

LAND USE COMMISSION

STATE OF HAWAI'I

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DR10-39 QUEEN LILI'UOKALANI TRUST'S PETITION FOR DECLARATORY ORDER) 8
HEARING)
A10-788 HAWAI'I HOUSING FINANCE and DEVELOPMENT CORPORATION and FOREST CITY HAWAI'I KONA, LLC.) 25

TRANSCRIPT OF PROCEEDINGS

The above-entitled matters came on for a Public Hearing at Waikoloa Beach Marriott Resort, Naupaka Rooms V, VI, and VII, 69-275 Waikoloa Beach Drive, Waikoloa, Hawai'i, commencing at 10:20 a.m. on Thursday, October 21, 2010 pursuant to Notice.

REPORTED BY: HOLLY M. HACKETT, CSR #130, RPR
Certified Shorthand Reporter

A P P E A R A N C E S

COMMISSIONERS:

KYLE CHOCK

THOMAS CONTRADES

VLADIMIR DEVENS (Chairman)

RONALD HELLER

CHARLES JENCKS

LISA M. JUDGE

DUANE KANUHA

NORMAND LEZY

EXECUTIVE OFFICER: ORLANDO DAVIDSON

ACTING CHIEF CLERK: RILEY HAKODA

STAFF PLANNERS: SCOTT DERRICKSON

DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

AUDIO TECHNICIAN: HOTAI ZERBA

Docket No. DR10-39 QLT Petition for Declaratory Order

For the Petitioner: BENJAMIN KUDO, ESQ.
YUKO FUNAKI, ESQ.

For the County: LAUREEN MARTIN, ESQ.
Deputy Corporation Counsel
BOBBY JEAN LEITHEAD-TODD
Planning Director

For the Intervenor State: BRYAN YEE, ESQ.
Deputy Attorney General
MARY ALICE EVANS
Office of Planning

For the Intervenor Forest City/HHFDC:

STEVEN LIM, ESQ.
JENNIFER BENCK, ESQ.
A. BERNARD BAYS, ESQ.
CRAIG IHA, ESQ.

A P P E A R A N C E S cont'd

Docket No. A10-788 Hawai'i Housing Finance and
Development Corporation and Forest city Hawai'i Kona,
LLC

For the Petitioner Forest City: STEVEN LIM, ESQ.
JENNIFER BENCK, ESQ.
A. BERNARD BAYS, ESQ.

For the Co-Petitioner HHFDC: CRAIG IHA, ESQ.

For the County: LAUREEN MARTIN, ESQ.
Deputy Corporation Counsel
BOBBY JEAN LEITHEAD-TODD
Planning Director

For the State: BRYAN YEE, ESQ.
Deputy Corporation Counsel
MARY ALICE EVANS, OP

For the Intervenor QLT: BENJAMIN KUDO, ESQ.
YUKO FUNAKI, ESQ.

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1 CHAIRMAN DEVENS: (Gavel) Good morning.
2 We'll call this hearing to order. This is a meeting
3 of the State Land Use Commission. Today is October
4 21, 2010. We're in Kona for this agenda. First item
5 of business we have the adoption of the minutes. Are
6 there any corrections or changes to be made? Hearing
7 none is there a motion to adopt?

8 COMMISSIONER JENCKS: Motion to adopt.

9 CHAIRMAN DEVENS: Second?

10 COMMISSIONER KANUHA: Second.

11 CHAIRMAN DEVENS: All those in favor raise
12 your hand. It's unanimous. Minutes are adopted.
13 Next item is the meeting schedule. Dan.

14 MR. DAVIDSON: Thank you, Chair. You have
15 the tentative meeting schedule before you. And as
16 always any questions or conflicts please let either
17 Riley or me know.

18 We should also let the public know that
19 because this is a 201H expedited hearing docket that
20 we're going to be starting today, the Commission is
21 planning to work into the evening tonight after a
22 dinner break.

23 xx

24 xx

25 CHAIRMAN DEVENS: Thank you, Dan. We'll get

1 to the first item. This is an action meeting to
2 consider DR10-39 Queen Lili'uokalani Trust's Petition
3 for a Declaratory Order in the matter of docket
4 A10-788 -- I'm sorry -- it's a Declaratory Order in
5 the matter of Hawaii Housing Finance and Development
6 Corporation and Forest City Hawai'i, Kona, LLC to
7 amend the Agricultural Land Use District into the
8 Urban District for certain lands situated at Keahuolu,
9 North Kona; consisting of approximately 271.837 acres
10 Tax Map Key No. (3)7-4-021:020 and (3)7-4-021:024, and
11 (3)7-4-021:025, (3)7-4-021:026, and (3)7-4-021:027.

12 Can we have the parties identify themselves
13 for the record starting with the Petitioner.

14 MR. LIM: Good morning, Mr. Chairman,
15 members of the Commission. Steven Lim. And to my
16 right is Jennifer Benck. Seated to my rear is A.
17 Bernard Bays who's co-counsel. We're requesting in
18 addition to Mr. Craig Iha representing the HHFDC,
19 pursuant to the Commission's rule 15-15-67 on
20 co-counsel, we'd request leave of the presiding
21 officer of multiple counsel representing the
22 Petitioner.

23 We won't be having counsel talking on the
24 same issue at the same time, but we do have separate
25 areas of responsibility. So you'll see one or the

1 other of us representing the Petitioner at different
2 particular times.

3 CHAIRMAN DEVENS: Thank you. Good morning
4 to you all. County?

5 MS. MARTIN: Good morning. Laureen Martin
6 from corporation counsel and Bobby Jean Leithead-Todd,
7 director of planning for the County of Hawai'i.

8 CHAIRMAN DEVENS: Good morning.

9 MR. YEE: Good morning. Deputy Attorney
10 General Bryan Yee on behalf of the Office of Planning.
11 With me is Mary Alice Evans from the Office of
12 Planning.

13 CHAIRMAN DEVENS: Good morning to you.

14 MR. KUDO: Good morning. Ben Kudo and Yuko
15 Funaki appearing as the petitioner on this docket
16 number. If I could ask a question of the Commission
17 Chairman Devens.

18 CHAIRMAN DEVENS: Go ahead, sir.

19 MR. KUDO: It's a little -- I guess we need
20 to seek some guidance from the Commission. This is a
21 separate docket. It's DR10-39. And we are the only
22 parties as of today in this docket. And usually a
23 declaratory relief petition is between the petitioner,
24 who we are, and the Commission.

25 Because what we're doing is we're asking the

1 Commission to give us an interpretation of a rule or
2 statute that is applicable to this Commission's
3 deliberations.

4 We're surprised that we received, you know,
5 a response to our declaratory relief petition from
6 HHFDC and Forest City without them being admitted as a
7 party.

8 In other words, we didn't see a Petition for
9 Intervention or a hearing where this Commission
10 decided to admit any additional parties to this
11 declaratory relief action.

12 So we didn't know whether we needed to
13 prepare for arguments by the HHFDC and Forest City in
14 this matter because as of today we are the only
15 parties as well as the Commission to this proceeding,
16 this particular docket. And I guess we're seeking
17 direction from the Commission as to what we're
18 supposed to do.

19 CHAIRMAN DEVENS: First of all, do you have
20 any -- well, do you have an objection if we
21 consolidated the matter with Docket No. A10-788?

22 MR. LIM: Mr. Chairman, the Petitioner would
23 have an objection to consolidation. We believe that
24 we're a necessary party in interest to the Motion for
25 Declaratory Order in docket 10-39. But we would

1 object to consolidating the matters.

2 We feel that the Commission in the
3 processing of this 201H expedited proceeding has the
4 authority to waive whatever applicable rules with
5 respect to adding the landowner who's the subject of
6 the petition for declaratory ruling to be a party in
7 this declaratory ruling.

8 CHAIRMAN DEVENS: Mr. Lim, if I may ask you,
9 what would be the concern about consolidating this
10 matter if the petition for declaratory order was
11 handled first?

12 MR. LIM: We believe that the issues raised
13 by the petition are separate and apart from the
14 petition itself. You'll hear our argument, of course,
15 in a short while. But we believe that consolidating
16 would be inappropriate at this time.

17 CHAIRMAN DEVENS: Would your arguments be
18 any different to what you've raised in the opposition
19 to the petition for declaratory order?

20 MR. LIM: Would our arguments be any
21 different?

22 CHAIRMAN DEVENS: Yes.

23 MR. LIM: To some degree. Because we
24 have -- what they have raised is a very large contract
25 issue in their petition. And we believe that that

1 should be separate and apart from the petition itself.

2 MR. KUDO: We, the petitioners in this
3 particular docket, would agree with HHFDC and Forest
4 City on that because you're going to intermingle the
5 contract issues into the case in chief. I don't know
6 if this Commission really wants to do that.

7 I think we're asking for an interpretation
8 separate and apart from the merits of the case in
9 chief as to the rule and the statute by this
10 Commission.

11 Now, it does have some relevance but we are
12 bringing in additional issues which I don't think any
13 of the parties are prepared to discuss today or were
14 on notice of. So on that basis we would agree that we
15 should keep the two dockets separate.

16 MR. YEE: For the record the Office of
17 Planning has no objection to the combination of the
18 two.

19 CHAIRMAN DEVENS: The consolidation.

20 MR. YEE: The consolidation. And, quite
21 frankly, the relevance of the declaratory order is
22 really only relevant to the district boundary
23 amendment proceeding. This is sort of evidenced, I
24 think, by the initial filing where the initial filing
25 was actually in the district boundary amendment

1 proceeding and LUC staff changed the docket number.

2 In fact, you look at the petition caption
3 that was filed by QLT, you'll notice it's in the
4 matter of the Petition of Hawaii Housing Finance and
5 Development Corporation and Forest City Hawai'i Kona,
6 LLC.

7 If there was some confusion about who the
8 appropriate parties are, it's not to put blame, but I
9 think you can reasonably understand why HHFDC and
10 Forest City might have thought that they were parties
11 since they're actually named in the caption itself.

12 CHAIRMAN DEVENS: County, do you have a
13 position on -- I'm just raising consolidation as an
14 option. I'm not saying that we're going to do that.
15 I'm just raising it to try to figure out a way to
16 efficiently deal with these two matters.

17 To me we have to decide this petition for
18 declaratory order to get to the merits of the
19 petition. The argument is that on the side that it's
20 defective. If it's defective can we even be
21 considering the petition to begin with?

22 MR. KUDO: Excuse me. I didn't quite
23 understand.

24 CHAIRMAN DEVENS: The issues that you're
25 raising in your petition for the declaratory order

1 you're alleging that the petition itself is defective,
2 right?

3 MR. KUDO: Correct.

4 CHAIRMAN DEVENS: And if it is defective do
5 we have the right to even be hearing the petition?

6 MR. KUDO: That's entirely up to the
7 Commission. We would think not. But....

8 CHAIRMAN DEVENS: Right. So it is relevant
9 to whether or not we can go forward with the
10 presentation in the petition.

11 MR. KUDO: The relevance of the declaratory
12 relief issues is pursuant to the rules because this
13 Commission does not have to decide academic questions
14 of interpretation.

15 So in order to bring some relevance to the
16 subject matter of this declaratory petition we tied it
17 in to the case in chief. Otherwise you could decline
18 from answering it for wasting time and say, "Mr. Kudo,
19 we don't want to answer an academic question. This has
20 to have some relevance to something."

21 And so normally declaratory actions have
22 some bearing on something that's before the
23 Commission. But they're not consolidated together
24 because they're really separate actions. One's an
25 interpretative action where the administrative body is

1 exercising its interpretation of a particular rule.

2 And the other is an adjudicatory power where
3 you're adjudicating a case in chief where evidence is
4 being submitted.

5 We have no evidence in a declaratory, in
6 this particular declaratory docket. We're simply
7 arguing the case and asking the Commission to
8 interpret its own rules.

9 CHAIRMAN DEVENS: And I understand that. I
10 appreciate your point. But I'm not so sure that it
11 was even a proper petition for declaratory order as
12 opposed to a motion that should have been filed as
13 part of the Petitioner's case. You guys are
14 Intervenor. You could have filed it as a motion as
15 well, right?

16 MR. KUDO: We could do that as well. But we
17 felt that we could give the Commission every
18 opportunity to look at its own rules and decide for
19 itself, before this hearing was started and people's
20 time and money were utilized in doing that, to look at
21 the issue itself and make its ruling based on that.

22 I mean I didn't want to waste anybody's
23 time. So we brought this as a preliminary step toward
24 beginning the case in chief.

25 CHAIRMAN DEVENS: I don't see how it helps

1 move the case along. I mean that's the problem that
2 I'm struggling with. It's a separate action right
3 now.

4 We could consolidate it. We could refuse to
5 hear it. We could tell you to file it as a motion and
6 we could take it up. But to me it affects going
7 forward.

8 I think we've got to resolve the questions
9 you're raising before we can move forward. Because if
10 it turns out the petition's defective, and who knows
11 how this Commission is going to decide, then we're
12 going to go through a couple days of hearings and it
13 may turn out the petition is defective to begin with
14 and we shouldn't have even started.

15 MR. KUDO: Can I offer a solution?

16 CHAIRMAN DEVENS: Go ahead.

17 MR. KUDO: I'm just bringing this up because
18 it's a procedural rule with regard to party status.
19 The Commission could entertain a motion to waive the
20 rule on HHFDC and Forest City having to file a
21 Petition to Intervene and having a hearing on the
22 matter -- it's obvious to us that they have a stake in
23 this particular issue that we brought before the
24 Commission -- and admit them as a party to this
25 proceeding. That is what I thought the Commission

1 would probably do.

2 We just wanted direction as to whether we,
3 because I'm going first, whether I needed to argue
4 what they brought up in their response or not in my
5 argument. But I would offer that as a solution to the
6 Commission's issue with regard to the consolidation.

7 I think that would probably allow for all of
8 us to proceed and to allow HHFDC and Forest City to
9 participate in this declaratory action if you decided
10 to admit them and waive that rule.

11 CHAIRMAN DEVENS: You did receive their
12 opposition to your petition.

13 MR. KUDO: Yes, we did.

14 CHAIRMAN DEVENS: Would you add anything
15 more to your arguments after reading what they've
16 raised?

17 MR. KUDO: Yes. I was prepared to argue
18 that, but I wasn't sure whether I was going to or not.
19 I'm prepared to argue and address the issues that they
20 raised in their response.

21 CHAIRMAN DEVENS: Mr. Lim, would you need
22 time to raise anything more other than what you have
23 in your pleadings so far?

24 MR. LIM: We'd just like to hear their
25 response and have a rebuttal, an opportunity for

1 rebuttal.

2 CHAIRMAN DEVENS: Sure.

3 MR. LIM: Ms. Benck will be arguing that
4 motion and Mr. Iha arguing for the HHFDC.

5 CHAIRMAN DEVENS: I'm going to move to go
6 into executive session to discuss our powers and
7 authorities.

8 COMMISSIONER LEZY: Seconded it.

9 (Recess was held. 10:30-10:55)

10 CHAIRMAN DEVENS: We're back on the record.
11 I apologize for the delay on our part to the parties
12 and the public. We're still on this first item.

13 And I wanted to ask you, Mr. Kudo, if you
14 would be amenable to us treating your petition for
15 declaratory order as a motion and incorporate that
16 into the petition for boundary amendment and rule on
17 it in that fashion to help us streamline the process.

18 MR. KUDO: I would not want that to happen.
19 Because should this Commission rule against our
20 position on the interpretation of the rules, I will be
21 making that motion in the case in chief, which is a
22 separate docket.

23 CHAIRMAN DEVENS: I'm sorry. Can you repeat
24 that.

25 MR. KUDO: If this Commission rules against

1 the interpretation that we have argued in our
2 declaratory petition, I will be making a motion in the
3 case in chief, which starts after this particular
4 docket, for a Motion to Dismiss based on a defective
5 petition.

6 CHAIRMAN DEVENS: So why don't we just roll
7 your petition into the Petition for Boundary Amendment
8 to streamline the matter?

9 MR. KUDO: Well, because this is -- we would
10 like to keep them separate because, again, because if
11 you wrap it in, the arguments on the contract issue
12 get wrapped up into the case in chief which right now
13 it's not. And we didn't want to complicate matters
14 that way.

15 So we wanted to keep it separate. We don't
16 want to involve the Commission in things that you
17 don't want to be involved in, so I'm trying to keep it
18 separate.

19 CHAIRMAN DEVENS: Well, you're involving us
20 anyway. We're going to have to hear it at some point.

21 MR. KUDO: I'm just trying to limit the
22 Commission's involvement. That's all.

23 CHAIRMAN DEVENS: Mr. Lim, you got any more
24 comment on this issue?

25 MR. LIM: I think that, you know, our

1 suggestion to the Commission is you have a couple of
2 options on any petition for declaratory ruling. Of
3 course we suggest that the Commission decline to rule
4 because obviously they have posited a potential
5 lawsuit against the state, which I would imagine may
6 include the Land Use Commission, on any favorable
7 decision on this matter. So there's some litigation
8 potential there.

9 So I would argue that the Commission not
10 issue a declaratory ruling, decline to do so. You
11 have in your rule 15-15-102 a refusal to issue
12 declaratory order.

13 One of the reasons is that it may affect the
14 interest of the Commission in a litigation that's
15 pending or may reasonably be expected to arise.
16 That's been directly threatened by the Trust already.

17 In addition, I agree with Mr. Kudo, we
18 certainly don't want to be litigating the contract
19 issues in front of the Commission. So that would be a
20 matter that's not within the jurisdiction of the
21 Commission under subsection 4 of that rule. So that's
22 one of the options.

23 The second option would obviously be just to
24 deny the release sought in the declaratory ruling.

25 And, lastly, there is the option that we

1 might suggest to the Commission is that you have the
2 ability to waive your rules on a Notice of Intent
3 requirement. That's strictly a Commission rule.

4 And obviously the Trust has always been
5 here. They didn't complain the first time we came in
6 and filed a Notice of Intent.

7 And we feel this was a late filing and that
8 the Commission has the ability to waive its rule on
9 this, especially when the party complaining is sitting
10 at the table.

11 CHAIRMAN DEVENS: Thank you. Let me just
12 recite the state of the record. On October 11, 2010
13 the Commission received QLT's Petition for Declaratory
14 Order and Exhibits A through D identified as Docket
15 No. A10-788.

16 On October 13, 2010 the Commission mailed a
17 letter to notify QLT that the Petition's
18 identification reference should be Docket No. DR10-39
19 and that the matter would be on the October 21, 2010
20 agenda.

21 On October 15, 2010 the Commission received
22 a copy of QLT's letter to the parties regarding its
23 corrected DR10-39 flysheet.

24 On October 18, 2010 the Commission received
25 Respondents Hawaii Housing Finance and Development

1 Corporation's and Forest City Hawai'i Kona, LLC's
2 Memorandum in Opposition to Queen Lili'uokalani
3 Trust's Petition for Declaratory Order and Exhibits 1
4 through 4.

5 On October 20, 2010 the Commission received
6 state of Hawai'i Office of Planning's Joinder to
7 Respondent's Hawai'i Housing Finance and Development
8 Corporation's and Forest City Hawai'i Kona, LLC's
9 Memorandum in Opposition to Queen Liliuokalani Trust's
10 Petition for Declaratory Order.

11 At this time are there any public witnesses
12 that wish to give testimony on this limited petition?
13 This is not the petition for the boundary amendment,
14 but this is the petition for the declaratory order
15 which is a much narrower issue in this case.

16 Do we have any witnessed signed up, Dan?

17 MR. DAVIDSON: No sign-ups.

18 CHAIRMAN DEVENS: Hearing none, I appreciate
19 the arguments by the parties. I understand what
20 you're saying, Mr. Kudo. And your points are well
21 taken, as well as yours, Mr. Lim. I think at this
22 point in time I'm inclined to defer the matter on this
23 petition. And we'll set it for argument and decision
24 on a date to be set by Mr. Davidson, our executive
25 officer.

1 If the parties choose to file any additional
2 responses to the petition, please do so by Wednesday
3 October 27. Any QLT response is due no later than
4 Monday, November 1, 2010. Are there any questions
5 regarding this ruling? Mr. Kudo.

6 MR. KUDO: So you're going to be setting a
7 hearing somewhere down the road on the dec relief
8 action. Is that my understanding?

9 CHAIRMAN DEVENS: Actually I'm just going to
10 defer it. I'm requesting additional filings if you
11 wish to file something in addition. And let me
12 clarify. It is not going to be set for hearing at
13 this point in time. But make the filings and we'll
14 put it back up on the calendar.

15 MR. KUDO: Do we have to refile?

16 CHAIRMAN DEVENS: No. If you want any
17 additional pleadings.

18 MR. KUDO: Oh, okay.

19 CHAIRMAN DEVENS: You mentioned that there
20 were some responses that you had to --

21 MR. KUDO: Yes, I do.

22 CHAIRMAN DEVENS: -- the Memorandum in
23 Opposition that Petitioner filed in this case.

24 MR. LIM: Mr. Chairman, because he's the
25 petitioner in that DR, we request that he file his

1 additional pleadings and then we'd be able to respond.

2 CHAIRMAN DEVENS: Yes, you're right. Why
3 don't we reverse the dates then. QLT, we'll give you
4 October 27. And, Petitioner, we'll give you
5 November 1st, 2010. Are those dates okay with you
6 folks?

7 MR. KUDO: Is there going to be a hearing on
8 whether they're intervening? I mean it's a procedural
9 step but I just wanted to know.

10 CHAIRMAN DEVENS: Do you have any objection
11 to them intervening?

12 MR. KUDO: No.

13 CHAIRMAN DEVENS: Okay. Let's have them
14 intervene then. You guys are in.

15 MR. LIM: Thank you very much.

16 MR. YEE: Can we get clarification? The
17 Office of Planning would seek to intervene in this
18 case as well.

19 CHAIRMAN DEVENS: Any objections to that?

20 MR. KUDO: No.

21 CHAIRMAN DEVENS: You're in. We'll take a
22 short break.

23 (Recess was held.)

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5 CHAIRMAN DEVENS: We're back on the record.
6 This is a hearing on docket No. A10-788 HHFDC/Forest
7 City Kona Hawai'i, LLC to amend the Agricultural Land
8 Use District boundaries into the Urban Land Use
9 District for certain lands situated at Keahuolu, North
10 Kona; consisting of approximately 271.837 acres, Tax
11 Map Key No. (3)7-4-021:020, (3)7-4-021:024,
12 (3)7-4-021:025, (3)7-4-021:026, and (3)7-4-021:027.

13 The parties will identify themselves for the
14 record, please.

15 MR. LIM: Good morning, Mr. Chairman,
16 members of the Commission. Steven Lim, and to my
17 right Jennifer Benck representing the Forest City Kona
18 Hawai'i, LLC co-petitioner.

19 MR. IHA: Good morning, Mr. Chair. Craig
20 Iha, deputy attorney general, representing the
21 co-petitioner Hawaii Housing Finance and Development
22 Corporation.

23 MR. LIM: Also seated to my rear is Bernard
24 Bays who is co-counsel for Forest City Hawai'i Kona.

25 CHAIRMAN DEVENS: Thank you.

1 MS. MARTIN: Good morning. Laureen Martin,
2 deputy corporation counsel for the county of Hawai'i
3 and Bobby Jean Leithead, the planning director for the
4 county of Hawaii.

5 MR. YEE: Good morning. Deputy Attorney
6 General Bryan Yee on behalf of the Office of Planning.
7 With me is Mary Alice Evans from the Office of
8 Planning.

9 MR. KUDO: Ben Kudo and Yuko Funaki
10 representing Intervenor Queen Lili'uokalani Trust.

11 CHAIRMAN DEVENS: Good morning to you all.
12 This is an update on the state of the record. On
13 October 11, 2010 the Land Use Commission received
14 Petitioner's First List of Witnesses, and First List
15 of Exhibits and accompanying exhibits.

16 On that same date the Commission also
17 received the State Office of Planning's List of
18 Witnesses and Exhibits 1, 5, 6 and 7 and the County of
19 Hawai'i's Planning Department's Testimony in Support
20 of the Petition.

21 On October 12th, 2010 the Commission
22 received Petitioner's Notice of Hearing filing and
23 Affidavits of Publication confirmations.

24 On October 14, 2010 the Commission received
25 Intervenor Queen Lili'uokalani Trust's Statement of

1 Opposition to the Petition.

2 On October 15, 2010 the Commission received
3 the following: Petitioner's First Amended List of
4 Witnesses, and List of Rebuttal Witnesses, and List of
5 Rebuttal Exhibits; Exhibits 88 through 108 and OP's
6 List of Rebuttal Witnesses.

7 On October 18, 2010 the Commission received
8 Intervenor's Amended List of Witnesses, Amended List
9 of Exhibits, and Exhibits 1 through 35.

10 Also on that same date the Commission
11 received Petitioner's Written Direct Testimony,
12 Exhibits 39, 41, 44, 47, 51, 53, 57, 59, 61, 63, 67,
13 70, 74, 76, 79, and 86.

14 Along with the Notification of Co-counsel,
15 the firm of Bays Deaver Lung Rose & Holma- A. Bernard
16 Bays and Christian D. Chambers for Forest City Kona
17 Hawai'i, LLC, COS; and the State Office of Planning's
18 Testimony in Support of the Petition with conditions
19 along with the First Amended Exhibit list, Exhibits 2,
20 4 and 8.

21 From October 19th to the 20th the Commission
22 received written correspondence via email from Michael
23 J. Riehm, Alex Woodbury, and Paul Horner, the general
24 manger of Keauhou Beach Resort.

25 On October 20, 2010 the Commission received

1 the following: OP's Exhibit 3, written direct
2 testimony of Edwin H. Sniffen, and QLT's Motion for
3 Issuance of Subpoena Duces Tecum of Ken Tatsuguchi,
4 Exhibit A.

5 Before we proceed any further our LUC
6 executive officer has a disclosure he would like to
7 make on the record. Mr. Davidson.

8 MR. DAVIDSON: Thank you, Commissioners, and
9 to the parties: I wanted to put a brief disclosure on
10 the record.

11 From July 2006 until May 2008 I served as
12 the executive director for the Hawaii Housing Finance
13 and Development Corporation, HHFDC, one of the
14 co-petitioners in A10-788.

15 In this role I participated in the early
16 planning stages of the Kamakana Villages affordable
17 housing project that is now docket A10-788. This
18 included recommendations regarding consultant
19 selection for the original EIS and selection of the
20 developer, Forest City. My role was advisory.

21 All decisions in the planning stages were
22 made by the HHFDC board of directors. I've had no
23 substantive role in the Project since leaving HHFDC in
24 May of 2008 and do not believe that this prior work
25 has or will affect my current staff work regarding

1 this docket.

2 CHAIRMAN DEVENS: Do any of the parties have
3 any concerns or objections with Mr. Davidson's
4 participation in this matter?

5 MR. LIM: Co-petitioners have no objections.

6 MS. MARTIN: The County has no objection.

7 MR. YEE: No objection.

8 MR. KUDO: No objection.

9 CHAIRMAN DEVENS: Thank you. Thank you for
10 the disclosure, Mr. Davidson.

11 Petitioners, I take it that you're aware of
12 our reimbursement policy and that your clients are
13 agreeable and will abide by the policy.

14 MR. LIM: That is correct, Mr. Chairman.

15 CHAIRMAN DEVENS: Thank you. before we get
16 into the public witness testimony, the Commission
17 wanted to hear arguments on the notice issue. We're
18 going to treat that as an in limine argument, go
19 ahead, Mr. Kudo.

20 MR. KUDO: As I indicated earlier our intent
21 was to file an oral motion anticipating that the
22 declaratory order would be deferred or otherwise
23 denied.

24 And so we make a motion at this time in this
25 particular docket to find that this Petition before

1 this Commission is defective for the two reasons
2 stated in our declaratory relief petition.

3 That is that it is contrary to the intent of
4 the parties involved in the acquisition of the
5 property that comprises the Kamakana Villages Project
6 and, therefore, is not properly before this Commission
7 under chapter 205 and 201H.

8 Secondly, the Notice of Intent failed to
9 meet the statutory requirements under this
10 Commission's rules and the state law that dictate
11 statewide and countywide publication.

12 We would also in the alternative ask that
13 this Commission consider these issues as we believe
14 that these issues are threshold issues. And that for
15 the purposes of all the parties participating in these
16 hearings that those issues should really be addressed
17 first before the case in chief begins.

18 We would ask this Commission consider that
19 in terms of its ruling on the declaratory relief
20 petition issues as part of this particular motion that
21 I'm making right now.

22 CHAIRMAN DEVENS: I'm going to defer that
23 motion and ask that we receive arguments in limine on
24 the issue of the notice, just on that issue.

25 MR. LIM: Mr. Chairman, would that be on the

1 same written submittals as the DR schedule where the
2 Trust submits by October 27 and the other parties
3 submit by November 1?

4 CHAIRMAN DEVENS: No. We're talking about
5 oral arguments now. Are you prepared to argue just
6 that issue?

7 MS. BENCK: Yes.

8 CHAIRMAN DEVENS: Is that okay? Okay,
9 Mr. Kudo, we'll hear from you first.

10 MR. KUDO: Could I have just a couple
11 minutes just to get....

12 CHAIRMAN DEVENS: Sure. Mr. Kudo, while
13 you're getting ready, let me ask the parties if the
14 parties want to incorporate the pleadings that they
15 filed in this issue in DR10-39 into this matter.

16 MR. KUDO: I'm ready.

17 CHAIRMAN DEVENS: Let me first ask Mr. Kudo.
18 Do you want to incorporate the written arguments you
19 made in DR10-39 on this issue into this proceeding?

20 MR. KUDO: Yes, I'd like to --

21 CHAIRMAN DEVENS: Okay. Why don't we note
22 that for the record.

23 MR. KUDO: -- as part of my motion. As part
24 of my motion, yeah.

25 CHAIRMAN DEVENS: Mr. Lim, you want to do

1 the same?

2 MR. LIM: Ms. Benck will --

3 CHAIRMAN DEVENS: I'm sorry. Ms. Benck, do
4 you want to do the same?

5 MS. BENCK: Yes.

6 CHAIRMAN DEVENS: OP?

7 MR. YEE: Yes, thank you.

8 CHAIRMAN DEVENS: So noted. I'm sorry, go
9 ahead, Mr. Kudo.

10 MR. KUDO: Our argument on the notice is
11 quite simple. And I think the law is quite clear.
12 There are two notices that normally must be filed in a
13 201H proceeding. The first notice is called a Notice
14 of Intent. This is the notice that we are talking
15 about in this particular argument.

16 We believe that the Notice of Intent is
17 defective. And it was defective because it did not
18 comply with the state law Chapter 1 section 1-28 of
19 the Hawaii Revised Statutes. That particular law was
20 created by the Legislature to apply to government
21 agencies.

22 HHFDC is a body politic and a government
23 agency under state law. HHFDC is required under 201H
24 to be the Petitioner in this proceeding. It can also
25 add the private sector developer, but the corporation

1 is required under 201H to file this petition.

2 HHFDC filed a chapter 343 EIS as part of the
3 land use process to get to this point. In chapter 343
4 there are two types of EIS's. There is one that's
5 filed by a, what's called an agency action, that is a
6 governmental body.

7 Whenever a governmental body does something
8 it must comply with the requirements, the time
9 requirements and disclosure requirements, content
10 requirements of an agency action.

11 And there is a private action process for
12 private developers or others in the private sector who
13 wish to do something for which a 343 EIS is required.

14 HHFDC followed the agency action process.
15 And the major difference is that the agency action
16 process is approved not by the accepting agency, which
17 may be the Commission or may be some other state body,
18 but by the governor of the state of Hawai'i.

19 HHFDC's EIS in this particular process was
20 accepted by Governor Lingle. It was not accepted by
21 an accepting agency, which is normally the process for
22 private developers.

23 HHFDC is a governmental body. There's no
24 question about it. Therefore it is required to follow
25 Chapter 1 section 1-28. Section 1-28.5 in particular

1 relates to the publication of notice.

2 It states as follows: "Notwithstanding any
3 other statute, law, charter, provision, ordinance or
4 rule to the contrary, whenever a government agency is
5 required to give public notice or to publish notice,
6 the notice shall be given only as follows:

7 "1. For statewide publication..." And it
8 lists different types of publications that must be
9 advertising the notice. And "For countywide
10 publication."

11 Chapter 1 section 1-28.5 requires both
12 statewide and countywide publication. Now, HHFDC, the
13 Petitioner in this case, has argued in the other
14 docket that number one, they're not a government body.
15 Because they're acting like a private developer they
16 should be considered to be a private party.

17 We find that argument with no basis at all.
18 HHFDC there is no question that it is a government
19 agency. And it is acting as a government agency in
20 this particular matter under Chapter 201H. So,
21 therefore, it is required to publish both statewide
22 and countywide publication.

23 The statewide publication was normally
24 fulfilled in the past by publishing notice in the
25 "Star Bulletin" or the "Honolulu Advertiser".

1 However, that changed once the "Star
2 Bulletin" and the "Advertiser" merged into one
3 newspaper. To date the "Star-Advertiser", which is
4 the new paper, only circulates on O'ahu. They send
5 newspapers to subscribers on Maui and on Kaua'i and
6 the Big Island. These are subscribers now. This is
7 not like you can buy it on the street in a machine.

8 Now, some of the subscribers may be people
9 that put it in a machine. Most definitely the
10 "Star-Advertiser" does not reach the islands of
11 Moloka'i and Lana'i.

12 In order to comply with statewide
13 circulation you must hit all of the counties. That is
14 our understanding from the state Office of
15 Procurement. It requires that we must publish now in
16 five newspapers to reach statewide publication
17 requirements. That was not done in this case.
18 Publication was made in the "Star-Advertiser."

19 Secondly, countywide publication.
20 Publication was made in "West Hawaii Today" only, not
21 in the "Hilo Tribune". The Office of Procurement has
22 stated -- and this is stated in the letter from your
23 executive director to the Petitioner for the Notice of
24 Hearing, where they found that that Notice of Hearing
25 failed to meet the countywide publication because the

1 Petitioner had only filed notice in the "West Hawai'i
2 Today".

3 In other words, "West Hawai'i Today" does
4 not qualify as a paper of countywide publication on
5 this island. It only circulates for half the island.

6 Now, there was an argument raised by the
7 Petitioner that this Commission should waive its
8 requirement of the Notice of Intent to File. If you
9 read the state law it says, "Notwithstanding any other
10 statute, law, charter or rule to the contrary,
11 whenever a government agency is required to give
12 public notice it must publish both statewide and
13 countywide."

14 We submit to this Commission that your rule
15 to waive the rule on an after-the-fact violation is
16 contrary to the statute and the intent of the
17 Legislature.

18 The intent of the Legislature was to provide
19 free and open public notice to all persons in this
20 state and in the county. It wasn't to circumvent the
21 notice requirements. And in fact the statute was
22 changed to add those provisions a few years ago.

23 So we submit that the Notice of Intent to
24 File a Petition is a notice requirement; that HHFDC is
25 a governmental agency and is therefore required to

1 follow the provisions of section 1-28.5 and that this
2 did not occur in this proceeding.

3 If you proceed forward on this petition
4 you're proceeding forward with defective notice and
5 therefore potentially have violated the due process
6 rights of individuals throughout the state that may
7 have wanted to participate in these proceedings but
8 didn't because they didn't get notice.

9 We ask this Commission to find that and to
10 cure the defect by having that Notice of Intent
11 refiled in this particular matter. Thank you.

12 CHAIRMAN DEVENS: Thank you, Mr. Kudo.
13 Ms. Benck.

14 MS. BENCK: Thank you, Chairman and
15 Commissioners. I think probably the first point that
16 we'd like to respond to is clearly Intervenor got
17 notice. Intervenor's a party. In fact Intervenor
18 sought to be a party the first time we filed the
19 Petition for the District Boundary Amendment. So
20 Intervenor's interesting attempt to protect the public
21 interest is really misguided. They're a party here so
22 they've suffered no harm. They don't even have
23 standing to deal with this matter.

24 But having set that aside for a minute I
25 want to start out with saying when you look at the

1 Notice of Intent requirement that's a rule
2 requirement. 15-15-97 is a rule requirement that
3 applies.

4 This Commission created the rule. This
5 Commission has full authority to waive any rule, any
6 rule that doesn't have to do with jurisdictional
7 matters.

8 Clearly this is a rule that doesn't have to
9 do with jurisdictional matters. Why? Because the
10 Notice of Intent doesn't trigger any jurisdictional
11 issues. It doesn't trigger timelines for
12 intervention. It doesn't trigger timelines for
13 hearing. It doesn't trigger anything except in 60
14 days we're probably going to file a Petition for
15 District Boundary Amendment.

16 And 15-15-97 goes on to say that if you
17 don't file that Petition for District Boundary
18 Amendment in 60 days the executive officer can go
19 ahead and waive that requirement or allow you to file
20 it at some other time.

21 So we're talking about something that's
22 purely rule based, not statutory. And that means that
23 the Commission has full authority to waive the rule.

24 The second point that I think is important
25 to make is that trying to somehow cojoin the Notice of

1 Intent requirements with the Notice of Hearing
2 requirements is a clever tactic but it's completely
3 off-base.

4 Notice of Intent to File a Petition is
5 something a petitioner does. The rule requires the
6 petitioner to publish a Notice of Intent, not a
7 governmental agency file a Notice of Intent. It's a
8 petitioner. We have a petitioner. That's what they
9 did.

10 So HRS 1-28.5 doesn't apply. That's for
11 governmental agencies who have to do something. Here
12 we don't have a governmental agency who has to do
13 something. We have a petitioner who under a rule is
14 required to do something. If the petitioner doesn't
15 do it the Commission has full authority to waive that
16 requirement.

17 And trying to wrap this up quickly, I just
18 want to briefly march us through the chronology
19 because we know that we've eaten up a lot of the
20 Commission's time already.

21 Notice of Intent on this, on the prior
22 docket, and when I say "prior docket" I mean the one
23 that was filed in March, Notice of Intent was
24 published on January 21st, 2010. It was published in
25 two newspapers.

1 Affidavit was filed on January 28.
2 Pre-hearing conference was held I believe in this room
3 on March 4th. Intervenor was there. We were all
4 there. Well, I'm sorry, the Commissioners were not at
5 the pre-hearing. But certainly the Commission at that
6 point had full awareness of our publication of the
7 Notice of Intent in two newspapers, as did the
8 Intervenor. This issue wasn't raised.

9 As you know the Notice of Hearing did
10 properly get published in all the necessary
11 newspapers. QLT, when they submitted their Petition
12 for Intervention back on March 31st, never raised this
13 issue. It was never at issue.

14 As the Commission recalls we withdrew the
15 Petition. With your indulgence we were granted
16 permission to refile. When we refiled our Notice of
17 Intent on January 7, again published in two
18 newspapers, nobody ever said a word. Why? Because I
19 believe this Commission had already determined that
20 that HRS section isn't applicable. That's applicable
21 Notice of Hearing. Why? Notice of Hearing comes from
22 the Commission, not from private petitioners, which is
23 what we're dealing with here.

24 So Notice of Intent was published in two
25 papers on January 7. We filed our affidavit -- I'm

1 sorry on July 7 -- we filed our affidavit on July 26.
2 Again, no problems, no issues were raised whatsoever.
3 The petition was filed on September 7th and the Notice
4 of Hearing was properly published, meaning in all of
5 the relevant newspapers by the Commission on
6 September 21st.

7 So to recap: Clearly there's been
8 absolutely no prejudice suffered by Intervenor. I
9 think after reciting the history here nobody can
10 honestly claim that there's been anybody in the state
11 of Hawai'i who has the slightest bit of interest in
12 this matter who hasn't been properly notified. We
13 have had two petitions before you. That means twice
14 we've mailed out to everybody on the state and county
15 mailing list. We've had numerous newspaper
16 publications.

17 Ultimately if the Commission does find that
18 15-15-97 in this instance means that there has to be
19 publication in all of the newspapers because one of
20 the petitioners, although they are acting as a
21 petitioner and not as a governmental agency -- if the
22 Commission, nevertheless, finds that it should have
23 been published in all newspapers, then we ask the
24 Commission's indulgence to kindly waive that rule as
25 at this point there's been more than adequate notice.

1 Intervenor's a party and we believe that if there has
2 been any error it's a completely harmless error.
3 Thank you.

4 CHAIRMAN DEVENS: Thank you. County, do you
5 have a position on this issue?

6 MS. MARTIN: No. The County is not taking a
7 position on this issue.

8 CHAIRMAN DEVENS: OP?

9 MR. YEE: The Office of Planning --

10 CHAIRMAN DEVENS: I'm sorry. Mr. Iha, did
11 you have -- I'm sorry, Mr. Yee. Mr. Iha, did you have
12 an argument you'd like to add?

13 MR. IHA: Yes. Thank you, Mr. Chairman. I
14 just wanted to add to what Ms. Benck said. If the
15 Commission is concerned about due process rights I
16 think that the Commission can waive the strict
17 application of that rule in this case.

18 Clearly the more important notice is the
19 actual Notice of Hearing. And there's no dispute that
20 that notice was sufficient. 'Cause in fact the
21 Commission required Petitioners to go ahead and
22 re-notice that.

23 The Notice of Intent to File, even though it
24 may not have been filed in the way Mr. Kudo would like
25 to have it been filed, the "Star-Advertiser" has

1 tremendous circulation including as well as "West
2 Hawai'i Today" which is the core area of the petition.
3 So I'd just like to add I don't think there's a due
4 process concern in this case should the Commission
5 decide to waive the rule.

6 CHAIRMAN DEVENS: Thank you. Mr. Yee.

7 MR. YEE: The Office of Planning believes
8 that there is insufficient grounds to determine that
9 this petition is deficient. We say this, though,
10 acknowledging that section 1-28.5 does not appear to
11 have been met.

12 And let me take a step back and just say
13 there are two separate notices in this case: The
14 Notice of Intent to File the Petition, which sort of
15 tells the world at some point or a particular point
16 the petitioner is going to file a petition. Then
17 there's the Notice of Hearing itself. That tells the
18 world "We're going to hold a hearing on this matter on
19 this date."

20 The Notice of Intent is not a requirement on
21 the Land Use Commission. It is a requirement on the
22 petitioner. And the issue, it seems to me, is not
23 whether 1-28.5 was or was not complied with because
24 it's clear that the Notice of Intent was filed in two
25 newspapers, not five.

1 But really the question is whether section
2 1-28.5 applies. And we say this because the
3 particular requirement for the Notice of Intent says
4 petitioner shall file this Notice of Intent.

5 It doesn't specify -- it doesn't say
6 governmental agencies should do a certain thing. It
7 doesn't say the Land Use Commission should do a
8 certain thing. It's a rule of general application.

9 And the question then arises: When the
10 petitioner happens to be a governmental agency does
11 1-28.5 then create this additional requirement? Or
12 does it create an additional requirement upon a
13 governmental agency which might not apply -- may or
14 may not apply to other private agencies or private
15 parties? We don't believe it does. We think that
16 1-28.5 is intended to set forth a standard. Let me
17 take a step back.

18 As you probably know there are a variety of
19 situations which governmental agencies have to publish
20 notice. So 1-28.5 we think sets a standard which all
21 government agencies file when there are general
22 governmental notices required under statute or rule.
23 It really is not intended to apply to cases of general
24 requirements if there's a contract and the government
25 is supposed to provide notice in a particular way

1 pursuant to that private contract.

2 1-28.5 doesn't then insert this new
3 requirement that, well, because one of the particular
4 parties to the contract happens to be a governmental
5 agency, now you're incorporating all of these
6 additional conditions. That's not the intent.

7 And we say this also because in your rules
8 the Notice of Intent, 15-15-97D notes that "If the
9 petitioner fails to file the petition on the date
10 stated in its Notice of Intent, the petitioner shall
11 refile the Notice of Intent in the manner set forth in
12 this section unless the refiling is waived by the
13 chairperson or presiding officer."

14 So it seems that there are possibilities
15 that you've already included in your rules for waiver.
16 So, in other words, what you're waiving is not the
17 publication process.

18 What you're waiving is the requirement for
19 Notice of Intent. So if you do not require a Notice
20 of Intent, 1-28.5 simply doesn't apply. And there's
21 no violation with 1-28.5.

22 I'm saying this in response to what I
23 believe is QLT's argument that it's a mandatory
24 requirement and you cannot waive 1-28.5. What I'm
25 saying you're not waiving the notice requirement.

1 You're waiving the Notice to File Notice of Intent at
2 all. So you're not changing the way in which the
3 notice is filed.

4 You know, this is not something that I would
5 argue as something that should be done all the time
6 necessarily because you do have -- aside from 1-28.5
7 you have your own rules and your own way of doing
8 things. And if you tell petitioners they should do it
9 a certain way then I think they should.

10 But in this case because there were two
11 separate notices, we are persuaded that there was no
12 prejudice to any of the parties. That's to say
13 initially the Notice of Intent was filed in two
14 newspapers. Subsequently the Notice of Hearing was
15 filed in five. We have not received any additional
16 requests for intervention.

17 Someone could have argued that they were
18 prejudiced and they wanted to intervene. They have
19 not. I think any possibility that that would happen
20 is purely speculative. So we believe that any
21 prejudice which might have existed was effectively
22 superceded or cured by the Notice of Hearing and that
23 filing in all five newspapers.

24 Consequently, the Office of Planning would
25 suggest that there is not a violation of the statutory

1 requirement. And to the extent that you find that
2 there is a violation of your rules that that should be
3 waived and that you're allowed to waive the rule
4 requirements for the filing of Notice of Intent,
5 because there's been no prejudice to the parties, no
6 prejudice to -- no discernible prejudice to the public
7 and that it would serve basically the good cause of
8 justice in general. Thank you.

9 CHAIRMAN DEVENS: Mr. Kudo, you have
10 additional arguments?

11 MR. KUDO: Yes. I'd like to say that this
12 201H proceeding is a very special proceeding. And
13 it's an expedited, accelerated proceeding. It's not
14 the normal kind of boundary amendment that I normally
15 have to go through that takes almost a year.

16 It's a process which was set up which
17 expedites the petitioner in terms of meeting with
18 public groups and stakeholders and filing its
19 petition, and this Commission making a decision in 45
20 days. No exceptions. Forty-five days. There's no
21 extension to that. It is an extremely accelerated
22 process.

23 And for that reason the two notices are
24 required. Not just one valid notice but two. 1-28.5
25 was passed by the Legislature in 1998 and amended in

1 2003 for that very reason. That the public concern
2 was that government agencies were doing things that
3 they weren't notified of.

4 So to address the Office of Planning's
5 argument that just because your rule says petitioner
6 should file the notice, that somehow that exculpates a
7 government agency from complying with chapter 201H,
8 which requires the government agency to file the
9 petition, would mean that any government agency if the
10 rule said "Applicant, Petitioner" they could hide
11 behind those words and say, "We can stealth this
12 Project through without complying with 1-28 and filing
13 the notice in statewide and countywide publications
14 just because it says "petitioner"?

15 "Petitioner" is the formal term for those
16 persons applying and asking this Commission to act.
17 It can include government agencies as well as private
18 parties. 201H requires HHFDC, a government body, to
19 file this petition. It is a government action. And
20 therefore 1-28.5 is applicable.

21 The expedited process also calls into
22 question of whether it's appropriate as a public
23 policy for any agency to waive a rule after a
24 violation has occurred. I don't believe that's good
25 public policy. I think it flies in the face of 1-28.5

1 and the concerns the citizens had when they had the
2 Legislature pass that law.

3 Notice should be given to all parties. And
4 it should be proper, especially in an expedited
5 process such as the one that we are in. Thank you.

6 CHAIRMAN DEVENS: Thank you, Mr. Kudo.
7 Commissioners, have any questions for the parties?
8 Mr. Yee, you had some additional arguments?

9 MR. YEE: Just one short clarification. It
10 is my understanding -- and certainly you should check
11 the law yourself -- that 201H proceedings are not
12 necessarily brought by HHFDC. They have to be
13 certified by either HHFDC or the county. But I don't
14 believe -- they could be a purely private project on
15 private lands that gets certified as an affordable
16 housing project. So I just wanted to...

17 MR. KUDO: I would draw this Commission to
18 section 201H-38A4: "The Land Use Commission shall
19 approve, approve with modification or disapprove a
20 boundary change within 45 days after the corporation,"
21 which is defined as HHFDC within 201H, "after the
22 corporation submitted a petition to the Commission as
23 provided in section 205-4." It requires the
24 corporation to file the petition. The co-developer
25 cannot file it by itself.

1 MR. YEE: Okay. I'm sorry. I stand
2 corrected.

3 CHAIRMAN DEVENS: Okay. Ms. Benck, Mr. Iha,
4 you have anything more you want to add?

5 MR. IHA: Mr. Chair, there's nothing wrong
6 with the 201H process. There's nothing wrong with the
7 manner in which this petition has been handled.

8 Clearly I think everyone can see that this
9 has not been a stealth project, as Mr. Kudo
10 characterizes it. And further, even if HHFDC,
11 assuming it is subject to 1-28.5 in this case, 1-28.5
12 has to attach to some requirement.

13 If the Commission is kind enough to waive
14 the Notice of Intent requirement or perhaps relax the
15 Notice of Intent requirement, then of course 1-28.5
16 does not apply because it would not be a notice
17 required to be given by the agency.

18 CHAIRMAN DEVENS: Ms. Benck, do you have
19 further argument on this?

20 MS. BENCK: No. Thank you.

21 CHAIRMAN DEVENS: Commissioners, any
22 questions for the parties? Mr. Kudo, if I can ask you
23 is there any substantive prejudice that your client
24 has suffered based on the manner that the notice was
25 done in this case?

1 MR. KUDO: I'm not sure because should other
2 parties have participated in this proceeding I don't
3 know what our position would be in involved in this.
4 Right now we're involved by our ourselves. But should
5 there have been other parties that had concerns
6 similar to ours, our positions might be adjusted or
7 amended to reflect the other parties' participation.

8 CHAIRMAN DEVENS: Based on what you know now
9 can you point to any substantive prejudice to the
10 Intervenor?

11 MR. KUDO: Not to us right now.

12 CHAIRMAN DEVENS: Ms. Benck, can I ask you,
13 you know, in 15-15-97, subsection F, it refers to the
14 petitions that fail to comply with the requirements
15 set forth to subsection B and E. B being the notice
16 requirements. What's your response to the argument
17 that that is a jurisdictional standard?

18 MS. BENCK: Because the Notice of Intent
19 doesn't trigger any kind of jurisdictional
20 requirements it's not required in order for the
21 petition to be deemed effective. It doesn't trigger
22 any intervention rights. It doesn't trigger any
23 hearing rights. All it does is say somebody's going
24 to file a petition pretty soon. And because in this
25 instance our Notice of Intent was, as I said before,

1 originally published January 21st, 2010 and everybody
2 was well aware of it.

3 And clearly if 1-28.5 attached it would have
4 attached at that time the same way that Mr. Kudo's
5 claiming it attaches now. And it didn't. And when
6 our Notice of Intent was filed again the same exact
7 thing happened.

8 I think the jurisdictional requirement goes
9 to the Notice of Hearing, Notice of Hearing that was
10 published both in March and again this past September
11 in all of the relevant newspapers.

12 MR. IHA: Chair Devens, if I could add to
13 that. An agency's jurisdiction is determined by its
14 governing statute. In this case the Land Use
15 Commission's governing statute doesn't set forth any
16 requirements regarding to a Notice of Intent.

17 It's not something that the Legislature has
18 placed on the Commission as a restriction. Or it's
19 not something the Legislature has placed on parties as
20 a restriction. 201H-38 doesn't mention such a
21 requirement.

22 And the Commission is rightfully concerned
23 with prejudice to parties, prejudice to the public.
24 However, I think, even as Mr. Kudo would admit, he
25 can't really identify any prejudice if in fact the

1 Notice of Intent was defectively published.

2 CHAIRMAN DEVENS: Thank you. Commissioners,
3 what's your pleasure on this matter, on this in limine
4 argument? (Pause) Any motion? (Pause). Okay. We'll
5 take public witnesses. Why don't we take a short
6 2-minute break.

7 (Recess was held.)

8 CHAIRMAN DEVENS: (11:55) Back on the
9 record. I had one more question, Ms. Benck. Not
10 being familiar with the papers here, the "West
11 Hawai'i" newspaper I have personally seen it at the
12 Hilo offices of SHOPO. Is it circulated in Hilo and
13 other places besides just on this side?

14 MS. BENCK: Yes. "West Hawaii Today" is
15 widely circulated.

16 CHAIRMAN DEVENS: Throughout the island.

17 MS. BENCK: Yes.

18 MS. LEITHEAD-TODD: I'm sorry. It's not.
19 "West Hawai'i" is available in stands on the side of
20 the east side. But as far as I know there is no home
21 delivery. So it depends on what you mean by
22 "circulation".

23 My understanding is that under the State
24 Procurement Office's rules in order to have
25 countywide circulation you need both "West Hawai'i"

1 and "Hawai'i Tribune Herald".

2 So we're stuck with the same ruling. We
3 have to publish in both papers whenever we have to do
4 something countywide.

5 CHAIRMAN DEVENS: Thank you for the
6 clarification. I actually meant is it sold in Hilo
7 and other parts of the island.

8 MS. BENCK: And I'm sorry if I misspoke. I
9 understood your question to mean is it available.

10 CHAIRMAN DEVENS: That's what I mean.

11 MS. BENCK: Certainly I look at it and I'm
12 in Honolulu. I look at it regularly. So I believe it
13 is available. Certainly it's available to
14 subscribers. I believe the planning director's point
15 about as a county, whether the county has to publish
16 notice in both papers for the HRS issue is a separate
17 question.

18 But I thought I was just answering the
19 question, yes, I believe I can look at this paper
20 where and whenever I want to.

21 CHAIRMAN DEVENS: I appreciate the
22 clarification. My question was bad, I'm sorry.
23 Unless the Commissioners have any other questions
24 we'll continue moving on.

25 COMMISSIONER LEZY: Chair, if I might.

1 CHAIRMAN DEVENS: Commissioner Lezy.

2 COMMISSIONER LEZY: I apologize. I tried to
3 get your attention prior to the last break that we
4 took.

5 CHAIRMAN DEVENS: I'm sorry.

6 COMMISSIONER LEZY: I'd like to make a
7 motion, Chair, on this in limine matter currently
8 before the Commission. The content of my motion is as
9 follows: To the extent that there may have been any
10 failure on the part of Petitioner to comply with the
11 Commission's rule governing publication of the Notice
12 of Intent to File, I believe that there's good cause
13 here to waive the rule as it is not jurisdictional;
14 there's been no showing of actual or apparent harm;
15 and that the intent of the rule and the actual
16 practice here has been substantially met.

17 COMMISSIONER KANUHA: Second.

18 CHAIRMAN DEVENS: The motion has been
19 seconded. Discussion? Hearing none, Dan, you want to
20 take the roll call.

21 MR. DAVIDSON: Thank you, Chair. The motion
22 in limine as set forth by Commissioner Lezy.

23 Commissioner Lezy?

24 COMMISSIONER LEZY: Yes.

25 MR. DAVIDSON: Commissioner Kanuha?

1 COMMISSIONER KANUHA: Yes.

2 MR. DAVIDSON: Commissioner Chock?

3 COMMISSIONER CHOCK: Yes.

4 MR. DAVIDSON: Commissioner Contrades?

5 COMMISSIONER CONTRADES: Yes.

6 MR. DAVIDSON: Commissioner Heller?

7 COMMISSIONER HELLER: Yes.

8 MR. DAVIDSON: Commissioner Jencks?

9 COMMISSIONER JENCKS: Yes.

10 MR. DAVIDSON: Commissioner Judge?

11 COMMISSIONER JUDGE: Yes.

12 MR. DAVIDSON: Chair Devens?

13 CHAIRMAN DEVENS: Yes.

14 MR. DAVIDSON: Motion passes eight/zero,
15 Chair.

16 CHAIRMAN DEVENS: For clarification,
17 Commissioner Lezy, it wasn't a motion in limine. It
18 was your motion ruling on the in limine issue, is that
19 correct?

20 COMMISSIONER LEZY: That's correct.

21 CHAIRMAN DEVENS: Moving on. The procedure
22 we're going to follow today: In a little while we'll
23 to take public testimony. We're going to be calling
24 the public witnesses in the order they signed up for
25 on the witness sheet. If you wish to provide public

1 testimony, please sign up on the sheet and we will
2 call you up.

3 For those witnesses that are called we'll
4 have you sworn in. If you could provide your address
5 and then you can provide your testimony. We normally
6 limit it to 3 minutes to make sure we get through
7 everybody because of the expedited nature of this
8 proceeding.

9 We will call short breaks as needed to give
10 the court reporter a break. After that, we will move
11 into have Scott provide the Commission with the map
12 orientation. After that has been done we will have
13 the exhibits identified by the parties, note any
14 objections thereto.

15 Scott, you want to provide the orientation
16 at this time. Why don't we just have the orientation
17 and then we'll take the public testimony.

18 MR. DERRICKSON: Aloha, Commissioners. Map
19 orientation for Docket No. A10-788 Hawaii Housing
20 Finance and Development Corporation and Forest City
21 Kona Hawai'i, LLC. The official LUC map is composed
22 of the following USGS quads: H-2 Keahole Point. H-7
23 Kailua. H-8 Kealahou.

24 The general location of the Petition Area in
25 yellow is approximately 1 mile northeast and mauka of

1 Kailua-Kona waterfront; one mile southeast of
2 Kaloko-Honokohau National Historical Park; and
3 approximately 6 miles south of Kona International
4 Airport.

5 The surrounding lands that are in the Urban
6 District: The adjacent parcel on the west adjoining
7 is the Queen Lili'uokalani Trust property reclassified
8 in 1991 Docket No. A89-646.

9 Adjacent land to the south are private lands
10 reclassified in 1998 by the county of Hawai'i as part
11 of the 5-year boundary review recommendations docket
12 No. 894-705. And adjacent land to the north HHFDC
13 reclassified in 1990, Docket No. A90-660.

14 The main roadways adjacent to the Petition
15 Area or in proximity are Palani Road along the
16 southern boundary, runs mauka to makai; the Queen
17 Ka'ahumanu Highway, approximately 1 half mile makai of
18 the Petition Area; a proposed mid-level road Ane
19 Keohokalole Highway which would run on the boundary of
20 the Petition Area and Queen Lili'uokalani Trust lands,
21 the Kealakehe Parkway three quarters of a mile north;
22 and Hina Lani Street approximately one mile north.

23 Both those two: Kealakehe Parkway and Hina
24 Lani Street are mauka-to-makai connector roads running
25 from Queen Ka'ahumanu Highway. And I think Hina Lani

1 runs all the way to Mamalahoa Highway. Kealakehe
2 Parkway does not run all the way to the top yet.
3 That's the map orientation. Any questions?

4 CHAIRMAN DEVENS: Thank you very much.
5 We'll now take public testimony. Dan.

6 MR. DAVIDSON: First testifier Sallie Buchal
7 followed by Jon Miyata followed by Mike Yoshimoto.

8 SALLIE BUCHAL
9 being first duly sworn to tell the truth, was examined
10 and testified as follows:

11 THE WITNESS: I do.

12 CHAIRMAN DEVENS: State your name and
13 address, please.

14 THE WITNESS: My name's Sallie Buchal. The
15 address of the National Park Service is 73-4786
16 Kanalani Street, Kailua-Kona 96740.

17 Aloha, Mr. Chair and Commissioners.
18 Superintendent Billings was not able to make it today.
19 I'm presenting the testimony of the National Park
20 Service in this docket A10-788. And you've got
21 written testimony which I'll briefly summarize.

22 The proposed Forest City Project is situated
23 approximately one and-a-half miles from the
24 Kaloko-Honokohau National Historical Park and shares
25 the watershed and aquifer with the National Park.

1 This proposed Project in the cumulative
2 context of other proposed and existing developments in
3 the area of the National Park -- you can see attached
4 figure 1 -- has the potential to impact natural and
5 cultural resources and practices in the Park that
6 depend upon groundwater.

7 As this Commission is aware the National
8 Park Service is gravely concerned about impacts to
9 these nationally significant resources due to
10 groundwater withdrawals and nonpoint source pollution.

11 The National Park Service seeks to ensure
12 that the existing and planned groundwater use in North
13 Kona is sustainable for both human needs and ecosystem
14 services and that clear, enforceable and effective
15 nonpoint source pollution controls are consistently
16 applied to urban development.

17 Groundwater use has doubled since the Park
18 was established in 1978 and will double again due to
19 proposed developments in the immediate vicinity of the
20 National Park. You can refer to the attached table in
21 the written testimony.

22 The National Park Service disagrees with
23 Petitioner's claim that the development will not have
24 a significant effect on groundwater resources. The
25 fact is that the cumulative effects on groundwater are

1 uncertain and were not analyzed in the EIS.

2 However, lack of scientific certainty does
3 not prevent the Commission from taking precautionary
4 actions to protect public trust purposes and the
5 capital investments in water and infrastructure that
6 may be at risk due to future limits on groundwater
7 withdrawals.

8 The Park Service provided comments on the
9 EIS prep notice, on the Draft EIS for this proposed
10 development. These letters and the Petitioner's
11 response are incorporated into the docket. And I'm
12 pleased to say the Petitioner's response to the
13 National Park Service, which is also attached to the
14 testimony, included strongly worded commitments to
15 protect the state of Hawai'i and National Park coastal
16 resources through implementation of nonpoint source
17 pollution controls and water conservation measures and
18 increased monitoring in higher elevation wells.

19 The National Park Service respectfully
20 requests that if this Project is approved, the
21 Commission accept at minimum the Petitioner's proposed
22 conditions of approval concerning nonpoint source
23 pollution and groundwater monitoring or with stronger
24 modifications as appropriately required by county and
25 state agencies.

1 Petitioner's incorporated to a large extent
2 these commitments in their Exhibit 17, which includes
3 proposed Conditions 11, 12, 13, 14, and 18. Such
4 controls are necessary to protect the nationally
5 significant cultural and natural resources of
6 Kaloko-Honokohau National Historical Park and the
7 traditional and customary practices of Native
8 Hawaiians in the park.

9 The National Park Service applauds the
10 parties and this Commission in sharing in the
11 responsibility to preserve the National Park, its
12 federally protected resources and our national
13 heritage. Thank you for the opportunity to provide
14 this testimony.

15 CHAIRMAN DEVENS: Thank you for your
16 testimony. Parties have any questions for this
17 witness?

18 MS. BENCK: No questions.

19 MS. MARTIN: No questions.

20 CHAIRMAN DEVENS: Hearing none,
21 Commissioners?

22 MR. YEE: I'm sorry, Commission.

23 CHAIRMAN DEVENS: I'm sorry. Mr. Yee.

24 MR. YEE: Just briefly. Ms. Buchal, is it
25 fair to say that the National Park Service was

1 consulted before the finalization of the proposed
2 conditions in Petitioner's Exhibit 17?

3 THE WITNESS: Yes.

4 MR. YEE: And during that process is it also
5 fair to say that the National Park Service
6 participated both in expressing some concerns at some
7 point as well as expressing its satisfaction?

8 THE WITNESS: Yes.

9 MR. YEE: And that Petitioner's Exhibit 17
10 at this point with the conditions you've cited are
11 satisfactory -- either those conditions or something
12 stronger would be satisfactory to the National Park
13 Service.

14 THE WITNESS: That's correct.

15 MR. YEE: I have nothing further. Thank
16 you.

17 CHAIRMAN DEVENS: Parties have any
18 questions? Hearing none, Commissioner? Hearing
19 none, thank you very. Next witness.

20 MR. DAVIDSON: Jon Miyata followed by Mike
21 Yoshimura.

22 JON MIYATA,
23 being first duly sworn to tell the truth, was examined
24 and testified as follows:

25 THE WITNESS: Yes.

1 CHAIRMAN DEVENS: Please state your name and
2 address.

3 THE WITNESS: Jon Miyata, 60 Keaa Street,
4 Hilo, Hawai'i, 96720.

5 CHAIRMAN DEVENS: Thank you.

6 THE WITNESS: I was just about to change my
7 salutation to "good afternoon", but it's still
8 morning. So good afternoon, (sic) Commissioners. My
9 name is Jon Miyata. And I'm president-elect of the
10 Hawai'i Island Chamber of Commerce whose membership
11 includes over 300 businesses representing over 700
12 individual members. We are here in support of the
13 Kamakana Villages Project.

14 The vision of Kamakana is to create an
15 affordable, livable community derived from new
16 urbanist planning and design principles described in
17 the Kona Community Development Plan.

18 Kamakana Villages is designed as a
19 Transit-Oriented Development in accordance with the
20 Kona CDP, adopted by the Hawai'i County Council in
21 2008.

22 The proposed community will be a vibrant
23 mixed-use neighborhood that includes a town center
24 with shopping and dining establishments, two new
25 schools, two regional parks with ball fields and play

1 structures, open spaces and nine acres of preserved
2 Native Hawaiian archaeological sites.

3 It will be a cutting edge sustainable and
4 energy efficient community with residences and
5 commercial structures designed to LEED criteria which
6 incorporate renewable energy and water conservation
7 strategies in its design.

8 Forest City and the Housing Finance and
9 Development Corporation have worked hard to see this
10 project reach fruition and provide West Hawai'i with
11 desperately needed affordable homes.

12 Currently the Petitioners are seeking to
13 amend the land use district from its current Ag
14 District to Urban District. By your supporting this
15 request you will allow Forest City to fill a void in
16 the West Hawai'i affordable housing market and provide
17 jobs to the hundreds of construction workers who are
18 now out of work.

19 The economic benefits of this Project will
20 also greatly benefit many of our member businesses and
21 the surrounding community.

22 We urge this Commission to support the
23 Petitioner's request to amend the land use district
24 from its current Ag District to Urban. Thank you for
25 your time and consideration.

1 CHAIRMAN DEVENS: Thank you for your
2 testimony. Parties have any questions for this
3 witness? Hearing none, Commissioners? Thank you very
4 much, sir. Next witness.

5 MR. DAVIDSON: Mike Yoshimoto followed Chris
6 Okamura.

7 MIKE YOSHIMOTO
8 being first duly sworn to tell the truth, was examined
9 and testified as follows:

10 THE WITNESS: Yes.

11 CHAIRMAN DEVENS: Please state your name and
12 address.

13 THE WITNESS: My name is Mike Yoshimoto. I
14 live at 68-1845 Waikoloa Road, Suite 106 Waikoloa,
15 Hawai'i. 96738. 'Morning everyone. My name is Mike
16 Yoshimoto. I'm here to voice my support for the
17 Kamakana Project. I feel that this Project will help
18 with two of the biggest concerns we face today. 1.
19 It will create jobs. 2. It will provide affordable
20 housing.

21 I've been living on the Big Island for
22 several years now and I believe Kamakana will be a
23 perfect opportunity for me to buy an affordable home
24 and raise a family someday. So I ask that you please
25 make this Project happen. Thank you.

1 CHAIRMAN DEVENS: Thank you for your
2 testimony. Questions from the parties? Hearing none,
3 Commissioners? Hearing none, thank you very much,
4 sir.

5 MR. DAVIDSON: Chris Okamura followed by
6 Wendell DeCoito.

7 CHRIS OKAMURA,
8 being first duly sworn to tell the truth, was examined
9 and testified as follows:

10 THE WITNESS: Yes.

11 CHAIRMAN DEVENS: State your name and
12 address.

13 THE WITNESS: Chris Okamura, 64-5258 White
14 Road, Kamuela. You know, I had a whole prepared
15 speech this morning, kind of long winded. But the
16 more I sat through this the simpler it seemed. The
17 bottom line is we need this. We as a community we
18 need this. You know, we need the work. We need the
19 affordable homes. You guys see it every day as well
20 as I do, our families and friends struggling to make
21 ends meet because they don't have work. Their
22 unemployment is about to run out. They can't find an
23 affordable apartment let alone an affordable home to
24 purchase in town.

25 So I, I sit here humbly, you know, before

1 you guys today and I ask the committee to allow the
2 zoning change and help get our local families back on
3 their feet. Thank you.

4 CHAIRMAN DEVENS: Thank you for your
5 testimony. Parties have any questions for this
6 witness? Hearing none, Commissioners? None. Thank
7 you, sir. Next witness.

8 THE WITNESS: Thank you.

9 MR. DAVIDSON: Wendell DeCoito followed by
10 Mike Fujimoto.

11 WENDELL DECOITO,
12 being first duly sworn to tell the truth, was examined
13 and testified as follows:

14 THE WITNESS: Yes.

15 CHAIRMAN DEVENS: State your name and
16 address.

17 THE WITNESS: Wendell DeCoito, 66-1850
18 Alaneo Street. Good afternoon --

19 CHAIRMAN DEVENS: Good afternoon.

20 THE WITNESS: -- Chair, Commission. I'm a
21 Native Hawaiian. My parents' fifth generation born
22 and raised here on this island. I feel I support this
23 Kamakana Project. Our families need affordable homes
24 now especially in the West Hawai'i area.

25 We have waited for developers who will

1 commit to build affordable housing. And here today is
2 Forest City Hawai'i with plans to build a nice, safe
3 energy-saving community.

4 Being a Hawaiian I care about the land and
5 the environment and believe that Forest City will have
6 in its best interest the concern for the Project and
7 the land. Yeah? And it's our families that need
8 homes.

9 And Forest City can deliver this affordable
10 community, and we can help them build it strong
11 lasting good quality homes the right way. Mahalo for
12 your time.

13 CHAIRMAN DEVENS: Thank you for your
14 testimony. Any questions from the parties? Hearing
15 none, Commissioners? Hearing none, thank you very
16 much.

17 THE WITNESS: Mahalo.

18 CHAIRMAN DEVENS: Next witness.

19 MR. DAVIDSON: Mike Fujimoto.

20 MIKE FUJIMOTO,
21 being first duly sworn to tell the truth, was examined
22 and testified as follows:

23 THE WITNESS: Yes, I do.

24 CHAIRMAN DEVENS: State your name and
25 address.

1 THE WITNESS: My name is Mike Fujimoto,
2 66-1453 Ko Uka Place in Kamuela, Hawai'i. I am
3 representing our company, which is a hundred percent
4 employee-owned company on the Big Island and O'ahu,
5 HPM Building Supply. I'm the president and CEO of the
6 company. I'm here before you representing our 240
7 employees.

8 Commissioners, consistent with the goals,
9 objectives, policies and actions of the Kona CDP the
10 vision of Kamakana Villages is a community knitted
11 together by design for residents of all income levels,
12 will have the chance to interact with neighbors from
13 the strategic placement of roadways, homes, gathering
14 places, open spaces and the like.

15 You know, in our estimation over the next 20
16 years the growth in the general Kona economy will
17 double the number of jobs in Kona. This will result
18 in a similar doubling of the needs for housing in
19 Kona.

20 We believe Kamakana Villages will go a long
21 way in meeting this need for housing in general. And
22 we're especially grateful that 50 percent of these
23 homes in Kamakana Villages will be targeted towards
24 affordable housing.

25 HPM Building Supply has been blessed to have

1 had the chance to supply the Big Island community with
2 building products since my great-grandfather first
3 started the company by opening a lumber milling
4 operation back in 1921 in Hilo.

5 For the past 89 years we've focused our
6 product and service offerings on meeting the needs of
7 the broader community. And we really appreciate the
8 need for an attractive and affordable community and
9 are delighted that Forest City has stepped up to the
10 plate with Kamakana Villages.

11 Over the years filling the need for
12 affordable housing has been a high priority for both
13 the state and county governments.

14 MR. DAVIDSON: Thirty seconds.

15 THE WITNESS: Both the state and county have
16 addressed this priority through the passage of
17 legislation and ordinances which facilitate the
18 development of affordable housing. Kamakana Villages
19 is a product of these initiatives.

20 And we believe that the state and county
21 boards and agencies should facilitate the realization
22 of projects like these which were really born from
23 those initiatives. We at HPM support this petition to
24 amend the land use district from Ag to Urban and urge
25 its timely passage. Thank you very much for the

1 opportunity to address you.

2 CHAIRMAN DEVENS: Thank you, sir. Parties
3 have any questions for this witness? Hearing none,
4 Commissioners? Hearing none, thank you very much.

5 THE WITNESS: Thank you.

6 MR. DAVIDSON: Next is Dora Aio.

7 DORA AIO

8 being first duly sworn to tell the truth, was examined
9 and testified as follows:

10 THE WITNESS: Yes, I do.

11 CHAIRMAN DEVENS: If you can tell us your
12 name and address please.

13 THE WITNESS: Dora Aio, 74-5142 Hale Olono
14 Place, Kailua-Kona, Hawai'i 96740. Good morning,
15 Commission. Thank you for this time. I am currently
16 the president of Kaniohale Community Association at
17 the Villages at La'i 'Opua. I'm going to -- we have a
18 resolution at the board meeting last night.

19 It is resolution 10-20-2010 to support the
20 state of Hawaii Housing Finance Development
21 Corporation and Forest City Kona Hawai'i's Kamakana
22 Villages affordable housing's Project, the Keahuolu
23 ahupua'a Hawaiian Islands.

24 The Kaniohale Homestead Association Board
25 represents 225 households with an average or an

1 estimated amount of thousand people on Hawaiian Homes
2 located in Kealake'e ahupua'a adjacent to Keahuolu.

3 On October 20, 2010 the Kaniohale
4 Association Board at its regular scheduled meeting
5 agreed to support the need for affordable housing in
6 the Hawai'i region.

7 The HHFDC/Forest City development is an
8 affordable housing project proposed over a 20-year
9 period on 272 acres next to DHH we call Kaniohale.

10 As a neighboring ahupua'a the Kaniohale
11 Community Association welcomes Forest City and HHFDC
12 in building this sustainable environmental
13 conscientious community.

14 Kamakana Villages product type will be
15 diverse from apartment rentals, townhouses, condos to
16 live-work areas up to single-family units. HHFDC
17 Housing Corporation is charged with establishing
18 affordable sales and rental guidelines. The
19 percentages of median income is established by HUD,
20 HHFDC, uses complicated formulas developed by HUD.

21 As an example a 3-person family making
22 \$72,040 is in the 120 percent of Hawai'i county median
23 income. The Kamakana Villages is planned to develop
24 in six phases with first occupancy as early as 2012.

25 MR. DAVIDSON: Thirty seconds.

1 THE WITNESS: I'll just keep going on. But
2 at the end of this -- let me just finish up and say
3 that as a part-Hawaiian we are eligible for qualified
4 by blood quantum and DHHL homesteads have an
5 opportunity to participate in Kamakana Villages and
6 development.

7 This will help us neighboring with Kamakana
8 and to give our people work and jobs. Thank you.

9 CHAIRMAN DEVENS: Ma'am, did you want to
10 make that resolution a part of the record?

11 THE WITNESS: Yes.

12 CHAIRMAN DEVENS: We'll make that part of
13 the record. Parties have any questions for this
14 witness? Hearing none, Commissioners? Hearing none,
15 thank you very much.

16 THE WITNESS: Thank you.

17 MR. DAVIDSON: Sam Walker followed by Gene
18 Rivera.

19 SAM WALKER
20 being first duly sworn to tell the truth, was examined
21 and testified as follows:

22 THE WITNESS: Yes, I do.

23 CHAIRMAN DEVENS: State your name and
24 address.

25 THE WITNESS: Sam Walker, Sr. 74-210 Ililoa

1 Street, Kailua-Kona Hawai'i. Good afternoon,
2 Commissioners and Chairman. My name is Sam Walker.
3 First of all, I'm a Native Hawaiian and a lessee that
4 lives in Kaniohale Community Association.

5 I'm also the director of -- I'm one the
6 directors on the La'i 'Opua 2020 Project that we're
7 working on within that area to bring social
8 self-sustainability to the area.

9 I'm also the president of the La'i 'Opua
10 Community Development Corporation that we're working
11 on renewable energy projects. So I head that also.

12 And my circular job I'm the director of
13 operations for a Native Hawaiian civil construction
14 company by the name of E.M. Rivera & Sons,
15 Incorporated.

16 I'm here to testify, to also talk about just
17 what our president of the Association talked about was
18 our resolution. The key thing inside here is that
19 being a neighboring, neighboring with Forest City/
20 Kamakana Villages it just complements all of the
21 activity that's going on within our ahupua'as
22 together.

23 As earlier testimony, a lot of the people
24 are saying that we need jobs. That we do desperately
25 need. We need affordable housing. Coming from

1 Honolulu a long time ago, maybe 20 years-plus ago, and
2 living here has been a struggle, struggle, struggle.
3 So for this development coming in I think it just has,
4 it hits all the needs of the people and the community.

5 So for me I support this as a Native
6 Hawaiian. And it complements, like I said earlier,
7 complements all the projects, the projection, the
8 vision that we see in the future. Thank you very much
9 for the time.

10 CHAIRMAN DEVENS: That you, sir. Questions
11 from the parties? Hearing none, Commissioners? None.
12 Thank you very much.

13 THE WITNESS: Thank you.

14 MR. DAVIDSON: The last signed up witness is
15 Gene Rivera.

16 GENE RIVERA,
17 being first duly sworn to tell the truth, was examined
18 and testified as follows:

19 THE WITNESS: I do.

20 CHAIRMAN DEVENS: Tell us your name and
21 address.

22 THE WITNESS: My name is Gene Paul Rivera,
23 74-4932D Mamalahoa Highway, Ho'olua, Hawai'i. I'm the
24 vice president of E.M. Rivera and Sons. And five
25 years ago I was happy to say we had 120 employees.

1 And today we have 25.

2 And you heard earlier testimony that we do
3 need for the affordable housing and the work for us.
4 But I think it's a stepping stone for the future for
5 our children. I'm the proud father of, father of
6 twins, 5-year-old.

7 And it gives them an opportunity not only to
8 live in the community but it also gives them an
9 opportunity to work right here in Hawai'i.

10 I had my 15-year class reunion last month.
11 Over half of my graduating class live on the mainland
12 'cause they can't afford to live here in Hawai'i. So
13 I'm here in support for Forest City's project. Thank
14 you.

15 CHAIRMAN DEVENS: Thank you very much.
16 Parties have any questions for this witness? Hearing
17 none, Commissioners? Hearing none, thank you very
18 much. Are there any other witnesses that wish to give
19 testimony in this case?

20 Seeing none, we'll moving on to the
21 exhibits. Starting with the Petitioner can you
22 identify and describe the exhibits you wish to offer
23 into evidence.

24 MR. LIM: Thank you, Mr. Chairman. We have
25 submitted Petitioner's Exhibits 1 through and

1 including 108. We have served those on all the
2 parties and Commission. We request that those be
3 entered into the evidence on the record.

4 CHAIRMAN DEVENS: Parties have any
5 objections to that offer? County?

6 MS. MARTIN: No objection.

7 MR. YEE: No objection.

8 MR. IHA: No objection.

9 MR. KUDO: No objection.

10 CHAIRMAN DEVENS: Exhibits 1 through 108
11 will be accepted into evidence for the Petitioner.

12 County, you want to describe the exhibits
13 you have.

14 MS. MARTIN: We have one exhibit and that's
15 the testimony of the planning director.

16 CHAIRMAN DEVENS: Any objections to that
17 offer into evidence?

18 MR. LIM: Petitioner has no objections.

19 MR. YEE: No objections.

20 MS. FUNAKI: No objection.

21 CHAIRMAN DEVENS: That exhibit will be
22 accepted into evidence. Mr. Yee, OP's exhibits?

23 MR. YEE: OP has 8 exhibits comprising of
24 position statements, testimony, resumè, maps and
25 letters. We would ask to offer them into evidence 1

1 through 8.

2 CHAIRMAN DEVENS: I'm sorry? 1 through 8?

3 MR. YEE: Yes.

4 CHAIRMAN DEVENS: Any objections from the
5 parties to the offer of evidence?

6 MR. LIM: Petitioner has no objections.

7 MS. MARTIN: County has no objections.

8 CHAIRMAN DEVENS: Mr. Kudo?

9 MS. FUNAKI: No objections.

10 CHAIRMAN DEVENS: One through 8 will be
11 admitted into evidence. Mr. Kudo, your exhibits.

12 MS. FUNAKI: QLT has 35 exhibits comprising
13 of CV's, reports that our experts relied on, et
14 cetera.

15 CHAIRMAN DEVENS: Those are Exhibits 1
16 through 35?

17 MS. FUNAKI: One through 35 yes, sir.

18 CHAIRMAN DEVENS: Any objections to that
19 offer from the parties?

20 MR. LIM: Petitioner has no objections.

21 MS. MARTIN: County has no objections.

22 MR. YEE: No objections.

23 CHAIRMAN DEVENS: Exhibits 1 through 35
24 will be accepted into evidence. Before we move into
25 Petitioner's presentation of their case there was that

1 item relating to the motion for that subpoena.

2 Mr. Kudo, you want to make arguments on that now, see
3 if we can resolve that?

4 MR. KUDO: Let me --

5 CHAIRMAN DEVENS: Let me first ask did the
6 parties get a copy of that motion? I think it was
7 just filed yesterday. Petitioner, did you folks get a
8 copy?

9 MS. BENCK: It was e-mailed to us at the end
10 of the day yesterday so we printed out one copy this
11 morning at the hotel. I don't believe Mr. Iha has one
12 so the three of us are sharing.

13 CHAIRMAN DEVENS: Did you folks want an
14 opportunity to file a written response to the motion?

15 MS. BENCK: No, thank you very much. No, we
16 don't need that opportunity.

17 CHAIRMAN DEVENS: Ready to take arguments
18 today? We can roll on this?

19 MS. BENCK: Yes, we are.

20 CHAIRMAN DEVENS: Okay. Mr. Kudo.

21 MR. KUDO: A lot of our --

22 CHAIRMAN DEVENS: I'm sorry. OP, did you
23 receive a copy?

24 MR. YEE: We received a copy, an electronic
25 copy at 4:35 yesterday. And we are prepared to argue

1 today.

2 CHAIRMAN DEVENS: Thank you very much. Go
3 ahead, Mr. Kudo.

4 MR. KUDO: One of our main issues is the
5 TIAR that was filed on this Project, we believe it to
6 be extremely defective. We wanted to question a
7 representative of the state Department of
8 Transportation who actually knows something about this
9 particular TIAR.

10 We notice that the Office of Planning has
11 listed as a witness Mr. Ed Sniffen who recently took
12 his new position. And we wanted to know whether
13 Mr. Sniffen would be prepared to answer the questions
14 on the TIAR.

15 If he is, then we can withdraw the subpoena
16 with the reservation that if he isn't able to answer
17 those questions we'd like to renew our request for the
18 subpoena of Mr. Tatsuguchi.

19 CHAIRMAN DEVENS: Do you want to wait and
20 see? Wait for him to testify?

21 MR. KUDO: I'd like to ask the Office of
22 Planning since they're putting Mr. Sniffen on the
23 stand whether he will be able to answer all our
24 questions with regards to the TIAR.

25 CHAIRMAN DEVENS: Mr. Yee, you want to

1 provide the response?

2 MR. YEE: I'm not sure I can provide a
3 specific response because I don't know what all their
4 questions are. But I can tell you that Mr. Sniffen
5 has provided written testimony and will be prepared to
6 testify tomorrow that the Department of
7 Transportation's position is that there's some things
8 that they have agreed with on the TIAR; the TIAR is
9 not accepted.

10 There are several things for which
11 assumptions, key assumptions have not yet been agreed
12 upon or have not been yet verified. These would be
13 assumptions associated with land use, socio-economics
14 and trip distribution which I think was addressed by
15 Mr. Niiya's written testimony.

16 He can give some examples, I believe, of
17 those things for which we disagreed with, those things
18 for which there's additional information outstanding.
19 And can provide the information as to what we have
20 agreed with and what we have not yet agreed with.

21 If that's -- I believe that should be
22 sufficient for -- I mean I'm not sure what purpose
23 they have but it seems it's sufficient for any
24 reasonable purpose to describe the Department of
25 Transportation's position.

1 We would object for the record to the
2 provision of any notes from the Department of
3 Transportation. Because the TIAR has not yet been
4 accepted, these notes constitute pre-decisional
5 material which I believe to be protected by the
6 deliberative process privilege.

7 We would also object if there was -- quite
8 frankly, it would be up to QLT to pay for the
9 transportation too of Mr. Tatsuguchi. So they would
10 need to provide the parking, the airfare, the mileage,
11 the rental car and the per diem since they would be
12 calling him as one of their witnesses.

13 We don't think it's necessary to call
14 Mr. Tatsuguchi. And we believe certainly that
15 Mr. Tatsuguchi should not be called as an additional
16 consultant. They have their own consultants. They
17 can provide their own information regarding what they
18 view to be sufficient or not sufficient about the
19 TIAR.

20 We believe Mr. Sniffen should be sufficient
21 to describe the Department of Transportation's
22 position on the TIAR as it stands today.

23 CHAIRMAN DEVENS: Petitioner, do you have
24 any argument on this?

25 MS. BENCK: We would agree with the position

1 stated by deputy attorney general, AG. I'm, I'm sorry
2 Deputy AG Bryan Yee. We don't believe that there is
3 any need to call any additional Department of
4 Transportation witness or subpoena his records.

5 I mean the reason for the subpoena is that
6 the material is relevant to the issues involved.
7 Okay. That's what's under 15-15-69. The state has
8 already provided a Department of Transportation
9 witness who can talk to Department of Transportation
10 issues.

11 We, Petitioner, have identified two
12 transportation witnesses who can talk to our Traffic
13 Impact Analysis Report.

14 So it would appear that -- and I'm sorry,
15 and Intervenors identified their own witness to talk
16 about traffic issues. So it seems beyond excessive to
17 try to pull in yet another person to speak about
18 traffic issues or the Department of Transportation
19 issues.

20 And I have to go back and ask you to please
21 look at 15-15-52. I mean intervention is one of the
22 grounds and one of the considerations the Commission
23 makes is, is the addition of this additional party
24 going to render the proceedings inefficient and
25 unmanageable.

1 We're under an extremely tight timeframe.
2 I'm talking too much already. We need to get to a
3 decision whether it's yes, no or yes with
4 modifications, quickly. And to us it appears that
5 this is just another technique to try to run the clock
6 and delay these proceedings. So we would object.
7 Thank you.

8 MR. KUDO: Mr. Iha, you want to add
9 anything?

10 MR. IHA: No, Mr. Chair.

11 CHAIRMAN DEVENS: County?

12 MS. MARTIN: We have nothing to add.

13 CHAIRMAN DEVENS: Mr. Yee, so you intend to
14 call Mr. Sniffen tomorrow to testify.

15 MR. YEE: Yes.

16 MR. KUDO: May I add --

17 CHAIRMAN DEVENS: I'm sorry. go ahead.

18 MR. KUDO: You know, the center of our case,
19 one of the major issues is traffic. And we have our
20 own expert. He didn't do the TIAR. The Petitioner's
21 consultant did it. But the third-party in this is
22 state Department of Transportation because they have
23 to approve the TIAR.

24 And the state Department of Transportation
25 has to look at this document, which they're still

1 doing. And we want to be able to question the person
2 who's doing it.

3 Our need to question Mr. Sniffen, we didn't
4 offer Mr. Sniffen. The Office of Planning did. We
5 believe Mr. Tatsuguchi is probably the most
6 appropriate than Mr. Sniffen.

7 But if they want to put on Mr. Sniffen and
8 if he can't answer our questions, then I would renew
9 our request to have Mr. Tatsuguchi appear before this
10 Commission at that time. We're willing to do that if
11 that's the Commission's pleasure.

12 CHAIRMAN DEVENS: You'd be calling him as a
13 rebuttal witness?

14 MR. KUDO: Beg your pardon?

15 CHAIRMAN DEVENS: You'd be calling him as a
16 rebuttal witness, Mr. Tatsuguchi?

17 MR. KUDO: No, not a rebuttal witness --
18 well, yeah, in terms of getting more clarification.
19 We wanted to call him as basically a witness for this
20 proceeding.

21 CHAIRMAN DEVENS: I'm not sure on the
22 deadlines on identifying witnesses.

23 MR. KUDO: Beg your pardon?

24 CHAIRMAN DEVENS: I assume you've identified
25 Mr. Tatsuguchi as a potential witness on your witness

1 list?

2 MR. KUDO: Yes -- well, we didn't do that.
3 We moved to have him included because we saw
4 Mr. Sniffen's testimony which was only like two
5 paragraphs or three paragraphs, a very summary kind of
6 general statement. We can't figure out what the
7 details of that or the basis of those conclusions are.

8 And we know that Mr. Tatsuguchi is the one
9 that's been reviewing this particular TIAR for the
10 state Department of Transportation. He's not just
11 anyone.

12 CHAIRMAN DEVENS: Okay. I understand your
13 point. You make a valid point on that. For now
14 because we don't know exactly what Mr. Sniffen is
15 going to say and whether or not there's a need, I
16 understand there may not be one, I'm going to deny the
17 motion without prejudice subject to renewal after we
18 hear from Mr. Sniffen.

19 MR. KUDO: Okay. That's fine.

20 CHAIRMAN DEVENS: Is that fair enough?

21 MR. KUDO: That's fine.

22 CHAIRMAN DEVENS: Let me take a 2-minute
23 break and see what the schedule looks like.

24 (Short recess)

25 CHAIRMAN DEVENS: We're going to take a

1 45-minute lunch break and then we'll come back and
2 resume and start with the Petitioner.

3 (Recess was held. 12:45)

4 CHAIRMAN DEVENS: We're back on the record.
5 Sorry for the delay. Anyway, do the parties want to
6 make an opening statement, a very brief one?

7 MR. LIM: Thank you, Mr. Chairman. I won't
8 be making an opening statement per se but I'll give
9 you a preview of what we're going to be presenting to
10 the Commission very shortly here.

11 Obviously we're happy to be here on behalf
12 of HHFDC/Forest City Hawaii Kona, LLC. We're going to
13 present you with a chronology of the Project. We'll
14 start off with Mr. Stan Fujimoto from HHFDC who will
15 give you some of the background on how they came to be
16 involved in the Project.

17 We'll then move into a short slide show, a
18 PowerPoint presentation by Mr. Francis Oda and
19 Mr. Joey Scanga from Calthorpe Associates. They're
20 going to present an overview of the land use planning
21 issues and how the Project started from the very
22 beginning, worked through the community and came to be
23 what you see today.

24 We'll then, also with relationship to the
25 community aspect, we'll bring in Mr. Craig "Bo" Kahui

1 who is a member and resident in the DHHL La'i 'Opua
2 Project. He will present the background on how his
3 organization La'i 'Opua 2020 worked with the
4 Petitioner to develop this plan.

5 Then we'll follow up with the overall
6 planning discussion and environmental review with Jeff
7 Overton from Group 70 followed by our individual land
8 use consultants.

9 Our intention in all of this in order to
10 expedite the proceedings as best we can, we'll be
11 presenting compressed testimony, very compressed
12 testimony and effectively turning the witnesses over
13 for cross-examination. And we'll reserve the right to
14 rebut our witnesses following that.

15 We submitted the written direct testimony
16 for all of our witnesses to you covering all the
17 salient points of the boundary review requirements.

18 We believe the petition plus our written
19 direct testimony gives the Commission the substantial
20 evidence on the record to be allowed to proceed to
21 make a decision on this docket.

22 So that's the overview that we're going to
23 do. And we'll start off, of course, with Mr. Fujimoto
24 with Mr. Iha doing the examination.

25 The last thing before we start is the

1 parties, with the exception of the county and with the
2 exception of the Office of Planning, have named expert
3 witnesses. That just being the Petitioner and the
4 Trust.

5 We request that the parties stipulate to the
6 qualifications of all the witnesses listed as experts
7 by all the parties in this proceeding. So we make
8 that request now.

9 CHAIRMAN DEVENS: Thank you, Mr. Lim. Mr.
10 Iha?

11 MR. IHA: I concur.

12 CHAIRMAN DEVENS: County?

13 MS. MARTIN: The county believes the
14 reclassification to urban is appropriate in this
15 circumstance. And we'll have a single witness, the
16 planning director.

17 As to the stipulation that's been requested
18 we do agree to that as long as it's clear that we are
19 only stipulating to the qualifications of the experts
20 for this particular matter.

21 CHAIRMAN DEVENS: Thank you. OP.

22 MR. YEE: The Office of Planning will waive
23 opening argument and we concur with the stipulation
24 for the expertise of the witnesses.

25 CHAIRMAN DEVENS: Mr. Kudo.

1 MR. KUDO: Thank you. We'd like to briefly
2 explain to the Commission through our opening
3 statement why we are here. The Queen Lili'uokalani
4 Trust is a small organization when compared to some of
5 its brother and sister ali'i trusts. However its
6 reach to the welfare needs of our state is wide and
7 far.

8 From the Big Island to the Island of Kaua'i
9 the Queen Lili'uokalani Children's Center services the
10 growing social, financial and educational needs of our
11 young children. Please don't misunderstand our
12 opposition to the Kamakana Villages Project. We are
13 not against affordable housing or even the creation of
14 jobs for our brothers and sisters in the construction
15 industry during these severe economic times.

16 What we are against is when the housing and
17 jobs come without consideration of the price that will
18 be carried by those in the community and those that
19 already serve that community.

20 The principle is what we teach our children:
21 if you create a mess it is your responsibility to
22 clean it. Not the responsibility of others. The fear
23 we have is very simple.

24 If Forest City asks for exemptions from
25 infrastructure requirements, and they have, some 50 or

1 more from the county of Hawai'i, or this Commission
2 does not condition or require the Petitioners to
3 provide the same mitigation measures that other
4 private developers would otherwise be responsible for,
5 whom then will this burden fall upon? The state? The
6 county? Surrounding landowners like ourselves? Or
7 the community at large through their tax dollars?
8 Someone will need to clean up the mess left behind as
9 those who profited leave town.

10 We stand today before what seems to be a
11 moving locomotive barreling down a track and headed
12 for an approval by this Commission. If you were an
13 odds maker you'd be betting against us. The Project
14 before you has the full weight of the state
15 administration.

16 It is not only sanctioned, supported by the
17 Office of Planning, State DOT, HHFDC and all state
18 agencies, but state funds were used to acquire these
19 lands over 20 years ago from the Queen Lili'uokalani
20 Trust.

21 State funds are being used to plan this
22 Project. State funds are being used to run it through
23 the regulatory process. We as the Trust realize we
24 face almost insurmountable odds. Yet we are
25 determined to have our story told.

1 These lands were part of the Queen's lands
2 in the ahupua'a of Keahuolu. The lands bear special
3 relationship to the Queen and Kamehameha I.

4 The Trust has no choice but to carry out its
5 fiduciary responsibilities to the future generations
6 of our social welfare beneficiaries.

7 This Project presents a real and significant
8 threat to our continued ability to serve the growing
9 social welfare needs of this island and of our state.

10 A few years ago this Trust sought to repeal
11 the leasehold conversion law in the City and County of
12 Honolulu. The law had been in effect for 10 years. A
13 few leasehold condominium owners of the Foster Towers
14 Building in Waikiki sought to use this law to take
15 away the ownership of the Trust lands underlying the
16 building.

17 The building was located on the Queen's
18 beloved Lele of Hamohamo, a land where she had a home
19 and retreat from her duties at Washington Place. The
20 trustees saw this law as a threat to the corpus Trust
21 assets and the taking of the Queen's lands.

22 Against all odds the Trust took on the task
23 of repealing this law amidst significant opposition by
24 condominium owners, the City and County of Honolulu
25 and members of the City Council.

1 After two years of struggle the Trust
2 fortunately prevailed and the law was repealed. Those
3 individuals and groups that joined us in the Hawaiian
4 communities were dedicated to save the Queen's lands
5 and referred it us as the "Little Trust that Roared".

6 Throughout the two-year ordeal was heard
7 Queen Lili'uokalani's chant of *onipa'a*, "to be
8 resolute and to be steadfast".

9 This morning we find ourselves beginning a
10 similar journey. We wonder will we as we stand in
11 front of the train be given a fair opportunity to
12 present our case and to build our record? Or will we
13 be cut off from putting on our case simply because
14 this state project is in a rush to judgment before the
15 sun sets in December? If you were an odds maker would
16 you place your bet on us?

17 The Hawaiian name "*Kamakana*" means "the
18 gift". Ironically Queen Lili'uokalani would not
19 consider this to be a gift but a definite and real
20 threat to her mission.

21 If we learned one lesson from the SuperFerry
22 case, is that no matter how worthy the goal when state
23 agencies, like the state Department of Transportation
24 and others, look the other way in an effort to
25 expedite decision-making it yields long-term negative

1 results. We hope that this is not a repeat
2 performance of this case. Thank you.

3 CHAIRMAN DEVENS: Thank you, Mr. Kudo. I'd
4 like to reassure you, Mr. Kudo, that each one of us as
5 Commissioners take our duties and obligation very
6 seriously and maintains an open mind until we hear all
7 the evidence and will weigh the evidence accordingly.

8 I'm not sure why you feel that you'll be cut
9 off in any way. But we have a duty and try in every
10 case to give everyone a fair opportunity to be heard,
11 with the understanding in this case there is an
12 expedited timetable.

13 So with that in mind that's how we intend to
14 proceed, but I appreciate your comments. Petitioner,
15 your case.

16 MR. IHA: Thank you, Mr. Chair. For our
17 first witness we'd like to call Mr. Stanley Fujimoto.

18 MR. LIM: Excuse me, Mr. Chairman, one
19 procedure matter before we begin.

20 CHAIRMAN DEVENS: Yes, sir.

21 MR. LIM: We reached stipulations on the
22 expert witness qualifications for all the parties and
23 QLT never did commit to that stipulation.

24 CHAIRMAN DEVENS: I'm sorry. You're right.
25 Mr. Kudo, any objection to the stipulation being

1 offered by Mr. Lim and Mr. Iha that you stipulate to
2 the qualifications of each expert for all the parties
3 in this matter? And it's just to the qualifications.
4 Correct, Mr. Lim?

5 MR. LIM: Yes.

6 MR. KUDO: As to the qualifications we have
7 no problem.

8 CHAIRMAN DEVENS: Okay. Stipulation is
9 noted and accepted. I'm sorry, counsel. Your first
10 witness is Mr. Fujimoto.

11 MR. IHA: That's correct, Mr. Chair.

12 CHAIRMAN DEVENS: And this is Petitioner's
13 Exhibit 86. Am I correct on the written testimony?

14 MR. IHA: That's correct.

15 CHAIRMAN DEVENS: Before we proceed, is he
16 just going to read the testimony as presented in
17 Exhibits 86?

18 MR. IHA: He was just going to stand on his
19 written testimony but summarize his testimony as it
20 relates only to HHFDC's mission and the background of
21 this particular Project.

22 CHAIRMAN DEVENS: You know, if it's all
23 contained in the exhibit we've already accepted it and
24 we will review it again. In trying to streamline and
25 move this thing ahead as quickly as we can, we would

1 appreciate it if you want to add anything to his
2 written testimony. Otherwise it's in evidence and
3 we're going to read it. Otherwise it's going to be
4 cumulative and we're going to rule that way.

5 And that will go for any of the witnesses
6 that have written testimony. Again, keep in mind that
7 we're trying to move this along and meet our deadline
8 under the law.

9 MR. IHA: Thank you, Mr. Chair. We'll try
10 to keep this short.

11 CHAIRMAN DEVENS: Well, not short but we
12 don't want any repeating of what he's already said.
13 If you want to add something new, no problem.

14 MR. IHA: May I ask Mr. Fujimoto if he's got
15 anything to add?

16 CHAIRMAN DEVENS: Sure. We'll swear him in.
17 I just want to let you know where we're heading on
18 this. And that goes for all the parties, not just
19 you.

20 MR. IHA: Thank you, Mr. Chair.

21 CHAIRMAN DEVENS: Sir, can you raise your
22 right hand?

23 STANLEY FUJIMOTO.
24 being first duly sworn to tell the truth, was examined
25 and testified as follows:

1 THE WITNESS: Yes.

2 CHAIRMAN DEVENS: State your name and
3 address, please.

4 THE WITNESS: Stan Fujimoto, 677 Queen
5 Street, Suite 300, Honolulu, Hawai'i, 96813. Yes, I
6 don't have anything to add to my written testimony.

7 CHAIRMAN DEVENS: Okay. I'll let your
8 counsel see if he has any additional questions.

9 THE HEARINGS OFFICER: Nothing further,
10 Mr. Chair.

11 CHAIRMAN DEVENS: Okay. Any
12 cross-examination, County?

13 MS. MARTIN: Nothing from the County.

14 CHAIRMAN DEVENS: OP?

15 MR. YEE: Nothing from OP.

16 CHAIRMAN DEVENS: Mr. Kudo?

17 MR. KUDO: No questions.

18 CHAIRMAN DEVENS: Commissioners, any
19 questions for this witness? Hearing none, thank you
20 very much, sir.

21 MR. LIM: Thank you, Mr. Chairman. Our next
22 witnesses will be testifying at approximately the same
23 time. We'll be calling up Francis Oda and Joseph
24 "Joey" Scango from Calthorpe Associates. Mr. Oda you
25 well know, I think, from Group 70.

1 We've prepared a PowerPoint that includes
2 some but not all of the exhibits in the PowerPoints.
3 We have tried to minimize this presentation so it will
4 be enough that the Commission can be familiar with the
5 property and how the Kamakana Villages Project came to
6 be.

7 CHAIRMAN DEVENS: Mr. Lim, he does not have
8 any prepared written testimony. Am I correct?

9 MS. BENCK: They both do.

10 MR. LIM: They do have prepared written
11 testimony.

12 CHAIRMAN DEVENS: Does Mr. Oda?

13 MR. LIM: Yes, but it's mostly to lay the
14 foundation for this PowerPoint.

15 CHAIRMAN DEVENS: I'm sorry.

16 MR. LIM: Mr. Oda has Exhibit 39, Mr. Scanga
17 Exhibit 41.

18 CHAIRMAN DEVENS: Forty-one. Thank you.

19 FRANCIS ODA and JOSEPH "Joey" SCANGA
20 being first duly sworn to tell the truth, were
21 examined and testified as follows:

22 MR. ODA: I do.

23 MR. SCANGA: I do.

24 CHAIRMAN DEVENS: Please each state your
25 name and address, please.

1 MR. SCANGA: My name's Joseph Scanga. I work
2 at Calthorpe Associates at 2095 Rose Street, Berkeley,
3 California.

4 MR. ODA: Francis Oda, Group 70
5 International, 925 Bethel Street, Honolulu, 96813.

6 CHAIRMAN DEVENS: Thank you.

7 MR. SCANGA: We'll be as brief as we can.
8 Our testimony is part of the exhibits so I'll move it
9 right along as fast as I can. We're showing the
10 schedule here. Other witnesses will be discussing the
11 schedule. But we're showing it in this case to show
12 you the road map that we're using and the timeframe
13 that we're on.

14 There are many ways to measure a plan.
15 Luckily you have three very good ones that create some
16 objectivity in a subjective world.

17 The first one is LEED-ND, the first one.
18 The second one is the Smart Code. The third and final
19 one is the Kona Community Development Plan. We're
20 very lucky to have these three documents in place.
21 Before we would struggle to show how a place fits
22 within a community.

23 LEED-ND is the first one. This was a pilot
24 program that's now adopted. And what it does is it's
25 intended to spur development that offers mixed use,

1 pedestrian-friendly neighborhoods that are easy on the
2 environment, that save energy and water and other
3 natural resources.

4 There's some mystery surrounding the LEED-ND
5 but there's a grading system that we used. And we put
6 the plan to the test.

7 There's four main criteria that you have to
8 meet to even get started on the numbering system
9 that's used. The first one is smart location and
10 linkages.

11 The second one is neighborhood pattern and
12 design. The third is affordability, green
13 infrastructure and buildings. And the fourth is
14 innovation and design process.

15 Our goal with the LEED-ND is to establish a
16 silver rating which is approximately 64 points out of
17 the 96 criteria that's within this document.

18 The next is the Smart Code. The Smart Code
19 is used nationally and adopted by communities to once
20 again create a measuring stick to define these
21 neighborhoods.

22 It addresses five main issues. The first
23 with the land use and density distribution and how
24 it's distributed over the land.

25 Limits block sizes. It describes setbacks

1 where buildings sit against the street. It describes
2 the building forms. And finally it suggests street
3 sections. So it's a very good way to measure the way
4 a community would be developed.

5 And, finally, the Kona CDP, the Community
6 Development Plan. Once again I feel we're lucky to
7 have a standard to look at to -- we don't have to
8 invent everything and we don't have to have a
9 subjective look at what the plan is. We have very
10 measurable documents in place or policies in place.

11 We're a TOD. A TOD is a higher density
12 neighborhood than the traditional neighborhood
13 development. It's along a transit corridor which is
14 along the mid-level road. There's a bus line that
15 will be there. It defines the size, a quarter mile
16 radius and a half mile radius.

17 Those are defined by walking radiuses, how
18 close the transit station actually is to the houses
19 themselves.

20 And finally there's Best Practices.
21 Calthorpe Associates has been developing TOD and TNDs
22 for probably the last 25 years. We created four
23 principles that we use to look at throughout the
24 entire process of this.

25 The first is how it fits within a region.

1 Next is human scale. The third, conservation and
2 restoration and diversity in balance. We want to
3 create a neighborhood, we want to have all these
4 principles in place for this to work. Thank you very
5 much.

6 Before I hand it over to Francis I'd also
7 like to say I've been working with Forest City for
8 approximately 14 years beginning with the Stapleton
9 project and also for seven years on the military
10 projects in Hawai'i.

11 And I confidently say that this is a group
12 that will be around with you and be a good partner for
13 a long time.

14 MR. ODA: Thank you, Joey. The community
15 aspect of the Project began, first of all, with the
16 entire design team going to the ahupua'a Keahuolu,
17 Kaloko and down to the ahupua'a of Keauhou lead by
18 Mahealani Pai just to understand the land, the history
19 of the land, and the environmental issues related to
20 the land.

21 We conducted a planning charrette with the
22 community in July of 2009. About 74 people showed up.
23 Since that time during the process of the planning we
24 met with many individual smaller groupings.

25 However, at that community meeting five

1 major themes came up selected by the community which
2 we tried to be very faithful to.

3 The first is connectivity, which generally
4 meant to those in the room the idea that this was not
5 an isolated Project but really needed to be connected
6 to the larger community.

7 The concept of kokua aku, kokua mai, you
8 give kokua, you receive kokua, something that was very
9 deeply felt by the people at that charrette. They
10 also wanted the community to be a learning place, a
11 community focused on education.

12 That's not just in terms of the school but
13 in terms of the way, the lifestyle of that community
14 and not only the younger people but the older people
15 in terms of life-long learning and a place where
16 there's open space and a real connection with nature.
17 Finally a sustainable community using the best
18 practices and technology of sustainability.

19 In regard to the issue of connectivity, that
20 began a process for us where one of the first things
21 we always do is try to determine what the piko of the
22 land is.

23 We came to the conclusion that the piko was
24 not dead center in our Project, especially the lands
25 mauka of the mid-level road that's under construction

1 right now, but in fact shared with the land that
2 adjacent to us on the north which is DHHL land. Our
3 plan derives from this perception.

4 The CDP defines walking, pedestrian sheds
5 and with a quarter mile radius. So our Project with
6 that piko identified on the north there we needed five
7 pedestrian sheds to really be effective on this
8 property.

9 So what we did was in the center of these
10 pedestrian sheds we needed to have some kind of
11 commercial or other kind of community resource. We
12 located schools, commercial areas and sometimes larger
13 parks. We then connected these resources with
14 greenways which are landscaped pedestrian and
15 vehicular ways.

16 Then in the lower portion of the site, which
17 is flatter, we created a higher density community
18 generally attached buildings, homes. And here we're
19 talking about a density of -- yeah, an average density
20 of about 8 to -- 10 to 37 units per acre. That's in
21 this lower area.

22 Throughout the Project we have an average
23 density of about 8.6 units per acre. I want to point
24 out that we are distributing units throughout. We
25 don't want to just have little enclaves of units but

1 we want to distribute units throughout.

2 The roadway system that you see is
3 connecting these resources but also at the diagonal
4 which allows us to have 5 to 6 percent grades rather
5 than the 15 percent grades if we went mauka-makai.
6 That's to provide for pedestrian access, convenient
7 pedestrian access.

8 In this middle area we have middle density
9 units. And those numbers are presented for you in the
10 testimony. The mauka areas we have lower density.
11 That's just the general principle. In fact this will
12 show how we have distributed the building types
13 throughout the property. In general there is a
14 relationship to the contours.

15 Now, the circle shows where the commercial,
16 primary commercial development would be. This is what
17 I referred to as the piko of the site. Just to give
18 you a sense of what that might look like, you can see
19 in this rendering that we have it would be a place
20 where we have storefronts, cafes, a gathering place
21 for the community.

22 This is what was desired by the community
23 and certainly in terms of Smart Growth this is a
24 principle, a place where people can relate to each
25 other and get to know each other as a community. But

1 also where local small businesses can thrive and be
2 supported by the community.

3 The major streets will have bikeways and
4 resources for bikes. There will be street furnishings
5 in very well landscaped streets and roadways.

6 Close to this, adjacent to this area we have
7 a non, what we're calling a non-DOE school. Normally
8 a project like this would be required to give one
9 school site, dedicate one school site.

10 We felt that since this education issue was
11 a very important issue to the community and the DOE
12 school would probably take a long time, in fact, to
13 become a reality, we have dedicated a site for a
14 non-DOE school. This might be a charter school. It
15 could be an immersion school.

16 What we see is a school that would be really
17 focusing on the needs of that community but also a
18 gathering place for the community, very inviting.

19 Adjacent to this area is what we call
20 mixed-use affordable rental. This is in the earlier
21 phases to the Project. This is the kind of affordable
22 rental that we are proposing. You can see it has
23 certain characteristics that are important to
24 understand.

25 One is in this community we want everyone to

1 have a lana'i. We want every unit to have its own
2 street frontage. In this case it's two stories.
3 These are flats, but we want everyone to have kind of
4 a community identity that oftentimes in multiple
5 family housing is not there.

6 In this lower flatter area, the makai area
7 of our site, we have townhouses and flats. These are
8 the highest density we have. They're basically two to
9 three stories. The maximum we have projected is three
10 stories.

11 Here you'll notice again each of the homes
12 has a front yard. It has an entry, lana'i, stoop.
13 And the parking is in the back within the block in
14 general.

15 Here are units that are what we're calling
16 green court units. They face a court. And, again,
17 there won't be cars necessarily parked in front
18 because garage access is from the back alley.

19 Here's another kind of unit we're calling
20 greenways in the middle of the site. These have these
21 mauka-makai greenways that allow mauka-makai views and
22 the community to meet each other, to interact with
23 each other, to have kids play in an environment that
24 is safe and visually controlled by the parents. And,
25 also that preserves natural fauna and flora.

1 Here are guidelines that will in general
2 control the development of the Project. I won't go
3 into this too specifically.

4 But as with projects of this type we have
5 specified in general the needs and requirements and
6 standards of the Project from buildings to all
7 roadways; the treatment of existing landscaping as
8 well as additional landscaping.

9 We have developed a landscape structure that
10 is based on native plants and shrubs. And we are
11 encouraging neighborhood gardens in specific areas.

12 So in terms of the general major themes, the
13 idea of connectivity, the idea of *kokua aku, kokua*
14 *ma'i*, people getting together getting to know each
15 other, helping each other as a community, education
16 and lifelong learning in terms of open space and
17 nature and finally in terms of sustainability.

18 And we are talking about a triple bottom
19 line sustainability that allows for not only the
20 technology of sustainability to be embedded in this
21 Project, but also the idea that if you can work close
22 to where you live that will make it much more
23 sustainable for the families who are there.

24 So this is the vision of Kamakana, a smart
25 affordable community. Mahalo.

1 CHAIRMAN DEVENS: Thank you for your
2 testimony. Any further --

3 MR. LIM: No further questions,
4 Mr. Chairman.

5 CHAIRMAN DEVENS: County, any questions for
6 these witnesses?

7 MS. MARTIN: No questions, Mr. Chair.

8 CHAIRMAN DEVENS: Mr. Yee?

9 MR. YEE: Thank you.

10 xx

11 CROSS-EXAMINATION

12 BY MR. YEE:

13 Q Mr. Oda, just for my information you used
14 the term "triple bottom line sustainability". Could
15 you give me a definition or could you explain what
16 that means?

17 A Yes. In general the concept is -- there are
18 different interpretations of that. But one is a
19 social and environmental and economic bottom line. So
20 that to be sustainable you have to be sustainable on
21 all of those levels.

22 Q Thank you. And then, Mr. Scanga you talked
23 about LEED-ND. Do you believe that LEED-ND will be an
24 achievable and realistic goal for this Project?

25 A I'm banking on it. They recently turned it

1 from a pilot program to an official program. Forest
2 City has done a certified LEED-ND project on Honolulu,
3 the military sites. Our goal is silver and I believe
4 we can achieve this.

5 The difference between an ND and an AP is
6 when you're planning something you're promising a
7 lot. Transit has to come, the roadways have to -- you
8 have to promise certain provisions. And we believe we
9 can do it.

10 Q So you think there's a realistic possibility
11 that it will actually be constructed to at least
12 LEED-ND Certified, if not higher for this Project?

13 A Certified is below Silver. Our goal is
14 Silver.

15 Q Okay. Are you aware that the Office of
16 Planning has asked for and that the Petitioner has
17 agreed to a condition whereby the Petitioner will
18 design, plan and construct the Project to meet LEED-ND
19 Certified or higher to the extent practicable?

20 A Yes, I am.

21 Q So that was a request by the Office of
22 Planning and agreed to by Petitioner, is that right?

23 A Correct.

24 MR. YEE: I have nothing further, thank you.

25 CHAIRMAN DEVENS: Mr. Kudo, your cross.

CROSS-EXAMINATION

BY MR. KUDO:

Q Yes. Mr. Oda, you mentioned that during your public airing of this Project that open space was an important element of this Project?

A Yes.

Q Is that correct?

A Yes.

Q You also mentioned in your testimony that I believe the average density of this Project for residential purposes was 8.2 did you say?

A 8.6.

Q 8.6. Are you aware that your environmental impact statement has different numbers with regard to the densities of this Project, the environmental report?

It lists high density areas at 36 dwelling units per acre; medium high density at 20 dwelling units per acre; medium low density at 14 dwelling units per acre; low density residential at 11 and mixed uses at 26 dwelling units per acre.

How does that reconcile with your number of 8.2?

A I can ask those who prepared the EA about that. But let me conjecture. That was early in the

1 process. We've since continued to design. Our effort
2 is to create a balanced community. And these are the
3 more current.

4 In other words, 36, that number that you
5 talked about, might have been because the maximum we
6 have is 37. These might have been maximums that were
7 stated worst case.

8 And there's also a difference between the
9 net versus gross. And ours is net -- I'm sorry, the
10 higher number is based on the gross. That is the net
11 that the EA might have reflected.

12 Q Mr. Oda, are you familiar with Petitioner's
13 Exhibit 3 which is a market study economic impact
14 analysis and a public cost benefits assessment of this
15 Project?

16 A I'm not the person to address that. I'm not
17 familiar with that.

18 Q Are you familiar with the fact that this
19 particular document sets forth the average density of
20 this Project at 17.4 units per acre and not 8.2 ?

21 A As I said I'm not familiar with that
22 document.

23 Q Mr. Oda, are you familiar with the fact that
24 this Project has requested from the county of Hawai'i
25 a number of exemptions from building code and design

1 requirements that would normally be imposed on a
2 typical project of this nature?

3 A Yes, I am.

4 Q Are you familiar with the fact that the
5 exemptions asked for deal with setback requirements
6 for the residential dwellings?

7 MR. LIM: Mr. Chairman, excuse me. I'd like
8 to clarify the question to clarify what a "project of
9 this nature" is. I think that I'd like to have him
10 clarify the question as to what the answer would be.

11 MR. KUDO: A project that would not be able
12 to ask for an exemption. That is a non-201H project.

13 MR. LIM: Okay.

14 Q (By Mr. Kudo): Are you familiar with the
15 exemptions being requested that is an exception to the
16 setback, the normal setback requirements imposed by
17 the building code and zoning codes of the county of
18 Hawai'i?

19 A Yes, I am. But Joey can address that more
20 specifically.

21 Q Are you familiar with the exemptions that
22 the Petitioner has asked the county for roadway
23 widths, cul-de-sac area turn-arounds?

24 MR. SCANGA: We are familiar with 56
25 exemptions there were submitted, 48 of them are

1 actually to provide and get to the Kona CDP. Those
2 are specifically defining the widths of roads. We
3 meet those criteria.

4 It also specifically discusses setbacks in
5 the Kona CDP. So we are actually providing 48 out of
6 those 56 to meet the CDP requirements.

7 Q Isn't it true that those exemptions are
8 requested of the county in order to get to the
9 densities that I just mentioned, 17.4 average density
10 per acre? Nothing to do with that?

11 A It has to do more with meeting the VDG, the
12 village design guidelines, and the Kona CDP. Density
13 is related to something different.

14 MR. KUDO: No further questions.

15 CHAIRMAN DEVENS: Any redirect?

16 MR. LIM: No redirect.

17 CHAIRMAN DEVENS: Commissioners, any
18 questions for the witnesses? Commissioner Kanuha.

19 COMMISSIONER KANUHA: Thank you,
20 Mr. Chairman. Gentlemen, I wanted to get some
21 understanding here. Was this Project designed in a
22 particular manner to take advantage of these possible
23 exemptions?

24 Give us some background on the original
25 concept of how this was done. Or was it done with the

1 contingency that you'd be getting some of these
2 exemptions?

3 MR. SCANGA: It's working backwards. It's
4 trying to follow the CDP and the VDG actually. And
5 the exemptions are only a net result to get to that
6 community that we want. It's not vice versa.

7 In other words, we designed a community to
8 meet the criteria of the Community Development Plan
9 and the Smart Code. And then we asked for the
10 request.

11 We didn't have a number of exemptions that
12 we thought would get us there. What we tried to do
13 was take what's in place, what are the policies in
14 place, meet that policy and then work backwards with
15 the exemptions.

16 MR. ODA: There are also additional
17 exemptions that related to LEED criteria which I know
18 you're familiar with. So it was a combination of all
19 of these things.

20 COMMISSIONER KANUHA: That's what your
21 submittals lay out. Do either of you know what the
22 status is of those exemptions?

23 MR. SCANGA: Yes. We're working on this at
24 the county level. We believe we're very close. There
25 is no recalibrated version of the village design

1 guidelines, so we're working from the original
2 document that's in place. And Steve probably has
3 maybe a better answer than that. Or is that fine?

4 COMMISSIONER KANUHA: The reason I'm asking
5 this is this is an expedited process and I understand
6 on the county level it's on an expedited process. I
7 think we just want to be sure that --

8 MR. SCANGA: We met with the county
9 yesterday. We have approval from the action
10 committee. The action committee is working closely
11 with a group called Placemakers who's a third-party
12 review of the village design guidelines.

13 COMMISSIONER KANUHA: Can I finish my
14 statement?

15 MR. SCANGA: I'm sorry. I'm sorry.

16 COMMISSIONER KANUHA: So what I was going to
17 say is I think we want to be sure that in the
18 consideration of this Project that we don't impose a
19 condition that goes against the exemptions you have.

20 That's why in my mind it's really critical
21 that we have some understanding of what the status is
22 of those exemptions, you know, almost before we can
23 make any kind of decision on this matter.

24 Thank you, Mr. Chairman, that's all the
25 questions I have.

1 CHAIRMAN DEVENS: Any other questions from
2 the Commission? Any follow-up questions from the
3 parties based on that testimony?

4 MR. LIM: No further questions.

5 MS. LEITHEAD-TODD: No questions.

6 CHAIRMAN DEVENS: Hearing none, thank you
7 very much. Next witness.

8 MR. LIM: Our next witness is Craig "Bo"
9 Kahui. Mr. Kahui's direct written testimony
10 is Exhibit 79 for the Petitioner. I'd ask the
11 Commission's indulgence to allow Mr. Kahui to do a
12 little bit more explanation in terms fo the La'i 'Opua
13 2020 Project which is adjacent to the Kamakana
14 Villages Project.

15 CHAIRMAN DEVENS: Sir, if we can swear you
16 in.

17 CRAIG 'BO' KAHUI
18 being first duly sworn to tell the truth, was examined
19 and testified as follows:

20 THE WITNESS: I do.

21 CHAIRMAN DEVENS: If you can state your name
22 and address, please.

23 THE WITNESS: My name is Bo Kahui. My
24 address is 74-5146 Haleolono Place, Kailua-Kona, 96740
25 in the Villages of La'i 'Opua Homestead, in the

1 district of Kealakehe ahupua'a adjacent to Keahuolu.

2 CHAIRMAN DEVENS: Mr. Lim.

3 MR. LIM: Thank you very much.

4 DIRECT EXAMINATION

5 BY MR. LIM:

6 Q For purposes of this hearing is it okay if I
7 call you Bo?

8 A Yeah.

9 Q Bo, what is your current occupation now?

10 A Currently I serve as the executive director
11 of La'i 'Opua 2020. Our organization's a 501-C3
12 nonprofit organization community-based organization to
13 develop social infrastructure in the district of
14 Kealakehe and Keahuolu.

15 Social infrastructure I want to point out is
16 that our development of 26 acres include a pre-school
17 development, 40,000 square foot community center,
18 40,000 square foot medical clinic, an aquatic center,
19 50 meter aquatic center, a gymnasium, social
20 infrastructure to include social services center and
21 then an abuse shelter, and an intergenerational
22 daycare facility.

23 Q Thank you, Bo. What other outreach programs
24 with the adjoining property owners have you had in
25 terms of your development of the La'i 'Opua community

1 center?

2 A Could -- would you....

3 Q What contacts have you had with adjoining
4 property owners with respect to assisting you in this
5 project?

6 A La'i 'Opua 2020 under, I guess, my capacity
7 as executive director, has reached through a number of
8 stakeholders of the region to include QLT, to include
9 Forest City Hawai'i, HHFDC.

10 Our development is a homestead land. And as
11 a homesteader myself our organization evolved from the
12 homestead so that we can build social infrastructure
13 not just for our homesteaders but for the region so
14 we're not building a gated community here.

15 Having said that, our partnership, I think,
16 or our collaboration with Forest City was crucial if
17 we are to serve not just our community but their
18 community as well.

19 If we look at the density, the type of
20 development they're pursuing today to which we
21 support, to which I fully support, then we need to
22 look at how we embrace the social infrastructure under
23 which we can build safe and healthy communities.

24 Because if we're not talking to each other,
25 *poho manawa*. Waste time. You guys want to go build

1 another Kalihi? Go build it somewhere else. I never
2 moved to Kona to live in Kalihi. So if you guys can
3 wrap your head around that that's what I mean.

4 Forest City has been forthcoming in their
5 development both within our community and outside our
6 community. So our collaboration has really been one,
7 it's the kind of synergism I haven't found anywhere
8 else.

9 I'll even add this. During the 2008
10 election the Ane Keohokalole Highway kinda fell apart.
11 So together, the Department of Hawaiian Homelands,
12 La'i 'Opua 2020 and with the assistance of Forest City
13 met in February of 2009, I believe. And we came up
14 with a plan, came up with a plan to build that road.

15 We then met with the mayor the week, almost
16 a week after and showed him our strategic plan to
17 build the road 'cause we knew highway funds were
18 available.

19 Then Forest City, myself and the Department
20 of Hawaiian Home Lands went to go seek that money.
21 And we fought for it. And we got it, \$36 million.

22 But that road served our, maybe our own
23 intended purposes too, right? Our La'i 'Opua 2020
24 community center development plan is triggered by that
25 road. Forest City Kamakana Villages is triggered by

1 that road.

2 Our commercial centers from Hawaiian Homes,
3 a 26-acre parcel adjacent to our community center is
4 triggered by that road. So it's important to find
5 that infrastructure. Without it, everything else goes
6 to pots. (sic) Again, *poho manawa*. Waste time.

7 I'm not a developer. I'm a commercial
8 fisherman by trade. But even, even a blind man can
9 see what's going on. His name was Alamina. When I
10 was growing up my grandmother said, "Alamina can see
11 that." But he was a blind musician. And I just
12 couldn't get it why she said that to me. But now I
13 get it. So for me I see what's going on. Hawaiian
14 Homes develop homes for Hawaiians. Okay. And in La'i
15 'Opua we have about 600 acres, 14 more villages to
16 come, a thousand more units to build. That's big for
17 us. We're going to be the largest homestead community
18 maybe across the state. That's important for us.

19 We've got 5,000 people on the waiting list
20 here on this island alone. How are we going to serve
21 our people if we don't begin to look to build that
22 social infrastructure, the real physical
23 infrastructure, the road, the sewer. Nobody like talk
24 about that. We're talking about it today but we're
25 talking about traffic. Yeah?

1 But we brought \$36 million to this economy.
2 And bless the mayor he saw it and historically, I say
3 historically that initiative took only eleven months
4 to come to fruition. That was historic in nature. No
5 other project was approved in such short time even
6 given the NEPA requirement.

7 So as you look, I mean our community fought
8 hard for that. The community is fighting, is reaching
9 out to you today, you know, that we need jobs, that we
10 need housing, that we need social infrastructure, and
11 we need schools, we need gymnasiums, we need aquatic
12 centers.

13 Our partnership is far reaching. La'i 'Opua
14 2020, our partners include the following: Kamehameha
15 Schools, Office of Hawaiian Affairs, Child and Family
16 Services; the largest social agency; West Hawai'i
17 Community Health Clinic to run our clinic.

18 I'll just tell you this past Monday we had
19 an overwhelm -- an unreal thing happen to us. We got
20 a commitment from the federal congressional delegation
21 for a \$25 million grant for our clinic. That's what
22 I'm talking about when you talk about building social
23 infrastructure.

24 So I don't know if I'm an expert. I come
25 here because I think what we're trying to do is build

1 a planned community, build a community where we can be
2 proud off.

3 So we're not, you know, we're not one of the
4 guys that wearing a red handkerchief or yellow
5 handkerchief and we're divided by, "All da reech guys
6 live deah, the guys ovah deah, they live ovah deah."

7 There are no boundaries between Forest City
8 Hawai'i and the Kamakana Villages and Hawaiian Homes.
9 We choose not to have that.

10 Our 26-acre -- La'i 'Opua was given an
11 additional 26 acres for commercial property. So now
12 I'm a commercial developer developing a commercial
13 retail center. Hawaiian Homes has saw fit to really
14 give the community the means by which they can create
15 their own sustainability. How do you do that?

16 You need economic development. So about a
17 month ago we are now the general lessees of a
18 commercial property adjacent to Forest City Hawai'i.

19 Two years ago in these discussions we got
20 Forest City Hawai'i to commit to move their 14-acre
21 commercial property adjacent to the proposed
22 commercial property.

23 So now we have a comprehensive
24 commercial/retail center. We're not competing against
25 each other. We're trying to collaborate with each

1 other.

2 You know, frankly, I don't know why I just
3 get overwhelmed, maybe to some extent disappointed,
4 you know, just disappointed by this process. Because
5 Alamina can see that.

6 So I respectfully, you know, when I look at
7 QLT and their mission, you know, I respect that
8 because we got plenny kids, Hawaiian kids. They serve
9 our kids, kids that don't have parents. They have a
10 good mission. They were our first partners. They
11 chose not to participate in our community center
12 development plan because of their future plans.

13 But what puzzles us today even for us La'i
14 'Opua 2020, we don't know what their plans are. We're
15 doing regional planning. And I will share this for
16 the record. This is -- this is our recent more
17 updated community center plan that I'll share with the
18 Commission.

19 Unfortunately these things cost money. I
20 don't have enough. But hopefully you can make copies
21 and pass 'em around. But what it states here it
22 really, it really points out the need of the type of
23 services we're gonna, we're gonna need for our growing
24 community. So La'i 'Opua 2020 and our community
25 center comprehensive plan really addresses that.

1 I started all of this because coming from
2 Kalihi I never was afforded those kinds of options,
3 you know. We all gotta make choices. We all got
4 choices to make, right? Some guys make bad choices.
5 Other guys get choices they make on their own
6 individual self.

7 When you only have one choice and there are
8 no other options available to you, then you're stuck
9 with making that choice, you know. So we choose to
10 provide the community options, options to keep our
11 community safe and healthy.

12 Q You mentioned the DHHL La'i 'Opua area has a
13 lot of land left for master planning for future
14 residential development. Are they moving forward at
15 this time? And if not why not?

16 A The Department of Hawaiian Home Lands has
17 had a difficult time moving in its development.
18 Village 5 is under construction now. And they was
19 poised to construct 119 homes.

20 Currently Armstrong Construction is
21 building 49 homes there today as we speak. And
22 another 50 or 60 homes poised for development in a
23 year.

24 We had a hard time selling those homes to
25 Hawaiians. That was one of the reason. The other

1 reason was the state of the economy.

2 In addition to Village 5 we have Village 4
3 which has already been grubbed and terraced and ready
4 for sewer, water and electrical infrastructure.

5 Na Kupa'a, a nonprofit corporation that was
6 set up by Hawaiian Homes, went out and sought funding
7 sources from USDA that has about \$4 million to give to
8 the department so that it can build its
9 infrastructure.

10 But the department has to come up with its
11 share, you know, almost I don't know, I don't know,
12 about 16 million, \$18 million. And they haven't.

13 So Village 4, 245 homes are going stalled
14 because we need to find ways to finance that and get
15 more Hawaiians on that. But that's been the
16 difficulty, the economy.

17 Q Are you familiar with the Queen
18 Lili'uokalani Trust property around the Kamakana
19 Villages Project Area?

20 A I do. I'm familiar with, in fact, all of
21 its holdings including the new Target development and
22 all of that area as well as the makai property of the
23 new Ane Keohokalole Highway.

24 Q Are you familiar with what their plans are
25 for the area just makai of the Ane Keohokalole

1 Highway?

2 A No. We haven't been afforded any
3 opportunity to meet with the QLT, nor have they come
4 to our community to engage us in a dialogue to discuss
5 what their plans are.

6 I only hope we can do that soon because
7 obviously we're all trying to plan, make a good
8 regional plan. We all should ought be sitting at the
9 same table talking the same language. LeeAnn Crabbe
10 is a good friend. These hearings have been strained.
11 But I know they got good things going for QLT. And
12 their mission to help support, I mean their
13 development to help support their mission is crucial
14 because they help Hawaiian children.

15 MR. LIM: No further questions.

16 CHAIRMAN DEVENS: Cross-examination, County?

17 MS. MARTIN: No questions.

18 CHAIRMAN DEVENS: Mr. Yee?

19 MR. YEE: No questions.

20 CHAIRMAN DEVENS: Mr. Kudo.

21 CROSS-EXAMINATION

22 BY MR. KUDO:

23 Q Couple questions, Mr. Kahui. You
24 acknowledged the good things that the Liliuokalani
25 Trust does in this community as well as other

1 communities with the Children's Center in helping the
2 orphaned children, single-parent children, destitute
3 families below the poverty line in the Hawaiian
4 community.

5 If this Project is approved and it prevents
6 us from continuing to provide that service, do you
7 believe that to be a good thing?

8 A Well, I don't think this Project will
9 prevent you from doing your mission. I don't
10 understand the question. Maybe you want to rephrase
11 your question. Because frankly QLT can do what it
12 should do, what it needs to meet its mission which is
13 far different than what Forest City is doing to help
14 bring affordable housing. So I don't think the two
15 equals, you know, 2 plus 2 equals 4.

16 MR. KUDO: No further questions.

17 CHAIRMAN DEVENS: Commissioners? No
18 questions. Any other redirect?

19 MR. LIM: No redirect.

20 CHAIRMAN DEVENS: Thank you. Thank you for
21 your testimony.

22 THE WITNESS: I want to conclude just by
23 saying mahalo. And I appreciate that again, on behalf
24 of our association. And I just want to add I serve as
25 vice president of the Kona CDP action committee.

1 I also serve as the executive -- I mean the
2 director for the Kaniohale Community Homesteaders
3 Association.

4 And I also serve, which we started, La'i
5 'Opua 2020, as a member of the Kealahakehe Regional Park
6 Advisory Committee. This advisory committee is on the
7 verge of taking 194 acres from what was proposed as a
8 golf course to a regional park, a regional resource, a
9 new asset in our community that will help the safety
10 and health of our community. So thank you.

11 CHAIRMAN DEVENS: Thank you, Mr. Kahui.
12 Mr. Lim, do you know how long your next witness is
13 expected to go?

14 MR. LIM: Our next witness would be Mr. Jeff
15 Overton who's the Project master planner. We have
16 submitted direct written testimony so we're willing to
17 provide him up for cross-examination by the parties,
18 if that's appropriate.

19 CHAIRMAN DEVENS: I was checking to see
20 whether or not it would be appropriate to take a
21 break. Looks like the court reporter is ready to
22 continue. I'm sorry, which exhibit?

23 MR. LIM: Jeffrey Overton from Group 70
24 written direct testimony Exhibit 44.

25 CHAIRMAN DEVENS: Thank you. Sir, if we can

1 swear you in.

2 JEFFREY OVERTON

3 being first duly sworn to tell the truth, was examined
4 and testified as follows:

5 THE WITNESS: Yes.

6 CHAIRMAN DEVENS: State your name and
7 addressed for the record, please.

8 THE WITNESS: Jeffrey Overton with Group 70
9 International, Inc, 925 Bethel Street, Honolulu,
10 Hawai'i, 96813.

11 CHAIRMAN DEVENS: Mr. Lim, he will stand on
12 the written testimony submitted Exhibit 44?

13 MR. LIM: That's correct. And we have a
14 short video presentation also to your rear there.
15 These are slides that are taken out of the
16 Environmental Report to provide you some background.

17 DIRECT EXAMINATION

18 BY MR. LIM:

19 Q Mr. Overton, could you please make your
20 presentation on your environmental report.

21 A Thank you. Group 70 was responsible for
22 preparation of the environmental report and working
23 with the technical studies that are supporting also.
24 The exhibits I'm showing here are part of the
25 environmental report, figures, tables also

1 Petitioner's Exhibits.

2 Project location, we have had a presentation
3 on it so I'll skip by this location. Basically
4 surrounding lands are vacant here, 272 acres
5 approximately.

6 The concept master plan that we're working
7 with on this Project has been developed for
8 approximately 2,330 residential units, up to 661
9 single-family homes and 1,669 multiple family units
10 which over 50 percent or approximately 1,169 units
11 will be affordable units offered for sale or rent to
12 buyers who earn no more than 140 percent of the median
13 family income of the county.

14 As the previous presenters spoke of it's a
15 range of residences from affordable multi-family to
16 townhouses, apartments, duplexes, plan to be
17 distributed throughout the Project. In general the
18 higher density is in the lower makai section of the
19 property. The lower density in the upper reaches.

20 There are three areas that are proposed for
21 mixed use commercial development on the property for
22 approximately 197,000 square feet of neighborhood
23 commercial space; three large park areas and numerous
24 small parks, a total of 46 acres in park and open
25 space and approximately 9 acres identified for 2

1 archaeological preserves.

2 There are 2 sites, roughly 17.26 acres
3 proposed for school and civic uses. And those are all
4 shown here in the exhibit.

5 Here's a summary of the land use areas
6 across the property. That gives you an idea of the
7 total area for residential units including the
8 mixed-use component, school and the civic and the
9 various components that I described just previously.
10 Parks are a very important part of the Project.

11 Parks and open space and the connecting
12 greenways are shown here on this exhibit.

13 Now, it's important for us on a project like
14 this to look at the phases of development. This is
15 the phased plan which was described earlier. There
16 are roughly six phases of development in the Project.
17 There are 2 broad Increment I and Increment II and
18 I'll describe that in a bit.

19 Phase 1 is identified in that lighter yellow
20 color 41,833 square feet of the neighborhood
21 commercial space with 76 single-family and 339
22 multiple family homes.

23 Phase 2 is that multiple shade of the green
24 in there that has 24,500 square feet of neighborhood
25 commercial space along with 94 single-family and 437

1 multiple-family homes.

2 Then Phase 3, which is broken into Phase 3A,
3 3B. 3A has 32,667 square feet of neighborhood
4 commercial; 94 single-family and 136 multi-family.
5 Up through phase 3A you can see the heavier line that
6 crosses the development plan here.

7 That's the entirety of Increment I of the
8 Project. So it goes Phase 1, 2, 3A.

9 Then we move on to Increment II which is
10 Phase 3B, a little bit darker shade of the green there
11 that has 82 single-family homes, 61 multi-family.

12 Phase 4 96 single-family, 278 multi-family.

13 Then Phase 5 80 single-family, 29
14 multi-family.

15 And the final Phase 6 has 98,000 square feet
16 of the neighborhood commercial, 139 single-family
17 units and 139 multi-family.

18 We've tallied it all here on this phase
19 summary. Again, part of the incremental development
20 plan which is Exhibit 23 to the petition references
21 all this.

22 Q Can you tell us why there are two separate
23 increments in the Project development plan? And I'll
24 refer the Commission to Exhibit 27 which is the
25 incremental development plan.

1 A Okay. The land use requirements with
2 respect to the Urban District reclassifications for
3 projects that won't be fully developed within 10 years
4 of reclassification, that's the case here. "If full
5 urban development cannot substantially be completed
6 within 10 years, the Petitioner must submit a schedule
7 for development increments together with a map
8 identifying the location of each increment." We have
9 that in the exhibits.

10 Q Thank you. With respect to the Land Use
11 Commission's Urban District standards set forth in
12 their rules, have you reviewed those standards and
13 compared to Kamakana Project aspects with the
14 standards for Urban District reclassification?

15 A Yes, we have. They are part of the
16 submittal in our environmental report as well as the
17 petition. And we've worked through those.

18 Q In your opinion has the Commission's
19 decision-making criteria been satisfied in this
20 particular case?

21 A Yes, they have.

22 MR. LIM: No further questions.

23 CHAIRMAN DEVENS: County, cross?

24 MS. MARTIN: No questions.

25 CHAIRMAN DEVENS: Mr. Yee.

1 XX

2 CROSS-EXAMINATION

3 BY MR. YEE:

4 Q Mr. Overton, with respect to Page 27 of your
5 written testimony, paragraph 15 element 7 relating to
6 energy, do you have that in front of you? I don't
7 know that you need it but if you have it.

8 A I have it, thank you.

9 Q Do you believe -- you've represented that
10 Forest City would to the extent practicable, the
11 planning, designing and constructing either commercial
12 buildings to meet LEED NC or new construction Silver
13 or higher. And homes to meet LEED Homes Silver or
14 higher. Do you see that?

15 A Yes. That's in that first paragraph.

16 Q Do you believe this is an achievable and
17 realistic goal?

18 A Yes, it is. I believe Joey Scanga responded
19 regarding the LEED-ND. For the vertical construction
20 we'd be seeking to comply with USGBC LEED-NC.

21 The way it's really spelled out in my
22 testimony here is Forest City's commitment in terms of
23 how they're going to plan, design, construct,
24 incorporating these elements into their -- constructed
25 to meet the minimum LEED for Homes silver level or

1 higher.

2 To the extent practicable Forest City also
3 plans to design, construct the Project to meet a
4 minimum of the LEED-ND character certification.

5 Q And that do you think it's a realistic
6 possibility that you'll be able to meet that standard
7 for LEED-Silver?

8 A That's for the vertical construction
9 element. The LEED Silver I know Joey responded on the
10 LEED-ND. The target is silver for the LEED-ND. For
11 LEED-NC here we are also talking about really to the
12 extent practicable and feasible Forest City will plan,
13 design and construct and incorporate into development
14 agreements a requirement that all commercial and
15 institutional facilities be planned, designed and
16 constructed to meet that minimum.

17 Q I was just asking whether you thought that
18 was practical -- whether that was, I'm sorry, whether
19 that was a realistic goal.

20 A It seems realistic.

21 Q And are you aware that the Office of
22 Planning has pushed for and the Petitioner has agreed
23 to a condition which would require, which would
24 require this representation be in place as one of the
25 conditions?

1 A Yes.

2 MR. YEE: I have nothing further.

3 CHAIRMAN DEVENS: Mr. Kudo, your cross.

4 CROSS-EXAMINATION

5 BY MR. KUDO:

6 Q Mr. Overton, what was the responsibility of
7 your involvement in this particular Project?

8 A My specific role was principal author for
9 the environmental report and as well coordinating with
10 the different technical consultants that provided
11 contributions to the effort.

12 Q Did your coordination effort include the
13 Traffic Impact Analysis Report done by Mr. Okaneku?

14 A Yes.

15 Q So you've read his report?

16 A Yes, I have.

17 Q How many reports has he produced for this
18 Project to date?

19 A There was an original submittal that was
20 made with our documents that were filed earlier in the
21 year. So that I believe the date was either late '09
22 or early area '10. That was the initial TIAR.
23 There's since been a subsequent or revised TIAR
24 submitted, I believe it was August 9th, 2010. So two
25 formal submittals.

1 Q Have there been revisions to the August 9th
2 TIAR to your knowledge?

3 A They're underway.

4 Q Was there a revision done on September 1st?

5 A What I'd like to do is defer the real
6 detailed questions on the traffic assessment to Randy
7 Okaneku. So that would probably be more appropriate
8 to work through that.

9 Q I'm just asking you a question if you're
10 familiar whether there was another revision done on
11 September 1st.

12 A I've been working with Randy to help with
13 the traffic study in terms of responding to any
14 comments or questions that have come in.

15 Q Now, have you been or have you participated
16 in any meetings with the state Department of
17 Transportation with regard to this particular TIAR
18 report that was done by Mr. Okaneku?

19 A Yes.

20 Q What were the nature of those meetings?

21 A The traffic study is a very complex document
22 understandably with the amount of roadways involved
23 here and predicting out over a 20-year period for this
24 Project. So we have responded to questions that have
25 planning support role.

1 We've helped in terms of facilitating
2 understanding of future development in the region.
3 That translates into the future projections for the
4 traffic study. We've sat through meetings with DOT
5 and the traffic consultant to really help solidify the
6 analysis.

7 Q During these meetings was there any
8 discussion raised with regard to errors and omissions
9 in the TIAR report that has been submitted in this
10 particular proceeding, done by Mr. Okaneku?

11 A Could you state specifically which report
12 you're talking about?

13 Q The latest TIAR which is the August 9th, as
14 you said?

15 A Yes.

16 Q Did you have a meeting with the state
17 Department of Transportation in which errors and
18 omissions in that report were discussed?

19 A What we discussed were really the
20 description of mitigation that the Project is going to
21 be proposing in preparation of the final report and
22 the dealings with that.

23 Q So the discussions centered around the
24 mitigation measures being recommended by Mr. Okaneku,
25 is that correct?

1 A That's been a big part of it.

2 Q So you are familiar with the mitigation
3 measures as set forth in his TIAR report, are you not?

4 A Again, I'm going to defer on the details of
5 that but in a big picture I have some familiarity.

6 Q Is it correct that the mitigation measures
7 are set forth in table 9 of that report?

8 A I don't have it before me.

9 Q For purposes of identification we'd like to
10 reference exhibit ...

11 MR. LIM: Mr. Chairman, if he's going to be
12 asking Mr. Overton about the details of the traffic
13 report I think that's not within his expertise.

14 CHAIRMAN DEVENS: I agree. It seems to be
15 going beyond the scope of his direct testimony.

16 MR. KUDO: The reason I'm asking Mr. Overton
17 is Mr. Overton is responsible for the TIAR report as
18 part of the EIS and has been overseeing Mr. Okaneku in
19 the drafting of that report, and has also accompanied
20 Mr. Okaneku in the meetings they have had with the
21 state Department of Transportation on that report.

22 And I think he has sufficient knowledge --
23 I'm not going to be asking him technical questions
24 with regard to the calculations done in that TIAR
25 report. But I'm going to be asking him issues that

1 surround the TIAR report and his involvement in it.

2 CHAIRMAN DEVENS: That's fair enough. To
3 the extent the witness can answer the question from
4 his personal knowledge.

5 Q (By Mr. Kudo): The TIAR report, for
6 purposes of the transcript, is marked as Petitioner's
7 Exhibit No. 28. And I draw your attention to table 9
8 of that report.

9 A Okay. I'm sorry. I have the older version
10 in front of me. I'll have to get the other one.

11 CHAIRMAN DEVENS: You know, we've been going
12 for over an hour. Why don't we take a short 5 minute
13 break for the court reporter.

14 MR. KUDO: Thank you.

15 (Recess was held)

16 CHAIRMAN DEVENS: (3:35) We're back on the
17 record. Mr. Lim, before you continue there was an
18 exhibit that Mr. Kahui presented to our clerk. Do you
19 want that marked as the next exhibit in order? And
20 are you offering that into evidence?

21 MR. LIM: That's correct. We'll offer that
22 as Petitioner's Exhibit next in order, which is 109.

23 CHAIRMAN DEVENS: 109. Just for
24 identification I believe it was the La'i 'Opuia
25 Community Development dated December 2010, if I'm not

1 mistaken.

2 MR. LIM: That's correct.

3 CHAIRMAN DEVENS: Thank you. Mr. Kudo,
4 still your cross.

5 CROSS-EXAMINATION

6 BY MR. KUDO:

7 Q Mr. Overton, do you have the August 9th TIAR
8 report in front of you?

9 A Yes, I do.

10 Q I draw your attention to table 9 of that
11 document. Can you describe to me what that table is?

12 A This is a listing of -- the title is called
13 Table 9, Summary of Traffic Mitigation. These are
14 improvements that are projected to occur across the
15 region in the area.

16 And these are combinations of projects that
17 are on the books, state and county. They're projects
18 that are needed to happen for entitled developments in
19 the area. And that would include future improvements
20 that could potentially be associated with Kamakana
21 Villages.

22 Q Who made those recommendations? Who's
23 making those recommendations? Is it coming from a
24 third-party source or is it coming from Okaneku or you
25 or who?

1 A It's a combination of those. There's
2 projects that are on the books. Those are coming from
3 the state and county authorities on transportation
4 improvements.

5 And as well the traffic engineer looking
6 forward has to determine, you know, working out level
7 of service in the future improvements that would occur
8 in the roadway network that was set up through the
9 process.

10 Q So if this Project goes forward, if I
11 understand you correctly, this table lists the
12 mitigation -- traffic mitigation measures that should
13 be implemented if Kamakana Villages Project is
14 approved; is that correct?

15 A I wouldn't say it exactly that way.

16 Q Okay. What does it say then?

17 A The way I understand -- again I'm not a
18 traffic engineer. I think what might be a more
19 helpful -- I don't mean to side step your question --
20 but there is a list of traffic mitigation that's set
21 forth in the incremental development plan Exhibit 27.

22 And it specifies roadway improvements that
23 Kamakana Villages would be putting forth as part of
24 their phases of development in the Project.

25 And this might answer your question more

1 pointedly in terms of improvements that Forest
2 City/HHFDC are committed to completing as part of
3 their traffic mitigation.

4 So if you refer to, say, the pages --
5 there's a table -- page 3 in there. It's item 4A,
6 Phase I which is year 2012 to 2014 at the Manawela
7 Street and Keanulehu Drive section northbound,
8 "provide exclusive left turn lane and through street
9 on Manawela Street.

10 "B. Southbound. Re-stripe Manawela Street
11 to provide a channelized right-turn lane and through
12 lane.

13 "C. Install all stop controls at the
14 intersection," and such.

15 So we've walked through and established
16 really a very thorough set of traffic mitigation
17 projects that are set up to mitigate traffic
18 associated with the Project throughout the six phases.
19 These are commitments that Forest City, that Kamakana
20 Villages is putting forward for the Project.

21 Q Are these mitigation measures limited to
22 only to the surrounding roadways? Or is this regional
23 traffic improvements as well?

24 A I am not the traffic expert so I'm going to
25 defer that question to the traffic expert.

1 Q In your meetings with the State Department
2 of Transportation has the State Department of
3 Transportation approved this particular version of the
4 TIAR that you have before you, that is the August 9th
5 2010 version?

6 A Well, it's very rare that when you reach
7 Land Use Commission that you would have a full DOT
8 blessing on the traffic study at this point in the
9 Project, especially something as complex as the
10 roadway network we're facing here.

11 What we have is a letter from the former
12 director of transportation, Brennon Morioka. This is
13 Petitioner's Exhibit No. 66. This is a letter of
14 September 23rd. And it's a very brief letter. I
15 could hit some of the high points.

16 This gave us a really good understanding of
17 where we were in terms of the review of the traffic
18 study. It says, "As discussed with you today at our
19 DOT and State Office of Planning meeting we received
20 your traffic study submitted on August 10th. We're
21 near completion of reviewing your study.

22 "We appreciate the thoroughness of your
23 review and the work of your team. We appreciate the
24 collaborative effort the team has made to work with
25 DOT over the past year to address issues.

1 "Based on our initial review of your TIAR we
2 are in agreement with the general mitigation concepts
3 being proposed and include the future study area for
4 both state and city" -- he probably meant county --
5 "facilities. So with respect to roadways, your
6 mitigation measures are at least equally effective as
7 the mitigation measures outlined in the acceptance
8 letter of the HHFDC Final EIS from 2008."

9 "So currently we are reviewing the
10 application of your cost assumptions to confirm your
11 cost structure and detail designs are consistent with
12 other projects we have done in the area and conform to
13 acceptable traffic standards to DOT."

14 So this is actually a pretty strong
15 concurrence with the level of study that went through
16 with the revised traffic study submitted August 9th.

17 Q Will there be another version of this TIAR
18 produced on this Project in terms of your negotiations
19 with the State Department of Transportation?

20 A Well....

21 Q Or is the final one?

22 A We would expect a condition. There's a
23 proposed condition in here, that's condition 4,
24 regarding transportation. This one really gets to the
25 impacts and the mitigation recommended under the TIAR.

1 So this condition is acceptable to Forest
2 City saying that "Petitioner shall mitigate all
3 Project-generated traffic impact as recommended and/or
4 required by the TIAR prepared for the Project that had
5 been reviewed and accepted by State DOT.

6 "Petitioner shall not submit applications
7 for subdivision of the residential lots or plan
8 approval for the multi-family and/or commercial units
9 within the Project until the Petitioner has executed
10 an agreement with the DOT committing to the
11 implementation of all necessary measures to mitigate
12 the direct impacts of the Project."

13 Q I'm glad you referenced the agreement.
14 Normally with most developers and before they appear
15 before this Commission, an agreement is reached and
16 submitted to this body normally referred to as an MOU
17 or MOA, with the State Department of Transportation
18 with regard to improvements or further TIARs that must
19 be done in this Project.

20 Has an MOU or MOA been completed and signed
21 by the Petitioner and the State Department of
22 Transportation to date?

23 A No, there is not one at this point.

24 MR. YEE: Can I just object to the form of
25 the question with respect to the representation what

1 is or is not the norm before the LUC as not a
2 question, therefore not appropriate as evidence before
3 you.

4 CHAIRMAN DEVENS: Sustain that objection.

5 Q (By Mr. Kudo): The Office of Planning has
6 submitted testimony in this proceeding. Are you
7 familiar with that testimony?

8 A Somewhat, but I don't believe I have it
9 before me.

10 Q Let me read a portion of it which is
11 relating to the transportation issue. It says, "The
12 Petitioner has agreed to mitigate all Project-
13 generated impacts on the surrounding roadway system as
14 recommended and/or required by the TIAR report and to
15 also pay a pro rata share of regional transportation
16 improvements."

17 Is your understanding that this Petitioner
18 has, in fact, agreed to that with the State Department
19 of Transportation?

20 A Well, I won't paraphrase the proposed
21 condition that I just recited. I'll let that stand on
22 its own. My involvement has strictly been in terms of
23 assisting Randy from a land use planning standpoint in
24 the discussions with DOT.

25 So we've been talking specifically about

1 state facilities improvements associated with the
2 Project. And we have compiled a set of mitigation
3 projects, and proposed what is a fair-share of
4 required traffic mitigation going forward associated
5 with Kamakana Villages.

6 Q Mr. Overton, I realize that you're not the
7 Petitioner in this matter. You're a consultant that
8 works for them. And that you may not have the
9 authority to bind the Petitioner to this condition
10 that I just read from Office of Planning's testimony.
11 Is there someone that's going to be appearing before
12 this Commission that will make that representation as
13 to whether this statement is true or not?

14 CHAIRMAN DEVENS: I don't know if that's a
15 proper question for this witness. You'll see the
16 witnesses as they get called. I don't know if that's
17 something that's appropriate for this witness.

18 MR. KUDO: All right. We have no further
19 questions of this witness.

20 CHAIRMAN DEVENS: Commissioners, any
21 questions? Commissioner Judge.

22 COMMISSIONER JUDGE: Would you be the
23 appropriate person to ask about the Department of
24 Education agreement?

25 THE WITNESS: Probably not. Forest City

1 representatives might be the best to speak to on that.

2 COMMISSIONER JUDGE: Okay. No questions,
3 thank you.

4 CHAIRMAN DEVENS: Any redirect?

5 REDIRECT-EXAMINATION

6 BY MR. LIM:

7 Q Mr. Overton, I think the point that the
8 Trust is trying to make is that the various amendments
9 that they see with respect to what they call versions
10 of the TIAR, the traffic report, are somehow an
11 evidence that the traffic report was not sufficient.
12 We're talking about Exhibit 28, the August 9, 2010
13 Traffic Impact Analysis Report.

14 Is it your opinion that the August 9th, 2010
15 TIAR is sufficient to provide information to the
16 Commission to determine the availability of basic
17 services on transportation systems?

18 A Yes, it is.

19 MR. LIM: No further questions.

20 CHAIRMAN DEVENS: Any follow-up questions
21 from the parties. County?

22 MS. MARTIN: No questions.

23 CHAIRMAN DEVENS: Mr. Kudo, you have any
24 additional questions?

25 MR. KUDO: No questions.

1 CHAIRMAN DEVENS: Nothing further. Thank
2 you very much for your testimony. Next witness,
3 Mr. Lim.

4 MR. LIM: Thank you, Mr. Chairman. We're
5 going to be moving now into the consultants and I
6 don't expect a lot of direct testimony on them.

7 So I'll be calling them up one by one, and
8 asking you to accept their written direct testimony as
9 the testimony of the witness and opening them up for
10 cross-examination.

11 CHAIRMAN DEVENS: We will.

12 MR. LIM: Some of them I will do a little
13 bit of lead off, but I think for the next four, five,
14 six people we'll go straight through. First witness
15 would be Alan Haun who will be testifying on
16 archaeology.

17 CHAIRMAN DEVENS: That's Exhibit 51?

18 MR. LIM: His direct testimony is Exhibit
19 51.

20 CHAIRMAN DEVENS: Thank you.

21 ALAN HAUN,
22 being first duly sworn to tell the truth, was examined
23 and testified as follows:

24 THE WITNESS: Yes.

25 CHAIRMAN DEVENS: State your name and

1 address, please.

2 THE WITNESS: Alan Haun, 73-1168 Kahunaa'o
3 Kailua-Kona, Hawai'i.

4 CHAIRMAN DEVENS: Thank you. Mr. Lim, your
5 witness.

6 MR. LIM: Thank you, Mr. Chairman.

7 DIRECT EXAMINATION

8 BY MR. LIM:

9 Q Alan, you've prepared a couple of
10 Archaeological Inventory Survey reports for this
11 matter, is that correct?

12 A Yes.

13 Q Would that be the November 2009
14 Archaeological Mitigation Plan update and the addendum
15 Archaeological Inventory Survey dated August 2010
16 which we call the addendum AIS?

17 A That's correct.

18 Q And have both of those AIS documents been
19 accepted by the State Historic Preservation Division?

20 A Yes.

21 MR. LIM: No further questions.

22 CHAIRMAN DEVENS: Cross-examination?
23 County?

24 MS. MARTIN: No questions.

25 CHAIRMAN DEVENS: OP? Mr. Yee?

1 MR. YEE: Thank you.

2 CROSS-EXAMINATION

3 BY MR. YEE:

4 Q Are you aware that the Office of Planning
5 has had in the past insisted that the petitioners
6 perform an additional AIS addendum?

7 A Um, I'm not specifically.

8 Q Did you perform an additional AIS?

9 A Yes.

10 Q What did you do in that?

11 A We essentially resurveyed the entire parcel.

12 Q Can you be just a little more specific about
13 what you were doing?

14 A Basically identifying all of the
15 archaeological and historical sites that were present,
16 documenting them to inventory survey level standards
17 sufficient for the State Historic Preservation
18 Division to review and approve our site-significant
19 assessments and recommended treatments.

20 Q So rather than rely upon the previous AIS
21 you basically did the work from -- did you do the
22 work, the physical work from scratch?

23 A Yes.

24 Q So you when you say "resurvey" you walked
25 the site.

1 A Entirely.

2 Q The entire site?

3 A That's correct.

4 Q Okay. What did you discover -- what
5 additional information, if any, did you discover from
6 this, if you could summarize those results?

7 A Well, we found that the original survey was
8 accurate in terms of the kinds of sites that were
9 present and the general distribution of sites that
10 were present.

11 We added sites to that list. And we also
12 did -- we did the work to a standard that is really 20
13 years later in terms of documenting minor features.
14 All of the several thousand agricultural features, for
15 example, were systematically documented during this
16 phase of work.

17 Q How many additional sites did you identify?

18 A About 120 new sites. Some of those sites,
19 though, were likely identified during the earlier
20 initial inventory survey. It's just that the records
21 from that study were not sufficient to be certain of
22 that.

23 Q Have you examined or have you had an
24 opportunity to examine the written testimony of
25 Ms. Tanya Souza?

1 A Yes, I have.

2 Q Do you have an analysis of that written
3 testimony? Do you have an opinion about that written
4 testimony?

5 A It primarily seems to be requesting that the
6 Trust be consulted as this Project moves forward in
7 terms of any new discoveries, in terms of the
8 development of various plans.

9 Q Would this be part of your preservation plan
10 that is to be developed?

11 A Yes. It's -- consultation with interested
12 parties is normally a part of preparation of such a
13 plan.

14 Q So would you be considering that as part of
15 your recommendation or would you look into that
16 question as you move forward in preparing your
17 "preservation" plan to SHPD?

18 A Consultation is a necessary part of that
19 plan.

20 Q Then is that one of the issues or one of the
21 factors SHPD must consider in reviewing your
22 preservation plan?

23 A Yes.

24 Q And are you going to be doing a preservation
25 plan in the future?

1 A Yes.

2 Q And will you be getting SHPD approval before
3 any groundbreaking of that preservation plan?

4 A Yes.

5 MR. YEE: I have no further questions.

6 CHAIRMAN DEVENS: Mr. Kudo.

7 CROSS-EXAMINATION

8 BY MR. KUDO:

9 Q Mr. Haun, as part of the development of that
10 preservation plan, just let me clarify, you believe
11 that the Lili'uokalani Trust should be a consulted
12 party?

13 A Yes.

14 Q Would you explain to us your concept of what
15 preservation means. What does that entail?

16 A Well, in general it means preservation of a
17 particular site as is, if we're talking about
18 archaeological sites as opposed to the information they
19 contain. What forms preservation takes depends on the
20 resource, whether it's a burial or he'iau or what type
21 of site it is.

22 Preservation can take several forms. It can
23 take sort of a resource banking conservation form
24 where there's relatively little in the way of
25 interpretation.

1 And at the other end of the spectrum you
2 have sites that may be amenable to interpretation,
3 public education purposes where, again, that would
4 depend on the resource.

5 But preservation can span the range from
6 simply in-place conservation to much more interactive
7 educational opportunity.

8 Q How does the interpretation of archaeological
9 materials take place within the boundaries of, say,
10 this, say, ahupua'a?

11 A I'm sorry?

12 Q How does interpretation of the archaeological
13 materials that you locate, what do you do in terms of
14 the process of identifying these archaeological finds
15 that are found within this ahupua'a?

16 A Well, in all of the -- any Archaeological
17 Inventory Survey in the state of Hawai'i as part of
18 that report you summarize, do research and summarize
19 the results of that search into the previous
20 historical as well as archaeological studies within the
21 larger ahupua'a and district, but particularly the
22 ahupua'a, with the intent being the results are
23 interpreted within the context of that larger
24 ahupua'a.

25 Q Now, in the sites that we are taking about

1 that are located within the Petition Area, did you
2 uncover any petroglyphs?

3 A Yes.

4 Q How many and which sites were they located?

5 A There were 20 individual petroglyph units, I
6 believe, at two sites. One had a single and the
7 remaining petroglyphs were at the other site.

8 Q What were your recommendations with regard
9 to these 20 or so petroglyphs?

10 A Petroglyph field, which is at site 28423 we
11 recommended preservation of that site.

12 Q Did you have a recommendation with regard to
13 the future in terms of how it would be preserved and
14 who would maintain the areas?

15 I mean is it fenced? Or is some third-party
16 organization going to take over control for the
17 maintenance and security of that area? Or how is that
18 going to work?

19 A Those are all questions that will be dealt
20 with as the preservation plan is developed through
21 consultation. And when it takes its final form it
22 will be the result of government requirements as well
23 as the consultation.

24 MR. KUDO: Thank you. No further questions.

25 CHAIRMAN DEVENS: Commissioners, any

1 questions for this witness? If not, any redirect?

2 MR. LIM: Just one question.

3 RE-DIRECT EXAMINATION

4 BY MR. LIM:

5 Q Alan, the updates on the Archaeological
6 Inventory Survey reports you were doing for this
7 property were the updates on the prior report?

8 A Yes. The addendum is seen as an update to
9 the original 1990 AIS study.

10 Q And what area did that cover?

11 A It's primarily the documentation of the
12 sites.

13 Q I was talking about the geographical area.
14 It covered this property and other properties?

15 A The study that I did?

16 Q This is the PHRI study.

17 A The earlier PHRI study covered 1100 acres.
18 This is a 272-acre portion of that study area.

19 Q The other areas that it covered were
20 primarily owned by whom?

21 A The study was done for the Trust. And the
22 balance of this area is makai of this parcel.

23 MR. LIM: Thank you. No further questions.

24 CHAIRMAN DEVENS: Any other questions?

25 MS. MARTIN: No questions.

1 MR. YEE: No questions.

2 MR. KUDO: No questions.

3 CHAIRMAN DEVENS: Thank you very much for
4 your testimony. Your next witness, Mr. Lim.

5 MR. LIM: Thank you, Mr. Chairman. Our next
6 witness is Helen Wong-Smith who will be speaking on
7 cultural impacts. Her direct written testimony is
8 Exhibit number 53.

9 HELEN WONG-SMITH
10 being first duly sworn to tell the truth, was examined
11 and testified as follows:

12 THE WITNESS: Yes.

13 CHAIRMAN DEVENS: If you can give us your
14 name and you address, please.

15 THE WITNESS: Helen Wong-Smith, 1961 Kaimiki
16 Road, Hilo.

17 CHAIRMAN DEVENS: Mr. Lim.

18 MR. LIM: Thank you, Mr. Chairman. This is
19 one of the witnesses where we believe there is or
20 should be not too much controversy so we're going to
21 rest on the written direct testimony but reserving our
22 right to rebut.

23 CHAIRMAN DEVENS: County, any
24 cross-examination?

25 MS. MARTIN: No questions.

1 CHAIRMAN DEVENS: Mr. Yee?

2 MR. YEE: No questions.

3 CHAIRMAN DEVENS: Mr. Kudo?

4 MR. KUDO: No questions. May I make one
5 point?

6 CHAIRMAN DEVENS: Sure.

7 MR. KUDO: The question that I had asked
8 Mr. Overton with regard to who might answer the
9 question with regard to what the Petitioner's going to
10 do with traffic, can I ask Mr. Lim, since he's in
11 charge of all his witnesses, who might answer that
12 question or who I might direct those questions to?

13 CHAIRMAN DEVENS: Why don't we finish up
14 with this witness.

15 MR. KUDO: I have no questions.

16 CHAIRMAN DEVENS: Commissioners? None.
17 Thank you very much. Mr. Lim, you want to give --

18 MR. LIM: To answer the question we have the
19 Forest City representative. And that would be,
20 depends on the level, but the specific mitigation
21 measures would be probably Race Randle. He's one of
22 our witnesses that.

23 Depending upon how quickly we go, we may
24 just put all of our rebuttal witnesses up as direct
25 witnesses too.

1 So our next witness is Dr. Whistler. He'll
2 be talking about botany and endangered plant species.
3 His written testimony is No. 63, Exhibit 63.

4 W. ARTHUR WHISTLER
5 being first duly sworn to tell the truth, was examined
6 and testified as follows:

7 THE WITNESS: I do.

8 CHAIRMAN DEVENS: Please state your name and
9 address for the record.

10 THE WITNESS: Art Whistler, 2814 Kalawao
11 Street, Honolulu, Hawai'i 96822.

12 CHAIRMAN DEVENS: Mr. Lim.

13 DIRECT EXAMINATION

14 BY MR. LIM:

15 Q Dr. Whistler, I'll ask you a couple
16 questions because there were some recent issues that
17 came up. You performed the botanical survey dated
18 November 2007 and the botanical survey of the
19 reservoir site dated January 28th. These are attached
20 to the environmental report.

21 You did an update report subsequently
22 earlier this year. Could you explain to the
23 Commission why you did that update report?

24 A The 2000 report we had listed a species that
25 is a candidate, U.S. Fish and Wildlife Threatened

1 Endangered Species.

2 It was on the boundary. And we weren't
3 quite sure where the boundary line was. But it wasn't
4 an issue at that point. It was better to put that
5 species in than not.

6 But the Fish and Wildlife Service has taken
7 a concern about this plant. So we did what's called a
8 100 percent survey of the whole area, walking transect
9 lines 30 feet apart to find out if that plant was, in
10 fact, on property. We did not find it.

11 Q That particular plant was called what?

12 A Ko'oko'olau or *bidens microfila*, subspecies
13 *tinofila*.

14 Q Based upon your study are there any concerns
15 or regulatory constraints related to botanical
16 resources located within the Petition Area?

17 A There are none. There were no threatened or
18 endangered species. Very few cultural species as
19 well.

20 Q Thank you.

21 MR. LIM: No further questions.

22 CHAIRMAN DEVENS: Thank you. Any
23 cross-examination from the County?

24 CROSS-EXAMINATION

25 BY MS. MARTIN:

1 Q Is it correct that you did not find any
2 *bidens* on the property?

3 A During the final -- the hundred percent
4 survey that is correct.

5 MS. MARTIN: Thank you.

6 CHAIRMAN DEVENS: Mr. Yee?

7 MR. YEE: No questions.

8 CHAIRMAN DEVENS: Mr. Kudo?

9 MR. KUDO: No questions.

10 CHAIRMAN DEVENS: Commissioners? None.

11 Thank you very much, sir. Next witness, Mr. Lim.

12 MR. LIM: Next witness would be Jim Lyon
13 from Lyon Associates, will be our engineering
14 consultant for the preparation of his portion of the
15 environmental report. His record and testimony is
16 Exhibit No. 59.

17 JIM LYON,
18 being first duly sworn to tell the truth, was examined
19 and testified as follows:

20 THE WITNESS: Yes.

21 CHAIRMAN DEVENS: Would you state your name
22 and address, please.

23 THE WITNESS: Jim Lyon, 45 North King
24 Street, Honolulu 96817.

25 CHAIRMAN DEVENS: Mr. Lim.

1 DIRECT EXAMINATION

2 BY MR. LIM:

3 Q Thank you. Mr. Lyon, you prepared, or your
4 firm prepared the Environmental Report for the portion
5 of the engineering on the property. Can you please
6 outline for the Commission the major infrastructure
7 elements that you looked at in your report?

8 A We looked at the water, the sewer, the
9 drainage. And the water system is a series of wells
10 and reservoirs and transmission mains offsite.

11 The sewer line system is a transmission main
12 to the sewage treatment plant. And the drainage
13 system is onsite retention.

14 Q Do you believe, based upon your study, that
15 there are or will be as developed by the Petitioner
16 the availability of basic services such as wastewater
17 systems, solid waste disposal, drainage, water,
18 transportation, systems, public utilities?

19 A Yes.

20 Q Thank you.

21 MR. LIM: No further questions.

22 CHAIRMAN DEVENS: County, cross?

23 MS. MARTIN: No questions.

24 CHAIRMAN DEVENS: Mr. Yee?

25 CROSS-EXAMINATION

1 BY MR. YEE:

2 Q Mr. Lyon, your study assumes that there's
3 going to be a connection to the sewage treatment
4 plant?

5 A Yes.

6 Q And so a requirement to connect up to the
7 sewage treatment plant would effectively prevent
8 individual wastewater systems from being used for all
9 the homes, correct?

10 A Correct.

11 Q And you're also familiar with -- are you
12 familiar with a requirement for a drainage on this
13 property?

14 A Yes.

15 Q As well as storm and surface waters runoff
16 quality requirements?

17 A Yes.

18 Q Are you aware that these are requirements
19 that are over and above what is often included in
20 other cases? Are you familiar -- maybe you're not
21 familiar but are you familiar with other conditions in
22 other cases?

23 A Yes.

24 Q And these are something more than what is
25 required in other cases outside of Kona, is that

1 right?

2 A Well, there's several permits. There's a
3 federal NPDES, there's the UIC injection well, I mean
4 drywells. You have to get permits from the Department
5 of Health, et cetera.

6 Q Were you here when the National Park Service
7 was testifying?

8 A Yes.

9 Q You heard about their concerns?

10 A Yes.

11 Q And are you convinced that the conditions
12 that have been agreed to by Petitioner would resolve
13 those concerns?

14 A Yes.

15 MR. YEE: That's all I have. Thank you.

16 CHAIRMAN DEVENS: Mr. Kudo, your cross.

17 CROSS-EXAMINATION

18 BY MR. KUDO:

19 Q Mr. Lyon, I'll draw you to the EIS,
20 Petitioner's Exhibit 2, Fig. 4-21. That indicates
21 sewer lines.

22 A Yes.

23 Q Do you see the sewer line that is on the QLT
24 property on the right side of that figure?

25 A Yes.

1 Q I just wanted to confirm. Is Kamakana
2 Villages Project intending to use any part of that
3 sewer line?

4 A I believe no.

5 Q You believe or you know?

6 A We don't have any plans to use that.

7 Q Mr. Lyon, we have an exhibit that we
8 received from the Petitioners marked as QLT Exhibit
9 31. Do you have that in front of you?

10 A No. What page is that on, please?

11 Q This would be QLT Exhibit 31. It's a couple
12 pages. It's like a chart.

13 MR. LIM: Mr. Chairman, this appears to be a
14 portion of the traffic mitigation worksheet. And I
15 don't think Mr. Lyon has worked on this.

16 MR. KUDO: We just wanted to confirm whether
17 Mr. Lyon had any part in the compilation of the
18 numbers which include construction cost and
19 percentages allocation for proportion share.

20 CHAIRMAN DEVENS: That's fair enough. Do
21 you mind showing him the exhibit, Mr. Lim? Do you
22 have an extra exhibit for the witness?

23 MR. LIM: Yes.

24 CHAIRMAN DEVENS: All right he's got one.
25 Thank you.

1 THE WITNESS: I'm sorry. What was the
2 question?

3 Q (By Mr. Kudo) Did you have any part in
4 developing any of the numbers or information on this
5 chart?

6 A I've not seen this chart before.

7 Q So you don't know anything about this chart
8 and these are not your numbers that are on this chart?

9 A Yeah, I haven't seen this.

10 Q In other words, did somebody rely on your
11 numbers to put this chart together?

12 A Yeah. I didn't really -- I wasn't involved
13 in the traffic cost estimating. I've never seen this
14 before.

15 MR. LIM: I'll make a representation that
16 Mr. Lyon's staff worked on the cost estimates along
17 with others.

18 CHAIRMAN DEVENS: So noted.

19 MR. LIM: But he didn't prepare that chart
20 so I don't think he's seen the chart.

21 CHAIRMAN DEVENS: Sounds like he's never
22 seen it, doesn't know anything about it. Do you know
23 anything --

24 MR. KUDO: But his company put it together?

25 CHAIRMAN DEVENS: I'm sorry?

1 MR. KUDO: His company put it together.

2 CHAIRMAN DEVENS: Well, the question is do
3 you know anything about the substance of the chart?

4 THE WITNESS: We've put together numbers
5 related to the traffic improvements. I'm not familiar
6 with this particular chart.

7 But I would assume that some of the numbers
8 that have been created here could have been from our
9 analysis of the overall infrastructure costs which
10 have to do with the sewer, water, drainage, overall
11 site improvements.

12 CHAIRMAN DEVENS: At this point he's
13 speculating. He's not familiar with this document.

14 MR. KUDO: Okay. All right. That's all I
15 have.

16 CHAIRMAN DEVENS: That's all you have for
17 this witness.

18 MR. KUDO: Yes.

19 CHAIRMAN DEVENS: Commissioners have
20 questions for this witness? If not, Mr. Lim, any
21 redirect?

22 MR. LIM: No redirect.

23 CHAIRMAN DEVENS: Thank you very much, sir.
24 Your next witness, Mr. Lim.

25 MR. LIM: Our next witness is Mr. Tom Nance

1 who will be testifying on hydrology and water resource
2 engineering. His written direct testimony is No. 61.
3 And this is, again, one of the witnesses where we do
4 not anticipate issues. So I will rest subject to
5 rebuttal.

6 CHAIRMAN DEVENS: Mr. Nance, may I swear you
7 in.

8 TOM NANCE
9 being first duly sworn to tell the truth, was examined
10 and testified as follows:

11 THE WITNESS: I do.

12 CHAIRMAN DEVENS: Please state your name and
13 address.

14 THE WITNESS: Tom Nance. Business address
15 680 Ala Moana Boulevard, Suite 406, Honolulu, Hawaii,
16 96813.

17 CHAIRMAN DEVENS: Given Mr. Lim's
18 representations, county, you have any examination for
19 this witness?

20 MS. MARTIN: No questions.

21 CHAIRMAN DEVENS: Mr. Yee?

22 MR. YEE: No questions.

23 CHAIRMAN DEVENS: Mr. Kudo?

24 MR. KUDO: No questions.

25 CHAIRMAN DEVENS: Thank you.

1 Commissioners? None. Thank you very much, sir.

2 Your next witness, Mr. Lim.

3 MR. LIM: We'd like to take a witness up out
4 of order. We'd like to be calling our witness Lee
5 Sichter from Belt Collins. And it's also very, very
6 short testimony.

7 He performed the work on the HHFDC Final EIS
8 which supported this Project. His written direct
9 testimony is Exhibit No. 47.

10 LEE SICHTER

11 being first duly sworn to tell the truth, was examined
12 and testified as follows:

13 THE WITNESS: I do, sir.

14 CHAIRMAN DEVENS: State your name and
15 address, please.

16 THE WITNESS: Lee Sichter, 2153 North King
17 Street in beautiful downtown Kalihi, Honolulu 96819.

18 CHAIRMAN DEVENS: Mr. Lim.

19 MR. LIM: Thank you very much.

20 DIRECT EXAMINATION

21 BY MR. LIM:

22 Q Mr. Sichter, you performed the work -- your
23 firm performed the work on the Final EIS for this
24 Project.

25 A That is correct.

1 Q Would you give the Commission a short
2 summary on the Project description that was studied in
3 that Final EIS?

4 A The subject of the EIS was a 272-acre
5 portion of a larger area that we had prepared the EIS
6 for in 1990 on behalf of the Queen Lili'uokalani
7 Trust.

8 Q Was there more than one project concept?

9 A There were three alternatives presented in
10 that 2008 EIS.

11 Q Are you familiar with the current project
12 concept for the Kamakana Villages Project?

13 A Yes, I am.

14 Q Is the current Project consistent with one
15 or more of the concept plans that was studied in the
16 Final EIS?

17 A Yes, it is. It seems to be focused on
18 concept C with a few elements of concept D.

19 Q Are you aware of any significant changes
20 that occurred since the time that you did your Final
21 EIS to the present day?

22 A No, I am not.

23 Q You're aware, of course, that the total
24 Queen Lili'uokalani Trust is participating as an
25 intervenor in these matters.

1 A Yes, I am.

2 Q Did the Trust participate in the EIS process
3 in commenting on the EIS?

4 A No. We sent copies of the EIS prep notice
5 and the Draft EIS to the Trust but we did not receive
6 any comments in return.

7 MR. LIM: I have no further questions.

8 CHAIRMAN DEVENS: County?

9 MS. MARTIN: No questions.

10 CHAIRMAN DEVENS: Mr. Yee?

11 xx

12 CROSS-EXAMINATION

13 BY MR. YEE:

14 Q Is it your understanding that the Petitioner
15 will be implementing the mitigation measures proposed
16 in the EIS or its equivalent?

17 A I believe our EIS has been updated in the
18 form of an environmental report that was prepared by
19 the Petitioner. And I believe that report presents
20 mitigation measures.

21 Q Will those mitigation measures or their
22 equivalent be performed by the Petitioner do you know?

23 A I cannot speak to that because I was not
24 involved in that process.

25 MR. YEE: Okay. Thank you. I have no

1 further questions.

2 CHAIRMAN DEVENS: Mr. Kudo, your witness.

3 CROSS-EXAMINATION

4 BY MR. KUDO:

5 Q Mr. Sichter, were you involved in the
6 preparation of the environmental impact statement
7 produced for the state HHFDC on this Project in 2008?

8 A Yes, I was.

9 Q It's marketed Exhibit 2, I believe.

10 A Yes. I oversaw that work.

11 Q As part of that process the EIS or Draft EIS
12 is submitted to various parties including state
13 agencies, is that correct?

14 A That's correct.

15 Q Did you receive a response from the State
16 Department of Transportation on that EIS?

17 A Yes, we did.

18 Q Do you recall what that response was or
19 comment letter?

20 A I have it here. I've tagged it. I read it
21 about 15 minutes ago. And it seemed to me that the
22 main gist of it was DOT was asking that a TIAR be
23 prepared.

24 Q TIAR be?

25 A The traffic study -- the Traffic Impact

1 Analysis Report.

2 Q Be done?

3 A Be -- yes. They recommended that it be done
4 for the Project.

5 Q And approved by their department, is that
6 correct?

7 A I don't recall the language that it be
8 approved. But I just recall reading that they had
9 asked for one.

10 Q To be presented to the state Department of
11 Transportation for review and approval.

12 A I'll accept that.

13 Q Do you recall what your response to that
14 letter was?

15 A I believe that we responded that because the
16 developer had not been selected at the time we did the
17 EIS that we believe that once more detailed
18 information that would come out as a result of
19 selection of the developer, then that would be the
20 appropriate time that a TIAR would be done; that it
21 wasn't possible to include one in the 2008 EIS because
22 of the lack of information.

23 Q And is that the reason why the August 9th or
24 August 10 report was submitted to the Department of
25 Transportation in this case?

1 A I have no knowledge of the August 9th or
2 August 10 report. Was not involved in that.

3 Q In other words, your response or the HHFDC's
4 response to DOT's concerns was that a TIAR would be
5 submitted to them when this development became
6 eminent.

7 Is it your understanding that the TIAR that
8 was done by Mr. Okaneku is following up on this
9 letter?

10 A I could make the assumption, but I wasn't
11 involved in it so I don't know.

12 MR. KUDO: No further questions.

13 CHAIRMAN DEVENS: Commissioners, any
14 questions for this witness? None. Thank you very
15 much. I'm sorry. Any redirect?

16 MR. LIM: No further questions.

17 CHAIRMAN DEVENS: Thank you very much, sir.
18 Next witness.

19 MR. LIM: We have, next witness would be
20 Randy Okaneku who would be the traffic management
21 consultant. His written testimony would be Exhibit 57
22 and we do expect this one to take a while.

23 CHAIRMAN DEVENS: We'll take a 5-minute
24 break.

25 (Recess was held. 4:00)

1 CHAIRMAN DEVENS: (4:15) Back on the record.
2 Mr. Lim, your next witness is Mr. Okaneku.

3 MR. LIM: Thank you, Mr. Chairman. We have
4 Randall Okaneku who's going to be our expert witness
5 on traffic. His written direct testimony is Exhibit
6 No. 67.

7 CHAIRMAN DEVENS: Thank you. Can we swear
8 you in sir?

9 RANDALL OKANEKU,
10 being first duly sworn to tell the truth, was examined
11 and testified as follows:

12 THE WITNESS: Yes.

13 CHAIRMAN DEVENS: Please state your name and
14 address.

15 THE WITNESS: My name is Randall Okaneku.
16 I'm principal of The Traffic Management Consultant.
17 My address is 1188 Bishop Street, Honolulu, 96813.

18 CHAIRMAN DEVENS: Thank you. Mr. Lim.

19 MR. LIM: Thank you, Mr. Chairman. Again
20 I'll try to be brief. We have very detailed written
21 testimony from Mr. Okaneku. So I'm going to be asking
22 him some other questions that are not contained in
23 that.

24 DIRECT EXAMINATION

25 BY MR. LIM:

1 Q Randy, how many Traffic Impact Analysis
2 Reports have you prepared for this particular Project?

3 A I've submitted two versions of the traffic
4 study, one in December, one in August.

5 Q Why did you prepare two versions?

6 A The first version of the traffic study was
7 tailored to meet county requirements for the TIAR.
8 The subsequent August was to meet some of the comments
9 received from the DOT.

10 Q So as far as the TIAR that you're using for
11 this particular Project, this particular Petition,
12 would that be the August 9th, 2010 revised TIAR that
13 we referred to as Exhibit 28?

14 A Yes.

15 Q The meetings that you've been having with
16 the State Department of Transportation since August of
17 2010, can you describe to the Commission what those
18 consist of?

19 A The meetings were intended to assist DOT in
20 the review of the traffic study. So we had provided
21 supplemental aids for the review marked "exhibits", so
22 forth, yellow lined figures so they could identify
23 where their mitigation is, and some explanation of
24 what the regional background is like today so they can
25 become familiar with the region.

1 Q Why are you meeting with DOT and why are you
2 discussing these various mitigation measures? What's
3 the intended goal?

4 A The goal of the 8/9/2010 TIAR was to
5 establish the basis for a fair-share assessment of
6 traffic mitigation between DOT and the developer.

7 Q In your professional opinion does the
8 August 9th, 2010 TIAR, the revised TIAR, provide the
9 Commission with the adequate evidence to determine the
10 availability of basic services such as transportation
11 systems?

12 A Yes.

13 Q The eventual goal -- I may have missed it --
14 but the eventual goal of our current discussions are
15 to do what?

16 A Is to determine what the developer's
17 fair-share assessment is on state highways.

18 Q Would that be what they call the approval
19 portion of the TIAR, the revised TIAR?

20 A In my experience satisfaction to DOT would
21 be the payment of fair-share or an equivalent.

22 Q The Intervenor Queen Lili'uokalani Trust has
23 been asking other witnesses questions indicating that,
24 I think, the current negotiations with the DOT are
25 intended to somehow rehabilitate your August revised

1 TIAR. What is your response to that?

2 A No. The purpose of the meeting that we are
3 again to facilitate the review, make it easier for
4 them to understand what is going on with the report
5 and how we came about with the numbers that we did.

6 Q I think in a number of the Trust's questions
7 to another witness the statement was made that by the
8 time you come to the Land Use Commission you're
9 supposed to have a Memorandum of Understanding with
10 DOT as to the traffic impact mitigation measures. Is
11 that your experience?

12 A No. Generally if there's such an
13 understanding I wouldn't be here.

14 Q At what stage do those MOU's usually get
15 done?

16 A Usually when DOT finally signs off on plans,
17 for example, when you're usually at that construction
18 phase.

19 Q You've been testifying as an expert witness
20 before the Land Use Commission previously, correct?

21 A Yes.

22 Q You've had -- I guess the reason why you're
23 doing that is because you've been an expert witness on
24 traffic.

25 A Yes.

1 Q So you've had other TIARs prepared by you
2 and your company as part of the petitions for
3 successful boundary amendments in the past?

4 A Yes.

5 Q About how many times?

6 A I lost count. Probably more than 10, less
7 than 50.

8 Q Are you familiar with the condition 4 of the
9 Petitioner's proposed findings of fact relating to
10 transportation?

11 A Ah, if you could refresh my memory.

12 Q Pointing to question No. 29 on the last page
13 of your written testimony.

14 A Well, I presume they're talking about the
15 mitigation of all impacts on the, surrounding the
16 Project. All the traffic impacts on Project access
17 points are being mitigated by the developer.

18 Beyond that point, again, we're working with
19 DOT and eventually with the county on the developer's
20 fair-share of area mitigation beyond the immediate
21 surrounding area.

22 Q At present is there an agreement between the
23 State Department of Transportation and the Petitioner
24 on these mitigation measures?

25 A Not as yet.

1 Q So reviewing condition 4 that's proposed in
2 the Petitioner's proposed findings of fact will that
3 condition adequately address any anticipated impacts
4 from the development of the Project for traffic
5 purposes?

6 A Yes.

7 MR. LIM: No further questions?

8 CHAIRMAN DEVENS: County, your cross?

9 MS. MARTIN: No questions.

10 CHAIRMAN DEVENS: OP your cross?

11 xx

12 CROSS-EXAMINATION

13 BY MR. YEE:

14 Q Mr. Okaneku, I understand you're satisfied
15 with the August 2010 TIAR. But it's fair to say that
16 the Department of Transportation has not yet accepted
17 that document, is that correct?

18 A That's correct.

19 Q And you're still engaged in discussions
20 hopefully leading to a time in which DOT would accept
21 some TIAR from Petitioner, correct?

22 A Yes.

23 Q And has the Department of Transportation
24 asked for some additional information or analysis from
25 you?

1 A The Department has asked for some of the
2 intermediate worksheets that I used to go from one
3 step to the next so that they can understand the
4 process.

5 Q So you and the Department of Transportation
6 are continuing to engage in discussions that will
7 hopefully lead to an agreement.

8 A Yes.

9 Q Are you aware that condition 4 of
10 Petitioner's Exhibit 17, which is their Proposed
11 Decision and Order, would mean that the Petitioner
12 could not submit applications for subdivision until an
13 agreement has been reached with the Department of
14 Transportation?

15 A Yes.

16 Q So the Department of Transportation's
17 approval is necessary before this Project can move
18 forward past a certain point?

19 A That's my understanding.

20 MR. YEE: I have nothing further, thank you.

21 CHAIRMAN DEVENS: Mr. Kudo.

22 CROSS-EXAMINATION

23 BY MR. KUDO:

24 Q Mr. Okaneku, who engaged you to do the TIAR
25 reports for this particular Project?

1 A Group 70 International.

2 Q And you worked with Jeff Overton, is that
3 correct?

4 A Yes.

5 Q Now, you said in your testimony that you've
6 done two TIAR reports for this Project.

7 A Yes.

8 Q What were the dates of those reports?

9 A The first report was in December 2009 and
10 the latest report is in August 2010.

11 Q Isn't it true that you actually did four of
12 these reports? December 2009 and I believe
13 March 17th, 2010; August 9th, 2010 and a revised
14 August 10, 2010 on September 1st?

15 A The March was a preliminary report leading
16 up to the August 9th report.

17 Q It doesn't say "preliminary" on this March.
18 It says "TIAR" for the Project.

19 A The intent that was the preliminary review
20 for DOT's, to respond to their first cut of comments
21 that we received from the December 2009 report.

22 Q Isn't it true that there are two versions of
23 the August 9th TIAR report?

24 A There are some pages that were their
25 inserted into the August 9th report that were to

1 correct the typographical errors, printing errors, so
2 forth.

3 Q This was done on September 1st.

4 A The pages are dated September 1st, yes.

5 Q So there are two August 9th reports. In
6 other words, the face page says August 9th but one
7 report was done on August 9th and the other one was
8 done on September 1st, correct?

9 A It's still substantially -- the August 9th
10 report is still substantially the same report.

11 Q But it has inserted pages where the
12 September 1st date is on there --

13 A Correct.

14 Q -- right?

15 A Yes.

16 Q Okay. Which is the report that you
17 submitted to full review for the state Department of
18 Transportation?

19 A I believe it's the August 9th but they have
20 received subsequent worksheets as we have progressed.

21 Q That means the September 1st version.

22 A Ah, yes.

23 Q The reason I'm confused is that we received
24 from the Petitioners the August 9th version. And then
25 later we received the September 1st amended version

1 because it was in a disk. And when we printed out the
2 disk we found that there were changes to the version
3 that we received the hard copy of. That's why I'm
4 trying to clarify.

5 A Okay.

6 Q So they're actually two versions of
7 August 9, right? Because the flysheet is the same.

8 A Yes.

9 Q Now, in your discussions with the State
10 Department of Transportation was there any mention of
11 the fact that your reports, that is your reports prior
12 to the August 9th report, had certain errors in the
13 assumptions, errors in the calculations, errors in the
14 trip generation numbers that you generated which
15 resulted in the concluding mitigation measures of that
16 report? We're talking about the December 2009 report.

17 A The 2009 report I wouldn't characterize it
18 as errors. The study area was expanded twice by DOT
19 to include more intersections. The subsequent report
20 also included more projects, outlying projects that
21 were in various stages of planning.

22 Q Now, what was the reason why you did another
23 report in March?

24 A That first -- again, the first report was to
25 address DOT's initial response on the December study.

1 Q And why was the next report done in March?

2 A DOT expanded the study area and began to
3 include more projects in the region.

4 Q And what happened to the August 9th? Why
5 was there another report done on August 9th? Why was
6 the August 9th report required?

7 A The August 9th report was the culmination of
8 all the discussion between DOT, myself and Group 70.

9 Q Isn't it true that you were responding to
10 the various concerns that DOT had about your previous
11 reports? That resulted in the August 9th report?
12 You're responding to their concerns?

13 MR. LIM: Mr. Chairman, I've let Mr. Kudo go
14 on some. I know he's trying to address credibility, I
15 assume, of the witness. And I want to just make it
16 clear for the record that the August 9th, 2010 report
17 that we submitted as Exhibit 28 includes the
18 September 1 updates.

19 So technically all the questions he's asking
20 him about the report prior to that date are really
21 irrelevant. I've been trying to let him attack the
22 credibility but I just want to make sure the
23 Commission is not confused as to what we actually have
24 before you.

25 CHAIRMAN DEVENS: Understood. Thank you.

1 MR. KUDO: I'm going through this
2 questioning because it leads up to the fact --

3 CHAIRMAN DEVENS: You can go ahead.

4 MR. KUDO: Okay. All right.

5 Q Now, Mr. Okaneku, was your TIAR required as
6 a result of the DOT letter that was contained in the
7 EIS report? That is the letter that I was questioning
8 Mr. Sichter on that required a review and approval by
9 the Department of Transportation of this Project?

10 A Yes.

11 Q Okay. So it's to satisfy that particular
12 requirement, correct?

13 A Yes.

14 Q And to date you have not received an
15 approval from the State Department of Transportation
16 of your report, correct?

17 A Yes.

18 Q And to date you have not received an MOU or
19 MOA from the State Department of Transportation as to
20 outlining the understandings between the Petitioner
21 and the State Department of Transportation in so far
22 as improvements, et cetera, et cetera.

23 A Yes.

24 Q Now, I refer you again to the statement
25 you've been attending meetings with the State

1 Department of Transportation, is that correct?

2 A Yes. That's right.

3 Q And how many meetings have that been?

4 A Since August maybe four or five.

5 Q And who at State Department of
6 Transportation were you meeting with?

7 A We were meeting with the staff members of
8 the planning branch. We ultimately met with Brennon
9 Morioka, former director and Ed Sniffen as well.

10 Q And who were the members of the staff?

11 A They were Ken Tatsuguchi who is the planning
12 branch head. There was Russell Iwase who was the lead
13 reviewer and Robert Miyasaki.

14 Q Now, I'm going to read you the same
15 testimony of the Office of Planning that I read to
16 Mr. Overton.

17 A Okay.

18 Q And this is the testimony of Office of
19 Planning filed in this proceeding regarding the
20 transportation improvements. And it says "Petitioner
21 has agreed to mitigate all Project-generated traffic
22 impacts on the surrounding roadway system as
23 recommended and/or required by the Traffic Impact
24 Analysis Report and to also pay pro rata share of
25 regional transportation improvements."

1 Is that an accurate statement they have
2 actually agreed to that?

3 MR. LIM: Objection. As we stated before
4 we'll have the Petitioner's representative answer this
5 question.

6 MR. KUDO: Well, only if you know.

7 CHAIRMAN DEVENS: Yeah, we'll let him --
8 I'll let him answer to the extent you have personal
9 knowledge.

10 THE WITNESS: No, I don't know that there's
11 an agreement. We're working towards that goal.

12 Q (By Mr. Kudo) Can you tell me, explain to me
13 from your perspective as a professional what a TIAR
14 does?

15 A Okay. The Traffic Impact Analysis Report
16 has basically three purposes: To establish existing
17 condition, to estimate a future condition without
18 project and then a future condition with project.

19 And using the future condition without
20 project as a base line you identify traffic impacts
21 that would result from future conditions with project.
22 And as a result you make recommendations to mitigate
23 those traffic impacts.

24 Q Do you make certain underlying assumptions
25 in reaching your analysis, in doing your analysis?

1 A Yes.

2 Q What kind of assumptions are those?

3 A They are assumptions regarding external
4 growth, which is basically a background growth in
5 traffic, other ongoing projects that have not been
6 constructed yet.

7 Q And how do you go about doing that? I mean
8 do you look at some documents to determine which
9 projects are ongoing or planned for?

10 A In general you do a research of previous
11 traffic studies of projects that have not been
12 constructed yet that are still in the process and
13 using that as your background.

14 Q Now, you mentioned "existing traffic data".

15 A Yes.

16 Q Where is that? How is that derived?

17 A That's done by the manual and mechanical
18 traffic surveys conducted throughout the region.

19 Q So you actually to traffic counts on various
20 intersections and roadway to determines what the
21 existing traffic conditions are or trips generated
22 from various directions, is that correct?

23 A Yes.

24 Q And that's part of your study, your TIAR
25 study.

1 A Right.

2 Q Now, if any of your assumptions are wrong,
3 let's just assume that, would it be fair to say that
4 your conclusions, the mitigation measures, your
5 traffic analysis might be wrong as well?

6 A It depends on the assumptions.

7 Q Well, let's assume it's a major assumption
8 you've made a mistake on. Would it be fair to
9 conclude that the conclusion of your report would be
10 in error?

11 A Possibly, yes.

12 Q If you made errors in calculation, let's say
13 calculating trip generation, or you didn't add trips
14 from one road to another, would it be possible that
15 your conclusions would also be in error?

16 A It depends on if it contributes to the
17 critical movements of --

18 Q Let's say it does contribute to that
19 intersection of that roadway.

20 A It would change the calculation, yeah,
21 that's correct.

22 Q Now, the mitigation measures that you have
23 in table 9 of your TIAR, those are the mitigation
24 measures that come from what?

25 A They're derived from the estimation of

1 future traffic with and without the Project.

2 Q Okay. But there are specific mitigation
3 measures that are mentioned in there. Let's say the
4 ones that pertain to the Kamakana Villages Project.
5 How did you come about those mitigation measures? Did
6 you come up with it? Is it from somebody else or
7 what?

8 A There are some mitigation measures that are
9 ongoing by state and county. The others are to
10 achieve a standard, a minimum level of service that
11 was established by both the county and the state.

12 Q Okay. Are some of these your
13 recommendations?

14 A Yes.

15 Q Can you look at table 9. Do you have it in
16 front of you?

17 A Yes.

18 Q Can you point out to me which are your
19 recommendations?

20 A Okay. With the exception of the first Queen
21 Ka'ahumanu Highway, Ane Keohokalole Highway and the
22 intersection of Palani and Ana Keohokalole and the
23 intersection of Palani and Kamakaeha, Palani at
24 Kealakaha, Palani at Uluaoa. I believe the rest are
25 as a result of the Traffic Impact Analysis. They're

1 mine.

2 Q Do any of those mitigation measures address
3 regional traffic impacts as distinguished from
4 localized traffic impacts?

5 A Yes.

6 Q Which ones are those?

7 A The second column identify what
8 intersections are considered area or regional. I'm
9 equating regional with area mitigation. And the local
10 is Project access.

11 Q How did you come up with the specific
12 traffic mitigation measures that you've recommended in
13 table 9?

14 A Again, I'm trying to achieve a minimum Level
15 of Service D, which is established by the county and
16 the state as a minimum acceptable level of service.

17 Q So let's see if I got this correct. I
18 apologize, I'm not a traffic engineer. If your
19 Project -- if the existing condition is at Level of
20 Service C, which is a measurement of traffic patterns
21 or timing, as I understand it, if your Project makes
22 that go to level E, for instance, what does that mean?

23 In other words today it's C. The Project is
24 built. Now that traffic intersection or that traffic
25 roadway goes to Levels of Service E. What does that

1 mean?

2 A It depends on what the without -- future
3 condition without Project is. Whether the Project is
4 directly causing the E, the drop from C to E.

5 Q Let's assume the Project is causing it to go
6 from C to E.

7 A Okay. So without future condition it's C.
8 The future condition with Project is E.

9 Q Yeah.

10 A The purpose of the mitigation is to bring
11 that operation back up to a minimum Level of Service
12 D.

13 Q Correct. To bring it up to an acceptable
14 level which you said is is level D, correct?

15 A Right.

16 Q So if you miscalculated the trips or you
17 made the wrong assumptions, would that affect your
18 recommendations with regard to getting intersections
19 that went past D?

20 In other words, if you underestimated trips
21 at a particular intersection so that today the Level
22 of Service is C. But because of your underestimating
23 you're projecting Level of Service D, you wouldn't be
24 recommending any mitigation measures, correct?

25 A Right, correct.

1 Q But if you made an error, either assumptions
2 or trip counts or whatever you're doing and it
3 actually was E, would you then recommend a mitigation
4 measure to bring it back to D?

5 A That's the goal of the traffic study, yeah,
6 to --

7 Q To mitigate that, right?

8 A To provide mitigation measures to bring to a
9 minimum Level of service D.

10 Q Now, where in your Traffic Impact Analysis
11 Report, which I believe is Petitioner's Exhibit 28,
12 where do you have the list of the traffic counts and
13 traffic data for all the affected intersections
14 involved in your Project? In other words, your
15 Project impacts certain intersections. So you've
16 probably got that data somewhere. Where is all of
17 that?

18 A Traffic data should be under Appendix A of
19 the traffic study.

20 Q Appendix A. Now, you've analyzed all the
21 intersections affected by your Project, correct in
22 Appendix A?

23 A Yes.

24 Q We noticed that in that Appendix A there's
25 no analysis done of the Palani/Mamalaho junction, is

1 that correct?

2 A That's correct.

3 Q Why don't you think that your Project
4 affects that intersection? Can you explain?

5 A It was not included as part as DOT's study
6 area.

7 Q Do you believe in your professional opinion
8 that that intersection would be impacted by your
9 Project since it's so nearby?

10 A Well, Palani Road is a continuation of
11 Mamalahoa Highway. So basically it's the same
12 roadway. The interaction of Old Mamalahoa t's into
13 the main arterial.

14 Q Would you say that your Project would impact
15 that particular intersection?

16 A To a degree.

17 Q Now, we also noticed you didn't analyze
18 Konalani and Palani intersection, is that correct?

19 A You can repeat that again? The...?

20 Q We noticed in your Appendix K in which you
21 listed all the intersections that your Project is
22 supposedly impacting, you didn't analyze the Konalani
23 and Palani intersection. Is that correct?

24 A That's right.

25 Q Okay. Can you explain to us why that

1 intersection was not included?

2 A I'm not familiar with the intersection.

3 Q In your Appendix A we also noticed that you
4 didn't analyze Queen Ka'ahumanu and Manulani
5 intersection. Are you familiar with that
6 intersection?

7 A Yes.

8 Q Was there a reason why that wasn't included?

9 A Well, again I -- the study area was expanded
10 to meet DOT's requirements. And Manulani I believe is
11 the Lowe's intersection?

12 Q I believe so.

13 A Yeah, okay. Because it's just a minor
14 intersection -- in my opinion it's a minor
15 intersection as opposed to a Henry Street and Queen K,
16 and Queen Ka'ahumanu and Palani, so forth.

17 Q Do you believe that intersection is impacted
18 by your Project?

19 A To a degree.

20 Q Now, we also noticed that you didn't include
21 Halekapili, Henry Street and the Wal-Mart driveway.
22 Is that correct?

23 A Yes.

24 Q Why wasn't that intersection included in
25 your Appendix A?

1 A Again, in my opinion it's a minor
2 intersection.

3 Q Did DOT say "don't include it"?

4 A They did not include it on their list of
5 intersections to analyze.

6 Q Does your Project impact that intersection?

7 A To a degree it may.

8 Q So you've listed a least three intersections
9 here that probably would be impacted by your Project
10 if it were built, correct?

11 A Yes.

12 Q Now I'd like you to turn to table 8.1 on
13 page 86 of your TIAR. Can you explain to us what that
14 table is?

15 A The table is a summary of existing a.m./p.m.
16 conditions at all of the intersections within the
17 study area. They have three measures of
18 effectiveness. That's MOE, Level of Service; LOS;
19 delay in terms of seconds and volume-to-capacity
20 ratio.

21 Q So these tables indicate the traffic counts
22 for intersections in the North Kona region which you
23 believe would be impacted by this Project?

24 A No, they're not traffic counts. They're
25 their measurers of effectiveness. So they're

1 operational measures of each intersection within the
2 study area.

3 Q Can you explain to us what operational
4 measures are?

5 A Again, there's levels of service which is
6 the basic grading system from A to F. They're delay
7 which is average daily per vehicle in seconds.

8 Q So the delay per vehicle is that a factor in
9 calculating what the LOS level is?

10 A Yes.

11 Q So if the delay is beyond a certain time
12 interval --

13 A Correct.

14 Q -- it may move from C to D or D to E, or E
15 to F, correct?

16 A Correct.

17 Q And the longer the term interval the worse
18 the situation gets or the worst category it falls
19 into, is that correct?

20 A Yes.

21 Q Okay. Now, is it correct that the
22 information on tables 8.1 through 8.18 in your report
23 is based on the analysis worksheet that you included
24 in your TIAR in the appendices?

25 A Yes.

1 Q Can you tell me which appendices those are?

2 A Should be from B through J.

3 Q Beg your pardon?

4 A From B through J. Yeah, appendices B, yeah,
5 B through J should be the worksheets.

6 Q Okay. I notice that on all of these tables
7 you use the letters V slash C. What does that mean?

8 A V slash C is the volume to capacity ratio.
9 Basically volume is the demand. C is the capacity of
10 the particular movement to carry traffic.

11 Q What is this measure used -- what is this
12 ratio used to measure?

13 A It's generally used as a second measure to
14 delay, to measure the roadway's capacity and carrying
15 capacity.

16 Q So it's volume of the particular roadway
17 based on the design capacity of that roadway, correct?

18 A Well, the volume is based on demand. So
19 it's what the existing condition is or whatever future
20 traffic you project on it. That's the volume.
21 Capacity is just a measure of the roadway's ability to
22 carry that traffic.

23 Q So let's assume that the ratio is equal to
24 1?

25 A Yes.

1 Q What does that mean?

2 A That means the roadway is carrying as much
3 volume as it can.

4 Q If it's over 1?

5 A If it's over 1 it's more of a theoretical
6 depending how far over 1. If it's like 1.05 it's
7 probably something beyond the theoretical, you know,
8 volume-to-capacity ratio. If it's over 1.2 at that
9 point the demand pretty much exceeds capacity.

10 Q So is it a correct assumption that if the
11 ratio is above 1 that that would also impact the time
12 intervals for traffic to pass through that
13 intersection or travel through that roadway?

14 A Possibly.

15 Q So that would, in effect, affect the LOS
16 level, correct, Level of Service?

17 A Possibly. They're derived separately.
18 That's all I'm saying, separate measures.

19 Q So when you design intersections and
20 roadways do you design it so that it's equal to 1 or
21 less than 1?

22 A Well, the traffic mitigation measures again
23 are to achieve Level of Service D.

24 Q Correct.

25 A So that's the only measure that we are using

1 to develop mitigation measures.

2 Q But do you use the VC ratio in any --

3 A More as a secondary check.

4 Q So it is a verification of whether the
5 roadway or intersection is overcrowded or not --

6 A Yes?

7 Q -- based on a design capacity, correct?

8 A Yes.

9 Q Now, it's our understanding that you are
10 currently working with the State Department of
11 Transportation on which improvements or mitigation
12 measures this Project necessitates in order to
13 mitigate the negative impacts, is that correct? Or
14 has that been agreed to?

15 A We are working on which mitigation measures
16 the developer will implement as part of their fair
17 share of regional impacts.

18 Q Because they're going to contribute to that
19 or build it or whatever.

20 A Yes.

21 Q I'm going to reference you or refer you to
22 QLT's Exhibit 31, which is a summary of area regional
23 traffic mitigation and fair-share allocation dated
24 September 1st, 2010. Do you have that in front of
25 you?

1 A I don't have the exact exhibit, no. I have
2 my version of it.

3 Q Is there more than one version? Because we
4 have the September 1, 2010 version.

5 (Witness looking through documents)

6 A Okay. I have it.

7 Q Can you explain what that chart communicates
8 to us?

9 A Okay. This table is an extension of table
10 9. It's all the recommended mitigation with and
11 without the Project. The columns on the right, three
12 columns on the right represent the cost of the
13 improvement, the Kamakana's fair-share percentage of
14 that improvement.

15 And, let's see... oh, yeah, Kamakana's
16 fair-share in terms of percentage and Kamakana's
17 fair-share in terms of dollars is the last column on
18 the right.

19 Q How did you calculate the percentage
20 allocated fair-share?

21 A The percentage fair-share is a ratio of the
22 total traffic entering an intersection with the
23 Project; that divided into the Kamakana traffic that's
24 entering the intersection.

25 So basically it's Kamakana traffic that

1 passes through an intersection.

2 Q So say if it says 28 percent. That means
3 you've estimated that 28 percent of the traffic in
4 that intersection is being derived or coming from or
5 originating --

6 A Coming from or going to --

7 Q -- Kamakana Villages.

8 A That's correct.

9 Q I'm going to draw your attention to Page 9
10 of the TIAR report, which is Petitioner's 28. You
11 state in the last paragraph -- are you turned to that
12 page?

13 A Yes. I have it.

14 Q I'm going to be turning to some of the
15 assumptions you made in deriving your TIAR report.
16 You state in the last paragraph of your report that
17 "The extension of the south leg of Kamanu Street to
18 the north leg of Kamanu south of Maiau Street is
19 planned as part of the development of the West Hawai'i
20 Business Park," is that correct?

21 A Yes.

22 Q What do you mean by "planned"?

23 A It's my understanding that it's a condition
24 of approval for West Hawai'i Business Park.

25 Q Does that mean that this extension is going

1 to be built?

2 A It's going to be built when the West Hawai'i
3 Business Park is developed, yes.

4 Q Okay. And how did you confirm that?

5 A West Hawai'i Business Park was my project.
6 I did the TIAR for that project.

7 Q So that developer -- who's the developer on
8 that?

9 A Lanihau Properties.

10 Q So Lanihau has committed to doing this
11 particular road?

12 A Yes.

13 Q Has that been communicated to the State
14 Department of Transportation?

15 A Yes.

16 Q Now, I'd like you to turn to Page 10 of your
17 TIAR report. Now, you state that QLT will extend
18 Makaula Boulevard to AKH. I'm using that as an
19 acronym for the mid level road; is that correct?

20 A Yes.

21 Q How did you confirm that?

22 A That is based upon their master plan, their
23 1990 roadway master plan.

24 Q The 19 -?

25 A '90. '91? The EIS.

1 Q So that you're relying on a document that
2 was done 20 years ago.

3 A Well, the most recent document.

4 Q Have you confirmed that with QLT?

5 A Well, that's the most recent document that
6 was available to me.

7 Q But have you confirmed that with QLT?

8 A Not directly, no.

9 Q So that's just an assumption you're making.

10 A Yes.

11 Q Okay. Now, have you analyzed your traffic
12 impact that this particular improvement, the extension
13 boulevard would not be built in the timeframe that you
14 estimated it to be built?

15 A Did I analyze it?

16 Q Did you analyze that?

17 A If the extension's not built, no I did not.

18 Q Well, you're assuming that it's going to be
19 built in a certain timeframe, correct?

20 A Yes.

21 Q So if it's not built in the timeframe, would
22 it impact your Traffic Impact Analysis Report?

23 A Yes.

24 Q Would it impact the level of service
25 possibly, potentially or the V/C at particular

1 intersections?

2 A Yes, possibly.

3 Q Would it impact your conclusions reached in
4 your TIAR report as far as mitigation measures?

5 A Yes.

6 Q Either more mitigation or less mitigation?

7 A Yes.

8 Q Okay. Now, I'll turn your attention now to
9 figure 4 to 31 of your TIAR report. Now, it's my
10 understanding that -- have you turned to that?

11 A Wait. 4 through 31?

12 Q Four through 31.

13 A Okay.

14 Q Can you describe for this Commission what
15 those figures are.

16 A The figures basically show the geometrics of
17 the roadway and traffic volumes, turning volumes --
18 turning movement and volumes on the network within the
19 study area.

20 Q So these are traffic volumes?

21 A Yes.

22 Q Are these existing or projected?

23 A Figures 4 and 5 should be existing a.m./p.m.
24 peak hours.

25 Q Excuse me?

1 A Four and 5 are existing a.m./p.m. peak
2 hours.

3 Q And the rest?

4 A Five and 6 should be year 2014, a.m./p.m.
5 peak hours. Then 2019, 2020, 2029.

6 Q So these figures indicate the traffic
7 volumes for intersections you deem would be impacted
8 by the Project. Is that fair to say?

9 A These are the traffic volumes that are at
10 the intersections within the study area being
11 analyzed.

12 Q Okay. Then you mentioned that figures 4 and
13 5 indicate the existing a.m./p.m. traffic counts,
14 correct?

15 A Yes.

16 Q And these were done because you went out to
17 the roadways and took actual traffic counts, correct?

18 A Yes.

19 Q So this is data that you used in your study.

20 A Yes.

21 Q And you relied on this data for reaching
22 your conclusions, correct?

23 A Yes.

24 Q Now, figure 6 on Page 18, which is part of
25 this, you indicate that the extension of Keanalehu

1 Drive to Manawela Street has already been constructed,
2 is that correct?

3 A What page again?

4 Q Excuse me. Figure 6 on Page 18.

5 A Figure 6.

6 CHAIRMAN DEVENS: Mr. Kudo, we're trying to
7 decide what time would be appropriate time to take our
8 next break. Do you know how much more time you have
9 with this witness?

10 MR. KUDO: Quite a bit actually.

11 CHAIRMAN DEVENS: What's an estimate?
12 Another half hour, hour?

13 MR. KUDO: Probably another hour.

14 CHAIRMAN DEVENS: Okay.

15 MR. KUDO: Should we break at this point?

16 CHAIRMAN DEVENS: No. Why don't we go for a
17 little more.

18 THE WITNESS: Repeat the question again?

19 Q (By Mr. Kudo) I draw your attention to
20 figure 6 on Page 18. And you indicate that the
21 extension of Keanalehu Drive to Manawela Street has
22 already been constructed, is that correct?

23 A Yes.

24 Q Now, I draw your attention to figure 4 on
25 Page 13.

1 A Okay.

2 Q Now, can you tell me why the volumes of
3 traffic that you've assumed for this intersection are
4 not included in this particular figure, figure 4?

5 A Well, it's basically a corner intersection
6 so it's not really an intersection in and of itself.
7 It's basically a continued roadway.

8 Q Wouldn't it contribute to that intersection,
9 the trips?

10 A The trips -- you're talking about existing
11 condition?

12 Q Existing, yeah.

13 A Yes.

14 Q It would, correct?

15 A Sure.

16 Q Yeah. And that would add to the number of
17 trips, right?

18 A Well, like I said I'm analyzing
19 intersections. When you have a corner intersection
20 like this it's not really an intersection because
21 there's no conflicting movements. Basically they're
22 just making a right turn or making a left turn.

23 Q So they're right turn or left turn
24 movements. But is it traffic that actually goes
25 through to the intersection?

1 A No, they're turning movements. It's
2 basically an L. It's a dead end.

3 Q In 2014 will that intersection be a T
4 intersection?

5 A I believe so. With the Project.

6 Q So it will change.

7 A With the Project, yes.

8 Q Do your numbers change as a result of that?

9 A Yes.

10 Q They get higher, don't they?

11 A Generally, yes.

12 Q Okay. Now look on Page 4, excuse me --
13 figure 4 on Page 13 again which shows the existing
14 a.m./p.m peak traffic volumes. Can you look at the
15 Queen Ka'ahumanu/Hina Lani intersection on this
16 figure.

17 A Okay.

18 Q Now, you have listed on this figure 552 cars
19 coming southbound through Queen Ka'ahumanu, correct?

20 A Yes.

21 Q Now turn to appendix B-11.

22 A Appendix B-11.

23 Q This is, I believe, your analysis worksheet.

24 A All right. I got it.

25 Q What number do you have listed?

1 A Wait. Direction again? Southbound through.
2 Is that what you're looking at?

3 Q Right. Southbound through Queen Ka'ahumanu
4 and Hina Lani Street.

5 A 552.

6 Q 552. Correct?

7 A Yeah.

8 Q Can you turn to Page A-8 of your appendices.
9 I'm asking the Commission to bear with me because this
10 is the subject matter of engineers. And it actually
11 ties all together with all of these appendices and
12 charts.

13 A Okay.

14 Q Okay. Is my understanding correct that the
15 information that you state here indicates the actual
16 traffic count data you took on February 9th, 2010?

17 A Yes.

18 Q So what do you have for the existing a.m.
19 southbound through on this particular page?

20 A 729.

21 Q Your latest traffic count result has 729
22 cars, correct?

23 A Yes.

24 Q But you have 552 cars on figure 4 in the
25 analysis sheet. Why is there a discrepancy between

1 the traffic counts? This is existing now.

2 A Okay. If you look on page 11, a.m. peak
3 hour, 7:00 a.m. with the data that I just cited and
4 7:30 time of traffic. I selected a.m. 7:50 as the
5 study hour.

6 Q Why wouldn't you use the same time to study
7 the intersection?

8 A It is the same time. I'm picking a
9 different, another intersection as a critical
10 intersection which is probably Kealakehe Parkway is my
11 guess, and Queen Ka'ahumanu as the more critical
12 intersection and as the peak hour basically.

13 Q So you used another intersection to
14 establish --

15 A To determine the time when the peak hour
16 occurs.

17 Q And a different time for the intersections
18 that you were studying?

19 A No. No. Peak hours vary, right?

20 Q Correct.

21 A Different intersections, different regions.

22 Q Right.

23 A But in the analysis since I'm studying the
24 peak hour of traffic I have to use a 60-minute period.
25 I can't be going 7 to 8 here, 9 to 10 there. So

1 basically I select a peak hour. And I selected 7:50
2 to 8:50.

3 Q Is that an arbitrary determination, peak
4 hours?

5 A No. I look at the worst case condition is
6 what I'm selecting as the peak hour. But again, also
7 because the region has various peak hours, you know, I
8 would select what I would consider the critical peak.
9 Basically what's backing up traffic on Queen K, it's
10 not at Hina Lani. It's at Kealakehe Parkway.

11 Q That's your own determination.

12 A Yes. From what I observed.

13 Q There's no standards that you used to
14 determine that?

15 A There's no standard but it's general,
16 general practices.

17 Q You know, I'm looking at the chart and
18 you're saying that you're using 7:15 to 8:15.

19 A Yes.

20 Q Maybe I'm reading it wrong. But if you add
21 the trips doesn't it add up to...

22 A I hope so. I'm not sure. But anyway, let's
23 see. (Pause)

24 CHAIRMAN DEVENS: You know what, while the
25 witness is looking let me take a short 5-minute break

1 for the reporter.

2 MR. KUDO: Okay.

3 (Recess was held.)

4 CHAIRMAN DEVENS: (5:20) Back on the record
5 Mr. Kudo, you want to continue with your
6 cross-examination.

7 Q (By Mr. Kudo): I believe I left Mr. Okaneku
8 with a question with regard to why the numbers'
9 different and why doesn't it add up in your chart.

10 A There was a discrepancy. I did discover the
11 discrepancy between the worksheet and what I have on
12 my computer. I have to track it down to see where
13 exactly the discrepancy lies. Whether it's old data
14 or a misplaced number in the spreadsheet.

15 Q Now, Mr. Okaneku, I know that the Commission
16 is anxious about the timeframe, and I can go
17 through -- I'm prepared to go through every
18 intersection that's on your sheet. But we did an
19 analysis and that same mistake is carried forward in
20 every intersection --

21 A Okay.

22 Q -- in your charts. Would you agree that
23 that might be the case?

24 A No. Every inter-- every chart?

25 Q Every intersection that is in your figure 31

1 year 2029 p.m. peak hour traffic with Project has the
2 same errors on it. That is the existing traffic
3 counts were not transposed correctly.

4 This particular chart --

5 A Okay.

6 Q -- is based on the future with the Project.
7 But in order to derive this, as I understand it, you
8 must use the existing traffic count, and then project
9 forward what the new trips are with the Project to get
10 this.

11 A Yes.

12 Q Because of the errors, the similar errors
13 that you just described, the discrepancies, what I'll
14 call errors in the numbers that are transposed between
15 your existing trip counts and your analysis, every
16 intersection carries forward the same mistake.

17 CHAIRMAN DEVENS: What's the question?

18 MR. KUDO: Would he agree that that's the
19 case in his analysis. Otherwise I have to go through
20 every intersection and point that out to him. We've
21 done the calculations. They just don't add up.

22 CHAIRMAN DEVENS: I just didn't hear if
23 there was a question in your statement. Well, you can
24 answer.

25 THE WITNESS: Let me cut straight to the end

1 line. If you look at Appendix J, pages 19 and 59
2 those are the projected 2029 a.m. peak hour with
3 Project at full buildout of the Project. If you look
4 at the last column on about the sixth line from the
5 bottom where it says --

6 Q (By Mr. Kudo): Which exhibit?

7 A J19 and J59, sixth line from the bottom
8 which is Level of Service on the far right column
9 which is southbound through you'll see Level of
10 Service B during the a.m. peak hour and Level of
11 Service A during the a.m. peak hour.

12 In other words, that's not the critical
13 movement within the intersection. So the error does
14 not change the proposed mitigation at that particular
15 intersection.

16 Q Well, my question to you was not about, so
17 much about -- you've admitted to the error in this
18 intersection.

19 A Yes.

20 Q I'm saying that would it be fair to assume
21 that that same error has been transposed to the other
22 intersections --

23 A No.

24 Q -- to which it might be significant?

25 A No. They're separate. They're taken

1 separately. They're not continued forward. Each
2 intersection is surveyed separately.

3 Q No, no. I'm talking about your error from
4 transposing the existing traffic counts from your
5 exhibit to your analysis --

6 A Right. It only affects that particular
7 intersection.

8 Q So you're saying that the other intersection
9 numbers are correct?

10 A Well, unless you can point out differently,
11 yeah.

12 Q Okay. Then I'll have to do that.

13 A You understand that each intersection is
14 surveyed separately. I'm not -- I'm not taking one
15 intersection --

16 Q Correct.

17 A -- and taking the through traffic and
18 counting it for the next intersection.

19 Q Correct.

20 A They're all separate.

21 Q I'm using your existing traffic counts for
22 each intersection that you did, not me, you did. I'm
23 telling you that when you transpose them to your
24 analysis they were not correct.

25 MR. LIM: Mr. Chairman, I'd like him to ask

1 questions rather than testify, please.

2 CHAIRMAN DEVENS: Yes, if we can get the
3 question. I understand what you're saying. He's just
4 asking you do you agree that there's other errors in
5 the other intersections.

6 THE WITNESS: I don't know.

7 CHAIRMAN DEVENS: Okay. If you want to
8 point them out, Mr. Kudo, I guess we're going to have
9 to go that route.

10 MR. KUDO: Okay.

11 CHAIRMAN DEVENS: I know you'd rather not
12 but that's the way he's answering.

13 Q (By Mr. Kudo): Okay. Let's turn to Queen
14 Ka'ahumanu and Hina Lani existing a.m. southbound left
15 traffic. I draw your attention to figure 4 on
16 Page 13. Now, what is your traffic count for that
17 same intersection southbound left?

18 A We're talking about the same intersection
19 just a different movement? Is that what you're
20 saying?

21 Q Yes.

22 A Oh, okay. I, I --

23 Q You agree?

24 A -- agree that that intersection --

25 Q Okay. I'll move on to the next question.

1 CHAIRMAN DEVENS: Wait, wait, wait. You're
2 going to drive the court reporter nuts. And it's not
3 your fault. Wait for the answer to come out and of
4 course wait for the question.

5 THE WITNESS: I'm sorry.

6 CHAIRMAN DEVENS: Can you finish your
7 answer? I didn't quite hear what you had said on
8 that.

9 THE WITNESS: Well, he was pointing out a
10 separate movement at the same intersection. And I
11 have already agreed that there is discrepancy within
12 that intersection with the intersection data and the
13 analysis.

14 MR. KUDO: Each intersection has numerous
15 traffic counts. And I can point out each one within
16 each intersection. All he's saying is the mistake is
17 there in that intersection. So I'm going to move on
18 to the next intersection now.

19 CHAIRMAN DEVENS: Okay.

20 MR. KUDO: To show that the similar error
21 was done there. Okay.

22 Q Let's turn to Hina Lani/Mamalahoa existing
23 a.m. northbound through traffic. And I draw your
24 attention to the B13 of your analysis.

25 What was your existing traffic count -- oh,

1 excuse me analysis? What is the number on your
2 analysis sheet B13?

3 A Which direction? Which turning movement?

4 Q This is northbound through traffic.

5 A A.m. peak hour.

6 Q Hmm hmm. Yes.

7 A Pages 313, 314.

8 Q Three hundred fourteen. Correct?

9 A Yes.

10 Q Now, I want you to turn to Appendix A9.

11 Now, the latest traffic count you took on
12 February 9th, 2010 what do you have for the existing
13 trips northbound through?

14 A 282.

15 Q 282. Shouldn't those numbers be the same?
16 If not why not?

17 A That I can't answer at this point. I'd have
18 to go back to the original documents to see where the
19 error occurred, where the print error occurred in the
20 worksheet or spreadsheet.

21 Q Okay. I direct your attention to the next
22 intersection Queen Ka'ahumanu/Palani intersection.
23 I'd like you to look at the Queen Ka'ahumanu/Palani
24 intersection on figure 4 and tell me what you have
25 down for the eastbound right movement.

1 A Again Palani and Queen Ka'ahumanu?

2 Q Queen Ka'ahumanu/Palani intersection on
3 figure 4 eastbound right movement.

4 A 100.

5 Q 100 trips, correct. Can you turn to
6 appendix B5 and tell me what you have there listed for
7 the eastbound right movement for that intersection?

8 A 69.

9 Q B5 says 69?

10 A Oh, A3. What am I looking at? Okay.

11 Q You're getting ahead of me.

12 A Okay. Sorry. It's 100 again.

13 Q 100?

14 A Yes.

15 Q Now, what do you have for your latest
16 traffic count for appendix A3?

17 A 69.

18 Q Why aren't those numbers the same? And if
19 they're not supposed to be the same why not?

20 A I may have rounded up. I have to go back to
21 my....

22 CHAIRMAN DEVENS: Mr. Kudo, how many other
23 intersections do you have?

24 MR. KUDO: 1, 2, 3, 4, 5, 6 --

25 CHAIRMAN DEVENS: Roughly.

1 MR. KUDO: We don't have an accurate number
2 but it's a lot.

3 CHAIRMAN DEVENS: Over 50?

4 MR. KUDO: I mean we didn't think we were
5 going to have to do this for every intersection. But
6 I have -- I can do about 10 of them right now.

7 CHAIRMAN DEVENS: I'm just trying to figure
8 out if you're giving the same question and the same
9 discrepancy that you're offering up --

10 MR. KUDO: Correct.

11 CHAIRMAN DEVENS: -- if the witness is going
12 to give the same answer that you'd have to go back
13 look at the data, would your answer be the same to
14 each of these if there's a discrepancy or the numbers
15 don't match up; that you'd have to go back and look at
16 your data to figure out why?

17 THE WITNESS: Probably, yes.

18 CHAIRMAN DEVENS: Does that satisfy?

19 MR. KUDO: Would we be able to get his
20 answer, after he's looked at his data, to my questions
21 why the discrepancy appears or if there is any?

22 CHAIRMAN DEVENS: Well, he can handle the
23 question the way you want him. I'm just trying to see
24 if we can short-circuit this part of it so we're not
25 sitting here going through a hundred intersections.

1 MR. KUDO: I'm willing to pass by all of
2 these intersections and the inaccuracies that we found
3 provided that we get an answer from Mr. Okaneku if
4 he's going to give the answer that he's going to
5 check. If he admits right now that there are errors
6 then we can just move on.

7 CHAIRMAN DEVENS: I don't hear him saying
8 there's an error. I just hear him saying he's not
9 sure why the numbers are that way. Is that correct?

10 THE WITNESS: Yes.

11 CHAIRMAN DEVENS: Okay. And he can't answer
12 you and tell you why it's that way based on what he
13 has in front of him; is that correct?

14 THE WITNESS: Yes.

15 CHAIRMAN DEVENS: Okay. That's what I'm
16 getting from this.

17 MR. KUDO: But is he going to go back and
18 look at it and give --

19 CHAIRMAN DEVENS: I don't know. You can ask
20 him. I'm not trying to cut you off. I'm just trying
21 to figure out if we can avoid going through 200
22 intersections because we want to go eat dinner pretty
23 soon and come back.

24 MR. KUDO: I do too.

25 CHAIRMAN DEVENS: I don't want to cut you

1 off at a bad spot. Mr. Lim, I don't know if you have
2 any response to any of this.

3 MR. LIM: We would have redirect, obviously.
4 But I think maybe we can resolve it through our
5 agreement to bring Mr. Okaneku back after he's had a
6 chance to look at that.

7 MR. KUDO: Perhaps, Chair Devens, we can
8 take a break now. Then he can have a chance to go
9 look at it.

10 CHAIRMAN DEVENS: Okay. That's fine.
11 Mr. Lim, is that agreeable?

12 MR. LIM: That's assuming that Mr. Okaneku
13 has the material that he's being questioned on.

14 CHAIRMAN DEVENS: Sure. Why don't we take
15 how about an hour break. It's about 5:30 right now.
16 Come back at 6:30. Is that all right?

17 MR. LIM: That's fine.

18 CHAIRMAN DEVENS: Okay.

19 (Dinner recess was held.)

20 CHAIRMAN DEVENS: We're back on the record.
21 Mr. Kudo, we took a dinner break, you had the
22 cross-examination.

23 MR. KUDO: Yes. I believe that during the
24 dinner break --

25 MR. LIM: Excuse me, Mr. Chairman. We had a

1 discussion on our side during the dinner break. And
2 based upon the comments and the issues being raised by
3 the Trust, we would like to request that we can defer
4 continued cross-examination of Mr. Okaneku so that he
5 can review some of the issues being raised by the
6 Trust.

7 I think it will be a lot more efficient if
8 we can get a copy of their notes to show exactly where
9 they think he's made a mistake. He can go analyze it.
10 'Cause I think, as Mr. Okaneku testified, the
11 discrepancy in the numbers because they got raw data,
12 people just counting the cars and him interpreting
13 what that should be whether that's too high, too low,
14 he can make the adjustments. For each of those he's
15 got to go through and determine what it is.

16 So we'd like to make a motion to defer his
17 testimony until tomorrow. And with the request that
18 we get a copy of what the intervenors are looking at
19 with respect to the particular errors or
20 inconsistencies they've been they've pointing out.

21 I think it would help everybody. The
22 Commission's rules talk about the just and efficient
23 conduct of the hearing.

24 We think that that's necessary for us to go
25 and address the issues that he's raising rather than

1 go piece by piece by piece where Mr. Okaneku doesn't
2 know what's coming up next.

3 We have some -- we have a big problem, I
4 guess, with how it's been handled. We've got an
5 intervenor that had the opportunity to give us written
6 testimony. None of these factors -- they've obviously
7 got them pinpointed -- none of these have been
8 disclosed to us.

9 My client will testify that he asked about
10 what were the errors they were talking about and they
11 declined. So it's essentially been to some degree
12 trial by ambush on this issue. So we request that the
13 Commission order that we get the copies of whatever
14 documents they're looking at with respect to the
15 intersections in question. We can have him then check
16 those out.

17 CHAIRMAN DEVENS: Is that agreeable,
18 Mr. Kudo? I mean, it sounds fair.

19 MR. KUDO: It sounds fair. I will tell you
20 that the number of intersections we estimate that have
21 the same problem is a little bit over a hundred to 150
22 intersections. We can do that. It will take us some
23 time. We don't have a -- we didn't have enough time
24 to do a study of this.

25 We just went through Mr. Okaneku's report.

1 And our assumption was he knew what was in his report.
2 So we were going to ask him about his report. We're
3 not talking about a document he's never seen before.

4 CHAIRMAN DEVENS: I mean you're picking out
5 numbers. There's so many, many numbers. In fairness
6 to him you can't expect him to have remembered every
7 single number on the report.

8 So can you at least point out to them what
9 intersections you're looking at; at least point to the
10 data that you think there may be a discrepancy? At
11 least give the witness a fair chance to go back, look
12 at whatever data he has. Then he can explain it.

13 I can tell you the other thing is that I
14 think the Commission's more interested in whether or
15 not that makes a difference at the end on the impact.

16 MR. KUDO: I think that's the point I'm
17 going to reach. Because when you have all these
18 cumulative impacts in the errors on the base
19 information that you have and then you add on your
20 assumptions which may also be --

21 CHAIRMAN DEVENS: I understand where you're
22 going. You know, that's to be seen. I agree with
23 Mr. Lim that he should be given a heads up on that,
24 given this witness a fair chance to look at the
25 information or the points that you're raising. 'Cause

1 I'll tell you what. We're not going to go through a
2 hundred fifty intersections.

3 MR. KUDO: I don't want to do that. That's
4 why --

5 CHAIRMAN DEVENS: We're not going to do
6 that, number one. Number two, let's give him the data
7 and let's let him go look at it. We'll come back
8 tomorrow with this witness. And then you can cross
9 him all you need to cross him on that.

10 MR. KUDO: It's going to take us a little
11 while to get all the intersections together. But...

12 CHAIRMAN DEVENS: What are you referring to
13 when you were questioning him right now? Don't you
14 know exactly what intersections?

15 MR. KUDO: We know the intersections that we
16 have here.

17 CHAIRMAN DEVENS: Okay.

18 MR. KUDO: But there're more. Did you want
19 it all or just the one's we have here?

20 CHAIRMAN DEVENS: Well, it's whatever
21 Mr. Lim needs so that this witness or whatever this
22 witness needs to adequately prepare. I mean I know
23 you're trying to avoid going through a hundred fifty
24 intersections. So to me that makes sense.

25 MR. KUDO: Whatever Mr. Lim wants.

1 MR. LIM: We'd like all copies if they can
2 give that to us. We'll pay for the copies.

3 CHAIRMAN DEVENS: It's something we're going
4 to do tonight, right? Get it to you guys tonight so
5 you can --

6 MR. LIM: That's correct.

7 CHAIRMAN DEVENS: -- I hate to say 'work
8 through the night' but at least try get this ready for
9 tomorrow.

10 MR. LIM: That's our goal. That's our goal.
11 I think it would be much more efficient in terms of
12 the Commission's time that we get a chance to look at
13 those things.

14 Like I said, just because there's a
15 difference between what's in the appendix and the
16 table doesn't necessarily mean that that's a mistake.

17 CHAIRMAN DEVENS: Right. I understand. I
18 don't think anyone's drawing that conclusion right now
19 without more. But I understand where Mr. Kudo may be
20 going with the questioning and certainly has a right
21 to make his point. What information can you give him
22 at this point?

23 MR. KUDO: We can give him the intersections
24 that we pointed out these problems to that we were
25 going to go through before I would ask him: Do you

1 agree that this is a mistake that's carried forward
2 through all the intersections he's done.

3 But also in addition to this issue we have
4 problems with other portions of the TIAR in terms of
5 the calculations. So I know I have more stuff to do
6 later.

7 MR. LIM: We'd obviously like to have a look
8 at that too. This is all supposed to happen in their
9 Statement of Position and their written testimony.
10 They said: We think we have questions on the
11 discrepancies in the traffic report. That's all they
12 said.

13 MR. KUDO: You have to understand we didn't
14 have a lot of time to prepare for this one in terms of
15 the analysis of their traffic impact report.

16 We had to engage a traffic person to look at
17 everything and give us the report and go through it
18 and prepare for this hearing. We didn't have a whole
19 lot of time. This is an expedited hearing.

20 CHAIRMAN DEVENS: I can totally sympathize
21 with what you're saying. On the other hand, I'm not
22 into, you know, providing information for the first
23 time here.

24 I'm into, like, hey, let's level the playing
25 field, get everything in advance, let's just give a

1 full disclosure. I think that's fair to everyone
2 there. I'm not saying you had any intent to do
3 otherwise. I understand the short fuse.

4 So can you give them all that information as
5 far as point out to Mr. Lim the data that you think
6 might be in question so that he can take that back
7 tonight and sit down with the witness and figure this
8 out?

9 MR. KUDO: Can I consultant with my people
10 to determine --

11 CHAIRMAN DEVENS: Sure. We'll take a short
12 break on this.

13 (Recess was held.)

14 CHAIRMAN DEVENS: (6:45) We're back on the
15 record.

16 MR. KUDO: Chairman Devens and the
17 Commission, you have to understand we were working on
18 this, and I literally mean all night last night 'til
19 this morning compiling these numbers.

20 We can have something to Mr. Lim by 10
21 o'clock but we have to end the hearing now for us to
22 start to prepare those things. It's in basically
23 handwritten form. So we have to make it in a form
24 that he can understand. But we can give it to him by
25 10 o'clock this evening. But we need time to do it.

1 CHAIRMAN DEVENS: Can one of your assistants
2 start on that while we push ahead with the next
3 witness?

4 MR. KUDO: Well, that means my associate has
5 to go and I kinda need her.

6 CHAIRMAN DEVENS: I'm sorry, who's the next
7 witness you were going to call, Mr. Lim?

8 MR. LIM: That would be Mr. Tom Holliday,
9 the market witness.

10 CHAIRMAN DEVENS: Do you know approximately
11 how much you had with him? How long you had with him?

12 MR. LIM: We were going to have probably 10
13 minutes at the most. I think they have called a
14 market witness on their side so I wanted to give some
15 of the foundation for Mr. Holliday's testimony.

16 CHAIRMAN DEVENS: It's 7 now. Let's go off
17 the record.

18 (Off the record.)

19 CHAIRMAN DEVENS: Let's go back on the
20 record. So we've all agreed that we will defer the
21 questioning on Mr. Okaneku for now, and that
22 Mr. Kudo's agreeable to put the data, the information
23 together on the points that he was going to continue
24 crossing this witness on and provide that to Mr. Lim
25 tonight after we finish this evening's hearing.

1 And we'll move ahead to the next witness
2 which, I understand, Mr. Lim, will be Mr. Thomas
3 Holliday and then on to Mr. Jon Wallenstrom, is that
4 correct?

5 MR. LIM: That's correct.

6 CHAIRMAN DEVENS: Is that agreeable to all
7 the parties? Parties have any objections to that?

8 MR. YEE: No objection.

9 MS. MARTIN: No objection.

10 CHAIRMAN DEVENS: Okay. Hearing none, why
11 don't we move onto the next witness, Mr. Lim. Thank
12 you for working this out for us.

13 MR. LIM: Thank you, Mr. Chairman. We
14 appreciate the consideration shown by the Commission
15 and the other parties. We'll be calling as our next
16 witness Thomas Holliday from the Hallstrom Group.
17 He'll be testifying about market, economic and fiscal
18 issues. His direct written testimony is Exhibit No.
19 57.

20 CHAIRMAN DEVENS: Mr. Okaneku, thank you for
21 your patience in letting us work this out.

22 THOMAS HOLLIDAY,
23 being first duly sworn to tell the truth, was examined
24 and testified as follows:

25 THE WITNESS: Yes.

1 CHAIRMAN DEVENS: Please state your name and
2 address.

3 THE WITNESS: Thomas Holliday. I work for
4 the Hallstrom Group, 1003 Bishop Street, Suite 1350
5 Pauahi Tower, Honolulu, Hawai'i.

6 CHAIRMAN DEVENS: Thank you. Mr. Lim.

7 MR. LIM: Thank you very much, Mr. Chairman.

8 DIRECT EXAMINATION

9 BY MR. LIM:

10 Q Mr. Holliday, did you prepare a study for
11 the proposed Kamakana Villages at the Keahuolu
12 community?

13 A Yes, I did.

14 Q The Intervenor has submitted some testimony
15 and exhibits from their proposed witnesses Mark Boud,
16 I guess is how you say it, B-O-U-D.

17 A Yes.

18 Q Have you seen those documents?

19 A Yes, I have.

20 Q Okay. So could you please give the
21 Commission a summary on the basis for your estimate or
22 your opinion that the Kamakana Villages is a viable
23 Project?

24 A Okay. Thank you very much. I'd like to
25 clear up a couple things, first of all. It was said

1 earlier, reported that the density of the Project is
2 17.4 units an acre. That is incorrect. The density
3 of the entire Project is 8.6 units per acre. That's
4 2300 some odd units divided by 272 acres.

5 The net, net, net building area equals to
6 about 17.4 units per building lot. And those numbers
7 are not outside of the common market scheme.

8 As a matter of fact there's other proposed
9 projects in West Hawai'i right now that have overall
10 project densities between 6.5 and 9 units per acre.

11 And the building of 17 and-a-half units per
12 acre on a net building site, again, is not out of
13 character. Even on a net basis 5,000 square foot lots
14 equal 8 and-a-half units per acre. So I just wanted
15 to clear that up. That seemed to be a number that was
16 moving apart.

17 We did a study and we based it primarily on
18 the state population forecast for the County of
19 Hawai'i which we break down using General Plan
20 information and data to the district of North Kona.
21 Then we identify the greater Kailua-Kona area as being
22 the market for this Project. And that would be from
23 Keauhou to Keahole.

24 In addition to the numbers of doing this
25 Project there was also the market experience which the

1 Project will offer. It's been 25 or 30 years, I'm
2 getting very old, that we have been working in this
3 area with the various public agencies and private
4 developers. And this is the type of project that the
5 market is expecting to see in this area.

6 As West Hawai'i moves from continually from
7 an agrarian to an urban service economy it will have a
8 greater demand on its land, resources. People will
9 want better things in their life and their lifestyle.

10 And in the context of the plan this type of
11 project is the type of thing that should be seen next
12 in Kailua-Kona. Because one of the things it provides
13 is a master planed community concept for the average
14 person.

15 Historically the neighbor islands master
16 planned communities were for wealthy people. So it is
17 great that an opportunity exists for the average
18 worker to live in an environment where they get the
19 benefit of schools, parks, open space, paths and
20 commercial support within a walking environment as
21 opposed to haphazard home building and separate
22 condominium project building spread throughout the
23 district.

24 We believe that there's a market for the
25 Project even though it represents a different step

1 forward from what we have historically seen. Over the
2 last 10 or 15 years we've seen tract housing in Kona,
3 which we have never seen before.

4 We have seen more people willing to live in
5 multi-family environments than we have before. This
6 is a natural progression in that continuing step.

7 Q We've got both residential and commercial
8 product, and mixed-use product in this Project.
9 What's the basis for the residential market outlook?

10 A Well, based upon our analysis the demand for
11 residential homes -- and these are not resort
12 residential but homes serving the local household in
13 the community -- will be between some 7500 and 10,000
14 homes over the next-- to the year 2030. And that
15 would cover the area when the subject Project would be
16 being built.

17 During that same period there's a lot of
18 potential supply out there. And at this point in time
19 and in this area it's really hard to get a handle on
20 all the different projects. When we did this study it
21 was the depths of the recession. Fortunately things
22 are turning around a bit now.

23 So there's a little bit better prognosis.
24 But many of the projects are stalled. Many of the
25 projects' financiers have dropped out of the market.

1 So it's very important for us from a market
2 perspective that the planning support and the support
3 of the community go towards the people who are moving
4 forward in the process to build the needed product to
5 service the households that exist.

6 So we find that just on an observation basis
7 that Forest City is making the continuing steps
8 through the recession and moving forward in a quick
9 ability in order to provide product.

10 However, even if you look at all the
11 different potential product in the competitive area
12 from Keauhou to Keahole, it is unlikely that enough
13 will be built over time to meet all the demand.

14 And what will be built would probably not
15 really meet the lower end demands for those people in
16 the affordable and workforce housing groups.

17 So we have decided and determined that there
18 is a need for the subject Project relative to
19 demand/supply quotients.

20 Q Does this demand apply also to the
21 commercial aspects of the Kamakana Villages?

22 A Yes. We did not complete a regional
23 commercial study. We looked at how much would be
24 generated, commercial demand, would be generated by
25 the Project itself.

1 Because one of the parts about a TOD
2 community and in this type of moving forward
3 environmentally sensitive community is you want to be
4 able to provide people with the services they need in
5 their community so they don't have to go on the roads
6 and pack up the Palani Road/Queen K intersection
7 anymore than it is.

8 And from a market perspective people hate
9 driving down there. I mean that is where the
10 commercial is. But people who live up mauka, as I did
11 at one time, driving down Palani Road becomes more and
12 more contentious particularly for
13 neighborhood-oriented services and goods.

14 And so both within the community of Kamakana
15 Villages and in the adjoining communities you would
16 find demand for commercial product at that location.

17 Q Did you undertake an analysis of the
18 economic impacts of the Project?

19 A Yes, we did. We developed a model that
20 depicts the lifespan, if you will, of the development
21 from groundbreaking through total sellout and
22 stabilized operation.

23 During that period there's going to be over
24 \$700 million of capital poured into West Hawai'i. It
25 will create some, during its buildout, some 11,000

1 worker years of jobs. Upon stabilization it will
2 offer about 933 fulltime equivalent employment
3 positions on and offsite.

4 We also estimated the total owner population
5 the resident population at about 5,300 individuals and
6 the school-age children at about 1100 individuals.

7 Overall household income will be about
8 \$230 million a year after buildout. There will be
9 about \$140 million in taxable sales taking place
10 inside the Project.

11 The county of Hawai'i will receive about
12 \$62 million during buildout and \$6 million a year
13 thereafter; the state, \$280 million during buildout
14 and 26 million thereafter.

15 Because residential communities, and this is
16 heavy on the residential, require services, while
17 businesses/industrial generally collect more in taxes,
18 it is a slight shortfall to both the state and county
19 on a stabilized basis.

20 Q So in your professional opinion is there a
21 market support for the residential and commercial
22 components of the Project?

23 A Yes.

24 Q Will the Project development have a positive
25 impact on the employment opportunities and economic

1 development?

2 A Yes, certainly, and particularly with regard
3 to the construction industry and trades which are in
4 dire straits at the moment.

5 Q You said you had a chance to look at the
6 written direct written testimony of Mark Boud. Do you
7 have that?

8 A I don't have it in front of me I'm afraid.
9 Yes, I do. Excuse me. Yes.

10 Q One of the concerns raised by Mr. Boud was
11 that there was a concern that the extremely high
12 density of the master plan for Kamakana is something
13 that he was concerned about and whether it was viable
14 or not.

15 A Again, I think that that is misconstruing
16 the reality. When you start looking at a whole
17 project you have to look at the entire Project Area.
18 That includes the roads, the parks, the schools and
19 whatever when you are assessing what the density of
20 the project is.

21 And the overall density is not 17.4 units
22 per acre as he has in his testimony. The overall
23 density is 8.6 units per acre which, again, is not out
24 of context with other new projects in the area or
25 certainly with the type of urban TOD project that this

1 is intended to do.

2 Regards to being a net figure there's a lot
3 of examples in Kona, particularly along Ali'i Drive,
4 where a lot of owner/occupants live that are at those
5 densities and higher on a net basis.

6 Q I think that Mark Boud also concluded with
7 respect to the commercial space at Kamakana Villages
8 that instead of absorption of the 197,000 square feet
9 proposed that he estimated that only 132,973 square
10 feet or 60 percent of your estimated demand would be
11 absorbed.

12 What's your comment on that?

13 A Well, I would say that there can be
14 professional differences of opinion. But I think the
15 most important thing that comes out of that is even
16 with his numbers at 133,000, if you will, rounded
17 square feet there's a huge neighborhood shopping
18 center that's required there.

19 A typical neighborhood shopping center is
20 110-, 120,000 square feet. So I think there is no
21 doubt from a planning perspective you need a
22 commercial center and the market demand even from an
23 Intervenor conservative trying to protect their own
24 market share perspective is going to be a
25 substantially large product.

1 And I would say the difference we're having
2 is minimal and that it is likely -- we would consider
3 it likely that with a shopping center of this size
4 there's always the potential for another store or two
5 to be in there.

6 The difference between us is not that
7 substantial. And it does indicate there is a need for
8 a major neighborhood shopping center in the location.

9 Q Thank you.

10 MR. LIM: I have no further questions.

11 CHAIRMAN DEVENS: County, do you have any
12 cross-examination for this witness?

13 MS. MARTIN: Yes I do.

14 CROSS-EXAMINATION

15 BY MS. MARTIN:

16 Q Do you have your written testimony in front
17 of you?

18 A No, I do not, I'm afraid. I apologize for
19 that.

20 Q Could you go to the bottom of Page 9,
21 please?

22 A Okay. Yes.

23 CHAIRMAN DEVENS: Counsel, what page was
24 that?

25 MS. MARTIN: This is Exhibit 57, page 9.

1 CHAIRMAN DEVENS: Page 9. Thank you.

2 Q (By Ms. Martin) The last, I guess, question
3 34 indicates that the county is anticipated to receive
4 6.8 million annually in real property taxes, is that
5 correct?

6 A Correct.

7 Q And that represents 75 percent of the cost
8 to provide the services to the Project?

9 A Correct.

10 Q And so I take it the county is expected to
11 incur the 25 percent.

12 A I guess you could interpret it that way.
13 But again the idea that is within the context of the
14 greater community residences and residential
15 developments require more government services.

16 They generally do run a negative. While
17 commercial and industrial development generally
18 creates more tax dollars and uses less services.

19 So the answer is yes but within the context
20 of increasing the size of the pie, the economic pie in
21 the community, it would be hoped that the county would
22 recover through commercial or industrial development
23 taking place offsite.

24 Q Okay. But all what I asked you was that
25 25 percent, that's not accounted for for the cost of

1 the services, that will be something that the county
2 will have to pick up, correct?

3 A Correct.

4 Q So if 75 percent is equal to 6.8 million is
5 it correct, then, 25 percent would be about
6 2.2 million a year?

7 A Correct. 2.177404.

8 Q Okay. And the number of affordable housing
9 units is about what? 1,169?

10 A Half of the units.

11 Q Do you know how much that would be per year
12 if the county had to incur about \$2.2 million a year?

13 A I'm afraid I don't understand the question.

14 Q If the county is expected to take
15 2.2 million additional expenses --

16 A May I clarify something first?

17 Q Sure.

18 A In order to be most fair in the process we
19 look at county costs and state costs on a per capita
20 basis by saying that every individual that comes into
21 the county shares or represents an equitable burden as
22 everybody else relative to the county budget.

23 If we had looked at this on an actual cost
24 basis, which would require a volume this big
25 (gesturing) the number may very well be less than the

1 per capita cost.

2 The per capita cost represents the maximum
3 amount the county should expect to spend. So just
4 wanted to clarify that.

5 Q I was just asking, though, if you knew how
6 much for each one of those affordable housing units
7 the 1,169, how much per unit it would be for the
8 2.2 million that's not paid by the real property
9 taxes.

10 A I'm not sure that you can necessarily say
11 it's just the affordable units that help create that
12 deficit. But if you did it would be \$18,000 a year or
13 something? I'd don't have my calculator in front of
14 me.

15 MS. MARTIN: Okay. Those are all the
16 questions I have. Thank you.

17 CHAIRMAN DEVENS: Mr. Yee.

18 CROSS-EXAMINATION

19 BY MR. YEE:

20 Q I just have a point of clarification. The
21 per capita contribution that you're calculating would
22 be required for county services, are these the
23 marginally increasing costs for the county or is this
24 an average?

25 A The average. We take the county budget over

1 a series of years, and we take the resident population
2 and we divide them into each other.

3 Therefore county service on a per capita
4 basis including capital contribution, road
5 maintenance, everything else the county has to do, we
6 divide up between the people equitably with the
7 concept being that anybody new into the county brings
8 the same level of burden as the existing members to
9 the county. And therefore has to be accounted for.

10 Q So currently at least part of that cost is
11 being borne by the existing per capita population.

12 A Correct. You're throwing people all into
13 the same pot, if you will.

14 Q Did you do a calculation for the marginal
15 increase in cost?

16 A No. Again that has to be done on an actual
17 cost basis. The marginal increase in cost is going to
18 be likely less, particularly once you start talking
19 about the school that they would be building here and
20 the parks they would be providing on site.

21 The assumption is that that is the maximum
22 amount that would be the cost being added. The
23 marginal cost is slightly less.

24 Q On the other side of the equation, when you
25 calculated the increase in property taxes, I take it

1 this is the total amount of property taxes, not the
2 increase?

3 A The total amount created by the development.
4 For the income to the county we look at the Project.
5 We basically build it out, and assess each of the
6 individual units, apply the mill rate, tax mill rate
7 to the values created in the Project.

8 And that generates the tax dollars that flow
9 to the county each year in property tax.

10 Q But presumably some amount of property tax
11 is being paid today on its existing classification.

12 A On the land, yes, it is.

13 Q So you didn't calculate out, then, the
14 marginal increase in revenue either?

15 A Well, it's not that difficult. If you give
16 me a second I can tell you what it is. Right now
17 the -- once the land is, would be entitled, we would
18 have about \$120,000 a year in taxes. And then it
19 would go up to the total of 6.8 million. So the
20 marginal increase would be from the one to the other.

21 MR. YEE: Okay. No further questions.

22 CHAIRMAN DEVENS: Mr. Kudo.

23 CROSS-EXAMINATION

24 BY MR. KUDO:

25 Q Hello, Mr. Holliday. I have a few questions

1 of you. You mentioned earlier in your testimony about
2 the difference between gross density, I believe, and
3 net density.

4 A Correct.

5 Q So if I had a project that had 20 units on
6 an acre within a larger project, the way I'd lower the
7 density of that particular acreage from 20 units per
8 acre is to divide it by the total acreage of the
9 entire project, correct?

10 A I guess correct, yeah, if I understand you.

11 Q That's the definition of what a gross
12 calculation is.

13 A Gross, yes.

14 Q You're including open space, roads, sewage
15 treatment plant, other things --

16 A Yes.

17 Q -- that may be included in the Project
18 unrelated to residential dwellings.

19 A I don't think "unrelated" is appropriate.
20 You can't have a residential product without --

21 Q -- not having residential dwellings on that
22 lot.

23 CHAIRMAN DEVENS: You can't talk over each
24 other.

25 Q (By Mr. Kudo): In other words, not having

1 the residential designation for that property the
2 property would be designated commercial, would be
3 designated preservation/open space or some other
4 zoning designation, is that correct?

5 A Again I disagree. You can't have a
6 residential project without roads. You have to have
7 access to it. So you can't divorce the roads from it.
8 You can't divorce the sewage treatment plant from it.
9 Those are all parts to develop the project.

10 And you could not expect to achieve a
11 hundred percent efficiency on any project that you
12 build from scratch. There is always going to be land
13 that has to be put to other sources. So when you talk
14 about the Project you have to talk about the entire
15 Project site.

16 Q Are you saying that the density based on the
17 gross area is more significant than density of these
18 residential uses on a net area basis?

19 A Um, I'm not sure that the differences
20 between gross and net are that important to the
21 individual buyer on a project-wide basis. I think a
22 person who's buying a unit cares about the density of
23 their project in their neighborhood, what's happening
24 on their block. I'm not sure they really care what's
25 happening a half mile away on the order side of the

1 Project.

2 So I think from a market basis we can talk
3 about numbers. But does it really impact the
4 potential buyer of one of the finished units? I don't
5 think so.

6 Q So density based on a net basis is not
7 important from a market analysis?

8 A It is important comparative with what else
9 could be bought. But from the standpoint when you
10 start talking about project-wide basis, project-wide
11 basis is not that important factor for an individual
12 person buying an individual unit. They care about
13 what's happening on their block in their project.

14 Q Well, when I look at your market study, if
15 density based on a gross basis is so important, why do
16 you use only the number for density on a net basis in
17 your market analysis?

18 A I don't use the number in my market
19 analysis. I mean it's put on a table. But if you
20 look at the very first opening paragraph of my report
21 it states right there how many units there is and how
22 much acreage there is on there.

23 I mean you are pointing to one little number
24 on one chart that did not have an impact on our
25 analysis. It's just a number on a chart.

1 Q Let me see if I got you correct here.
2 You're saying that a market analyst like yourself
3 doesn't consider that the net number, the density of
4 units on a net basis, is important for figuring out --

5 A Of course it is important. Because you're
6 talking about product types and how those product
7 types will sell.

8 Q But isn't that why you're using it in your
9 report?

10 A We just put it into the report as indicative
11 of what the average net density is. And, again, we
12 could provide, if you'd like, a list of projects
13 throughout Kona that are densities at about that type
14 on net acreages. So from a market perspective the
15 question is will a person in the Kona market buy
16 something at that average net density. The answer is
17 yes. The answer is yes.

18 And I don't think that they're making that
19 decision based upon what's the overall Project. They
20 look at the density of what they are buying. And we
21 considered that in our study.

22 Q So you're saying buyer of a house, it
23 doesn't make any difference if the house is located on
24 an acre in which there are three other houses, that is
25 4 units per acre or 36 units per acre?

1 A That's not what I said. I said that the
2 owner, purchaser does look at their immediate
3 neighborhood.

4 Q So the net number is significant for
5 purposes of how buyers make decisions as to whether to
6 buy or not.

7 A Correct. Correct.

8 Q Now, you state in your written testimony --
9 do you have a copy?

10 A Yep.

11 Q I refer you to page 6 of your written
12 statement, question 25: "What is the basis for your
13 general residential market outlook for Kamakana
14 Villages?" Your written answer, "Kamakana Villages is
15 unique in terms of the property itself as well as its
16 offering of a wide spectrum of pricing and unit
17 types." Is that correct?

18 A Correct.

19 Q Now, on page, I believe, 45 of your report,
20 if you could refer to your market study --

21 A I hope the paging is the same.

22 Q It's called Capital Investment and
23 Construction Cost, that particular paragraph. It's
24 also mentioned on Page 19.

25 A Okay.

1 Q That 97 percent of the affordable units are
2 multi-family units, that average 750 square feet with
3 only 3 percent, 31 units, being single-family homes
4 averaging 1,250 square feet, is that correct?

5 A Correct.

6 Q Under your testimony would you consider that
7 to be a wide spectrum of pricing and unit types that
8 is 97 percent of the units at 750 square feet?

9 A That's 750 square feet on average, which
10 means they're going to be one -- I would assume they
11 would even perhaps have one bedrooms, maybe even some
12 senior studios available.

13 Q So --

14 A And this is just an average. And I'd like
15 to point out that number is put in in order to
16 generate the economic impact models.

17 That it is not intended to be a commitment
18 by the developer over a specific number. But you have
19 to have some basis in order to generate the economic
20 impact models.

21 And that type of square footages is
22 supportable economically and price-wise and still
23 allows the Project to be economically feasible. So
24 that would be a broad range. It's not like every unit
25 is going to be 750 square feet. It's an average.

1 Q So do you know how many units in this
2 Project are going to be at 750 square feet or less?

3 A No, I do not. You'd have to talk with the
4 proponent.

5 Q I just wanted to ask you in doing your
6 market study did you include commercial demand and
7 supply beyond the Project's boundaries?

8 A No.

9 Q You only included the demand from the market
10 product, the affordable housing product you're
11 producing there on site.

12 A No. And first of all, it's all the product,
13 not just the affordable.

14 Q Excuse me.

15 A But the idea was everything within its
16 reasonable trade area. It would be expected that the
17 commercial center there would attract people from
18 nearby subdivisions who currently have to drive 5 to
19 10 minutes in order to get elsewhere.

20 It would have certain interception, people
21 driving down Palani Road would use it. So it is not
22 entirely dependent upon, however the most consumers
23 would come from the community itself.

24 Q So you didn't include the market demand that
25 Wal-Mart or our project or a project like Lanihau's

1 project would create?

2 A No, no. We did not do it on a regional-wide
3 basis.

4 Q Is that typical?

5 A Sometimes yes, some times no. The problem
6 here is there is just so much potential inventory of
7 commercial. And in addition you have a lot of light
8 industrial inventory that is often used for
9 commercial.

10 So we were interested in specifically what
11 was the need for commercial within the Kamakana
12 Villages Project at this location and how would it
13 impact people moving past that location. We did not
14 do a regional-wide study. That was not part of the
15 scope of our study.

16 MR. KUDO: Thank you. That's all the
17 questions I have.

18 CHAIRMAN DEVENS: Commissioners, any
19 questions for this witness? Hearing none, any
20 redirect?

21 MR. LIM: No redirect.

22 CHAIRMAN DEVENS: Thank you very much, sir.

23 MR. LIM: Our next witness is Jon
24 Wallenstrom.

25 CHAIRMAN DEVENS: And his testimony is

1 Exhibit 74?

2 MR. LIM: His testimony is Exhibit 74,
3 that's correct.

4 CHAIRMAN DEVENS: We'll swear in the
5 witness.

6 JON WALLENSTROM
7 being first duly sworn to tell the truth, was examined
8 and testified as follows:

9 THE WITNESS: I do.

10 CHAIRMAN DEVENS: State your name and
11 address, please.

12 THE WITNESS: Jon Wallenstrom. Address is
13 5173 Nimitz Road, Honolulu, Hawai'i 96818.

14 CHAIRMAN DEVENS: Mr. Lim.

15 MR. LIM: Thank you very much. I'll be
16 asking Mr. Wallenstrom some more questions rather than
17 do just a brief summary.

18 DIRECT EXAMINATION

19 BY MR. LIM:

20 Q Mr. Wallenstrom, could you please state your
21 position with Forest City Hawai'i Kona, LLC.

22 A I'm the president of the Forest City
23 Hawai'i.

24 Q How long have you held that position?

25 A I have held that position for, gosh,

1 approximately five, six, months although my
2 responsibilities have always been to run the Honolulu
3 office.

4 Q When did you come to Hawai'i to take this
5 job?

6 A About four years ago.

7 Q The questions that the parties have had and
8 I'm sure the Commission has had, is what experience
9 does Forest City have as a company to develop a
10 project of this size. And how do you intend to
11 compete in this relatively down real estate market.

12 A Okay. Forest City is about -- we're a
13 90-year-old company. We have grown from a company
14 that's roots were in literally -- the company started
15 building carports for Model T's. So that was the
16 company's start.

17 From there we kinda grew very slowly, very
18 deliberately, very consistently. The company has done
19 that by structuring deals many, many, many,
20 public-private ventures, and doing it with thoughtful
21 jurisdictions where again we make money slowly,
22 consistently and go forward.

23 In a down market you make money by finding a
24 market that's needed. In this case Kona needs
25 affordable housing. We structured a deal that allows

1 that to happen. And we know how to do it.

2 In fact, we currently are in Honolulu in a
3 50-year public/private venture building with the
4 military. Forest City has co-invested in that
5 project. So we brought our equity. We used federal
6 equity. We joined it together. In the midst of the
7 Lehman meltdown we built about 9,706 homes, many of
8 which, most of which are tenanted by people of
9 affordable means.

10 Q Approximately how many homes has Forest City
11 built on O'ahu within the last two years?

12 A Last two years we've built -- now we're
13 ramping down a little bit so last two years we've
14 built 13 to 1500, something like that.

15 Q Ever since you've been here approximately
16 four to five years ago about how many total homes?

17 A Two thousand three hundred I think it is,
18 2,300 I believe.

19 Q How did Forest City become involved in the
20 Kamakana Villages Project?

21 A There was an RFP that the state put out. We
22 answered that RFP, along with others.

23 Q What steps has Forest City taken towards
24 realization of this Project after entering into a
25 development agreement?

1 A Well, we have had numerous, numerous,
2 numerous public meetings. We have had extensive
3 outreach into the community. We have looked at the
4 market. We have looked at infrastructure. We've done
5 quite a bit of planning exercises which you folks have
6 seen. We've done everything a developer does as you
7 gear forward.

8 Q Has Forest City had experience doing high
9 density Transit-Oriented Developments such as proposed
10 in Kamakana Villages?

11 A Yeah, we have. I just can't begin to say
12 how much I bristle at this kind of density discussion
13 because it's not density. It's parks, it's houses,
14 it's liveable communities, walkable communities.

15 On the flight over today I was reading ULI
16 Magazine. This month's ULI Magazine had a story about
17 Washington, DC. And in Washington, DC walkable
18 communities right now are selling at paces a hundred
19 seventy percent faster than tired development that
20 we've seen.

21 Frankly, I mean very respectfully and with
22 lots of outreach into the community, the people are
23 reacting against this. Kona doesn't have these
24 walkable communities. The people want this. And it's
25 happening elsewhere. And the sales pace is greater

1 than it is on other forms of development.

2 Q In terms of the actual buildout of the
3 Petition Area for Kamakana Villages how many
4 increments are planned?

5 A Six increments. Well, six phases, two
6 increments that are divided up as well.

7 Q The Petitioner's asking that the Land Use
8 Commission approve both increments 1 and increment 2
9 at one time rather than be subject to incremental
10 redistricting. Can you tell the Commission why that
11 would be necessary?

12 A Yeah, yeah. It's a question of what you
13 want. Is it an absolute? It's not an absolute. You
14 can build smaller things, you can rely on a smaller
15 market, but it begins to tie the hands of a developer.
16 You can't finance the same way.

17 So when we're building, the massive volume
18 that we're building with the military right now we can
19 do that because we have a 50 year partnership with the
20 Department of Defense. We're co-investing in. We're
21 able to float bonds, enormous bonds to allow ourselves
22 to do that.

23 So as you create more diversity of product,
24 as you create a more interesting development, quite
25 honestly, you're able to avail yourself to better

1 financing, more interesting, longer-term, more
2 assuery to various financial bodies that they
3 actually get paid back.

4 Q So is it true that the project size and
5 duration affect the ability to obtain favorable
6 financing?

7 A Absolutely.

8 Q If the Kamakana Villages Project was subject
9 to a 10-year incremental approval, would that
10 negatively impact on your ability to obtain other
11 financing options?

12 A Yes.

13 Q What types of financing options would be
14 foreclosed?

15 A Well, you know, it wouldn't be -- it would
16 be, quite honestly it would be a -- I don't know that
17 you would absolutely close the door on anything. But
18 what would happen is you just couldn't do as much or
19 do it as well.

20 When you're doing a large Master Planned
21 community, which we've done a number of, your ability
22 to build more sewer, more water, more roads, most
23 importantly more parks, more schools, more things that
24 increase quality of life are dependent upon the length
25 and duration of your buildout. Because the banks know

1 that if they miss this market cycle they get it in the
2 next market cycle.

3 Q Based on the offsite infrastructure cost
4 this appears to be a very extensive Project. How does
5 Forest City intend to finance the Project?

6 A We intend to get through our zoning. Then
7 we'll look at a variety of options. We've cut these
8 in very different ways. There's not one Forest City
9 project that's financed the same as the others.

10 We've done CFD's, we've done TIF's, we've
11 floated bonds, we will go out to the financial markets
12 and figure it out in the best way possible.

13 The nice thing in this we are co-developing
14 with the state of Hawai'i. The state of Hawai'i has
15 invested money into this. So we've got a wonderful
16 partner in HHFDC.

17 They have given us tools that allow that we
18 can leverage, we bring significant financial
19 capability as well in that combination. That's a very
20 strong, strong, strong combination.

21 Q So Forest City itself will be bringing
22 developer equity into the Project as well as
23 financing.

24 A Absolutely, absolutely.

25 Q The Commission is required to assess the

1 manner in which the Petitioner will address the
2 housing needs of low income, low-moderate income
3 groups.

4 Please describe how you're going to address
5 the housing for these lower and median income groups.

6 A We'll mix it together. The whole
7 development plan -- we have a portfolio of about 35 --
8 and I should be careful -- about 30 to 40,000
9 apartment units. So this is just one of the many
10 parts of the Forest City portfolio.

11 Within that portfolio, and again, with some
12 qualification, but really not very much qualification,
13 those units are by and large financed through low
14 income housing tax credits.

15 And in this sort of structure we have, the
16 vernacular would be we'd do a lot of 80/20 deals or
17 60/0 deals.

18 What that means is that 80 percent of the
19 units are for market, 20 percent are for affordable,
20 60/40 same idea. So what's wonderful and beautiful
21 about it is you do mixed incomes. You bring these
22 people together.

23 We have a project in Bethesda, Maryland
24 where we have a professional basketball player and we
25 have teachers in the same project.

1 So that's what we intend to do here. We
2 will mix it together. We'll bring market in. The
3 market will help to subsidize the affordable. To a
4 certain degree right this minute the market is
5 affordable.

6 So that's where we're going first. We can
7 do that because we can bring in some state money. We
8 can bring in our own money and we can go forward.

9 Q Just to wrap up, what is Forest City's
10 commitment to stay in Hawai'i and active in Hawai'i,
11 both on O'ahu and for this particular Project?

12 A Yeah, I would like to answer that. We have
13 a couple of commitments. No. 1 we're trying to clean
14 up a mess. We've heard a little bit about "clean up
15 the mess". We are trying to do something that that
16 the community asked for.

17 The community doesn't want the traffic,
18 automobile-focused development that's occurred.
19 They've asked for TOD. They've asked for
20 Transit-Oriented Development. They've asked for these
21 things.

22 So we're going to clean up that mess. We're
23 going to do it for 20 years here. We're doing it for
24 50 years on O'ahu on military projects.

25 In terms of making a profit and going away,

1 I've got to maintain roads in O'ahu in the military
2 for another, actually 44 years. So I guess it's a 44
3 year commitment there.

4 Here we intend to commit to the 20 year
5 buildout. We hope and intend to do retail and 65
6 years leases. So we have a long-term commitment here.

7 MR. LIM: No further questions.

8 CHAIRMAN DEVENS: County, do you have any.

9 MS. MARTIN: Cross-examination for this
10 witness?

11 xx

12 CROSS-EXAMINATION

13 BY MS. MARTIN:

14 Q Is it correct that there's only going to be
15 31 single-family affordable homes in this Project?

16 A I think all the numbers in there are guides.
17 So we don't have -- we are committed to 51, 50 plus
18 1 percent of the homes to be affordable. As we ran
19 the numbers those are the numbers.

20 In answer I'd have to look specifically.
21 But as we ran, my presumption is you're looking at the
22 same numbers that went into the underwriting that we
23 worked on with HHFDC.

24 Q So if that's in the petition on Page 23 that
25 would be accurate as to what you're projecting

1 single-family homes would be 31?

2 A I think -- I presume that to be correct. I
3 don't argue with what you're saying.

4 Q And I guess for the multi-family affordable
5 homes we're looking at 1,138, is that correct?

6 A I think that's probably right as well.

7 Q It would be the balance.

8 A My presumption's that's correct. I don't
9 argue with that number.

10 Q Do you know the size of the units for the
11 multi-family?

12 A It will be a range. It will be a range from
13 small units to large units all over the board. And
14 again a walkable community that people can walk to go
15 get their groceries and walk back, walk to the school.

16 Q Do you have a breakdown as to the different
17 sizes for the multi-family? For example a studio
18 versus a 2 or 3-bedroom?

19 A We're going to build this for 20 years. So
20 the market will change over those 20 years I guarantee
21 it. What it will change to I don't know exactly.

22 But, and you look at some of the other
23 developments we have done like Stapleton, you'll see
24 where we have adjusted sizes to go where the market
25 is. Again committing to 50 plus one affordable. So,

1 no, I can't really tell you absolutely what will
2 happen over the next 20 years.

3 MS. MARTIN: That's all I have. Thank you.

4 THE WITNESS: Thank you.

5 CHAIRMAN DEVENS: Mr. Yee?

6 MR. YEE: No questions thank you.

7 CHAIRMAN DEVENS: Mr. Kudo.

8 CROSS-EXAMINATION

9 BY MR. KUDO:

10 Q Mr. Wallenstrom, is it fair to say that
11 Forest City's forte is military housing?

12 A No, that's not true. That's a very, very,
13 very small percentage of our portfolio.

14 Q In Hawai'i what other types of affordable
15 housing other than this Project and other than
16 military housing have you built?

17 A We haven't built any housing. We have two
18 photovoltaic facilities we're building in addition to
19 this master planned development. But I bring 2,300
20 people within the Forest City family who help me with
21 this. They're not located in Hawai'i, but we have 230
22 people here --

23 Q Your headquarters is where?

24 A Headquarters in Cleveland. Please let me
25 finish. We have 230 people here in Honolulu, many of

1 whom have built many, many, many homes here.

2 Q Now, military housing is different from
3 market housing, is it not?

4 A Right now the military housing that we're
5 building no, it's not. The military housing that
6 we're building right now with an enormously biased
7 perspective and for the record it is biased, is much
8 nicer than that the market housing that's being built
9 today.

10 But in the past military housing was very
11 substandard. So I don't think there's an enormous
12 difference between military housing and other housing.

13 Q So there's no difference between military
14 housing and market housing?

15 A If you go to our house and you go to a D.R.
16 Horton home I think you will find many of the things
17 that we do to be much better than a D.R. Horton home.

18 You'll probably find them to do some things
19 better than us but you won't notice enormous
20 differences.

21 Q Are the military homes for sale to
22 individuals?

23 A They're rental.

24 Q They're all rental, isn't it?

25 A They're rental. People have those --

1 Q They're owned by the United States
2 government.

3 A No, they're not. They're owned by --

4 Q Who are they owned by?

5 A They're owned by a partnership between
6 Forest City and the United States military. So
7 they're owned by Forest City in addition to the
8 military.

9 Q And they're rented to military personnel.

10 A They are but not exclusively. There's a --
11 we have, there's a waterfall of preference for the
12 military homes. So first you offer them to military
13 personnel. Then you offer them down to another
14 person. Eventually you offer them to civilians. We
15 do have civilians in some of our homes.

16 Q They're not for-sale fee simple units.
17 They're the rental projects, large rental projects
18 basically, right?

19 A Yeah. We have rental projects in this
20 project as well. And we've built many, many, many for
21 sale homes in addition to many, many rental homes both
22 locally with people in my office and nationally.

23 Q Now, you've had experience on the mainland I
24 suspect of building similar types of projects?

25 A I've been in many -- I've built -- I have.

1 I've built in many master planned communities. I've
2 built condos, I've built apartments. I've worked on
3 master plans -- I've built homes so, yeah, I have,
4 yes.

5 Q Have they been of a similar density, we're
6 talking net density of 17.4 or more per acre?

7 A They've been as high as a hundred to the
8 acre. They've been as low as 3 to the acre. So,
9 yeah, I've done a whole variety of things.

10 Q So in your experience of building these very
11 dense projects --

12 A This isn't dense. I don't agree with that
13 characterization. I'm sorry.

14 Q I'm referring to the projects on the
15 mainland that you just cited, a hundred units per
16 acre. Are those high-rises?

17 A I've done about 65 units to the acre in a
18 4-story construction. So that's not a high-rise.
19 That would be, you'd call a mid-rise or garden
20 product. And I've done high-rise too. So, no,
21 they're not high-rise, I'm sorry, in direct answer to
22 your question.

23 Q So in your experience in working or
24 constructing these very highly density projects, 65
25 units per acre, that's to me very dense, have you

1 encountered any social problems developing with people
2 who occupy those units such as neighborhood conflicts
3 and such? Versus, say, projects where there's only 4
4 units per acre?

5 A I want to be very careful when I answer
6 this. I think I have had many more problems in less
7 dense communities. The problems that I have had, so I
8 have had problems.

9 I've issues in less dense communities where
10 you actually don't have eyes on things happening,
11 there are more dark corners, there are more problems
12 like that.

13 In the more dense communities, if they're
14 really well designed you can design in things that
15 actually make them very safe.

16 But this isn't, this isn't relevant because
17 at least in this Kona Project this is a design that
18 density is the wrong word. It's the exact wrong way
19 to describe this.

20 This is a walkable community. This is where
21 things are going. It's a departure from what's
22 happened. It's a departure from the
23 automobile-focused development that, frankly, is in
24 the ahupua'a right now.

25 Q I'm glad that you acknowledge that there are

1 some social problems that develop in high density
2 neighborhoods.

3 A I didn't.

4 Q Are you aware that the Lili'uokalani Trust
5 is involved in neighborhood mediation --

6 CHAIRMAN DEVENS: Mr. Lim has an objection.

7 MR. LIM: Mr. Chairman, I'd like to request
8 that counsel refrain from trying to put words in my
9 client's mouth.

10 MR. KUDO: I thought that he said that he
11 wasn't aware of any social problems.

12 THE WITNESS: There are social problems in
13 housing of all kinds. So you're right, there is
14 housing problems.

15 Q (By Mr. Kudo): Are you aware that the
16 Lili'uokalani Trust is involved in mediating
17 neighborhood conflicts in neighborhoods such as these
18 where there's high density?

19 A No, I wasn't aware of that. But at least I
20 don't -- well, I haven't seen a community -- and again
21 with profound, and I don't want to say this because I
22 don't want to sound -- there are very few communities
23 in the country like the one we're proposing.

24 There's a community in Kentlands which is in
25 kind of North Bethesda area of Stapleton, Forest City

1 community. So again with profound respect and
2 without, I don't want to sound bad, but I haven't seen
3 the type of community that we're hoping to develop in
4 the state.

5 So I don't think QLT could possibly, in fact
6 it's impossible for QLT to be dealing with some issue
7 on a similar community when that community doesn't
8 exist.

9 Q Okay. Are you familiar with any projects
10 around this particular Project that has similar
11 densities?

12 A No. Similar, no similar layout.

13 Q I beg your pardon?

14 A No similar layout. Plenty with similar
15 densities. They're plenty with similar densities.
16 None with kind of a similar development structure.

17 Q Which projects are those?

18 A We've heard plenty of references earlier.

19 Q Well --

20 A Along Ali'i Drive. I can't say them by name
21 but I could call Tom Holliday back up and he could
22 recite them once again. But these folks have heard
23 this already.

24 Q But you can't name any project in the near
25 vicinity of this particular Project that has a density

1 of 17.4 units per acre or more.

2 A I can visually look at projects along Ali'i
3 Drive. And I think we all can look at projects and
4 recall them in our mind's eye that are density greater
5 than this. And when I talk about density you're
6 talking about 17.4.

7 But we can -- hypothetically we would never
8 do this, but hypothetically I could change that to
9 less than 17.4. We would just have to get rid of the
10 parks. We'd have to get rid of the other things.
11 That's not what we're going to do.

12 Q Are those projects that you're referring to,
13 and I don't know which projects those are on Ali'i
14 Drive, are they projects that include 2300 homes?

15 A No. No, no, no.

16 Q Are they high-rises?

17 A There aren't any high-rises. They aren't
18 high-rises.

19 Q On Ali'i Drive I'm talking about.

20 A No. Nor are there high-rises in this
21 Project. So I don't understand the relevance.

22 Q Well, I don't know. Are you saying that
23 there are projects with 17.4 units per acre or more?
24 I don't know what the top number is.

25 A May I ask for -- I mean does -- there are

1 projects on Ali'i Drive at high density.

2 Q Okay. Now, I'd like to refer you to the
3 testimony, and I referred this to several of the other
4 witnesses already, of the Office of Planning with
5 regard to transportation improvements.

6 Are you the person that is addressing this?
7 Or is Mr. Randle going to address those questions on
8 traffic?

9 A I can try. I would like to address some
10 questions probably at a high level. But quite
11 honestly I won't be able to answer all the specific
12 issues.

13 Q Should I reserve them for Mr. Randle?

14 A Specific details. But if you have any
15 general questions, policy, big questions about the way
16 this Project works I'd appreciate that.

17 MR. KUDO: No further questions. I'll
18 reserve my questions for Mr. Randle.

19 CHAIRMAN DEVENS: All right. Commissioners
20 have any questions for the witness? Commissioner
21 Jencks.

22 COMMISSIONER JENCKS: Thank you.
23 Mr. Wallenstrom.

24 THE WITNESS: Yes, sir.

25 COMMISSIONER JENCKS: Couple questions. Did

1 you say -- I thought I heard you say that the mix on
2 the affordable would be 60-40 rental/owner occupied.
3 Is that what you said?

4 THE WITNESS: Well, I didn't say that in
5 reference to this Project. The question was about
6 mixing incomes together and does that create problems.

7 COMMISSIONER JENCKS: What would you project
8 for this Project to be the mix?

9 THE WITNESS: On the rental?

10 COMMISSIONER JENCKS: On the affordable
11 side. Would you have a component that's
12 owner-occupied?

13 THE WITNESS: Oh, yeah. Yes.

14 COMMISSIONER JENCKS: And rental.

15 THE WITNESS: Yes, absolutely. No question.

16 COMMISSIONER JENCKS: Would it be 50/50?

17 THE WITNESS: No, no, no. I'd like -- we--
18 so Forest City, we have a larger appetite, quite
19 honestly, for income-producing properties. We like to
20 own retail. We like to own.

21 COMMISSIONER JENCKS: You mentioned the tax
22 credit program --

23 THE WITNESS: That's right. We like to own
24 rentals. I would love to do a large percentage of
25 rental. I don't think, and quite honestly, I don't

1 think the market is going to be there to do 700, 800
2 rentals.

3 There'd be nothing wrong with that, quite
4 honestly. That's a good thing. You can do that very
5 well. It allows people to move up into the for-sale
6 housing but I don't think right now -- and again the
7 market will change.

8 COMMISSIONER JENCKS: Sure.

9 THE WITNESS: The one thing that is certain
10 is the market will change.

11 COMMISSIONER JENCKS: There was reference
12 earlier about the ceiling for the affordable being
13 hundred 40 percent of the county median.

14 THE WITNESS: That's right.

15 COMMISSIONER JENCKS: What is the breakdown
16 below that in terms of -- we have 1100 units --

17 THE WITNESS: Good question.

18 COMMISSIONER JENCKS: -- do you know what
19 the breakdown is?

20 THE WITNESS: We've talked about a
21 breakdown. I won't be able to quote it exactly. When
22 people are worried, and I think it's a valid worry and
23 concern. If we tried to sell everything at 140,000 of
24 median you'd get about five people, right?

25 So we're going to have to, in order to meet

1 the market in order to sell, to rent these things,
2 we're going to have to go to people at 80, at 70, at
3 60, at 120 at 130 so we're looking at a broad
4 spectrum.

5 COMMISSIONER JENCKS: Does your pro forma
6 incorporate --

7 THE WITNESS: It does. It does.

8 COMMISSIONER JENCKS: Question on the
9 market-rate product. That's at the upper end, the
10 mauka end of the Project. It appears to all be
11 single-family for the most part.

12 THE WITNESS: Well --

13 COMMISSIONER JENCKS: Let me follow up.
14 Would your intention be to subdivide and sell parcels
15 to merchant builders to build the product?

16 THE WITNESS: We'll do some of that. We
17 will do some of that. Just real quickly, the reason
18 that it looks that way, and I may be repeating and I
19 shouldn't do that, it's a lot more level down on the
20 mid-level road. So as you go up it gets steeper and
21 we've gone to bigger lots.

22 COMMISSIONER JENCKS: It's easier to do that
23 as well.

24 THE WITNESS: That's right.

25 COMMISSIONER JENCKS: On the plans that were

1 shown on the PowerPoint that I'm reviewing on the file
2 I see a lot of roadway. These roadways, will they be
3 built to county standards and then dedicated to the
4 county? Will the open spaces be dedicated for
5 maintenance? Who's going to take care of all that
6 stuff?

7 THE WITNESS: We're still in discussion with
8 the county so it's probably premature. We'd like more
9 to be dedicated, quite honestly. But that's a good
10 thing. There's been a lot made about exemptions and
11 those sorts of things.

12 Some of the exemptions are so that we can
13 spend more money. We do have more roads. We have
14 alley-fed homes. That's actually expensive but it
15 creates a quality of life. It creates an aesthetic
16 that people appreciate. It helps us sell things. It
17 will make for a better community.

18 So, again, we're trying to do things very,
19 very differently.

20 COMMISSIONER JENCKS: Somebody has to pay
21 for it.

22 THE WITNESS: Somebody has to pay for it.

23 COMMISSIONER JENCKS: Thank you.

24 CHAIRMAN DEVENS: Commissioner Kanuha.

25 COMMISSIONER KANUHA: Thank you,

1 Mr. Chairman. The Office of Planning has a number of
2 recommended conditions. Are you familiar with those?

3 THE WITNESS: I am. I am, yes.

4 COMMISSIONER KANUHA: Are you in agreement
5 with any or all of them?

6 THE WITNESS: As we've gone through and the
7 Office of Planning has questioned each witness, I
8 haven't felt any disagreement with any of them. So we
9 are good with the conditions.

10 COMMISSIONER KANUHA: Okay. What about the
11 condition for -- or even the representation for
12 incremental development?

13 THE WITNESS: Well, maybe I better be
14 careful. Okay. So I probably need to be careful with
15 that last statement. Could you read me the condition?
16 Would that be okay? I apologize.

17 COMMISSIONER KANUHA: Basically it talks
18 about....

19 THE WITNESS: Oh, the phasing?

20 COMMISSIONER KANUHA: Yes.

21 THE WITNESS: That's fine. That's fine.
22 I'm good with the -- I'm good with the condition for
23 the incremental plan.

24 COMMISSIONER KANUHA: That's condition 21,
25 recommended condition 21.

1 THE WITNESS: Yeah, which is this one. Yes
2 I'm fine. Yes. I'm sorry. I apologize.

3 COMMISSIONER KANUHA: In your testimony you
4 seem to indicate that it would be easier, you know,
5 not to have that incremental requirement in order to
6 accomplish better economies of scale, et cetera.

7 THE WITNESS: Yeah. I should clarify. So
8 what that condition allows us to do -- and it's
9 good -- if forces our feet to the fire -- to do some
10 very, very important improvements. Those are the
11 sorts of improvements that we can go out and get
12 funded and we have to do in order to build out. We're
13 dead serious about getting this thing built. So I'm
14 very comfortable with those conditions.

15 COMMISSIONER KANUHA: You know, when you do
16 these projects the way they're set up you have these,
17 I guess Forest City Hawai'i, what is it? Is it a
18 subsidiary of Forest City Enterprises? Is that how it
19 works?

20 THE WITNESS: Yeah. We have a number of
21 companies, frankly, here. Our project with the
22 military, which is we've done a billion dollars worth
23 of work here, is in a LLC. So you set up separate
24 companies to do all of these things.

25 So we have a company, I'm the -- I guess

1 technically I'm the vice president. I'm the president
2 of the operation here. But for corporate purposes or
3 legal purposes I'm the head guy on Forest City
4 Sustainable Resources which is doing a PV deal. I'm
5 the head guy in Kona doing this, et cetera.

6 COMMISSIONER KANUHA: So this Forest City
7 LLC is in some kind of a partnership joint venture
8 development agreement with HHFDC?

9 THE WITNESS: We are technically not in a
10 partnership. We are the selected developer. We have
11 a loan which is different than a partnership. But it
12 really acts -- we're acting as partners. It really is
13 a partnering relationship. I don't think --
14 technically you can't be partners.

15 COMMISSIONER KANUHA: Okay. So based on the
16 material that's been submitted, Forest City Hawai'i
17 has a \$25 million loan from the state in order to
18 initiate this Project.

19 THE WITNESS: Yes.

20 COMMISSIONER KANUHA: What does Forest City
21 Hawai'i, LLC what is it bringing to this in terms of
22 financial capability then?

23 THE WITNESS: We -- millions of dollars. We
24 have submitted our current statement. Actually that's
25 very old. But we are already as of January 1st, 2010

1 we're a million dollars in. And we spent a lot more
2 than that in the next year so we bring equity as well.

3 So we bring, we bring equity. I'm sorry. So
4 specifically we bring equity. The state brings debt
5 on the early portion of the Project. So our equity
6 co-mingles with the State's debt.

7 Then our intention is to go out and further
8 finance that, bring more Forest City equity in to
9 co-mingle again with debt. And that can be bonds,
10 that can be TIF money. That can be a lot of different
11 things.

12 But we will continue to add equity in as the
13 Project proceeds. The Project's really based on that.
14 We bring a lot of equity into this Project.

15 COMMISSIONER KANUHA: And if you're not able
16 to bring in equity or anything to the Project, then
17 what happens to your agreement?

18 THE WITNESS: We have certain hurdles that
19 we have to achieve or the agreement would blow up. We
20 would we, would fall out of contract is what would
21 really happen in this.

22 COMMISSIONER KANUHA: Okay. Are some of
23 these financing mechanisms, the ability of the Project
24 to get started, are they contingent upon your
25 receiving any or all those exemptions that you're

1 asking for from the county?

2 THE WITNESS: Yeah. Yeah, they are. But
3 the exemptions are, they're not -- at this point we're
4 asking for exemptions for affordable homes. Those
5 would be the financial exemptions. And I'm
6 generalizing a little bit. But I think that's the
7 right way to characterize this.

8 Some of the other exemptions save some
9 money. But quite honestly, again, some of the
10 exemptions we're asking for are going to cost us. It
11 is going to cost us to do these alleys.

12 It's a significant expense. So is it going
13 to -- it would be a hardship to the Project. I don't
14 know if it would kill it but it would be a hardship to
15 the Project.

16 COMMISSIONER KANUHA: If you didn't get
17 certain of these exemptions.

18 THE WITNESS: Yes.

19 COMMISSIONER KANUHA: Finally, are you
20 asking -- is Forest City asking for any exemptions
21 from the state, state of Hawai'i?

22 THE WITNESS: I don't -- I don't think so.
23 No, none whatsoever.

24 COMMISSIONER KANUHA: Okay. You know, I
25 think from my standpoint I'm asking some of these

1 questions because No. 1 this is a fast track Project.
2 No. 2 it's being represented as an affordable housing
3 Project.

4 And some of us have been on this Commission
5 for years and years and years. We have heard this
6 same story and there's nothing that's come forth.

7 I think, at least from my standpoint, you
8 know, if there's a favorable consideration from my
9 position on this it's going to be very tight. I mean
10 I just want to make sure that this one doesn't get
11 away from us.

12 THE WITNESS: It's tight, it's very tight.

13 COMMISSIONER KANUHA: Thank you.

14 CHAIRMAN DEVENS: Commissioner Judge.

15 COMMISSIONER JUDGE: Thank you. I just have
16 one question. That's regarding the education. I know
17 in reading all of the submissions that you've been in
18 talks with the Department of Education. Have you
19 reached an agreement, a formal agreement with them?

20 THE WITNESS: Let me let Race answer the
21 specifics but I would love to talk a little bit about
22 education and some of the things we've done.

23 In terms of the absolute agreement with the
24 Department of Education, Race is probably more
25 equipped.

1 One of the things that we did submit, so as
2 Forest City does these big Master Planned communities
3 we have vast experience. And we believe that
4 education is a corner stone of the success. So we
5 have a requirement to do one school.

6 We've offered up to do another school.
7 That's part of our development plan. It's a very --
8 it's a very important component to that plan.

9 Because that's, again, part of the
10 walkability community, part of the open space, again
11 that's driving the 17, which is not a realistic
12 number. But, we're projecting that one to be a
13 charter school or something of that ilk.

14 We have recently done a charter school in
15 Denver. That charter school is for the children who
16 come into that school -- and this happens to be a high
17 school -- have come in generally at a greater grade or
18 two grades below their associated kids of the same
19 age. Every single one of those kids has gone to
20 college.

21 So we take education enormously seriously.
22 It is what drives markets. People show up to
23 communities because there's good schools. And we
24 intend to try to do that. And that's tough. It's a
25 tough thing to do but we'll take that very, very

1 seriously.

2 COMMISSIONER JUDGE: So are you saying -- I
3 see that there are two school sites. One's a DOE
4 site, another one is another school site, perhaps a
5 charter school site. Are you making the
6 representation that you will also build that school?
7 Or are you just gonna --

8 THE WITNESS: We will try to do it. It's
9 been the focus in other Forest City communities.
10 There is a track record of us doing that. We believe
11 it's very important.

12 Our deal with the DOE, and we do have a deal
13 which Race really should answer, is in relations to
14 the other school. It's in relation to the DOE school
15 which, again, is very important. It's in the center
16 of our plan.

17 It's all roads literally, figuratively in
18 this case, but really both, all roads lead to that
19 school. We anchor this community around that school.
20 So it is critical to us.

21 COMMISSIONER KANUHA: One other question
22 about your parks. I saw in one of the exhibits that
23 you also designate within those parks you have
24 playground sites.

25 Are those playground structures that those

1 little red dots are? Are you familiar with that?

2 THE WITNESS: I'm probably not absolutely
3 familiar. But we have various sized parks. We have
4 kind of linear parks that have houses up against them,
5 two very large regional parks. And we program all of
6 those.

7 What the programming is is going to be
8 different. Every green space won't have a play
9 structure because that wouldn't be appropriate. But
10 you can see it in our military community that we've
11 interspersed them.

12 We have looked very carefully at walking
13 radii so that we know mothers and strollers can get to
14 those other places.

15 COMMISSIONER JUDGE: Right. That's your
16 diagram that's in your literature. What I'm asking is
17 that when you build those parks will you be putting in
18 those playground structures into those parks?

19 Or will that be something that the county
20 has to do?

21 THE WITNESS: Oh, no. We'll put -- the
22 county isn't going to take those little parks. I mean
23 that's just an absolute. Race will need to talk to
24 some of the county things.

25 But I can tell you right now I don't even --

1 frankly, many of those parks will be parks where we'll
2 end up putting in play structures, the smaller ones,
3 particularly.

4 COMMISSIONER JUDGE: So where you have them
5 illustrated in the exhibit that shows the playgrounds,
6 you will be putting those playgrounds in?

7 THE WITNESS: That is our intention. Things
8 do change. So I would venture to say things will
9 change over time. We will put in parks within
10 reasonable walking distances to houses.

11 And we have everywhere else we have
12 developed. It would be silly not to. You would hurt
13 your market. It's not a good decision.

14 COMMISSIONER JUDGE: Right. Because one of
15 things we're supposed to do is make sure that the
16 representations are met. If we look at these
17 things -- I have a small child and I know that
18 playgrounds are very important.

19 It's one thing to look at a nice green grass
20 field. It's another thing to have a playground where
21 the kids can actually go and play.

22 So I think that would be a very important
23 component. When I saw that that's the first time I've
24 ever seen that.

25 And I think that's, I think that's very

1 important when you're saying you're creating these new
2 neighborhoods and walkable communities and all those
3 things are great.

4 But I think, well, myself we've been in
5 these things where people say, "Yes, that's our
6 intent."

7 But we want to make sure that these get
8 followed up on and that there's a commitment to
9 actually do, you know, what's being represented to us.

10 THE WITNESS: Yes.

11 CHAIRMAN DEVENS: Commissioner Heller, then
12 Commissioner Lezy has a question.

13 COMMISSIONER HELLER: Actually, Commissioner
14 Judge's question was pretty close to what I was going
15 to ask. But, again, going back to the school sites.

16 I think you said, if I heard right, that
17 there's an agreement with the DOE or at least an
18 agreement that's close to being finalized?

19 THE WITNESS: I think we have an agreement
20 with the DOE. We have an agreement.

21 COMMISSIONER HELLER: Going back to the
22 school site. Then who is actually going to own the
23 site and build the school?

24 THE WITNESS: Let me, let me let Race. I'm
25 99 percent certain I can answer that question but it

1 would be better if Race did.

2 COMMISSIONER HELLER: Okay. That's all I
3 was going to ask.

4 CHAIRMAN DEVENS: Commissioner Lezy.

5 COMMISSIONER LEZY: Thank you, Chair.
6 Thanks for your testimony, Mr. Wallenstrom. I'm going
7 to put you a little bit on the spot here.

8 THE WITNESS: Once again. (Laughter).

9 COMMISSIONER LEZY: It seems that one of the
10 concerns has been raised by the Intervenor, the
11 Lili'uokalani Trust, is that the joint venture between
12 HHFDC and Forest City is attempting somehow to exploit
13 the 201H process in order to shirk responsibilities
14 for infrastructure costs, and to try to essentially
15 pass those infrastructure costs onto other landowners
16 in the surrounding area.

17 And I'm just wondering how you would
18 respond.

19 THE WITNESS: I don't believe that. I don't
20 think that's true. We have, we have worked a long
21 time with the Department of Transportation. And I'm,
22 frankly, in speaking maybe, you know, I'm disappointed
23 that we're not further along. But we will get there.

24 We will satisfy their requirements. Maybe
25 we have. Let's let DOT testify. I mean it would be

1 nice to hear from them. But to the extent we have
2 we're going do. It's important. We will work with
3 DOT.

4 We will satisfy what they want us to
5 satisfy. Some idea that this Project is getting it
6 easy, I absolutely beg to differ.

7 COMMISSIONER LEZY: Thank you.

8 CHAIRMAN DEVENS: Any other questions? Any
9 redirect, Mr. Lim?

10 MR. LIM: No redirect.

11 CHAIRMAN DEVENS: We'll take our break at
12 this point. Mr. Lim, if I can just ask you it looks
13 like you have two witnesses left.

14 MR. LIM: That's correct.

15 CHAIRMAN DEVENS: Mr. Randle and Mr. Rashid.
16 Do you know approximately how much time you're going
17 to take with each witness?

18 MR. LIM: I think we'd like to have
19 Mr. Sohrab Rashid, he's a traffic peer reviewer, to
20 testify after Mr. Okaneku does tomorrow. We could
21 take Mr. Randle, depending upon on the
22 cross-examination questions, I could have Mr. Randle
23 up and down from my side in five to ten minutes.

24 CHAIRMAN DEVENS: Mr. Rashid, do you have an
25 estimate? Just a rough estimate. We won't hold you

1 to anything. I know it depends on how your other
2 witness testifies.

3 MR. LIM: Approximately 15 to 20 minutes.

4 CHAIRMAN DEVENS: Those would be your two
5 last witnesses plus finishing up with Mr. Okaneku?

6 MR. LIM: That's correct. We reserve for
7 rebuttal obviously.

8 CHAIRMAN DEVENS: Thank you. So we'll
9 recess at this point. We'll convene at 9:00 o'clock
10 tomorrow.

11 (The proceedings were adjourned)

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C E R T I F I C A T E

I, HOLLY HACKETT, CSR, RPR, in and for the State of Hawai'i, do hereby certify;

That I was acting as court reporter in the foregoing LUC matter on the 21st day of October 2010;

That the proceedings were taken down in computerized machine shorthand by me and were thereafter reduced to print by me;

That the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

DATED: This _____ day of _____ 2010

HOLLY M. HACKETT, CSR #130, RPR
Certified Shorthand Reporter