one right-turn Lane.

7 North bound for Kahului, we are going to
8 have one left-turn lane, two through lanes, and a
9 right-turn lane. West bound, or makai, we will have
10 two left-turn lanes, one through lane, and one
11 right-turn lane, with an acceleration lane.

12 And eastbound or mauka approach, you're
13 heading mauka, they'll have a left-turn lane, a
14 through lane, and a right-turn lane.

15 And there's also plans to construct the
16 shared use and pedestrian and bicycle path along the
17 mauka side of Pi'ilani Highway, as well as within the
18 project site.

19 And the results indicated that future
20 roadway capacity will be needed on Pi'ilani Highway.

21 Q Has the State Department of Transportation
22 reviewed the SSFM Supplemental TIAR, and have you
23 been interacting with them?

24 A Yes. We have a good working relationship
25 and dialogue with DOT for this project. Initially,

1 we met with DOT to clarify their comments on Phillip
2 Rowell's TIAR, and we provided our direction forward
3 to complete the Supplemental TIAR.

4 We continued discussions back and forth,
5 whether they were through face-to-face meetings, or
6 emails or phone calls, to ensure that the TIAR we did
7 addressed their comments.

8 We sent a copy of the Supplemental TIAR to
9 DOT in December 2016, which incorporated all of DOT'S
10 comments.

11 More recently DOT asked to test various
12 scenarios at the intersection of Pi'ilani Highway and
13 Kaonoulu Street to see if we could increase the
14 capacity, and how it would impact the operations.

15 We did this using a synchro model and
16 provided the results for the requested scenarios to
17 DOT. Through this collaboration we were able to
18 assist DOT with any concerns they may have, and we
19 are always open to have continued coordination with
20 DOT.

21 MR. SAKUMOTO: Thank you, Mr. Chair, I have
22 no further questions.

23 CHAIRPERSON ACZON: Questions?

24 MS. APUNA: No questions.

25 MR. HOPPER: No.

1 CHAIRPERSON ACZON: Mr. Pierce?

2 MR. PIERCE: Yes.

3 CROSS-EXAMINATION

4 BY MR. PIERCE:

5 Q The bubble concept that is on the screen
6 right now, and that's also part of -- is that part of
7 the TIAR, do you know?

8 I don't know what page this is of the
9 screen that's up there?

10 A I don't know what page this is that's up on
11 the screen right now.

12 I mean the Conceptual Plan, we put that in
13 our TIAR.

14 Q Does it include the annotations, the
15 colored annotations that talk about where
16 identifying, for example, number one says: Construct
17 East Kaonoulu Street extension.

18 A We discussed that in the TIAR.

19 Q So this is a diagram that's in there or a
20 figure, do you know?

21 A No.

22 We did that just to kind of maybe assist in
23 what the improvements are just so it's a little bit
24 visually, you know, a little bit better.

25 Q So with respect to number 3, Install Bike

1 Lane on Pi'ilani Highway.

2 Do you know what width of that bike lane
3 is?

4 A We would need to work with DOT to see what
5 width we would use after we do the construction
6 plans, but it should be like about 5-6 feet.

7 Q Have you personally been out to the site?

8 A Uh-huh.

9 Q Are you familiar with the width that's
10 there currently?

11 A Of just the bike lane?

12 Q Right.

13 A No. Is it on the shoulder though?

14 Q Actually maybe should not even be called a
15 bike lane, it's a shoulder.

16 I know, because -- and you know the traffic
17 speeds that are along in there, right?

18 A Yeah.

19 Q Do you know if this is going to be a
20 separate corridor where it will actually be separated
21 from the traffic?

22 A That's something we've got to work out with
23 DOT. Usually the bike lanes are adjacent to the
24 travel-way.

25 Q Has the developer told you what their

1 commitment is in terms of making sure it's truly a
2 safe and appropriate bikeway?

3 A You know, with our coordination with DOT,
4 they will make sure it's a safe bike lane.

5 Q But that would be -- I guess DOT approved
6 the current one, which bicyclers would find fairly
7 unsafe because of the speed of the traffic that's
8 going along there.

9 A Sure.

10 Q But is it your understanding then that the
11 developer is making a commitment to fund whatever is
12 necessary to make an appropriate bikeway there, or
13 would that be out of your --

14 A You can ask the developer what they
15 committed to.

16 Q Is there a reason why the specific location
17 of the intersections is not identified?

18 A What do you mean?

19 Q Right here, what I see are just generalized
20 locations. I don't see that we know exactly where on
21 Kaonoulu Street where the intersections will actually
22 be going in and out of the development?

23 A Oh, like the drive A, B, C and D?

24 Q Right.

25 A That was mentioned in the initial TIAR.

1 Q Can you explain to us, is it known where
2 those are going to be currently?

3 A I'm not sure.

4 Q That would effect traffic flow in terms of
5 their location though, right? In terms of how much
6 back-up traffic you can have, that kind of thing?

7 A It could.

8 Q And then I think I heard you say that the
9 developer asked you to assume that 50 percent of the
10 project would be complete by 2025.

11 A Yeah, about that.

12 Q And then you used -- your other assumption
13 was that the Pi'ilani project would be complete by
14 2032?

15 A Right.

16 Q Do you have -- within that, what was your
17 assumption with respect to the Honua'ula parcel, when
18 it would be complete?

19 A We assumed it would be finished in 2025.

20 Q And then what is page 41 of the TIAR, there
21 is a discussion of the phase project related trip
22 generation volumes.

23 A Uh-huh.

24 Q And so there's a -- at the left-hand bar
25 says, commercial/light industrial/apartment. Are

1 those each different scenarios, or is that what is
2 actually planned?

3 A That's our best guess of what was going to
4 be planned. Commercial, we assumed it was a shopping
5 center, because we didn't get more detail, we did our
6 best guess of what it would be. So for the
7 commercial, we used the shopping center land use that
8 is provided in the ICE Trip Generation Manual. And
9 from that manual they provide different rates, based
10 off of different square footage of a shopping center,
11 or the acres of a light industrial use place.

12 Q So the bracketed number that's underneath
13 commercial, it says A20. What does that mean?

14 A That's the land use that we use. That was
15 our assumption.

16 Q So with respect to commercial, what was the
17 size of the -- how did you actually apportion that?
18 What is the apportionment between commercial and
19 light industrial? Are you basing that on the size of
20 the development or on the number of -- I guess that
21 would be the question.

22 In terms of commercial, what amount of
23 commercial were you assuming was being placed on
24 within the Pi'ilani parcels?

25 A We assumed 530,000 square feet, and then

1 five acres light industrial.

2 Q I'm sorry, for the light industrial?

3 A Five acres.

4 Q For the apartment, of course, that's going
5 to be the size that they have actually specified?

6 A 226.

7 Q So if the 530,000 square feet of commercial
8 changes, and goes up, does that change the value of
9 the estimates that are in Table 15 on page 41?

10 A It was my assumption that 530,000 square
11 feet is the max that it would be, so it's really --
12 it shouldn't be going up.

13 Q It's my understanding the developer hasn't
14 made a representation as to what the maximum
15 commercial is going to be, so assuming that for a
16 moment. If I'm wrong, I apologize.

17 So assuming for the moment the developer
18 has not committed to a maximum of 530,000 square
19 feet, if it does go, then the value of the trip
20 generation numbers here goes down in terms of how
21 much we can rely upon it.

22 Would that be a fair assumption?

23 A Wait you're, saying if it's higher than --

24 Q Let me state that a different way.

25 We cannot rely upon the information except

1 for the hypothetical that you've given, right,
2 530,000 square feet of commercial, and five acres of
3 light industrial?

4 A Yes.

5 Q So if they change that, and make it, for
6 example, 100 percent commercial, that would change
7 the trip generation. Would that be safe to say?

8 A Yeah.

9 Q Are the trip generations more intensive for
10 commercial than they are for light industrial under
11 the models that you use?

12 A Yes.

13 Q Do you have an estimate of how much more
14 intense they are?

15 A I can't give you a percentage rate, but it
16 is higher. A shopping center, you got a lot more
17 people going there rather than light industrial.

18 Q And then I noticed that you're identifying
19 for the -- there is 226 apartments or units that are
20 assumed for the apartment use; is that right?

21 A Uh-huh.

22 Q So for that, what you are assuming for the
23 trip generation is 114 in the morning total, and
24 142 in the afternoon?

25 A Yes, during the peak hours.

1 Q Okay, during the peak hours.

2 Can you explain to us how that works in
3 terms of the model, because at least in my mind I'm
4 thinking that I understand there's going to be one,
5 two, and three bedroom apartments. And I think a lot
6 of us know that in many cases there are more than two
7 workers in one of those apartments.

8 So how is it that you end up with only less
9 than, well, roughly half of the trip generation of
10 the actual units. How does your model cause that to
11 happen?

12 A Okay, so --

13 Q Or can you explain the assumptions that
14 cause it to be like that?

15 A When we do these trip generation rates, we
16 don't just say there's 226 units, and there is two
17 cars, and so what would that be? 400 something,
18 right?

19 What we do is we look at the peak hour, and
20 we get these rates of trip generation from this
21 manual, this handbook. They've done studies
22 nationwide of different areas, of different type of
23 land uses for the peak hour, based off of the size of
24 the property.

25 And after you get a bunch of those, they

1 kind of create an equation. And from there we take
2 those equations, we put in the number of units for an
3 apartment. And from there that's how we get our trip
4 generation rate.

5 So although it may look like we're not
6 accounting for all 226, we're basing off this manual
7 that has gone through, it's on its 8th or 9th edition
8 right now that has been going through a lot of -- a
9 lot of studies are coming in. And we're not just --
10 I'm not sure what I'm trying to say to you. That's
11 it.

12 Q I think understand that.

13 So the peak hour in this instance for the
14 morning is what time?

15 A About 7:15, 8:15-ish.

16 Q Is that designed by you or is that designed
17 by the model?

18 A No. That's based off of taking traffic
19 counts during the morning and in the afternoon.

20 Q And truly identifying what the peak hour in
21 that particular neighborhood?

22 A Right, at the intersection, that is we're
23 looking at.

24 Q No further questions, Mr. Chair.

25 CHAIRPERSON ACZON: Let's take a

1 five-minute recess.

2 (Recess taken.)

3 CHAIRPERSON ACZON: We're back on the
4 record.

5 Commissioners, any questions? Vice Chair
6 Scheuer.

7 VICE CHAIR SCHEUER: Aloha.

8 I just want to make sure I understand the
9 TIAR. Based on the conclusion of the TIAR in the
10 summary on page 58.

11 The project, or the conditions with the
12 project, with the proposed mitigations, will result
13 in level of service F for certain intersections.

14 THE WITNESS: It will.

15 VICE CHAIR SCHEUER: And it identifies that
16 there might be other actions taken by other parties
17 that could improve, but doesn't specify what those
18 are.

19 THE WITNESS: They're the same as saying
20 that additional roadway capacity is needed.

21 There is some discussion about the
22 north/south collector road. That's between South
23 Kihei Road and Pi'ilani Highway.

24 You know I didn't really --

25 VICE CHAIR SCHEUER: But there's no

1 analysis there, because those are still conceptual?

2 THE WITNESS: Right.

3 VICE CHAIR SCHEUER: I just wanted to
4 clarify. Your description at the beginning of the
5 TIAR for the project I believe uses a figure of
6 68 acres of land total.

7 THE WITNESS: Oh, yeah.

8 VICE CHAIR SCHEUER: How big is the
9 project, how many acres?

10 THE WITNESS: Okay, I know there's 80
11 but --

12 VICE CHAIR SCHEUER: There's 88 acres of
13 petition area. Is your study totally for Pi'ilani
14 Promenade, or is it for Pi'ilani Promenade plus the
15 housing project that's Honua'ula Partners?

16 THE WITNESS: Okay, so this TIAR is for
17 Pi'ilani Promenade. I hope it's the 68 acres.

18 VICE CHAIR SCHEUER: I think it's not
19 exactly 68 acres.

20 THE WITNESS: My bad. But we do
21 incorporate Honua'ula affordable housing within our
22 TIAR. So the traffic that's generated by that
23 development, it's analyzed in there.

24 VICE CHAIR SCHEUER: I'm sorry, one more
25 time.

1 THE WITNESS: Okay, what are your concerns?

2 VICE CHAIR SCHEUER: My question, is the
3 TIAR based on the entire 88 acres, or just on
4 Pi'ilani Promenade?

5 THE WITNESS: In my mind, it's -- I'm just
6 looking at Pi'ilani Promenade. That's the project
7 I'm primarily focusing on. Yeah.

8 MR. SAKUMOTO: Is your question does the
9 analysis assume both projects being developed at the
10 same time, or you know, so the cumulative impacts
11 would have to be addressed in the same document? I
12 think she said yes to that.

13 Or is the question, does her study area
14 include all 88 acres?

15 I think that's what's been sort of a point
16 of confusion in several of the different reports
17 where the question was: Did you take into account
18 the Honua'ula Partners property? Because you can
19 take it into account as a cumulative impact, assuming
20 you know, the development of it.

21 Or, for example, if you do a study of
22 something dealing with flora or fauna, you would
23 actually study the ground itself and take that into
24 account.

25 So I think, you know, that concept has been

1 used in different fashions throughout this
2 proceeding. So maybe that's the source of the
3 confusion for the question you just asked.

4 I just want to make sure she answers your
5 question.

6 VICE CHAIR SCHEUER: She's doing fine,
7 thank you. I'll get back to that.

8 COMMISSIONER OHIGASHI: So I was just
9 looking at your diagram on, I guess that would be
10 Figure 7 surrounding area development, right? And in
11 that figure it shows Honua'ula affordable units as
12 being in the surrounding area development; is that
13 right?

14 THE WITNESS: Yeah.

15 COMMISSIONER OHIGASHI: I think you
16 testified you believe the build-out would be 2025.
17 You use that figure to determine what would be the
18 traffic count coming from the Honua'ula affordable
19 units?

20 THE WITNESS: I included Honua'ula. I
21 assumed Honua'ula would be pau in 2025.

22 COMMISSIONER OHIGASHI: And so, therefore,
23 you treated, in your traffic TIAR, you treated the
24 Honua'ula project as -- what is it -- contiguous as a
25 property that has to be reviewed for the purposes of

1 determining traffic counts in the area?

2 THE WITNESS: Right.

3 COMMISSIONER OHIGASHI: And it is
4 especially important, because it's contiguous to the
5 site, is that right?

6 THE WITNESS: Right.

7 COMMISSIONER OHIGASHI: And that's why you
8 used it, because it was primarily important in
9 determining what would be the traffic count out of
10 that area?

11 THE WITNESS: Right.

12 CHAIRPERSON ACZON: Anybody else?

13 COMMISSIONER OKUDA: Did you present any
14 opinion about what the comparison in traffic impact
15 would be if no action was taken?

16 In other words, only light industrial would
17 be on the property, or there would be no change or
18 amendment to the prior Land Use Commission order?

19 In other words, there wouldn't be this
20 retail development?

21 THE WITNESS: No, I only looked at whatever
22 I put in here. I didn't look at a separate analysis,
23 just looking at light industrial itself.

24 COMMISSIONER OKUDA: So your study wouldn't
25 give us information on the, no -- what's called "no

1 action alternative", correct?

2 THE WITNESS: Correct.

3 COMMISSIONER OKUDA: Thank you.

4 CHAIRPERSON ACZON: Anybody else? Mr.
5 Sakamoto, follow up?

6 MR. SAKUMOTO: No further questions, thank
7 you.

8 CHAIRPERSON ACZON: You done with the
9 witness?

10 MR. SAKUMOTO: Yes.

11 MS. CATALDO: Mr. Fredrickson has a back an
12 injury. You might have noticed him standing for the
13 last two days in the back of the room. He's going to
14 do his best to sit through, and I'm going to do my
15 best to go quickly.

16 CHAIRPERSON ACZON: You can stand up.

17 THE WITNESS: If I need to, I will.

18 CHAIRPERSON ACZON: May I swear you in
19 first?

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

22 THE WITNESS: Yes.

23 CHAIRPERSON ACZON: Please state your name
24 and address for the record.

25 THE WITNESS: Eric Mayland (phonetic)

1 Fredrickson, 29 Ulana Street, Makawao.

2 ERIC FREDRICKSON

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

6 DIRECT EXAMINATION

7 BY MS. CATALDO:

8 Q Mr. Fredrickson, based on the stipulation
9 of the parties, you're testifying as an expert in the
10 field of archaeology.

11 Did you prepare the 2014-15 AIS that's
12 appended to the FEIS?

13 A Yes.

14 Q And prior to your preparation of that AIS,
15 did you prepare an AIS in 1994?

16 A Yes. That was the original inventory
17 survey for Ka'ono'ulu Ranch.

18 Q I'm going to ask that we put up Slide 30.
19 Can you see that, Mr. Fredrickson?

20 A Yes.

21 Q Is that a map of the subject property?

22 A Yes. It does not show the off-site project
23 area because there were no sites on that portion.

24 Q And scattered throughout the project site
25 there are a series of numbers. Do you see that?

1 A Yes.

2 Q And do those numbers reflect sites that
3 were located in the 1994 or 2015 and 15 AIS?

4 A Yes.

5 Q And what does it mean to identify a place
6 as a site?

7 A When you conduct an archaeological
8 inventory survey, you conduct a pedestrian survey
9 first to see if anything shows up. And once surface
10 features are identified, then you go back and you
11 document them.

12 Sometimes that includes clearing an area,
13 includes mapping. It can include testing, subsurface
14 testing to see if any subsurface components are there
15 as well.

16 Q Now, if we look at Slide 31, is that a
17 table listing the sites you've identified?

18 A This table is from the 2015 Inventory
19 Survey Report, yes.

20 Q What is cairn, stone cairn?

21 A It's almost a conical pile of rocks.

22 Q The fact that a site is listed, does that
23 indicate that it is precontact?

24 A On the table?

25 Q In your AIS.

1 A Any site over 50 years old, anything that's
2 over 50 years old, so that would include me, is
3 considered historically significant.

4 Q We should all be so lucky.

5 Based on your experience, can you describe
6 the level of archaeological investigation on this
7 project site?

8 A This property has been covered quite
9 intensively over the course of 1999 and then 2014 and
10 2015.

11 Q You mentioned 1999 --

12 A Excuse me, 1994.

13 Q The AIS that you prepared in 1994 was
14 submitted and approved by the State Historic
15 Preservation?

16 A Yes.

17 Q And was that true also for the 2015 AIS?

18 A Yes.

19 Q Can you, going back to Slide 30, can you
20 tell from where you're sitting, which of the sites
21 are in red and which are in black?

22 A I can't see that far.

23 Q Because your historically significant?

24 A Yeah.

25 I have a table here. Thank you, I'll have

1 to put my glasses on for that one. Would you like me
2 to list them?

3 Q No.

4 What is the significance of listing some
5 sites in red?

6 A Of the 18 sites that are depicted on the
7 figure up there, 12 on that figure are in red. And
8 the red denotes the sites that will undergo data
9 recovery, and the State Historic Preservation
10 concurred with that mitigation.

11 Q What is data recovery?

12 A Data recovery is the most intensive form of
13 archaeological investigation that is available in the
14 process of identifying sites. And then if further
15 work is warranted, then that would be the next step
16 after an archaeological inventory survey has been
17 accepted by the State Historic Preservation Division,
18 and assuming that they concur with that form of
19 mitigation.

20 Q How did you determine which sites would be
21 determined for data recovery?

22 A Some of it was based upon the site type,
23 and some of it was based upon the community interest
24 in some of the sites. So it was an effort to get as
25 much additional information on a particular site.

1 Q How many sites did you designate for data
2 recovery based on community input?

3 A Well, there were -- of the 12 sites that
4 were in the report, that were recommended for data
5 recovery, the stone cairns that were recommended for
6 data recovery, those were added in, because of the
7 community interest. The enclosures and the surface
8 scatters were put in there in an effort to get
9 additional information on them.

10 Q Have you designated one additional site for
11 data recovery after submission of your 2015 AIS to
12 SHPD?

13 A Yes. The gully that has been the focus of
14 much community interest during the proceedings
15 contains a site 3740. And it's a long site, and
16 there's components on either side of the gully. And
17 that has been added to the data recovery, proposed
18 data recovery.

19 And that was at the developer's request,
20 given the interaction that the developer's
21 representatives had with the interest to community
22 members.

23 Q Is data recovery a form of mitigation?

24 A Yes.

25 Q Will any other mitigation be applied to the

1 project site as it relates to the archaeology?

2 A Yes. The data recovery process is a very
3 lengthy process. And there will be a lot of
4 additional information gathered and testing done,
5 mapping done.

6 Once that has been completed, the State
7 Historic Preservation Division will basically review
8 the amount of effort that's been put in. And
9 assuming that the state at that point concurs that
10 the data recovery field work has been adequate, then
11 the data recovery report would be prepared, and then
12 the state would review that.

13 Following that review, if any site is
14 deemed for preservation as a result of, say, the data
15 recovery process, a preservation plan would be
16 prepared. That would be reviewed by the state,
17 interested parties, could comment. And then that
18 plan would be in place.

19 Following all of those steps, then an
20 archaeological monitoring plan would be prepared.
21 That gets reviewed by the State Historic Preservation
22 Division.

23 Following that, at that point then
24 earth-moving activities could move forward.

25 But the process is -- I mean it's not over.

1 And some folks felt that, and that isn't the case.
2 There's an awful lot more archaeology that has to
3 occur on this project.

4 Q And when the earth moving begins, that
5 would be subject to an archaeological monitoring
6 plan?

7 A Yes. There would be a plan in place that
8 could only occur when there is an approved SHPD
9 accepted plan in place. And then, and only then,
10 could an archaeological monitoring actually occur.

11 Q If there was evidence of subsurface
12 cultural resources, would you anticipate that those
13 would be identified, either during data recovery, or
14 during the monitoring with the earth moving?

15 A Yes, those two approaches allow for the
16 maximum amount of information.

17 Also if something -- I think it was Basil
18 Oshiro had voiced concerns about what happens when
19 construction occurs. That's what the monitoring is
20 for. If anything turns up at that point, there's
21 archaeological monitors on ground, and they're there
22 for that reason.

23 Q Mr. Frederickson, did you identify any iwi
24 on the project site?

25 A Human, no.

1 Q Based on the topography and the type of
2 land that is the project site, would you expect to
3 find iwi?

4 A The challenge of this property is -- I
5 shouldn't say challenge -- but this property it's
6 very shallow soil deposit. It's very shallow.

7 So in most places, if someone had interred
8 human remains, iwi, there would need to be something
9 over them like a stone pile or something, because
10 there's really no soil to inter remains.

11 Q And you found no evidence of such piles or
12 human iwi?

13 A No. The piles -- there's some rock piles
14 that are noted that were investigated in the report.
15 And those, the interpreted function, those are
16 agriculture, potential agriculture clear piles.
17 They're real small rocks.

18 Typically when Hawaiians, if they did put a
19 rock on top of a burial, they used larger rocks, not
20 lots of real small ones.

21 Q As a result of your interaction with
22 community members, were you asked to identify
23 something referred as an "eclipse rock" or "eclipse
24 stone" as an archaeological site?

25 A I went on a field visit, and that

1 terminology was used by one of the -- by a few of the
2 community members. And I did see the boulder. But
3 there was no -- I have no archaeological basis to say
4 that is what it is.

5 Q Other than the boulder, were you asked to
6 identify any other features as archaeological sites
7 in your AIS by community members?

8 A There was a, my recollection, a ring of
9 boulders, semi-circular ring of boulders. And,
10 again, no archaeological basis.

11 Q To designate them --

12 A As a site. In respect to that feature,
13 there were heavy equipment scars that were, I believe
14 each of the boulders, and I don't know where the
15 boulders originated from, but they clearly -- there
16 had been some level of disturbance, mechanical
17 disturbance in the past.

18 Q Thank you, Mr. Fredrickson.

19 CHAIRPERSON ACZON: Any questions, Ms.
20 Apuna?

21 MS. APUNA: No questions.

22 CHAIRPERSON ACZON: Mr. Hopper?

23 MR. HOPPER: No, Mr. Chair.

24 CHAIRPERSON ACZON: Mr. Pierce? Mr.
25 Tabata?

1 MR. TABATA: No questions.

2 CHAIRPERSON ACZON: Commissioners? Vice
3 Chair Scheuer.

4 VICE CHAIR SCHEUER: Aloha. I want to
5 follow-up on one of the questions you were asked by
6 counsel.

7 When you were told that litigation, or
8 whether data recovery is a form of mitigation, and
9 you were asked and you said yes.

10 In what sense is it a form of mitigation?

11 THE WITNESS: The sites that have been
12 identified on the property are -- and the state has
13 concurred with these interpretations -- are
14 considered significant for their information content.

15 And in order to mitigate a site, if it
16 meets a bar where it's important enough to do
17 additional investigation, that's when data recovery
18 would come in as a form of mitigation, additional
19 information?

20 VICE CHAIR SCHEUER: Data recovery results
21 in the destruction of sites?

22 THE WITNESS: It can, not always, but it
23 can.

24 (Commissioner Estes leaves.)

25 VICE CHAIR SCHEUER: In this case?

1 THE WITNESS: We haven't done the work yet,
2 so I don't know. Potentially I would I imagine some
3 would be.

4 VICE CHAIR SCHEUER: You're familiar with
5 the requirements of Ka Pa'akai O Ka 'Aina?

6 THE WITNESS: (Witness nods head up and
7 down.)

8 VICE CHAIR SCHEUER: And that requires the
9 Land Use Commission to identify valued natural and
10 cultural resources in an area to the extent to which
11 there are practices associated with it, and what
12 actions can be taken. What effect might happen from
13 the project, and what action can be taken to protect
14 practices, if possible.

15 We had witnesses, our public testifiers
16 testify as to their cultural value of some of these
17 sites to them. If they are eliminated, if those,
18 through data recovery, it will be difficult for those
19 practices to continue? It's a question.

20 THE WITNESS: Yes.

21 VICE CHAIR SCHEUER: So data recovery is
22 not a mitigation in relationship to our Ka Pa'akai
23 duties, correct?

24 THE WITNESS: My understanding is that the
25 developer has agreed to preserve some of those sites

1 that the community members had voiced concerns about.

2 VICE CHAIR SCHEUER: Do you know if they
3 are all of the sites?

4 THE WITNESS: No, not offhand.

5 VICE CHAIR SCHEUER: Do you know of any map
6 that you've been asked to help develop in
7 relationship to the conceptual diagram for the
8 project?

9 THE WITNESS: Not at this juncture.

10 VICE CHAIR SCHEUER: Or this preservation
11 might protect those sites?

12 THE WITNESS: Not at this juncture.

13 VICE CHAIR SCHEUER: Thank you very much.

14 CHAIRPERSON ACZON: Commissioners?
15 Anybody?

16 COMMISSIONER CHANG: I just have a few
17 questions. Please feel free to stand up. I won't be
18 offended by it.

19 And I've known Eric for awhile. Thank you
20 for being here and waiting so patiently.

21 I'm going to walk us through a series of
22 questions as I'm trying to understand the
23 Archaeological Inventory Survey that was done for
24 this site to determine whether, once the AIS and CIA
25 are adequate.

1 The area's impact, as I understand it, is
2 approximately 101 acres, and that included both the
3 Pi'ilani Promenade, and it included the off-site
4 areas, and it included the proposed Honua'ula
5 affordable housing.

6 THE WITNESS: Correct.

7 COMMISSIONER CHANG: Within that 100 acres
8 -- rather than me making an assumption. What was
9 your trenching strategy for the archaeological
10 inventory survey when you initially did it in 1994?

11 THE WITNESS: There wasn't a trenching
12 strategy, because the soil is very, very shallow.

13 But the initial step we took was surface
14 walk over the project area.

15 COMMISSIONER CHANG: You did 100 percent
16 pedestrian walk?

17 THE WITNESS: Yes.

18 COMMISSIONER CHANG: How many trenches did
19 you do?

20 THE WITNESS: Well, we did excavation
21 units.

22 COMMISSIONER CHANG: How many excavation
23 units?

24 THE WITNESS: Off the top of my head, I
25 don't know.

1 COMMISSIONER CHANG: 20?

2 THE WITNESS: I don't think that many.

3 COMMISSIONER CHANG: Out of 100 acres,
4 20 -- so one trench pit for five acres?

5 THE WITNESS: Only where sites were
6 located, we tested those sites. Much of the property
7 is -- there's sheet erosion that occurs, and it's
8 pretty much down to what's called "parent material".
9 There's nothing much left. The topsoil has been
10 washed away.

11 COMMISSIONER CHANG: So the excavation was
12 in areas where there was some subsurface indication
13 of a --

14 THE WITNESS: Surface indication.

15 COMMISSIONER CHANG: Surface indication.

16 So not the entire area. There wasn't -- in
17 a lot of instances there'll be a strategy, like so
18 many per acre looking at -- but in this case, you
19 first did the pedestrian surveys, identified surface
20 features. Then based upon that, then you did some
21 trenching?

22 THE WITNESS: Not trenching, hand
23 excavation. When trenching is mentioned, that's a
24 mechanical trenching. The soil is typically less
25 than four inches.

1 COMMISSIONER CHANG: So that's about the
2 depth that you went, maybe four inches?

3 THE WITNESS: In much of the property.
4 Some of the areas where these sites were, they were
5 located in areas where there happened to be some more
6 soil. So that's -- we put test units in when we were
7 able to actually have something to excavate into.

8 COMMISSIONER CHANG: What was the use of
9 this property prior to, you know, historically?

10 THE WITNESS: It was used as cattle, to
11 graze cattle for by Ka'ono'ulu Ranch, the former
12 landowner for over 100 -- little over 100 years.

13 COMMISSIONER CHANG: Prior to that, do you
14 know what the area was used for?

15 THE WITNESS: Given the location, it would
16 have been used for, most likely, for transiting,
17 because of the -- it's a marginal -- in terms of an
18 environmental area, it's a marginal area. That's not
19 to say nothing occurred there. There's physical
20 evidence that Hawaiians did use at least portions of
21 the project area in transit.

22 COMMISSIONER CHANG: And I notice there is
23 one LCA that has come up. Is that correct?

24 THE WITNESS: That's Hewahewa. That's a
25 large LCA. I believe it's over 5700 acres. Most of

1 Ka'ono'ulu Ahupua'a is contained in that LCA. But
2 the project area is contained in a portion of that
3 large Land Commission Award.

4 COMMISSIONER CHANG: Were there any kuleana
5 lands that you were able to identify?

6 THE WITNESS: No, not on the property.

7 COMMISSIONER CHANG: During your
8 archaeological inventory survey, you identified --

9 THE WITNESS: There were originally 20
10 sites.

11 COMMISSIONER CHANG: Were there any
12 indication of subsurface resources?

13 THE WITNESS: Are you asking --

14 COMMISSIONER CHANG: Habitation, any
15 indication that there may have been habitation?

16 THE WITNESS: There was one enclosure that
17 was identified in 1994. And then an additional
18 enclosure identified in 2015.

19 And both of those, based on excavation,
20 were interpreted as temporary habitation areas. But
21 the midden, the amount of food remains and other
22 cultural material remains that were recovered, were
23 very modest. But still, it indicates that those
24 enclosures had been used for temporary habitation,
25 again, probably mauka-makai transiting.

1 COMMISSIONER CHANG: Mauka-makai
2 transiting. Are you aware of any trail systems that
3 go mauka-makai?

4 THE WITNESS: Not in this area.

5 When we were there in 1994, it was still
6 being grazed by cattle. And there were a lot of
7 trails, but they were animal trails. We didn't
8 identify like any paved trails or anything like that.

9 COMMISSIONER CHANG: Was there any attempt
10 to find out whether there were any trail systems
11 running through here?

12 THE WITNESS: Through the property itself?

13 COMMISSIONER CHANG: Or through any oral
14 history or archival research?

15 THE WITNESS: Yes, I believe a testifier
16 said that there were couple that the Kulanihakoi
17 Gulch, the large gulch to the south, and then to the
18 east of the project area, was used for transiting.

19 COMMISSIONER CHANG: So would you agree
20 that generally where there is habitation, temporary
21 or otherwise, that is an indication that people lived
22 there at some point in time? And that Hawaiians,
23 generally maka'ainana, not royalty, maka'ainana, they
24 were probably -- you look at -- there were very --
25 some Hawaiians say there were 300,000 Hawaiians, some

1 say as much as 800,000, but a lot of Hawaiians that
2 lived there.

3 Would you disagree that in many instances
4 where there is habitation, Hawaiians tended to bury
5 where they lived?

6 THE WITNESS: No, and that's been --
7 there's been many instances of that.

8 In this particular property, there's almost
9 no soil. And so that's why I was speaking a little
10 earlier about there being some sort of mounding, I
11 mean just necessary in order to have the remains, so
12 they were covered.

13 COMMISSIONER CHANG: But there could be
14 potential instances where there might be subsurface
15 human burial remains, slight, but there could be?

16 THE WITNESS: Yes. And one of the reasons
17 that monitoring would be occurring, would occur down
18 the road, is you never can say 100 percent guarantee
19 about anything in archaeology.

20 COMMISSIONER CHANG: There have been
21 instances -- there's been hundreds of years of
22 plantation, agricultural use. And then we find
23 subsurface, we will find a burial. You will agree
24 that has happened here on Maui?

25 THE WITNESS: Oh, yes. The one thing about

1 this property is that there is very, very shallow,
2 very shallow soil there.

3 COMMISSIONER CHANG: For purposes of
4 regulatory processes, if you find a burial during an
5 archaeological inventory survey, that would be
6 considered a previously identified?

7 THE WITNESS: Correct.

8 COMMISSIONER CHANG: And a determination,
9 disposition of that burial whether to preserve it or
10 relocate it would be made by the Maui-Lana'i Island
11 Burial Council in this case?

12 THE WITNESS: Correct.

13 COMMISSIONER CHANG: If you find human
14 burial remains during an inadvertent archaeological
15 monitoring, it would be considered inadvertent, and
16 that determination would be made by State Historic
17 Preservation Division?

18 THE WITNESS: The culture history branch,
19 correct.

20 COMMISSIONER CHANG: So there is a very big
21 distinction between consultation process, if it is a
22 previously identified, there is a public process for
23 one, the burden is upon the applicant to seek out
24 potential lineal cultural descendants, and it's a
25 much more involved process. And the Burial Council

1 can ultimately determine to preserve that burial in
2 place?

3 THE WITNESS: That's their kuleana.

4 COMMISSIONER CHANG: If you find them
5 during an archaeological monitoring, which at this
6 point in time this project would proceed forward
7 under an archaeological monitoring plan, right?

8 THE WITNESS: Assuming that the data
9 recovery process is undertaken, and eventually there
10 would be a monitoring plan prepared, and monitoring
11 program established.

12 COMMISSIONER CHANG: Let's knock on wood.
13 Hopefully we wouldn't find any human burial, but if
14 we did under the monitoring, SHPD would make that
15 determination?

16 THE WITNESS: In consultation with the
17 regional geographic representative for Maui-Lana'i
18 Island Burial Council.

19 COMMISSIONER CHANG: But no lineal cultural
20 descendant would be required to be consulted with?

21 THE WITNESS: My experience has been that
22 Hinano Rodrigues always reaches out to see if there
23 is lineal descendant.

24 COMMISSIONER CHANG: And mahalo to Hinano,
25 and you're right, I do believe he does that.

1 But there is no legal requirement to do
2 that?

3 THE WITNESS: The requirement, I believe,
4 is that they have to consult with Maui-Lana'i Island
5 Burial Council. But it's a consultation, it's not
6 their kuleana.

7 COMMISSIONER CHANG: Because under -- if
8 it's a previously identified, there is actually a
9 burial treatment plan that's prepared, a 90-day
10 period for review, publication in the newspaper to
11 determine whether there are any descendants. Much
12 longer process which would require consultation?

13 THE WITNESS: Correct.

14 COMMISSIONER CHANG: Versus inadvertent --
15 fortunately Hinano reaches out, but the law says you
16 have 24 hours upon which to make a determination
17 whether to relocate it and preserve it.

18 So hopefully we don't find any.

19 However, in this case, where the developer
20 -- let me ask you this.

21 There is a data recovery plan.

22 THE WITNESS: It's pending. The review
23 process is ongoing, it's not approved yet.

24 COMMISSIONER CHANG: In your opinion, if
25 anything -- if in one of these enclosures, a burial

1 bundle is discovered.

2 THE WITNESS: That would not be an
3 inadvertent find.

4 COMMISSIONER CHANG: You would agree if
5 it's found during data recovery, that would be
6 considered a previously identified?

7 THE WITNESS: At that point it would be.
8 It would go forward to the Burial Council, it's not
9 like it's a monitoring situation.

10 COMMISSIONER CHANG: And so everything
11 would stop in the project, nothing would be permitted
12 to proceed forward?

13 THE WITNESS: Testing to could occur
14 elsewhere during the data recovery project, but that
15 find would need to be examined and SHPD and the
16 Burial Council would comment on it.

17 COMMISSIONER CHANG: That would be a risk
18 the developer would assume by proceeding forward,
19 when there is potential outstanding that Burial
20 Council may determine to preserve it in place?

21 THE WITNESS: The Maui-Lana'i Island Burial
22 Council takes each case always on a case-by-case
23 basis.

24 COMMISSIONER CHANG: With respect to data
25 recovery, Commissioner Scheuer asked a question about

1 data recovery is a form of mitigation. But in your
2 experience has data recovery resulted in
3 preservation, or has it resulted generally in just
4 information?

5 THE WITNESS: Majority of the time, it's
6 information gathered.

7 COMMISSIONER CHANG: That's been my
8 experience as well. It's information, so it's not
9 preservation.

10 THE WITNESS: No.

11 COMMISSIONER CHANG: Because I don't see
12 any of the sites, at least on the recommended
13 mitigations for preservation. It's either no further
14 work or data recovery.

15 There has been representation that the
16 developer has agreed to preserve certain sites, but
17 at least on the mitigation measures that have been
18 presented to SHPD and approved, it is only data
19 recovery and no further work?

20 THE WITNESS: That's correct. The
21 commitment by the developer to preserve some of these
22 community sites was made by the developer.

23 This was after the Inventory Survey Report
24 SHPD had accepted it.

25 COMMISSIONER CHANG: And what is pending

1 before SHPD at this point in time is the mitigation
2 recommendations of either data recovery, or no
3 further work. But there is nothing on the mitigation
4 measures agreeing to preservation?

5 THE WITNESS: The data recovery plan is a
6 plan to undertake data recovery.

7 COMMISSIONER CHANG: At this point in time
8 there is no commitment by the developer before SHPD
9 for preservation?

10 THE WITNESS: That's correct.

11 Because of the situation, I would expect to
12 contact SHPD once it's known what's going to be
13 happening with the project and say, hey, these
14 certain sites have been requested to be preserved, so
15 we may withdraw those from the actual data recovery
16 plan, or just not do data recover on it.

17 COMMISSIONER CHANG: Because from a -- in
18 your experience, from a Hawaiian cultural
19 perspective, is it more important to get the
20 information, or is it more important to preserve the
21 site in its present state?

22 THE WITNESS: That's on good question. And
23 it would be to preserve.

24 COMMISSIONER CHANG: Because I did notice
25 that there was petroglyph in 1994.

1 THE WITNESS: On a boulder.

2 COMMISSIONER CHANG: It was identified in
3 your plan as to be preserved, but it was relocated.

4 THE WITNESS: The previous landowner
5 removed it from the property and relocated it to
6 Kula, and a different firm prepared the
7 after-the-fact preservation plan.

8 COMMISSIONER CHANG: Was there a plan that
9 was accepted by SHPD or it was --

10 THE WITNESS: It was accepted.

11 We didn't prepare that after-the-fact
12 preservation plan.

13 COMMISSIONER CHANG: So that removal by
14 that previous landowner was in disregard to the
15 agreed-upon commitment to preserve that petroglyph in
16 place? And I know it's not you.

17 THE WITNESS: I would have preferred that
18 the boulder was not removed.

19 CHAIRPERSON ACZON: Commissioner Chang,
20 where are you going with this?

21 COMMISSIONER CHANG: I am trying to
22 establish that the Archaeological Inventory Survey
23 that's been presented and the representation --

24 CHAIRPERSON ACZON: Let me give the other
25 Commissioners a chance.

1 COMMISSIONER CHANG: I'm sorry.

2 CHAIRPERSON ACZON: I'll get back to you.

3 COMMISSIONER CABRAL: I have a quick one.

4 There had been public testimony earlier
5 regards to gathering rights or gathering taking place
6 on the property, and that there is leaves and there's
7 plants on the property.

8 Does your study include that type of thing?
9 And my question about those type of plants, are they
10 somewhat available in abundance elsewhere, or are
11 they rare and unique and only available on that site?

12 THE WITNESS: The hualoa that was referred
13 to is an indigenous plant. I'm not a botanist, but
14 it's pioneer species. It can go into marginal areas.

15 So different places in Kihei and elsewhere
16 too would have that.

17 COMMISSIONER CABRAL: Thank you.

18 CHAIRPERSON ACZON: Commissioner Ohigashi?
19 Anybody else? Commissioner Chang.

20 COMMISSIONER CHANG: No, I'm fine.

21 CHAIRPERSON ACZON: Sure now?

22 COMMISSIONER CHANG: I was going to go
23 more, but I got kind of cut off there. I'm
24 completed.

25 CHAIRPERSON ACZON: Follow-up Mr.

1 Sakumoto -- Cataldo, Ms. Cataldo.

2 MS. CATALDO: I had to practice too, Chair.

3 No. No further questions.

4 CHAIRPERSON ACZON: So you folks done with
5 this witness?

6 MS. CATALDO: With this witness, yes.

7 CHAIRPERSON ACZON: Thank you.

8 THE WITNESS: Thank you, Commission
9 members, for your volunteer time.

10 CHAIRPERSON ACZON: Next witness.

11 MR. SAKUMOTO: Thank you, Mr. Chair. We
12 would like to call Mr. Tom Holliday.

13 VICE CHAIR SCHEUER: Mr. Chair, what's the
14 time to head out to the airport?

15 THE WITNESS: I will try to be as quick as
16 possible.

17 VICE CHAIR SCHEUER: 6:00 o'clock, and it's
18 5:00 now.

19 CHAIRPERSON ACZON: Do you swear that the
20 testimony that you're about to give is the truth?

21 THE WITNESS: Yes.

22 CHAIRPERSON ACZON: Please state your name
23 and address for the record.

24 THE WITNESS: Tom W. Holliday. I'm a
25 Director for The Hallstrom Group CBRE. We are

1 located at 1003 Bishop Street, Suite 1800, Honolulu.

2 CHAIRPERSON ACZON: Thank you.

3 TOM W. HOLLIDAY

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

7 DIRECT EXAMINATION

8 BY MR. SAKUMOTO:

9 Q Did you prepare the market study economic
10 analysis and --

11 CHAIRPERSON ACZON: Can you state what his
12 particular area of expertise?

13 MR. SAKUMOTO: I believe the parties have
14 stipulated that Mr. Holliday is testifying as an
15 expert in the field of market studies, economic
16 impact analyses and public fiscal assessments.

17 CHAIRPERSON ACZON: Thank you, please
18 proceed.

19 Q (By Mr. Sakumoto): Did you prepare the
20 market study economic impact analysis and public
21 fiscal assessment for Pi'ilani Promenade project
22 attached to the EIS?

23 A Yes.

24 Q As part of the Draft EIS process, were
25 comments made with respect to your draft report?

1 A Yeah, quite a few that came in.

2 Q Did you receive them?

3 A Yes, I did. And we address them, which is
4 the reason why the report shows a revision date of
5 2015 as opposed to the original date of 2013.

6 Q Is a copy of your final report attached as
7 an appendix to the Final EIS?

8 A I assume so.

9 Q Your report is essentially organized, if I
10 may, as a market study, then a location absorption,
11 then economic impacts, and finally public fiscal
12 impacts; is that correct?

13 A Yeah, correct. If I could go over real
14 quick. I've done this many times and testified
15 before the State Land Use Commission on these.

16 And basically the first step of the study
17 is market study of the components that comprise the
18 project, in this case you have commercial, industrial
19 and residential.

20 The second thing is to study the
21 appropriateness of the site for the proposed use.

22 The third thing is to do the absorption
23 estimates for each of the product types.

24 From that you develop an economic model
25 that shows the project from groundbreaking through

1 stable -- as they build out and stabilization.

2 And then the last piece is to figure out
3 how it works in taxation. How many tax dollars it
4 generates versus the potential tax liability
5 associated with it.

6 Q Were you here for the prior testimony from
7 the public witnesses, as well as from the other
8 witnesses?

9 A I've been here the last day and a half,
10 like all of us, yes.

11 Q Thank you for your patience.

12 There was some testimony with regard to
13 vacancy of commercial spaces on Maui. And I'm
14 wondering if you have any thoughts or responses to
15 the comments that were made along those lines?

16 A Well, Colliers did an in-depth study, and
17 it was published in the Maui newspaper in April, I
18 believe. And it looked at different areas on the
19 island.

20 And someone testified yesterday that it
21 showed that there was a 31 percent vacancy rate in
22 Kihei. That is totally wrong, and not what it says
23 in the article. And there is a 31 percent vacancy
24 rate of office space, but the subject is not going to
25 build office of space. In fact, the article says

1 that -- and I'm looking at it here -- says that South
2 Maui is the strongest of all the sectors on Maui, in
3 regards to commercial space vacancy. And that it
4 absorbed some 33,000 square feet of space last year,
5 while most of the other areas have declined.

6 And to quote -- I'm sorry, I'm running
7 through here -- the strongest retail space market for
8 owners in terms of vacancies was in South Maui where
9 the inventory was 823,000 square feet, 76,000 square
10 feet was vacant, for a vacancy rate of 9.28 percent.

11 Now, even at that level you have to start
12 analyzing the vacancy rates. There a lot of spaces
13 in Kihei that are obsolete, and will never be filled.
14 The largest single space is the old theaters at the
15 Kukui Mall. And that thing's been sitting vacant for
16 a decade. They tried to shoehorn a school in there,
17 but it can't do it. And as a result, that 12,500
18 square feet, the 5,000 square foot restaurant space
19 next to it that was dependent upon the theater, and
20 inline retail next to it have all sat vacant all
21 these years. And they will probably not never be
22 competitive.

23 Most of the space available that's in Kihei
24 is noncompetitive. It's second floor. It's that
25 space I just discussed, or it's in some secondary

1 poor location.

2 When you start looking at the newer centers
3 that are well located and embrace the best qualities
4 of a commercial site, they do quite well, like
5 Pi'ilani Village, over 95 percent occupancy. And
6 many of the better located ones are well over
7 90 percent.

8 So it's not a question of there being a
9 lack of business demand for space in Kihei, it's that
10 so many of the spaces are old and obsolete and it's
11 time to be replaced.

12 (Commissioner Cabral leaves.)

13 I found it interesting that nobody has, in
14 two days, said this is a bad site for commercial use,
15 because everybody recognizes it's a great site for
16 commercial use.

17 It's got all the characteristics necessary.
18 It's in an interceptor gateway location. It's got
19 direct access to major thoroughfares. It's got
20 extensive frontage on major thoroughfares, and it's
21 got high exposure. All those things will make it a
22 great site.

23 In fact, the best support for the project
24 came from the guy who's doing Downtown Kihei. He
25 spoke for Krausz. He said if they build that

1 project, that's where every new business, based on
2 his 30 years of experience, that's where all the
3 businesses are going to go is to that project,
4 because it will embody the very things that modern
5 commercial, retailers, and restaurants desire.

6 So it's not a question of the site being
7 inappropriate. If I could back up just a second and
8 go through some of the market indications. I don't
9 know what number it is.

10 Q I'm sorry, you have some slides. Is this
11 the market site indication?

12 A We'll start with that one. I don't know
13 what number that is, please forgive me.

14 So demand for suburban uses is all a matter
15 of end user. You need families that need new homes,
16 before you -- you have to put land for them. You
17 need people to buy patronized industrial and
18 commercial spaces before there is a demand for them.

19 Well, Kihei-Makena, which is historically
20 kind of under-serviced relative to the rest of the
21 Maui market, because it's been tied with this
22 umbilical cord to Kahului. It needs to have
23 significant additions in commercial, industrial and
24 residential inventory.

25 And that's going to be as a result of the

1 population, both residents and visitor populations,
2 growing by 50 to 70 percent by 2035.

3 We estimate, based on our models, that
4 950,000 to 1.5 million square feet of new competitive
5 retail, restaurant and service and medical space will
6 be needed in South Maui by 2035.

7 And as an aside, this is more than
8 sufficient to absorb the subject.

9 CHAIRPERSON ACZON: I believe what he is
10 testifying to is in the EIS.

11 MR. SAKUMOTO: I believe this is part of
12 his report, yes.

13 CHAIRPERSON ACZON: Can we move onto some
14 other --

15 THE WITNESS: Well, a point I would make.

16 CHAIRPERSON ACZON: It's on the record.

17 THE WITNESS: I'll add a couple thoughts
18 that aren't on the record.

19 One is that our estimate of demand is
20 sufficient to absorb the subject space and Downtown
21 Kihei space, and space in the Maui tech park that's
22 been rezoned, and even still some extra.

23 So it's not as if this project is going to
24 swallow the market whole, and there'll be no demand
25 that flows elsewhere.

1 In fact, Downtown Kihei has the benefit of
2 coming out of the ground first, and will be able to
3 do it.

4 It's an underserved industrial market, and
5 when it grows, and there is more commercial activity,
6 and economic activity, industrial people are there.

7 And I don't think there is any doubt that
8 there is a huge need for rental apartments. We just
9 finished a recent study and it shows that rentals are
10 in short supply. They have short exposure periods,
11 they can rent in a short time, and rents are
12 continually going higher.

13 Moving on to the next page, which is market
14 study indications. Again, Pi'ilani Promenade is one
15 of the best vacant commercial and industrial
16 development sites on the whole island, outside of
17 Kahului.

18 And we estimate that the commercial and
19 industrial floor space will require about 15 years to
20 absorb, and for the rental apartments, it's likely
21 that many of them will be absorbed in a lottery, and
22 certainly shortly after completion.

23 The economic impacts, which is the next
24 slide. That's all within the report, so probably we
25 don't have to go over that, if you're in a hurry.

1 And the only thing we want to note is that
2 with the rental apartments on-site, and those
3 proposed at Honua'ula just above, that's creating a
4 lot of potential customers for the commercial and
5 industrial spaces that are in the project right
6 on-site. And they'll be able to go there without a
7 car, without -- you know, by walking or biking on one
8 of the paths.

9 The next slide says economic impacts. And,
10 again, this just shows that we also apply -- the
11 studies that we do are independent, and they're meant
12 to look at a project in kind of a micro level within
13 its existence.

14 But we also want to apply the state
15 input-output economic model to see how it turns out.
16 And in every variable in every case, the state model
17 shows it will have a greater economic impact than
18 what our model shows.

19 And then lastly, public fiscal impacts.
20 The bottom line is that this is a net benefit to the
21 county first. Some 25.9 million during development,
22 and about 600,000 annually stabilized after it's
23 built out. And to the State of Hawaii it will turn,
24 if you will, a profit of \$194 million during
25 development, and a stabilized profit of \$20.7 million

1 per year.

2 That kind of covers it really quickly.

3 Q (By Mr. Sakumoto): Just one more question
4 for you from me.

5 Were you here when there was testimony
6 about some of the big box tenants closing in Maui?

7 A Yeah.

8 Q And I believe they were referencing some of
9 them, for example, along Dairy Road. And I believe,
10 if I heard it correctly, the assertion being made was
11 that is a sign that Maui is incapable of sustaining
12 retail demand. Did you hear that?

13 A Yes, I did.

14 Q What is your assessment of that?

15 A First of all, that was not part of my
16 study. So I haven't studied the Kahului market in
17 particular, but I'd be happy to comment on it.

18 Q Thank you.

19 A One is, it's -- shopping centers do become
20 obsolete over time. A lot of it is because of
21 traffic. Like I say, one of the most important
22 things is to be in an interceptor gateway location.
23 Dairy Road used to be great, but now it's become this
24 incredibly congested stretch of street that no one
25 wants to go to. And it's not that like Lowes folded

1 up shop and is going off island. They wanted a
2 better location. And this location 20 years ago was
3 a good location, but now we've got traffic problems.
4 And all these people want to be on the outside of
5 that Dairy Road congestion, you know, like Wal-Mart
6 is and like Target is.

7 If you talk to the brokers, people are
8 interested in those spaces, it's just they're going
9 to have to take time because they're going to have to
10 be carved up into smaller spaces. But the brokers
11 indicate that there is interest in these spaces, it's
12 just they have lost those original tenants who have
13 the money and the power and the need to be in a
14 different location.

15 And one other kind of point -- little off
16 from there -- is the 123 lot subdivision that was
17 originally approved from here is obsolete. No longer
18 are industrial lands in modern suburban Hawai'i done
19 by just owner users, single owner users. Which is
20 traditionally the way it was.

21 And if you look in the old part of Wailuku,
22 Kahului and Honolulu, but nowadays it's multi-tenant
23 buildings with mainland investors, and franchises
24 from elsewhere, and they need more space. In the old
25 days a guy would start a plumbing shop. He would

1 have his industrial lot, and that was part of his
2 retirement, because he would own that shop until he
3 decided to retire, and he'd sell the land along with
4 it.

5 But that's not how it works. And so the
6 reality is that they built that 123 lot subdivision,
7 you probably would get businesses coming in and
8 buying ten lots, and consolidate them together to
9 create the space they need to put in their modern
10 businesses, because modern businesses is require
11 certain levels of space, parking, exposure and other
12 things, that in this 123 lot subdivision would not
13 likely happen. And it would have taken decades to
14 sell 123 lots.

15 Q Thank you. I have no further questions.

16 CHAIRPERSON ACZON: Any questions for the
17 witness?

18 MS. APUNA: No questions.

19 MR. HOPPER: No questions, Mr. Chair.

20 MR. PIERCE: No questions.

21 MR. TABATA: No questions.

22 CHAIRPERSON ACZON: Commissioners?

23 COMMISSIONER SCHEUER: Just one question.

24 I know it's a question I directed to Mr.
25 Hart earlier. What's the sort of shelf-life of one

1 of your economic analyses?

2 THE WITNESS: Well, actually quite long.
3 Because, although the near-term market may change,
4 and the near-term market has changed somewhat from
5 the original 2013, and we tried to revise a little in
6 2015. But we were projecting out over several
7 decades.

8 And so if we were to redo it today, we
9 would probably project it out to 2040 instead of
10 2035. But the trending is the same, and the gross
11 level of demand that is created by an increasing
12 population of local residents and visitors would show
13 the same trends.

14 And so while the near-term moves up and
15 down, the long-term, which is what we're really
16 looking for, doesn't change that much.

17 Now, regards to the economic impacts,
18 obviously 2018 is different than 2013, and so we
19 would have to inflate everything up; the cost, the
20 amount spent, the wages created.

21 But it's just a question of inflating up
22 from a previous time to a current time. We would
23 still have about the same number of jobs. Still have
24 the same basic modeling answers, it would just be the
25 different level of currency 2018 versus 2013.

1 VICE CHAIR SCHEUER: Thank you.

2 CHAIRPERSON ACZON: Anybody else,
3 Commissioners? Everybody got shy.

4 Anybody, any followup for the witness?

5 MR. SAKUMOTO: No, Mr. Chair.

6 CHAIRPERSON ACZON: Any final comments from
7 the Commission, any final questions?

8 Commissioners, what is your pleasure?

9 Thank you, Mr. Holliday, sorry.

10 COMMISSIONER OHIGASHI: You going to ask if
11 final statements?

12 CHAIRPERSON ACZON: They don't -- I asked
13 them, they don't have anything.

14 What is the pleasure of the Commissioners?

15 COMMISSIONER OHIGASHI: Chair, I move that
16 that the Land Use Commission find that the Pi'ilani
17 FEIS does not comply with the content requirement for
18 an FEIS, is therefore not accepted pursuant to HRS
19 Chapter 343 and HAR Chapter 11-200, because:

20 The FEIS does not contain a thorough
21 discussion of the cumulative impacts of the project
22 and other developments in the area on the economy,
23 police and fire protection services, schools, solid
24 waste, civil defense services, utilities and medical
25 facilities and of the secondary impacts of the

1 project, particularly in regard to the potential
2 impacts on future developments mauka of Pi'ilani
3 Highway brought about by the construction of the KUH,
4 as required by HAR Section 11-200-17, paragraph (i).

5 Further, that the LUC authorizes the
6 Executive Officer to notify and submit a record of
7 this non-acceptance to Pi'ilani and OEQC by July 27,
8 2027 deadline for the LUC action.

9 CHAIRPERSON ACZON: There's a motion on the
10 floor. Any second?

11 COMMISSIONER OKUDA: Mr. Chair, I'll second
12 the motion, but I would also move that the motion be
13 amended to provide that the Commission authorize the
14 Chair to sign the order, and the Executive Officer to
15 notify and submit a record of the non-acceptance to
16 the parties by the appropriate deadline, which I
17 believe is July 27, 2017. But if my date is wrong,
18 then the date which is the deadline should control.

19 CHAIRPERSON ACZON: Are you okay with that,
20 Commissioner Ohigashi?

21 COMMISSIONER OHIGASHI: I'm okay.

22 COMMISSIONER CHANG: Are we in
23 deliberations?

24 CHAIRPERSON ACZON: A motion has been made
25 by Commissioner Ohigashi and seconded by

1 Commissioners Okuda that the Land Use Commission not
2 accept the proposed FEIS.

3 We're in discussion, Commissioners.

4 VICE CHAIR SCHEUER: I'll briefly speak in
5 favor of the motion.

6 I'll start at the outset, I'm very clear on
7 what our proceedings are today, this is not a comment
8 about the project, this is a comment about the
9 acceptability of the EIS under state law.

10 In particular, I want to highlight for me,
11 one of the reasons that I am voting in favor of the
12 motion was that I found that on Maui, of all places,
13 where impacts to water resources for new developments
14 are very significant, the EIS was most significantly
15 lacking, and at points contradictory in its analysis
16 of what the impacts might have been from the proposed
17 project.

18 I also share some of the concerns that I
19 believe are going to be voiced by another colleague
20 regarding the Cultural Impact Assessment.

21 CHAIRPERSON ACZON: Thank you, Vice Chair
22 Scheuer.

23 Commissioner Chang.

24 COMMISSIONER CHANG: If I may, in addition
25 to the motion, I would add that based upon the

1 testimony that was presented, the public testimony
2 that was presented yesterday, that the Cultural
3 Impact Assessment, which because there was no expert
4 testimony, it stands on its own record, which
5 concluded that there is no traditional customary
6 practices.

7 There was, in my view, substantial
8 testimony to the contrary. So I find that the
9 Cultural Impact Assessment is not, one, procedurally
10 and legally is inadequate.

11 So for me that would be another basis upon
12 which to not accept the EIS. I do not believe that
13 the Cultural Impact Assessment was adequate, nor as
14 well as the Archaeological Inventory Survey was
15 prepared, I think that the mitigation measures are
16 primarily -- there is no guarantee that these sites
17 will be preserved, and that there will be further
18 consultation. So I find that's inadequate as well.

19 CHAIRPERSON ACZON: Commissioner Okuda.

20 COMMISSIONER OKUDA: Thank you, Mr. Chair.

21 I seconded the motion because I do not
22 believe that the evidence on this record satisfies
23 the standard which is required by a number of cases,
24 including, which was cited by our colleague here,
25 Price versus Obayashi, Hawaii 81 Hawaii 171, a 1996

1 Hawaii Supreme Court case. We recognize that this is
2 not a comment on the merits of the project. It's
3 simply whether or not the Environmental Impact
4 Statement satisfies the standard of what should be
5 contained in there.

6 I would find, based on listening to the
7 witnesses, and evaluating and observing their
8 demeanor and substance of testimony, that, for
9 example, there was lack of sufficient information to
10 allow us to make a determination of the effect of the
11 proposed development on the Kihei-Makena Community
12 Plan. And also with respect to the Downtown Kihei
13 retail issues.

14 There was not sufficient information to
15 allow us to satisfy our obligations under Ka Pa'akai
16 versus Land Use Commission, which is 94 Hawai'i 31, a
17 Hawai'i 2000 Hawaii Supreme Court case.

18 There was not sufficient information about
19 really what this project was about. We understand
20 that it's not necessary in an Environmental Impact
21 Statement to have detail, piled upon detail, but
22 simply a conceptual development plan where many of
23 the material or potential material issues are left to
24 guesswork or substantial question, does not satisfy
25 the standards shown in Obayashi, and in other

1 relevant cases, and the statute, and the
2 administrative rules, as far as giving us sufficient
3 information to make a decision.

4 And, finally, in listening to, and
5 evaluating the traffic expert, I would also find that
6 there was lack of sufficient information about the
7 impact of traffic with this development, as compared
8 to the traffic impacts if the existing Land Use
9 Commission orders were to stay in effect.

10 Finally, and briefly, I would just like to
11 say this. I don't believe people should take the
12 questions about cultural impact and Hawaiian
13 practices to conclude that this is a Hawaiian thing.
14 It is not. It's provisions that are in our state
15 constitution, adopted after a constitutional
16 convention in 1978, where there were only a handful,
17 very few Native Hawaiian delegates at the
18 constitutional convention.

19 These provisions were adopted by the voters
20 of the this State of Hawaii. It reflects community
21 values.

22 So this should not be taken as an ethnic
23 thing or a racial thing. It's a statement of
24 enforcement of community values. And the Hawai'i
25 Supreme Court has made it very clear that we, as a

1 government agency, must take those obligations
2 seriously.

3 But even without those obligations, I would
4 still find that the EIS does not meet the requisite
5 standards, especially as enunciated and explained by
6 the Hawaii Supreme Court.

7 Thank you, Mr. Chair.

8 CHAIRPERSON ACZON: Any further discussion?
9 Commissioner Ohigashi.

10 COMMISSIONER OHIGASHI: In addition to what
11 has been said, for the record I noticed that on
12 August 24, 2012, there was a decision and order filed
13 in regard to the entire 88-acre parcel. And I
14 believe that we are bound by that determination in
15 determining whether or not the FEIS is sufficient to
16 cover that 88-acre parcel.

17 The submittal was for 75 acres. And
18 although there were some people -- some of the
19 studies took into account the other 13 acres, there
20 were studies that were not taken into account the
21 13 acres.

22 I think that the project, as it stands now,
23 since it hasn't been bifurcated nor has there been a
24 request for an order that it be treated as bifurcated
25 for the purposes of filing an EIS, the Commission

1 should review the FEIS in context with the project as
2 a whole, the 88 acres. That's my position.

3 CHAIRPERSON ACZON: Thank you. Vice Chair
4 Wong.

5 VICE CHAIR WONG: Chair, I just want to say
6 that, you know, the Pi'ilani portion, the EIS
7 portion, to me, was okay.

8 However, because we're taking the whole
9 project, all 88 acres, as Commissioner Ohigashi said,
10 we have to look at the whole 88, not just Pi'ilani
11 Promenade, because that's the way the Order to Show
12 Cause was set up.

13 So I have to support this motion, even
14 though, for the life of me, I want to say yes to this
15 EIS, but I cannot, because we have to follow the
16 Order to Show Cause right now.

17 CHAIRPERSON ACZON: Thank you.

18 Any further discussion? If no further
19 discussion, Mr. Orodener, please poll the
20 Commission.

21 EXECUTIVE DIRECTOR: Thank you, Mr. Chair.

22 The motion by Commissioner Ohigashi is to
23 find that the EIS is insufficient and should not be
24 accepted. It was seconded by Commissioner Okuda with
25 technical amendments.

1 Commissioner Ohigashi?

2 COMMISSIONER OHIGASHI: Aye.

3 EXECUTIVE DIRECTOR: Commissioner Okuda?

4 COMMISSIONER OKUDA: Yes.

5 EXECUTIVE DIRECTOR: Commissioner Scheuer?

6 VICE CHAIR SCHEUER: Aye.

7 EXECUTIVE DIRECTOR: Commissioner Chang?

8 COMMISSIONER CHANG: Yes.

9 EXECUTIVE DIRECTOR: Commissioner Wong?

10 VICE CHAIR WONG: Yes.

11 EXECUTIVE DIRECTOR: Chair Aczon?

12 CHAIRPERSON ACZON: Yes.

13 EXECUTIVE DIRECTOR: Thank you, Mr. Chair.

14 The motion carries with six votes.

15 CHAIRPERSON ACZON: Thank you everyone.

16 It's been a long day. Any other further business
17 today?

18 This meeting is adjourned.

19 (The proceedings adjourned at 5:31 p.m.)

20

21

22

23

24

25

**Henry Rice
President
Kaonoulu Ranch
P.O. Box 390
Kula, HI 96790**

Letter of Testimony

LAND USE COMMISSION AGENDA

JULY 19, 2017—2 P.M.

JULY 20, 2017 – 8:30 A.M.

**Maui Arts 7 Cultural Center, Morgado Meeting room
One Cameron Way, Kahului, Maui, Hawai'i 96732-1137**

July 17, 2017

Land Use Commission
Department of Business, Economic, Development & Tourism
State of Hawai'i
P.O. Box 2359
Honolulu, Hawai'i 96804

Attn: Mr. Daniel E. Orodener

RE: A94-706 KA'ONO'ULU RANCH (MAUI)

Dear Commissioners:

Related to this agenda item, I write in support of development by Pi'ilani Promenade North, LLC and Pi'ilani Promenade South, LLC ("Project Site"), and about my knowledge of the lack of any traditional cultural practices on the Project Site.

My paternal great-great grandfather arrived in Hawai'i in about 1840. My family has owned Kaonoulu Ranch since 1916. I grew up on the Ranch and have lived there most of my life. I know the Ranch land well. Before he purchased the Ranch, my grandfather, Harold ("Pop") Waterhouse Rice and his family, lived in the Spreckelsville and Makawao area.

At one time, the Ranch spread over 10,000 acres. Throughout the years, ranch workers included those of Hawaiian, Portuguese and Chinese descent. My grandfather was fluent in Hawaiian. The portion of the Ranch that is now the 75-acre Project Site was sold in approximately 2005.

I began working on the Ranch when I was seven or eight years old. I am currently 79-years old. Cattle, horses and pigs were raised on the Ranch. The Project Site was used almost exclusively

Commissioners
July 17, 2017
Page 2

for cattle grazing, although any activity in that area was limited because the climate was extremely dry. The area is also very rocky.

In early 1942, the military began using Ranch land for training exercises, including firing weapons, beach assaults and mock combat. After World War II ended, clean-up activities continued for unexploded ordinance. The clean-up efforts continued until 1946 or 1947.

Since my family has owned the Ranch, there have been grass fires throughout the property, including the Project Site. Large tractors from the Ranch and elsewhere were used to construct firebreaks. After my grandfather granted an easement, large equipment was also used to install a 36-inch waterline across the Project Site from the northeast corner to the southwest corner. This was a major construction project.

The only trails that I have ever seen on the Project Site were either cattle or deer trails. In 1994, a rock with a petroglyph was located on the Project Site. The archeologist indicated that it could have been a trail marker, but also said that there did not appear to be any intact remnants of trails in the area of the petroglyph. The archeologist's conclusion is consistent with my own knowledge and observation – I have never seen or heard about any human trails across the Project Site.

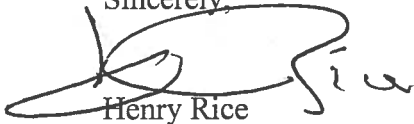
I have never seen or heard of anyone gathering anything from the Project Site, or requesting permission to gather anything from the Project Site.

I have never heard of any stories about the Project Site.

I have never seen or heard from anyone (including my grandfather) that traditional cultural practices occurred on the Project Site.

Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry Rice". The signature is stylized with a large, sweeping initial "H" and "R".

Henry Rice

Exhibit 32

**Final Environmental Impact Statement
for Piilani Promenade,
Volumes 1-5**

(submitted to the Commission on June 27, 2017)

ORIGINAL

RECEIVED
JUL 20 2017

STATE OF HAWAII
LAND USE COMMISSION

PIILANI PROMENADE

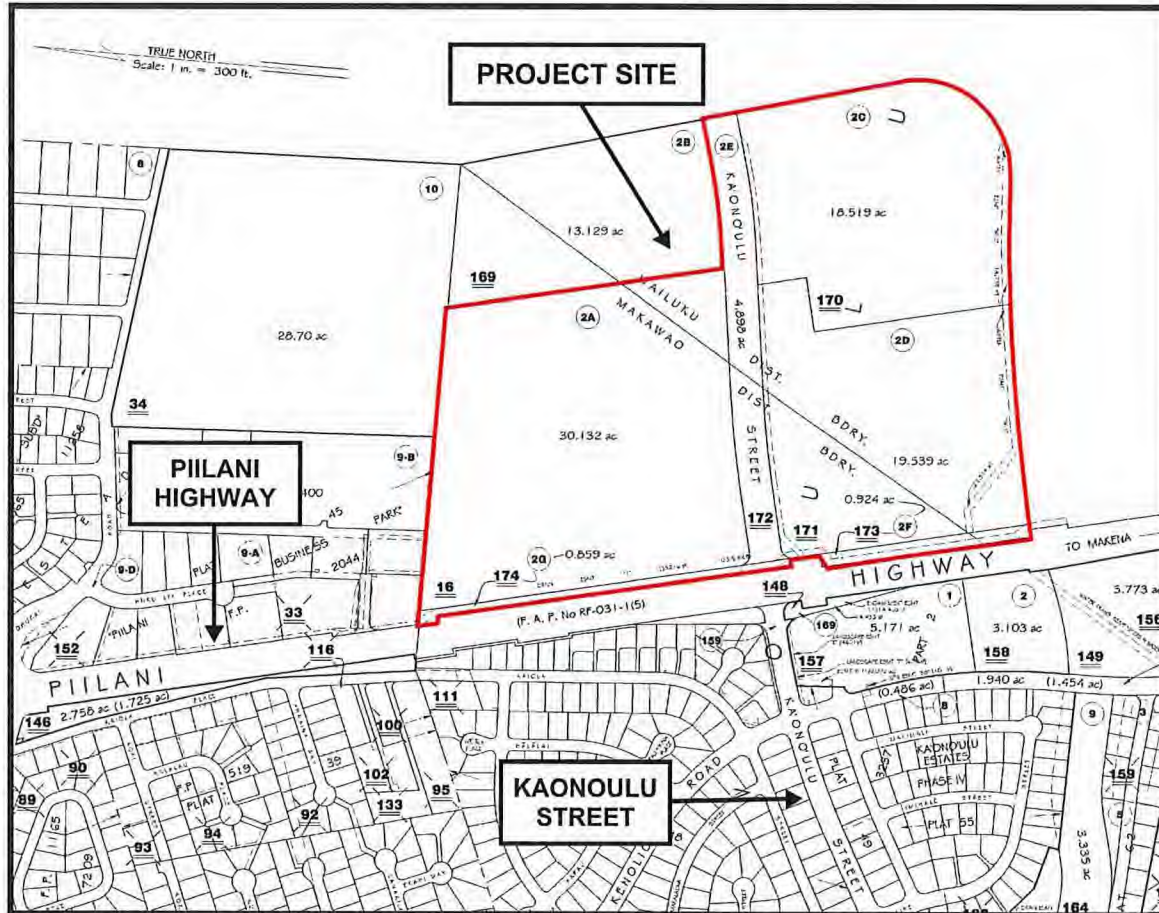
FINAL ENVIRONMENTAL IMPACT STATEMENT

PIILANI PROMENADE NORTH, LLC & PIILANI PROMENADE SOUTH, LLC

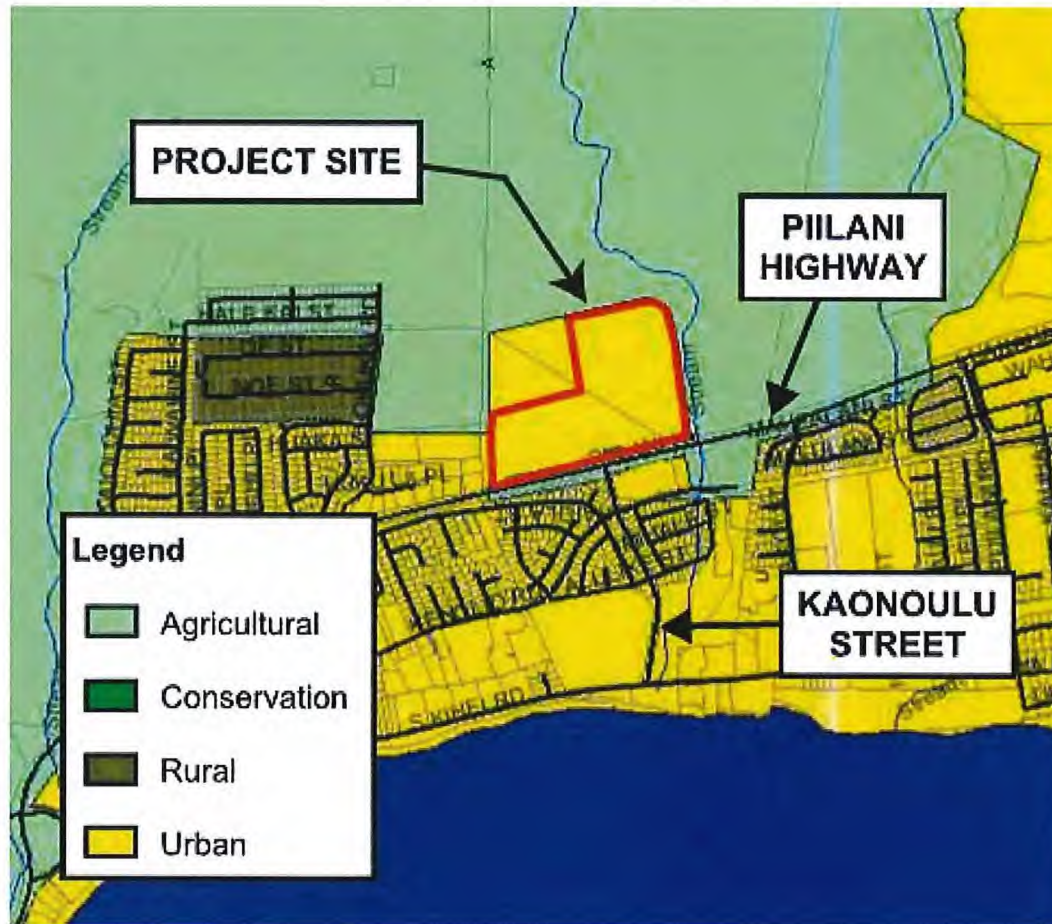
PROJECT LOCATION



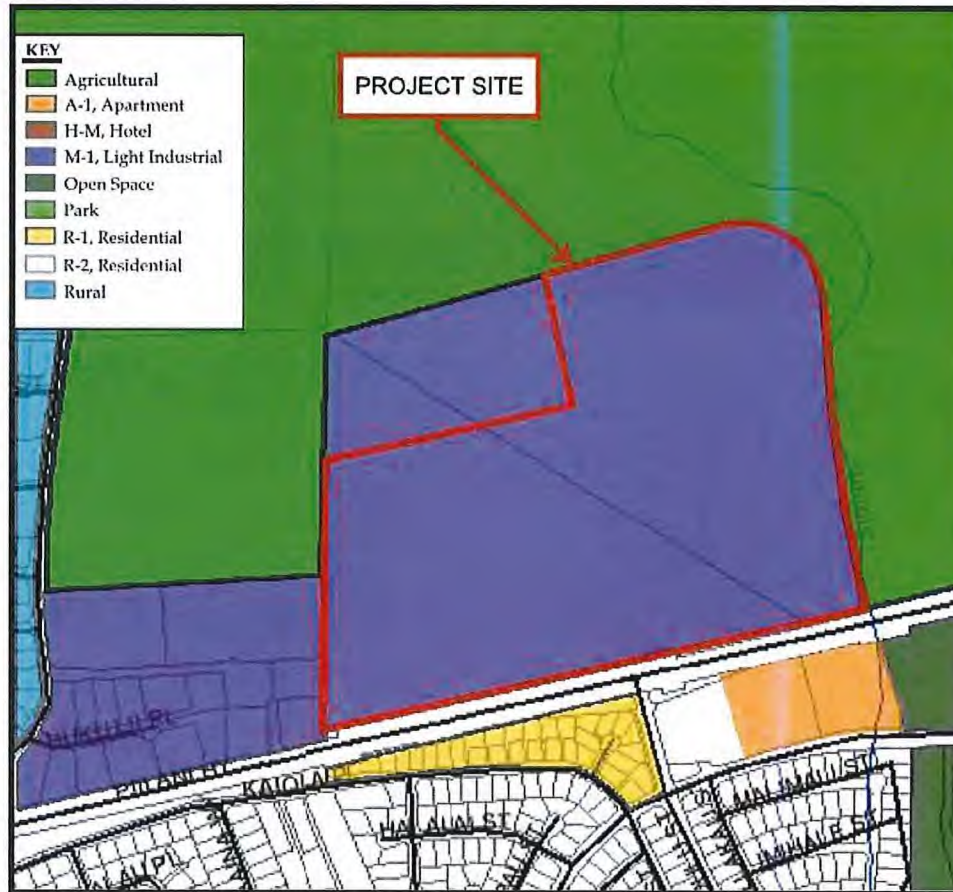
TAX MAP



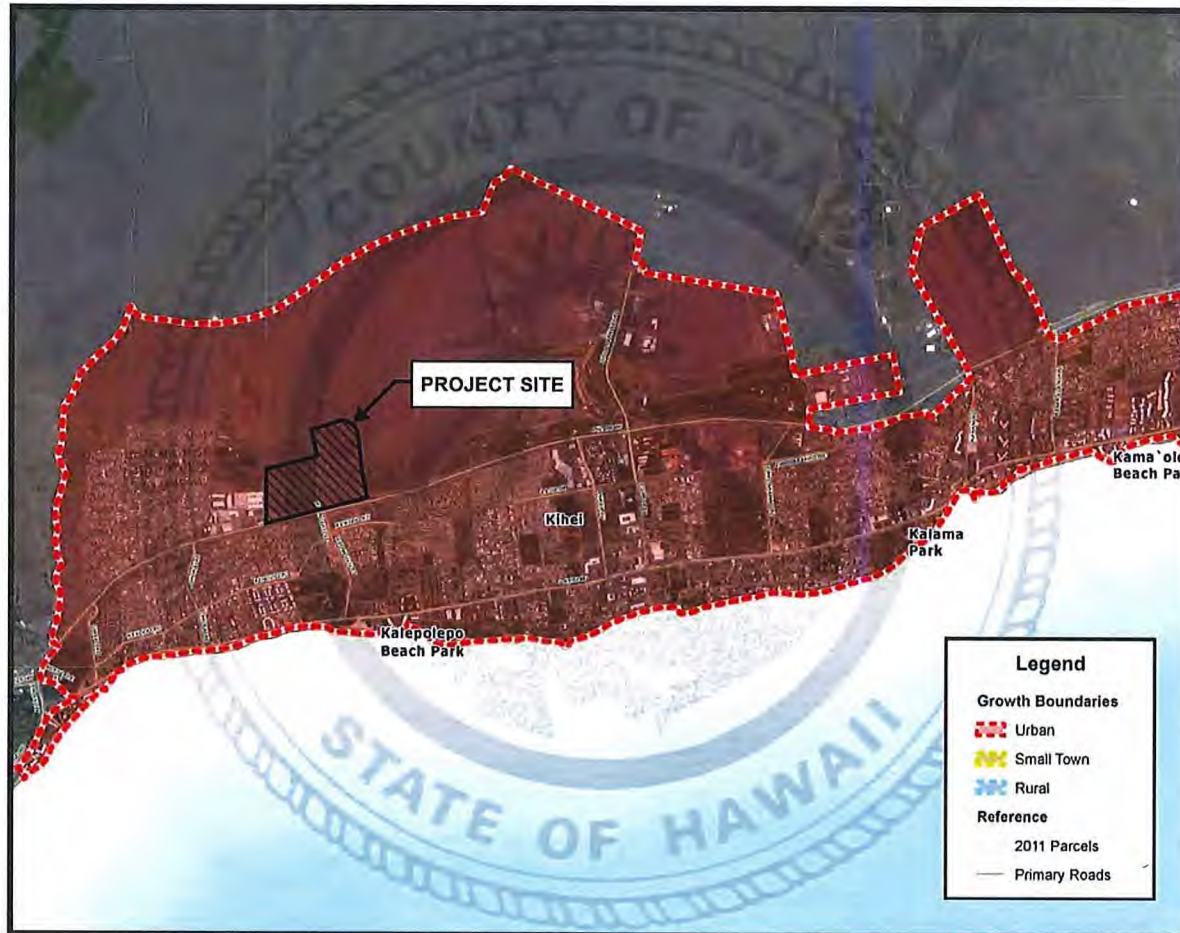
STATE LAND USE MAP



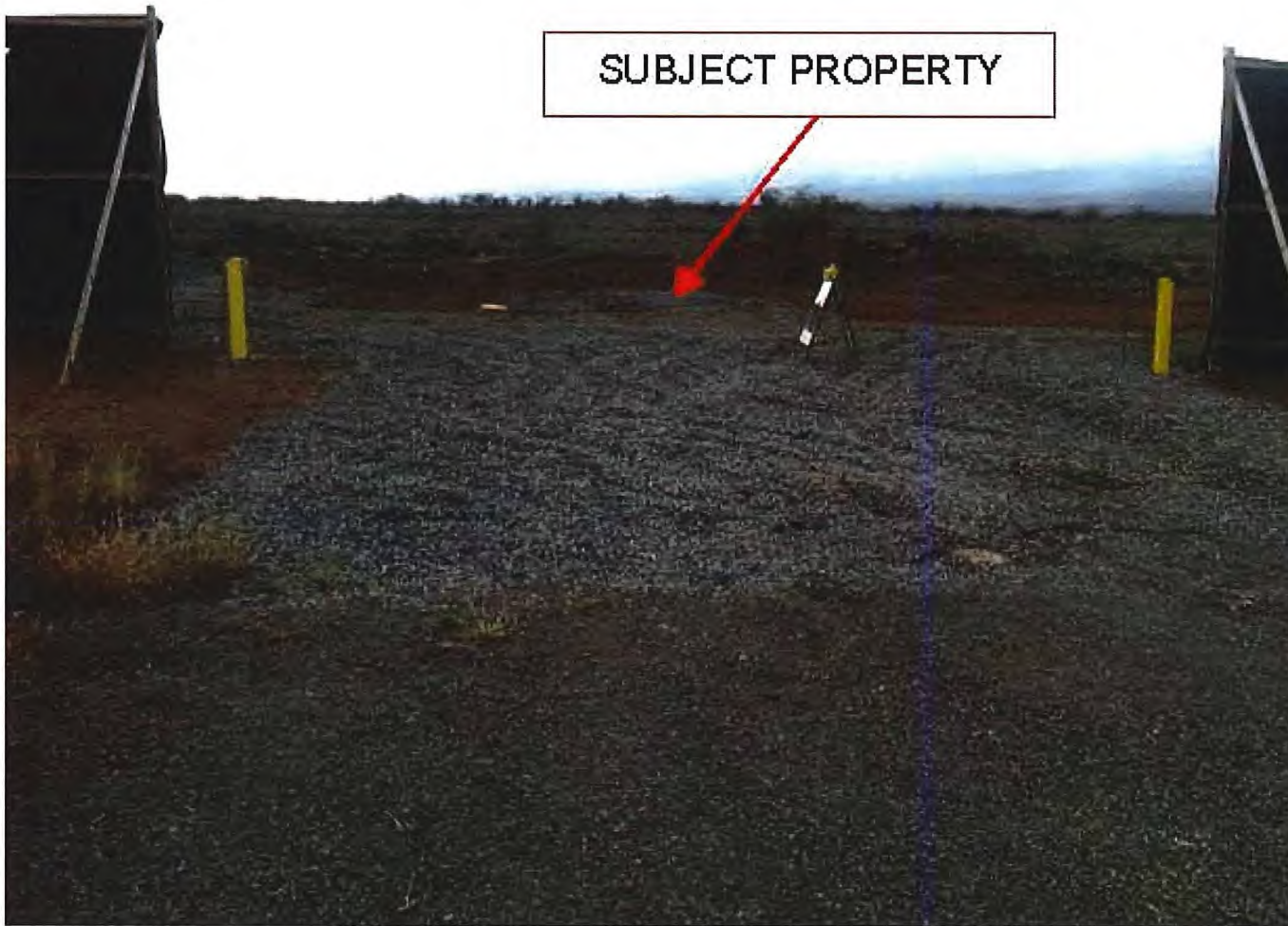
MAUI COUNTY ZONING MAP



MAUI ISLAND PLAN DIRECTED GROWTH MAP







View of the property construction entrance from Piilani Highway.



View from the southwest corner of the subject property looking North.



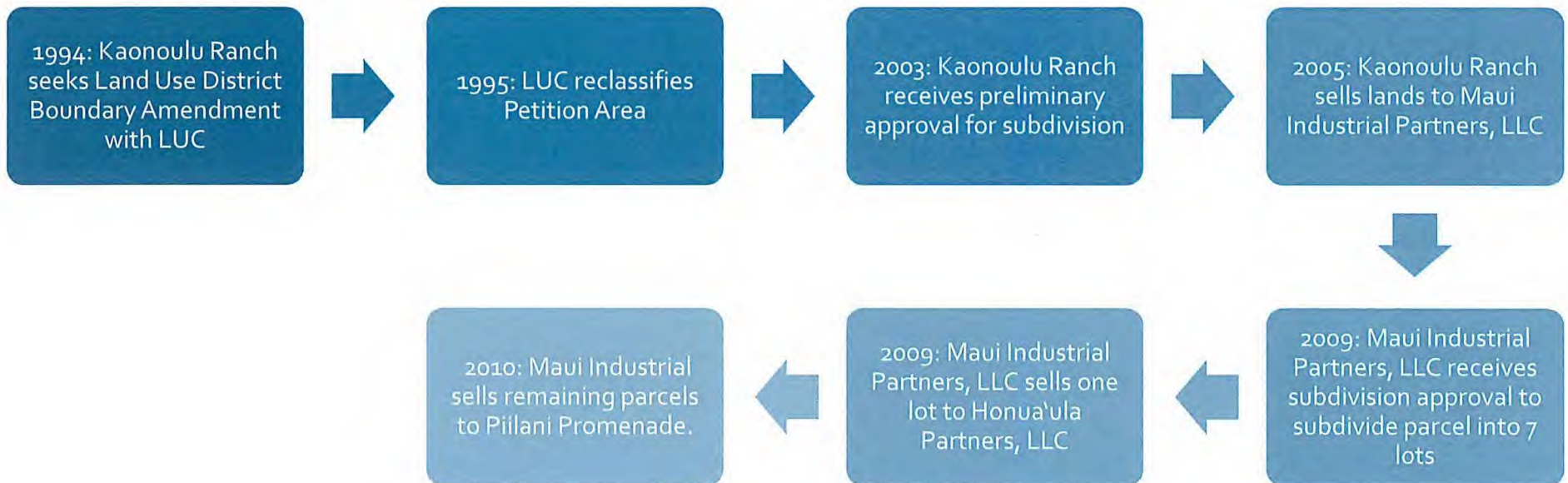
View of concrete drainage culvert that runs along the western boundary of the subject property and under Piilani Highway.



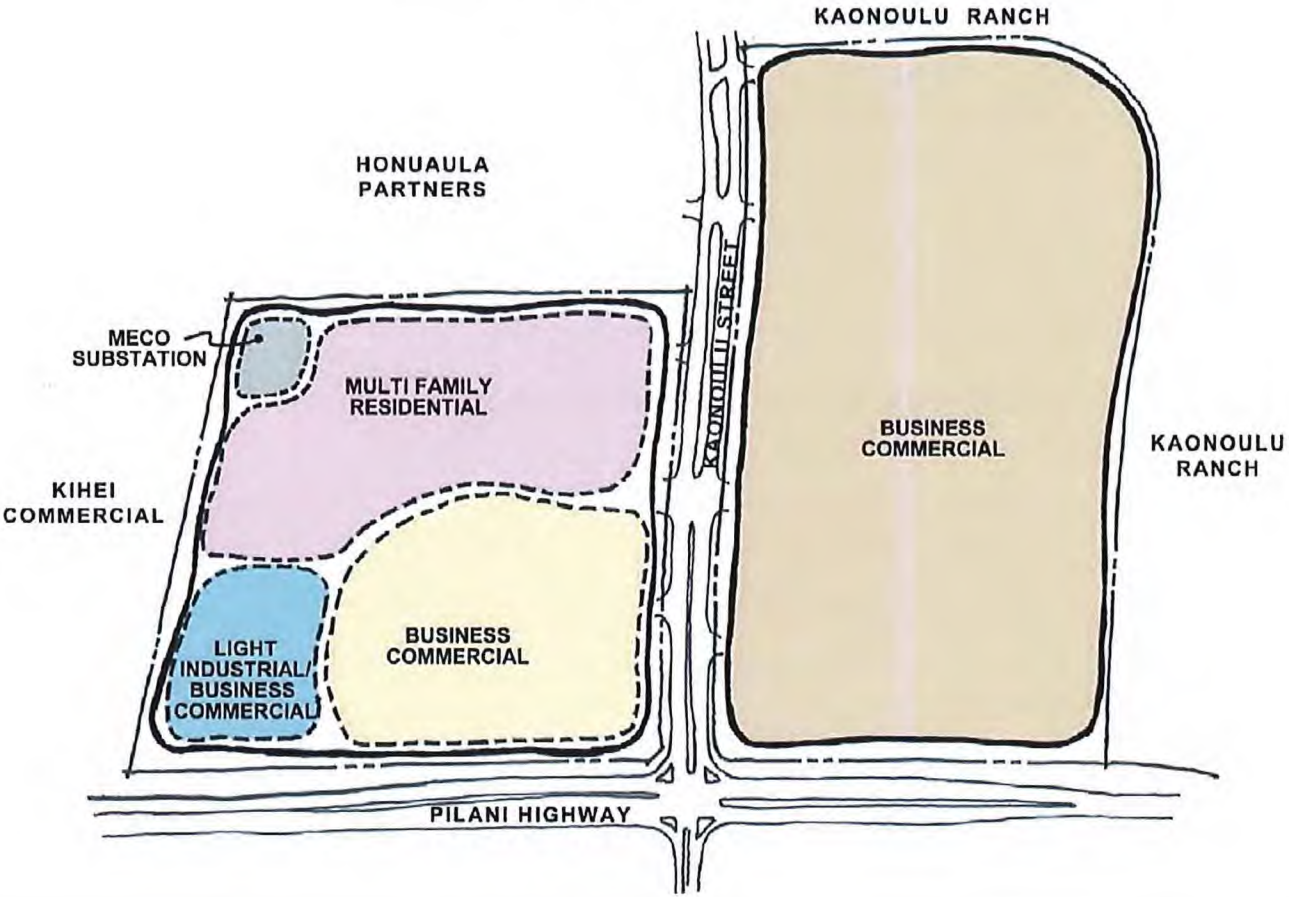


Ranch enclosures located near the southwest corner on Parcel 171.

PROJECT HISTORY



SITE PLAN



COMMUNITY MEETINGS

Aha Moku Council:

- April 2016
- January 2017
- May 2017

Kihei Community Association:

- April, June, September 2013
- April 2017 with Design Review Committee

Maui Chamber of Commerce:

- September 2013

Native Hawaiian Chamber of Commerce:

- September 2013

Maui Contractors Association:

- September 2013

Maui Nutrition and Physical Activity Coalition:

- June 2013

Meetings with Commenters on DEIS

- October 27, 2014: Meeting to discuss Environment and Project Impacts. Kihei Community Association members attended.
- October 30, 2014: Meeting to discuss the Economy and Project Impacts. A representative of the Maui Chamber of Commerce attended.

Public Information Meetings

- November 5, 2013: attendance by 150 community members
- February 25, 2014 (archaeological concerns)

Site Visits

- January 22, 2016: archeological sites
- March 8, 2017: LUC/Public Site visit

THE FINAL ENVIRONMENTAL IMPACT STATEMENT (FEIS)



STUDIES TO SUPPORT FEIS

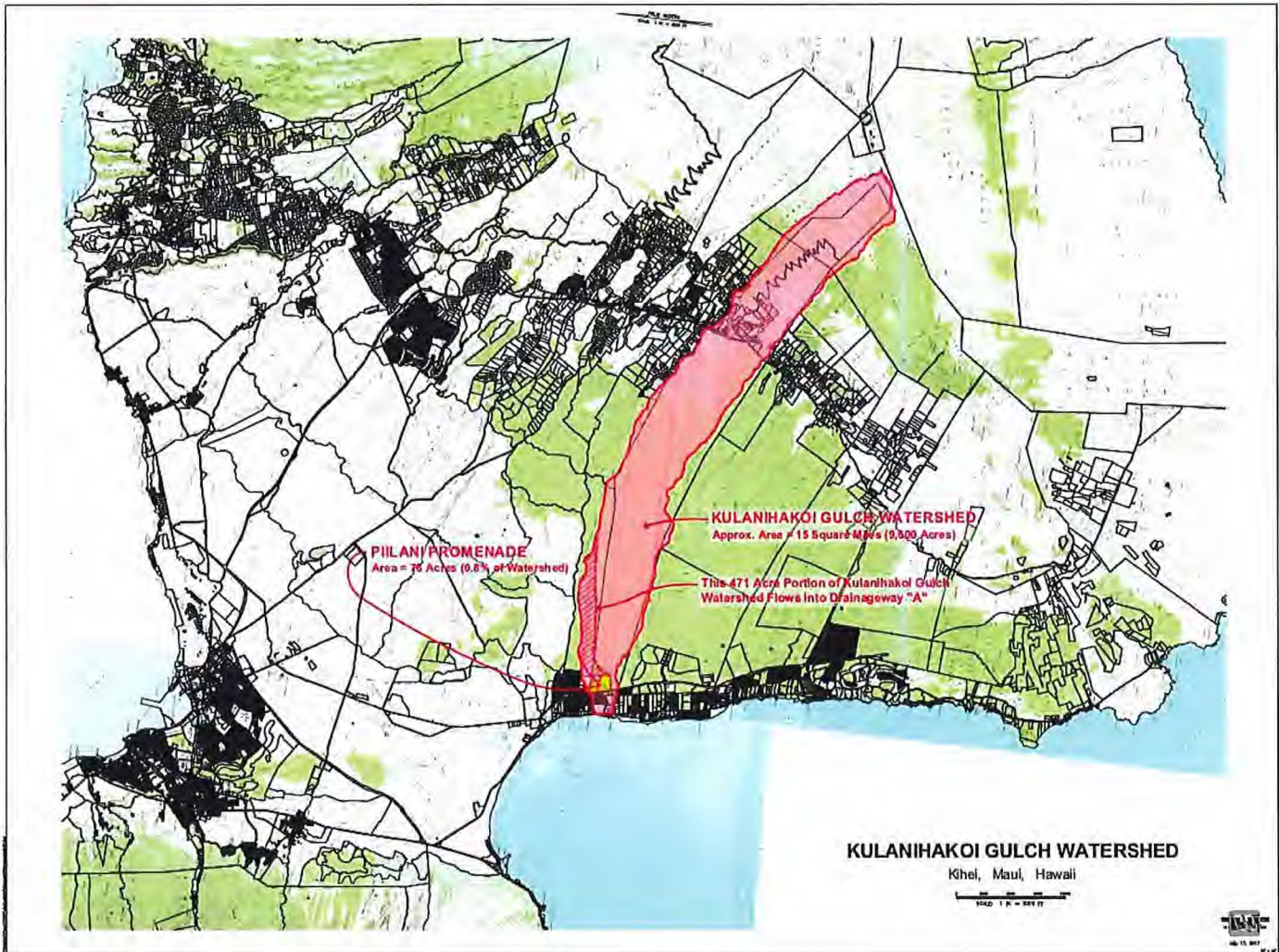
1. Environmental Site Assessment: December 2013, update letter dated January 2017
2. Botanical and Fauna Survey: July 2013
3. Air Quality Survey: February 2014, updated March 2016 and February 2017
4. Acoustic Study: February 2014, updated March 2016 and January 2017
5. Archaeological Inventory Survey: March 2014, revised August 2015, with SHPD acceptance letter dated January 2016
6. Archaeological Monitoring Plan dated July 2011, with SHPD acceptance letter dated August 2011
7. Cultural Impact Assessment ("CIA"): December 2013, revised March and August 2016
8. Supplemental CIA: March 2017
9. Baseline Assessment of Marine Water Chemistry And Marine Biotic Communities: February 2014
10. Economic and Fiscal Impact Assessment: December 2013, revised July 2015
11. Preliminary Engineering Report: December 2013, revised February 2017
12. Traffic Impact Analysis Report ("TIAR"): June 2014
13. Supplemental TIAR: December 2016
14. Soil Investigation Reports: August 2011
15. Waimea Water Services Report: August 2016

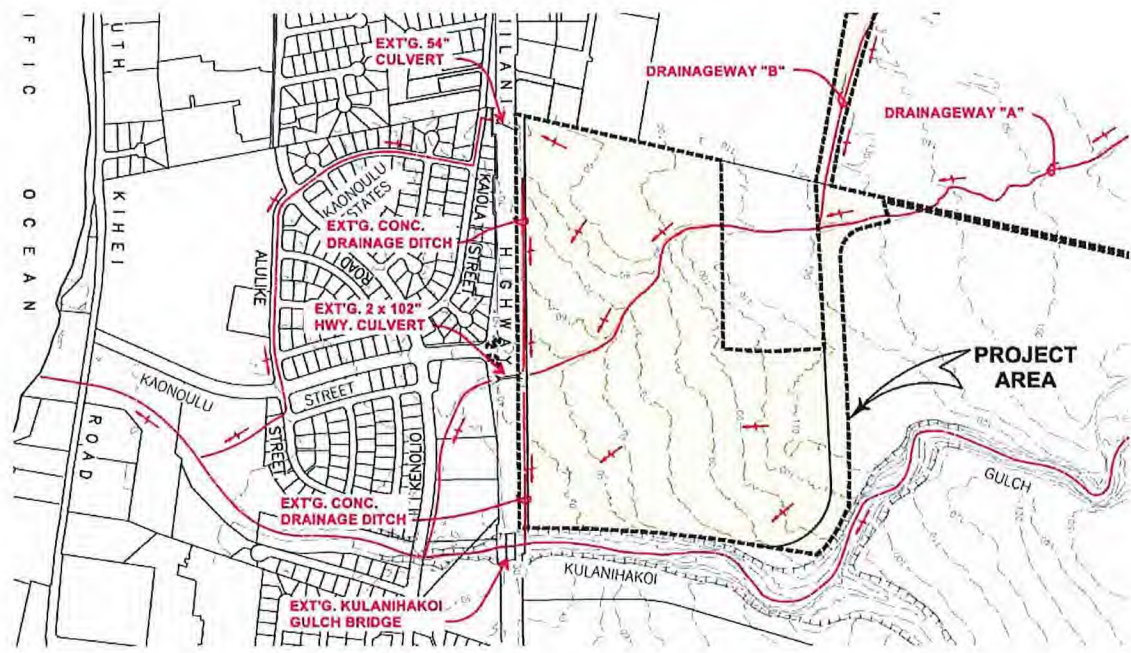
GENERAL CONCLUSIONS

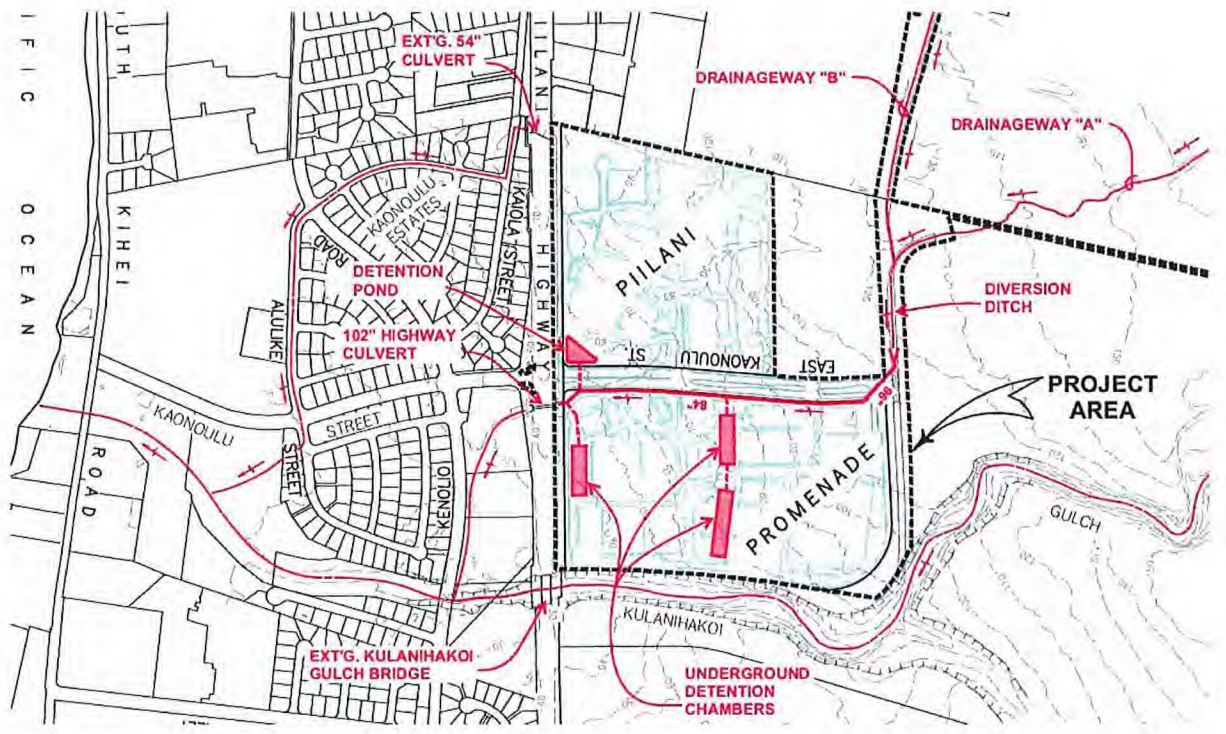
- **Botanical and Fauna Survey** – There are no rare or protected plant or animal species on or nearby the Project Site.
- **Air Quality Survey** –Employ mitigation measures during construction. Long-term impacts on air quality are “negligible” after construction.
- **Acoustic Study** –Residences that may be affected by increased traffic noise have adequate setbacks that result in generally acceptable noise levels.
- **Traffic Impact Analysis Report** – Application of the proposed improvements will improve the level-of-service (“LOS”) and traffic movements to meet an acceptable standard.
- **Engineering Report** – Drainage plan will result in downstream stormwater discharges at rates that do not exceed current levels and comply with Maui County’s Drainage Rules. No additional potable water sources beyond the County water meters are needed to implement the Project.
- **Soil Investigation Report** – Lots 2A, 2C, and 2D can be developed to support mass grading of the site, if the recommendations of the report are followed.
- **Water Services Report** – Adverse impacts are unlikely so long as the Proposed Action stays within its water allocation.

GENERAL CONCLUSIONS

- **Cultural Impact Assessment** – There are no known cultural practices or resources in the project area.
- **Supplemental Cultural Impact Assessment** – There are no specific valued cultural, historical, or natural resources within the project area; nor are any traditional and customary native Hawaiian rights being exercised within the project area. To the extent concerns were raised regarding flooding or drainage, please refer to the Engineering Report.
- **Baseline Assessment of Marine Chemistry and Marine Biotic Communities** – Proposed Project will not have significant negative, or even measurable, effect on water quality or marine biota in the coastal ocean offshore of the property. Changes to the marine environment due to the Project will likely be undetectable.
- **Economic and Fiscal Impact Analysis** - The Kihei-Makena Corridor is under-serviced with commercial, industrial and residential inventory. Development of the Project will generate approximately \$450 million in economic activity and 2,933 worker-years of jobs, with the stabilized operations at \$729 million in economic activity and 6,626 worker-years annually statewide.









Piilani Highway

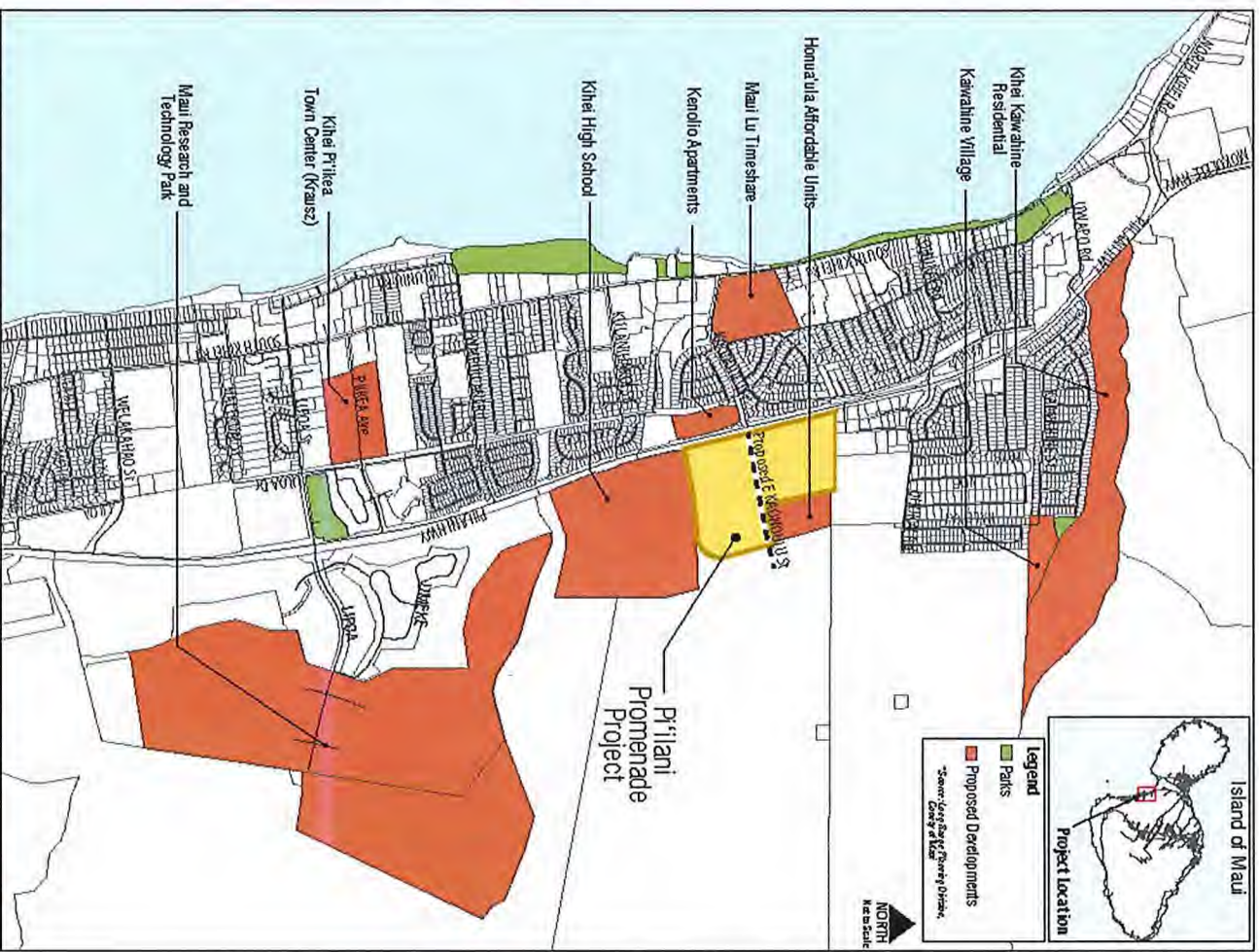


Figure 7: Surrounding Area Developments

Pili'ani Promenade – Kihai Maui

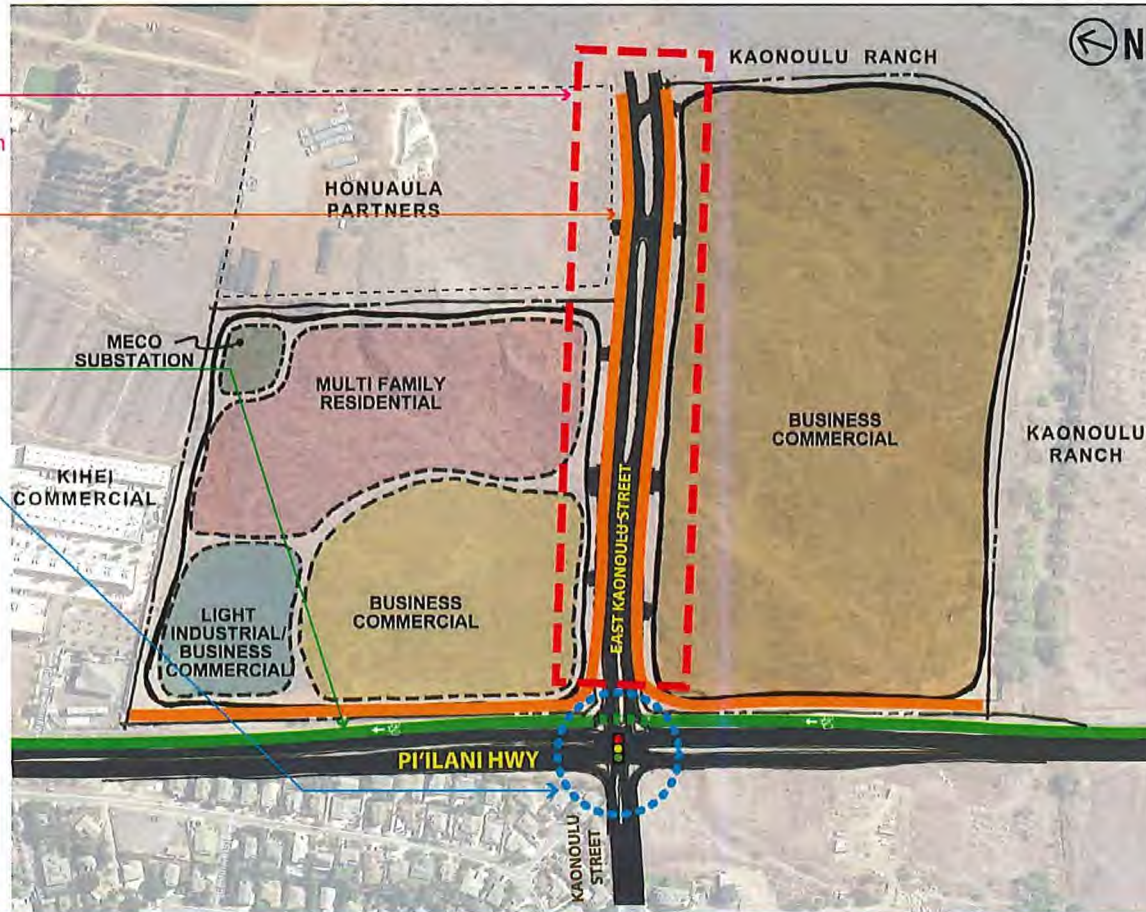
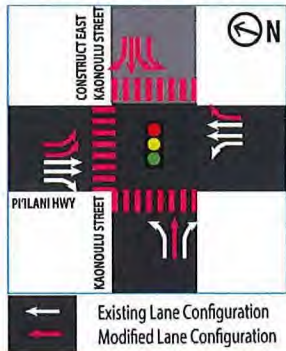
Level of Service	Delay (seconds/vehicle)	
	Traffic Lights	Stop Signs
A	0-10	0-10
B	10-20	10-15
C	20-35	15-25
D	35-55	25-35
E	55-80	35-50
F	>80	>50

1 Construct East Kaonoulu Street Extension

2 Construct Off-Street Shared-Use Pedestrian and Bike Path

3 Install Bike Lane on Pi'ilani Hwy

4 Signalize Intersection and Create New Lane Configurations



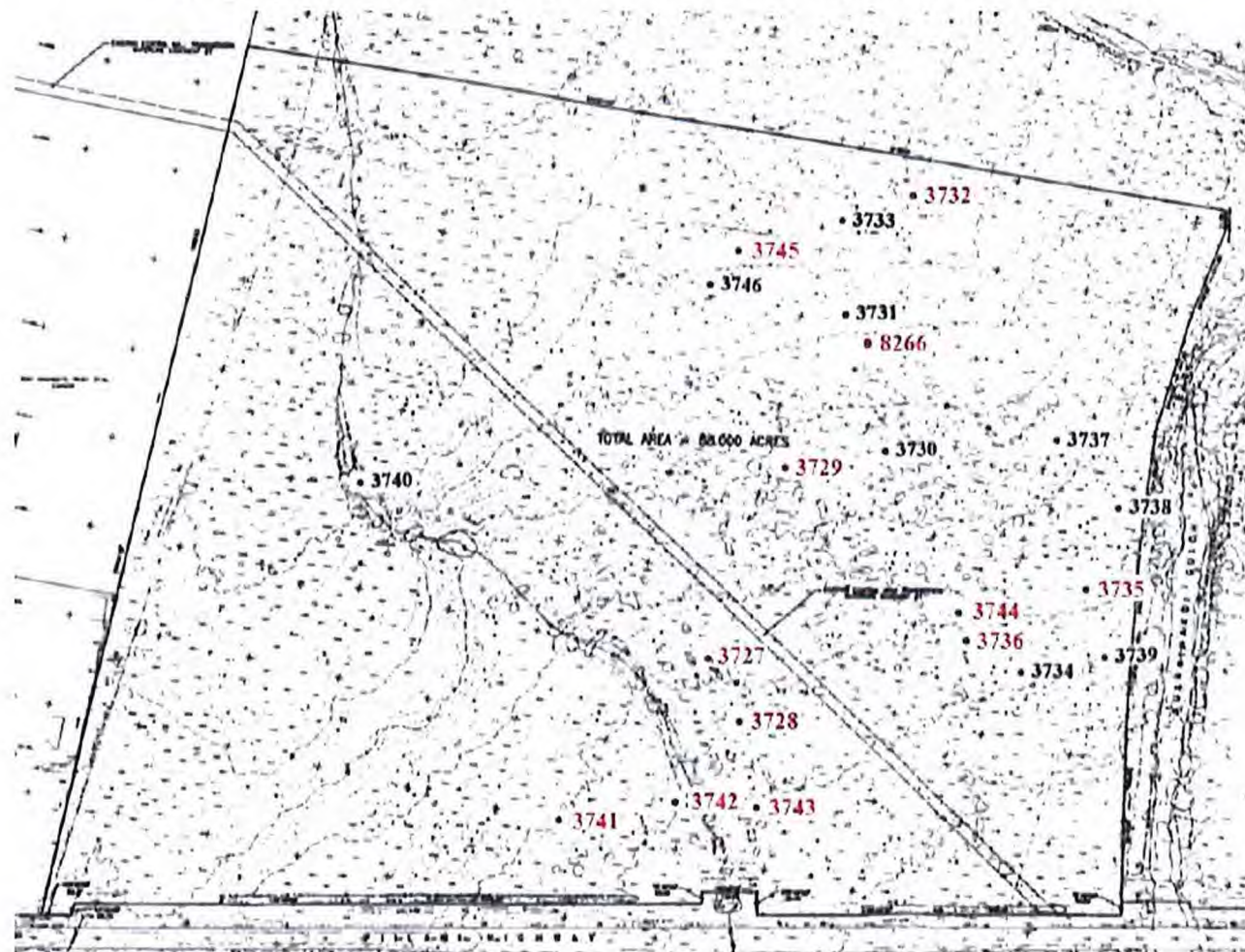
Pi'ilani Promenade Site Plan – Kihei, Maui

ARCHAEOLOGY

The following archaeological studies have been conducted on the Project Site:

- **1994: Archaeological Inventory Survey (“AIS”) of 88 acres, including Project Site**
 - 1994: State Historic Preservation Division (“SHPD”) accepted the 1994 AIS as final
- **2011: Archaeological Monitoring Plan**
 - 2011: SHPD approved the Archeological Monitoring Plan as final
- **2014-2015: AIS of approximately 102 acres, including Project Site and off-site improvement project area**
 - January 2016: SHPD accepted the 2015 AIS as final
- **June 2016: Data Recovery Plan submitted to SHPD**
 - Response from SHPD pending

Topographic map with proposed data recovery site locations in red



Site Evaluations and Recommendations

Site # 50-50-10-	Site Type	Recommendation
3727	Stone piles	Data Recovery (DR)
3728	Stone piles	DR
3729	Stone cairn	DR
3730	Stone cairn	No further work (NFW)
3731	Stone cairn	NFW
3732	Stone cairn	DR
3733	Stone cairn	NFW
3735	Enclosure	DR
3736	Enclosure	DR
3737	Parallel alignment	NFW
3738	Parallel alignment	NFW
3740	Erosion containment walls	NFW
3741	Surface scatter	DR
3742	Surface scatter	DR
3743	Surface scatter	DR
3744	Surface scatter	DR
3745	Surface scatter	DR
8266	Enclosure	DR

CULTURAL IMPACT

- A Cultural Impact Assessment (“CIA”) and a Supplemental CIA were conducted in 2016 and 2017, respectively.
- Both assessments concluded that there are no known cultural practices or resources in the project area.

MARKET STUDY INDICATIONS

- The Kihei-Makena Corridor is an expanding market area under-serviced with commercial, industrial and residential inventory. Significant additions in each sector will be needed as the populations increase by 50 to 70 percent by 2035.
- Commercial Space – An additional 950,000 to 1.5 million square feet of new, competitive retail, restaurant, service, and medical floor space will be needed in South Maui by 2035.
- Industrial Space – The demand for new industrial space in Kihei-Makena by 2035 will reach as high as 1.1 million square feet of gross floor space and 100 acres of building sites.
- Rental Apartments – Residential rental opportunities in South Maui are in scarce supply and have rising rents. There will be a need in the region for an additional 3,300 to 5,300 rental housing units by 2035 with a significant share for households in the workforce/affordable housing spectrum.

MARKET STUDY INDICATIONS: LOCATION/ABSORPTION

- The Piilani Promenade site is one of the best vacant commercial and industrial development sites on Maui.
- During the Project's marketing period, we anticipate the commercial component will capture up to 45 percent of regional activity, the industrial component up to 25 percent and the apartments up to 33 percent of South Maui demand.

ECONOMIC IMPACTS

(2013 CONSTANT DOLLARS)

- Piilani Promenade will require capital investment of more than \$210 million in direct costs and generate some \$348 million in annual business activity on a stabilized basis after completion and ramp-up.
- Building the various components will create some 878 worker-years of direct construction industry employment with wages totaling \$66.5 million.
- The operating businesses within the finished project will have some 1,200 full-time-equivalent employees, with another 300 directly-related off-site positions with total annual wages of \$49 million.
- The rental apartments are projected to have a resident population of 607 persons with household earnings of \$17.2 million per year.

ECONOMIC IMPACTS

(2013 CONSTANT DOLLARS)

Application of the State Input-Output Economic Model indicates development of Piilani Promenade would generate some \$450 million in economic activity and 2,933 worker-years of jobs, with the stabilized operations at \$729 million in economic activity and 6,626 worker-years annually statewide.

ESTIMATES OF TOTAL ECONOMIC IMPACT FROM SUBJECT OPERATIONS USING STATE INPUT-OUTPUT MODEL TYPE II* MULTIPLIERS Market Study of the Proposed Piilani Promenade Kihel, Maui, Hawaii All Amounts Expressed in Constant 2013 Dollars					
Year	Development Year			Totals	Stabilized
	2018 to 2022	2023 to 2027	2028 to 2032	During Build-Out	Annually
Operating Revenues	\$265,433,354	\$806,484,190	\$1,245,517,761	\$2,317,435,305	\$348,719,376
1. Economic Output Multiplier	2.09	2.09	2.09	2.09	2.09
Total State Economic Output	\$554,755,711	\$1,685,551,957	\$2,603,132,120	\$4,843,439,787	\$728,823,496
2. Earnings Multiplier	0.66	0.66	0.66	0.66	0.66
Total Increase in State Earnings	\$175,184,014	\$532,279,565	\$822,041,722	\$1,529,507,301	\$230,154,788
3. State Tax Multipliers	0.16	0.16	0.16	0.16	0.16
Total Increase in State Taxes	\$42,469,337	\$129,037,470	\$199,282,842	\$370,789,649	\$55,795,100
4. Total Job Multipliers	19.00	19.00	19.00	19.00	19.00
Total State Jobs Created	5,043.2	15,323.2	23,644.8	44,031.3	6,625.7
Operating Employment	1,328	3,425	6,158	11,111	1,210
5. Direct-Effect Job Multipliers	2.05	2.05	2.05	2.05	2.05
Total Direct Jobs Created	2,722.4	7,431.7	12,624.0	22,778.2	2,481.1
Operating Wages	\$15,091,499	\$71,258,521	\$153,409,782	\$244,265,924	\$48,859,144
6. Direct-Effect Earnings	1.89	1.89	1.89	1.89	1.89
Total Increase in Direct Earnings	\$28,522,934	\$134,678,605	\$289,944,489	\$461,662,596	\$92,343,782

Source: State Input-Output Model (approved July 2011), and The Hallstrom Group, Inc.

PUBLIC FISCAL IMPACTS

County of Maui

- Real Property Taxes and other secondary receipts and impact fees:
 - \$34 million during the 17-year construction and absorption period.
 - \$2.6 million annually on a stabilized basis thereafter.
- Net benefit to the County purse:
 - \$25.9 million during development.
 - \$594,600 annually on a stabilized basis.

State of Hawaii

- Gross Excise and Income Taxes, secondary revenues, and impact fees:
 - \$210.7 million during the build-out and ramp-up time frame.
 - \$26 million per year thereafter
- Net benefit to the State purse:
 - More than \$194.9 million during development
 - Stabilized "profit" of \$20.7 million per year.

QUESTIONS?