

LAND USE COMMISSION

STATE OF HAWAI'I

CONTINUED HEARING)

A10-788 HAWAI'I HOUSING FINANCE and)
DEVELOPMENT CORPORATION and FOREST CITY)
HAWAI'I KONA, LLC.)
_____)

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter 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 9:20 a.m. on Thursday, October 22, 2010 pursuant to Notice.

REPORTED BY: HOLLY M. HACKETT, CSR #130, RPR
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Docket No. A10-788 Hawai'i Housing Finance and
Development Corporation/ Forest City Hawai'i Kona, LLC

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For the Intervenor QLT: BENJAMIN KUDO, ESQ.
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1 CHAIRMAN DEVENS: We're back on the record.
2 This is a continuation of the hearing in A10-788. The
3 same counsel and parties are present. Mr. Lim, you're
4 still presenting your case. Are you going to continue
5 with Mr. Okaneku this morning?

6 MR. LIM: That's correct, Mr. Chairman.
7 Although technically we're on cross-examination by the
8 Trust with Mr. Kudo.

9 Because of the late introduction of the
10 evidence that they submitted last night we were able
11 to go through that evidence and have Mr. Okaneku
12 prepare some of his comments and responses. We are
13 having printing issues with the front desk here.

14 So we are trying to get that all printed out
15 for the Commission and the parties as we speak. But I
16 think I can have Mr. Okaneku summarize his statement
17 and then we can submit that written testimony in
18 addition as a supplement.

19 CHAIRMAN DEVENS: Mr. Kudo, are you in
20 agreement with that order, because it was your
21 cross-examination. It was your cross-examination and
22 that's where we left off. We had deferred this
23 witness 'til this morning.

24 MR. KUDO: That's correct. And because of
25 the problems we're having copying, one of our people

1 is rushing up to Waikoloa where they have a copy
2 center, but they open at 9:00 o'clock, to get copies
3 for the Commission members. Because I think it's
4 important that you see the depth of the errors that we
5 found in the TIAR report that we gave to them last
6 night. We were up to very late last night trying to
7 get that all compiled for them.

8 I think it would be very helpful that the
9 Commissioners would have that in front of them if
10 Mr. Okaneku's going to be talking about one
11 intersection or the other and the numbers that
12 don't --

13 CHAIRMAN DEVENS: No, but Mr. Lim was just
14 saying he wants to proceed in having his witness
15 continue testifying on cross. It was your cross. Are
16 you holding off on your cross?

17 MR. KUDO: I'd, I'd like to hold off on my
18 cross.

19 CHAIRMAN DEVENS: Okay, let's do that.
20 Mr. Lim, you go ahead then.

21 MR. LIM: Thank you very much, Mr. Chairman.

22 RANDALL OKANEKU,
23 having been previously duly sworn to tell the truth,
24 was examined and testified as follows:
25 xx

1 CONTINUED RE-DIRECT EXAMINATION

2 BY MR. LIM:

3 Q Randy, you're still under oath. And
4 continue on the discussion of your testimony based
5 upon your exhibits and your written direct testimony
6 No. 67.

7 Were you provided with information last
8 night from the Trust basically outlining what the
9 issues on the inconsistencies in your report were?

10 A Yes.

11 Q Can you describe for the Commission what
12 those things were?

13 A There were a number of sheets that were
14 given to me. I will try to summarize them because
15 basically the explanation will take between 8 and 10
16 pages at a time.

17 Okay. First of all, we started with the
18 existing condition volumes that Mr. Kudo picked up
19 some errors at one particular intersection. In that
20 case the Queen Ka'ahumanu Highway and Hina Lani Street
21 intersection, there were errors in the data input.

22 However, the errors in the data input were
23 not carried forward in the traffic projections of
24 2014, 2019, 2024 and 2029. So basically the findings
25 of the study still remain the same. Those errors in

1 the AM/PM peak hours at that particular intersection
2 was isolated.

3 Q The mitigation measures that you've been
4 proposing in your traffic report, are they based on
5 the full buildout of 2029?

6 A Yes.

7 Q Please go ahead.

8 A And then there are minor errors that
9 Mr. Kudo also pointed out. Generally because of the
10 study area is so large and I did the field
11 investigation in several phases because DOT began
12 requesting more and more intersections, I didn't do
13 everything all at one time, all in one snapshot.

14 So there were times when the adjacent
15 intersections were taken at separate days. So what I
16 do and normal practice to do is to try to balance the
17 intersection so that the traffic count from one
18 intersection to the next balances off so I don't have
19 a bad day or I don't lose a hundred cars between two
20 intersections that don't have driveways.

21 Basically that sums up the, any kind of
22 discrepancies with the figures 4 and 5 the existing
23 condition. Also let me say the Appendix A I consider
24 is raw data. Just raw data that I obtained in the
25 field.

1 I need to digest that data see if it's
2 credible, see it has enough quality for me to use it.
3 If it's not I either retake the traffic count or make
4 some adjustments based on historical data I've taken
5 in the past at adjacent intersections, so forth.

6 Q Mr. Okaneku, you're saying that the raw data
7 that was derived, are those derived by someone
8 actually going out there counting the traffic at the
9 intersections?

10 A Yes.

11 Q Are you exercising between Appendix A
12 figures and what's in your charts and your report, are
13 there times when there's discrepancies between what is
14 in the raw data versus what's in your chart?

15 A Yes.

16 Q I'm just trying to cover this because it's
17 an important point. Why do you do that?

18 A Again, I've been doing traffic studies in
19 this West Hawai'i for pretty much as long as I've been
20 practicing. So I have a historical basis to go back
21 to see how intersections operate. So I have a general
22 feel of what volumes should look like.

23 Again, looking at the data using some
24 judgment again comparing this data with other data
25 I've collected, I'll make an assessment on to the

1 quality of the data. Then I may adjust it before I
2 put it into the model. But, again, my position is
3 data's data. It can't can be touched. Once you
4 obtain the data you can't be changing numbers. I'm
5 just going to stick it in. Whatever I got I stick it
6 in.

7 But for the model purposes I may adjust
8 certain volumes, certain turning movements, what I
9 think is either low, high, that doesn't show up at the
10 next intersection, that kind of thing.

11 Q So this is where you take into account your
12 engineering judgment on these issues?

13 A Yes.

14 Q Is that something unusual that nobody else
15 does, only you do?

16 A No.

17 Q So are all traffic engineers to some degree
18 using their judgment?

19 A Sure.

20 Q Yes?

21 A Yes.

22 Q With respect to the other intersections, I
23 think what we'll do is we can have that discussion
24 later on because I think that we would like the
25 Commission to have the pictures if the Trust is going

1 to march through all those things. We'll submit that
2 in your written testimony.

3 A Okay.

4 Q One of the big discrepancies that's been
5 pointed out by their traffic expert, Mr. Niiya, is
6 that your trip generations for the Project didn't
7 match up.

8 In other words, I think to paraphrase what
9 he's saying, if I took the traffic without and I put
10 the traffic with I should come up with a total and it
11 doesn't match up.

12 Do you have a response to that?

13 A Yes. In the very simplest traffic studies
14 that kind of check may be valid. But in this case
15 where Kamakana Villages represents 2300 dwelling
16 units, it represents almost 200,000 square feet of
17 commercial floor area so its very presence in the
18 region will change the traffic assignments of other
19 projects in the region.

20 Whereas, for example, West Hawai'i Business
21 Park will draw employees into their business park. If
22 they have to go out to Waikoloa Village, South Kona,
23 they'll be drawing regional traffic in the region.

24 Whereas, if there's 2300 units in their
25 backdoor at least a portion of that you would expect

1 employees to be working and customers as well to work
2 in those employment centers. So it's not a simple
3 fact of plunking a project in and out, expect
4 everything else to be the same.

5 One of the basic concepts of this traffic
6 assignment is what we call the gravity model which is
7 analogous with the planetary gravity, laws of gravity.

8 Basically all it says is that the trips
9 between origin/destination is equivalent to
10 gravitational force between the planet, the moon, the
11 sun. The mass is proportional to the gravitational
12 force as well as the number of trips between origin
13 and destination.

14 The other factor is distance. That's
15 inversionally proportionate to distance. So, for
16 example, if I live in Hawai'i Kai I would shop at
17 Costco Hawai'i Kai. I wouldn't shop at Iwilei Costco.
18 But I may work at Downtown Honolulu rather than
19 Kaimuki because Downtown Honolulu has a bigger
20 concentration of jobs.

21 So basically that's kind of a -- it's a real
22 basic fundamental concept of traffic assignment. It's
23 applied usually for larger regions where you have
24 multiple destinations, multiple paths.

25 Q Randy, before the gravity model that you

1 speak about that you use, is that something that's
2 just unique to your company or do other traffic
3 engineers use that model?

4 A The gravity model -- the gravity model
5 concept has been part of transportation planning for
6 at least 50 years, probably back in the '50s when
7 interstate highways were being planned. It's not a
8 simple A to B anymore.

9 You have A,B,C,D and you have to determine
10 the trips going to each of these destinations so
11 that's where the gravity model came in.

12 Q In summary, for purposes of the record your
13 review of the markups that the Trust provided last
14 night and your analysis 'til this morning, are any of
15 the inconsistencies that they've been pointing out in
16 your reports or the charts affecting your basic
17 conclusions in this case?

18 A No, it does not.

19 Q And what is the basic conclusion on the
20 Level of Service, assuming that you implement the
21 mitigation measures in your report?

22 A At full buildout with implementation of all
23 the recommended mitigation, all the intersections
24 within the study area is expected to operate at Level
25 of Service D or better.

1 Q Do you agree that conclusions in your
2 traffic report plus the proposed Condition No. 4 that
3 the Petitioners propose in this matter regarding
4 transportation -- and essentially that says that --
5 the Petitioners will mitigate all Project-generated
6 traffic impacts as recommended and/or required by the
7 Traffic Impact Analysis Report prepared for the
8 Project that has been reviewed and accepted by the
9 State Department of Transportation -- would those
10 mitigation measures address the traffic impacts from
11 the Project?

12 A Yes.

13 Q And to be clear, who approves the
14 assumptions, conclusions and mitigation measures of
15 the traffic report?

16 A It's not so much approved, but just accepted
17 by the reviewing agencies.

18 Q And that would be?

19 A DOT and the Public Works Department of
20 Hawai'i.

21 MR. LIM: Okay. No further questions.

22 CHAIRMAN DEVENS: County, do you have
23 additional cross-examination based on this supplement
24 the direct testimony?

25 MS. MARTIN: No, we don't.

1 CHAIRMAN DEVENS: Mr. Yee do you have any
2 additional cross-examination?

3 MR. YEE: No, thank you.

4 CHAIRMAN DEVENS: Mr. Kudo, I understand
5 you're going to reserve your cross-examination 'til we
6 get the copies.

7 MR. KUDO: Yes.

8 CHAIRMAN DEVENS: Commissioners, any
9 questions for this witness? Commissioner Heller.

10 COMMISSIONER HELLER: Yes. Going back to
11 the point you made about adjusting data using your
12 professional experience. Do you make adjudgments
13 downwards to actual traffic counts when you plug
14 numbers into the model?

15 THE WITNESS: Generally it's upward if there
16 are two adjacent intersections and there are some
17 minor discrepancies generally I'll adjust it upward.
18 Unless there's something very flagrant.

19 COMMISSIONER HELLER: But you do sometimes
20 make adjustments that are downward.

21 THE WITNESS: Only if I have some reason to
22 believe that those numbers are inflated.

23 COMMISSIONER HELLER: Okay. Do you know if
24 in this particular case you made any adjustments that
25 were downward?

1 THE WITNESS: No, I don't.

2 COMMISSIONER HELLER: So it's possible there
3 may be an intersection where, for example, the actual
4 traffic count was 150, and when you put it into the
5 model you put in 130 because in your judgment you
6 thought that was a better number?

7 THE WITNESS: Well, because I have
8 confirming adjacent intersection data or historical
9 data to support my position. It's probably more than
10 like 20 cars. If it's going to be a big -- if I need
11 the supporting data I'm not going to arbitrarily drop
12 a hundred cars. More like 5 or 10 cars, kind of thing
13 out of it.

14 COMMISSIONER HELLER: But it is possible
15 that you made downward adjustments.

16 THE WITNESS: Possible, yes.

17 COMMISSIONER HELLER: And in terms of
18 actually recommending mitigation actions, the actions
19 you recommended would be based on the results of the
20 model, correct?

21 THE WITNESS: Yes.

22 COMMISSIONER HELLER: Which would include
23 whatever adjustments you made when you plugged the
24 data into the model?

25 THE WITNESS: Right.

1 COMMISSIONER HELLER: Okay. That's it.
2 Thank you.

3 CHAIRMAN DEVENS: Commissioners have any
4 other questions? One question is that you say you
5 rely on historical data. How far back do you go?
6 Because to me traffic only gets worse over time. It
7 doesn't get better.

8 THE WITNESS: Probably around early 1990s is
9 the first time I started working in the West Hawai'i
10 district, West Hawai'i region. So from 1990 on up I
11 have maybe about half a dozen projects over those
12 years.

13 CHAIRMAN DEVENS: Okay. But for this
14 particular study what historical data did you rely
15 upon?

16 THE WITNESS: That particular data I just go
17 back to my records to see what the trends were, that
18 kind of thing, to kind of give me a sense of
19 confidence that the data is, you know, usable.

20 CHAIRMAN DEVENS: What was the general
21 trends that you saw for this area?

22 THE WITNESS: Oh, yeah, there is -- growth
23 rates were, until the past 2 or 3 years, upward around
24 5 percent per year so it's really rapid for any
25 region.

1 CHAIRMAN DEVENS: Thank you. Any redirect?

2 MR. LIM: Just one question.

3 CHAIRMAN DEVENS: I'm sorry, Mr. Lim,
4 Commissioner Kanuha had a question. I didn't see him.
5 I apologize.

6 COMMISSIONER KANUHA: Thank you,
7 Mr. Chairman. Randy, is there a margin of error on
8 your findings? And if so what's the acceptable range?

9 THE WITNESS: I don't know if there's a
10 margin of error. The Level of Service has a range of
11 delay that defines each part, Level of Service maybe a
12 5 to 10 second spread for a Level of Service before
13 you drop to the next level.

14 COMMISSIONER KANUHA: But other than that
15 there's no criteria for how accurate that's what I'm
16 trying to get at, what the margin of error is. Because
17 if you have a traffic count, in this particular case
18 there's a dispute over numbers, well, if there's a 1
19 percent difference, how big is that compared to
20 20 percent?

21 THE WITNESS: Generally a rule of thumb
22 would be a 5 percent difference is a significant
23 difference.

24 COMMISSIONER KANUHA: Thank you.

25 CHAIRMAN DEVENS: Commissioner Jencks.

1 COMMISSIONER JENCKS: Randy, I had a
2 question.

3 THE WITNESS: Yes.

4 COMMISSIONER JENCKS: The documents I have
5 been reviewing talk about, and the condition that's
6 been discussed with Petitioner and the State talks
7 about a pro rata share or fair-share allocation of
8 costs.

9 THE WITNESS: Yes.

10 COMMISSIONER JENCKS: And I would assume
11 those costs are tied to state facilities, not county
12 facilities?

13 THE WITNESS: That's correct.

14 COMMISSIONER JENCKS: In your experience
15 working with the State Department of Transportation,
16 once you have some agreement as to what this number's
17 gonna be, this pro rata contribution, it's my
18 understanding the state has no mechanism for accepting
19 the money. Is that true?

20 THE WITNESS: That's my understanding, yes.

21 COMMISSIONER JENCKS: So you go through this
22 exercise and there's some allocation of costs that's
23 theoretically to be paid to the state, they can't
24 accept the money, I see that as a problem.

25 THE WITNESS: Yes.

1 COMMISSIONER JENCKS: In your experience
2 have you ever seen them accept this money and actually
3 make improvements to these facilities that benefit
4 the public?

5 THE WITNESS: I know of one case where they
6 accepted money from the county's traffic impact
7 assessment but they didn't do anything -- my
8 understanding they didn't do anything with it. It
9 wasn't enough to do what was needed to be done.

10 COMMISSIONER JENCKS: Wouldn't it be better
11 just to get the improvements made up front and not
12 kind of play this shell game of future fees for future
13 improvements that no one -- it seems kind of silly to
14 me. Why wouldn't you just want to say: Look, do the
15 improvements and be done with it?

16 THE WITNESS: That's exactly what we're
17 attempting to do.

18 COMMISSIONER JENCKS: Okay.

19 THE WITNESS: We have a list of mitigation
20 measures that were in the TIAR.

21 COMMISSIONER JENCKS: Right.

22 THE WITNESS: We've expanded that to include
23 construction costs. Again, expanded it further to see
24 what Kamakana's share would be at each of these
25 intersections, totaled it down.

1 We came up with a number. And we're saying,
2 we picked out line items within that mitigation, say
3 this, this and this adds up to our fair share. And
4 that's what we're working to.

5 COMMISSIONER JENCKS: So you're trying to
6 convince the state to take that approach as opposed to
7 this fair allocation cost.

8 THE WITNESS: It is a fair-share allocation
9 cost. But the cost is going to be actually built.
10 It's going to be actually put on the ground.

11 COMMISSIONER JENCKS: It will be built.

12 THE WITNESS: Yes. By the developer, yes.

13 COMMISSIONER JENCKS: Thank you.

14 CHAIRMAN DEVENS: Any other questions? I'm
15 sorry, Mr. Lim, I interrupted you.

16 MR. LIM: Thank you very much, Mr. Chairman,
17 just a short couple of questions.

18 FURTHER DIRECT EXAMINATION

19 BY MR. LIM:

20 Q With respect to the, what they have been
21 calling a margin of error and downward, potential
22 downward adjustments in the traffic counts, what type,
23 if any, conservative assumptions have you inputted
24 into your model for this particular Project? You
25 understand my question?

1 A We're trying to minimize the number of
2 assumptions that we make. That's why we use the
3 things like the gravity model. We use IT trip
4 generation rates. We use a market forecast that's
5 given to us. We try to minimize that level of
6 assumption.

7 Of course there is some educated guesswork
8 that needs to be done where you don't have any facts
9 in the future, you can't foresee anything in the
10 future.

11 So generally being an engineer I mean we
12 generally are conservative. That's basically our, the
13 way we think. That's, again, my position. I try to
14 be conservative within certain range. I'm not going
15 to be overly conservative.

16 But still if I had to choose one, to go
17 conservative or try to low ball something I'll go
18 conservative.

19 Q Did you consider any impact on the -- since
20 this is a Transit-Oriented Development did you
21 consider any impacts on your traffic counts resulting
22 from mass transit being put right next to the Project?

23 A No, I did not.

24 Q So that would be one of your conservative
25 assumptions?

1 A Yes.

2 Q Would that have reduced the traffic?

3 A It depends on the Level of Service. If we
4 got Honolulu bus system on the Big Island yes it
5 would.

6 MR. LIM: No further questions.

7 CHAIRMAN DEVENS: Parties have any further
8 questions?

9 MR. YEE: No questions from OP.

10 CHAIRMAN DEVENS: Commissioners? None.
11 Mr. Lim, you're going to have this witness stick
12 around so that Mr. Kudo can finish his
13 cross-examination?

14 MR. LIM: That's correct. I think we
15 received the written reports. We're just trying to
16 make enough copies for everybody. We'll distribute
17 that shortly.

18 CHAIRMAN DEVENS: Did you want to call your
19 next witness and we can then come back to
20 Mr. Okaneku?

21 MR. LIM: Yes. I think that might be
22 helpful for Mr. Kudo to look at the report, and the
23 other parties. We'll be calling the new report, the
24 title is called "Initial Responses to Comments from
25 QLT on TIAR Figures and Tables dated October 22,

1 2010." So we'll request that that be marked and
2 entered into evidence as Petitioner's Exhibit 110, one
3 ten.

4 CHAIRMAN DEVENS: Any objections to that
5 exhibit coming into evidence?

6 MR. KUDO: No objections.

7 MR. YEE: No objection.

8 MS. MARTIN: No objection.

9 CHAIRMAN DEVENS: It will be admitted. That
10 was one one zero, correct?

11 MR. LIM: One one zero.

12 CHAIRMAN DEVENS: Thank you.

13 MR. LIM: We'll be passing out copies as
14 soon as we make copies for all of the parties.

15 Our next witness will be Race Randle. He's
16 from Forest City Hawai'i Kona LLC. He'll be talking
17 about Project development and the incremental
18 development plan. His written testimony is Exhibit
19 No. 70.

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

23 THE WITNESS: Yes.

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

1 THE WITNESS: My name is Race Randle.
2 Address 5173 Nimitz Road, Honolulu, Hawai'i 96818.

3 CHAIRMAN DEVENS: Your witness, Mr. Lim.

4 DIRECT EXAMINATION

5 BY MS. BENCK.

6 Q Race, good morning.

7 A Good morning.

8 Q Hi. Race, we've been here now it seems like
9 a pretty long time over the last couple of days. And
10 there's been some suggestion that this Project has
11 moved really fast and that there's been some element
12 of surprise. Could you tell the Commission how long
13 you've been working on this Project?

14 A I started on this Project June of 2008. I
15 was hired by Forest City at that time. This is just a
16 couple of months after Forest City was chosen as the
17 developer by HHFDC through the RFP process.

18 Q So that's over two years.

19 A Yeah.

20 Q June 2008.

21 A Since June 2008 when we were chosen, I think
22 the bulk of our work was focused on working out a
23 satisfactory development agreement with HHFDC that for
24 both parties would encourage the affordable housing to
25 get built.

1 HHFDC had asked of us and in the RFP to
2 propose a project that would build them the most
3 affordable homes that would be possible on this land
4 in the most timely manner in the most livable
5 community. That's not easy in Kona. So it took some
6 time to work out how we could work out to arrange to
7 make that project function.

8 Q How did you know what kind of community Kona
9 wanted to see here?

10 A The Kona Community Development Plan was in
11 the works around that same time and finalized shortly
12 thereafter, I believe.

13 And what that plan did was to expand on the
14 previous planning efforts done in the Kona region
15 which were to direct growth into the Kailua-Kona area
16 to minimize commuting traffic in and out of the job
17 center.

18 But what it further did was to outline the
19 community's goals for design elements and specific
20 location of housing, Transit-Oriented Development and
21 commercial areas.

22 Q So did you and your planning team just look
23 and the Kona CDP and say, "Okay, there's a Project
24 we've designed and we're ready to go"?

25 A I wish it was that easy. No. We initially

1 started the Project once we put our team together.
2 And as Dr. Francis Oda mentioned, by bringing our team
3 over to this island to get some discretion from the
4 cultural members in the area and some of the folks who
5 live near the ahupua'a.

6 Following that we held a series of community
7 meetings, starting with one main public charrette to
8 get some of the local input from those who were
9 interested in providing detailed information what they
10 wanted to see in the community. That's reflected in
11 the plans.

12 After that, and during that time, actually,
13 during 2009 and most of this year, actually up until
14 last week we've been continuing to hold series of
15 small group meetings, one-on-one meetings both in
16 people's places of work and other places in Kona so
17 that more of the active community members could
18 provide additional input into the design of the
19 community.

20 Q Race, this is a 201H project. By law 201H
21 projects are supposed to be exempt from all kinds of
22 zoning and land use subdivision requirements. Are you
23 asking this Commission for any exemptions -- I'm sorry
24 is Forest City asking this Commission?

25 A No. Forest City is not asking this

1 Commission for any 201H exemptions. But I do want to
2 reiterate that while we're coming through this process
3 there's been mention of setting precedence with things
4 like LEED and other items. I just want to reiterate
5 affordable housing is hard. It's hard to do. If it
6 were easy everyone would do it. And 201H is a tool.

7 While we're not utilizing it I don't want to
8 create the impression that others shouldn't as well. I
9 don't want to create the unfair impression that Forest
10 City is doing this and we're not asking for
11 exemptions.

12 Q Again, to reiterate, while you're not asking
13 for exemptions from the Commission, the 201H exemption
14 tool can be and is valuable.

15 There were questions. And the reason why I
16 wanted to make it clear if you were asking exemptions
17 from the Commission, is that I look at the Commission
18 as almost representing, in some extent, the State's
19 interest just like the Office of Planning represents
20 the State's interest.

21 Have you sought exemptions from the
22 Department of Education?

23 A When we originally started discussions with
24 the Department of Education, we asked for them to
25 allow us -- at the time they were pursuing an impact

1 fee for the West Hawai'i region -- we had asked them
2 for the ability to not have to pay that impact fee for
3 the affordable homes in the community in the effort to
4 keep the homes as affordable as possible.

5 Currently our agreement with the DOE does
6 not allow for any exemptions even for the affordable
7 units. It lays out a provision of land and a fee
8 schedule for construction costs for all of the homes
9 in the community.

10 Q So, again, you're not seeking any exemption
11 for the DOE requirements whether it's impact fee
12 applicable to West Hawai'i or whether it's just a
13 state law, no exemptions whatsoever?

14 A Yes.

15 Q Do you recall approximately how much land
16 you're going to be dedicating to the Department of
17 Education?

18 A Our agreement that is currently with the, I
19 believe, with the attorney general, DOE's attorney
20 generals for finalization, which we are in agreement
21 with, provides for the provision of approximately
22 12 acres of land for an elementary school site and
23 play field.

24 Is also allows, in addition, the ability to
25 provide a little extra land. I think it was on the

1 order of magnitude of another acre to help the DOE in
2 providing a larger play area at that time. And it's
3 reflected in, I believe, an exhibit. If not it can be
4 provided.

5 But the DOE agreement exhibit lays out a
6 preferred location and layout for the school site in
7 the center of our Project.

8 We worked a lot with DOE. We had a lot of
9 information directly with their planners and their
10 architects to understand the kind of school they were
11 envisioning for this area.

12 The current elementary school with
13 approximately a thousand students is very large. It's
14 also just up the hill from the site.

15 And we know that DOE has had this Kealakehe,
16 a second elementary school, Kealakehe 2 on the books
17 for quite sometime.

18 So we wanted to make sure we were
19 cooperating with them where we planned it in our
20 incremental plans so we would match as best as
21 possible with their plans for when the students
22 generated in this area would call for another school
23 to be built.

24 Q Thanks, Race. I want to continue on with
25 dispelling or addressing any concerns that maybe

1 Forest City is getting relaxed treatment from any of
2 the state agencies.

3 I know that you met with the Office of State
4 Planning to discuss certain conditions of approval
5 that Forest City would present to this Commission,
6 rather the Office of State Planning would present to
7 this Commission, and that those conditions are in the
8 Proposed Findings of Fact that were filed as
9 Petitioner's Exhibit 17.

10 Do you have those in front of you or would
11 you like them? There's just a couple conditions.

12 A I don't have OP's list of conditions.

13 Q I just would like to, if I can, bring again
14 to everyone's attention those two conditions, the LEED
15 and the sustainability condition, Race. And tell me a
16 little bit about the history of those conditions. Was
17 that where we started out?

18 A Sorry. The question's this is where we
19 started out?

20 Q Right. With condition 19 and condition 20
21 which is on Page 77 of the Proposed Findings of Fact.
22 Are those conditions fairly typical
23 developer-presented conditions related to energy
24 conservation?

25 A I think my qualifications as a nonexpert, I

1 do not have experience on whether or not developers
2 are normally presented with the conditions like this.

3 I think what we did was the Office of
4 Planning did present us with conditions that would, in
5 my opinion, challenge us to build a sustainable
6 community as possible.

7 We took that request back, worked with our
8 construction team -- which at the time and currently
9 is building LEED homes on O'ahu -- to find out if
10 building LEED was feasible. And the result was in our
11 construction team's opinion is that it is.

12 Therefore we were able to accommodate this
13 condition. And we believe to the extent practicable
14 that we can do it.

15 Q Thanks, Race. There were also some
16 questions yesterday, I believe, from Commissioner
17 Judge about parks and playgrounds. Mr. Wallenstrom
18 did a good job addressing those. But you're also very
19 much the guy on the ground.

20 Can you talk approximately how much park
21 space or what it is that Forest City is intending to
22 do with respect to parks?

23 A With respect to the parks our plan shows a
24 layout with two key large parks. We've had one
25 meeting early on in the planning process with Parks

1 and Rec, at that time to identify and ask questions
2 about what particular play facilities that they would
3 like to see in a park, and if they had any particular
4 layout guidance for us in our park layout to make sure
5 that it complied and would allow for their
6 maintenance.

7 The goal is to dedicate the parks to the
8 extent we can. But what we will do and plan for and
9 budget for is to provide the amenities in the parks
10 that the county Parks and Rec would ask for, and
11 design them in consultation with them.

12 Parks are important. And we made those a
13 kind of key amenities of the site. We think they're
14 the best use of open space on the Project is to have
15 active and functioning parks.

16 Besides just the big parks we have also
17 layed out small, what we call, pocket parks. We'll
18 work with the county to determine the dedicatable
19 nature of those parks and what amenities should go
20 into them.

21 Q Race, have you submitted or has Petitioner
22 submitted some sort of schedule for development? I
23 know the Commission, and rightly so, have expressed
24 concerns about developers making a whole lot of
25 promises and not delivering and looking for open

1 ended, always a way to sneak away and get out of an
2 obligation.

3 Have you provided any sort of material that
4 everyone can look at the development schedule and know
5 what to expect and when to expect it?

6 A Yeah. We've provided the Incremental
7 Development Plan for the Project which lays out the
8 six phases. It lays out the percent of affordable
9 that are targets for each of those phases. It lays
10 out the infrastructure that's required to support
11 those phases. And it also reflects the figures
12 provided in the plans and figures, the phasing plan.

13 Q Does it also talk about, more specifically,
14 roadway improvements?

15 A Yes, it does. The Incremental Development
16 Plan for each phase identifies the key roadway
17 improvements that will, based on our current
18 understanding with the DOT, be required of the Project
19 and to be built with the particular phases.

20 Q Thank you. I'd also like to, if we could,
21 talk briefly now about a concern I suppose I'll say
22 about quality.

23 Is there any reason to think that because
24 this Project is 50 percent affordable that we're going
25 to have a stark contrast between the affordable and

1 what those affordable units look like and the quality
2 those units are built with versus the market units?
3 How does Forest City envision this entire community
4 looking?

5 A That's a good question. Forest City does
6 not plan for a difference in quality between the
7 affordable homes and market homes. I personally don't
8 plan for a difference in quality between affordable
9 and market.

10 I think the difference right now is almost
11 negligible because in Kona right now the market price
12 for a home in most situations is considered
13 affordable. So right now in Kona you can go purchase
14 a very quality home that would be considered
15 affordable.

16 This community is, has been designed for all
17 units to be of high quality. So I don't understand, I
18 guess, the direct part of the question. We've
19 provided some conceptual plans in our plans and
20 figures to provide the public-- provide the Commission
21 with some of the goals of the complete community
22 design.

23 Affordable, market, we plan to mix them
24 together. We don't plan to make them noticeably
25 different in appearance and in amenity.

1 Q What sort of outreach have you done with
2 your closest neighbors?

3 A We've done a lot. When we started this
4 Project we reached out to our neighbors to provide our
5 conceptual plans that at that time were part of our
6 proposal with HHFDC, and asked for comment.

7 We were lucky enough that our neighbor to
8 the north, who testified yesterday, Bo Kahui and DHHL
9 were in the planning stages for the La'i 'Opua
10 community center.

11 So at that time they not only had the
12 ability to provide good input into our planning
13 efforts, but also we were able to work with their
14 plans to make sure that the community from a regional
15 perspective would fit and would function well with
16 their plans to the north.

17 We did have the opportunity to reach out to
18 QLT and met with them. In addition, we invited them
19 to our community planning charrettes, which I believe
20 they attended. And we provided them with our plans as
21 we went through the process.

22 We did get some feedback from QLT at one
23 time on our plans specifically with reference to how
24 we were -- how our plans showed their plans for their
25 parcel which we incorporated into the planning

1 documents here, which is specifically to not give any
2 false impressions of their proposed plans, which we
3 aren't aware of and not representing.

4 Q So you don't know what QLT is planning, what
5 kind of development they're planning?

6 A No. We have received communication that
7 they are working with planners. But, no, I have not
8 seen any plans, any current plans for the areas
9 surrounding our parcel.

10 Q Race, I'm just going to ask you one last
11 question if I may. Petitioner's Exhibit No. 78 is a
12 markup of Governor Lingle's acceptance memorandum on
13 the EIS. I have a copy here in front of me if you'd
14 like.

15 I just would like you to state for the
16 record if Forest City -- excuse me -- as you look over
17 the markup those are again the mitigation measures
18 that were placed on the EIS that was done before
19 Forest City was involved in the Project. Then Forest
20 City has marked up this acceptance memorandum.

21 Can you represent that Forest City will
22 fulfill and implement these mitigation measures or the
23 mitigation measures as indicated by the modified
24 notes? In other words, mitigation measures that are
25 equal to these or equally as effective in the

1 discretion of the permitting agency?

2 A Yes.

3 Q Sorry?

4 A Yes.

5 MS. BENCK: Thank you. And with that I'm
6 through with Mr. Randle.

7 CHAIRMAN DEVENS: County, your cross.

8 MS. MARTIN: Thank you.

9 CROSS-EXAMINATION

10 BY MS. MARTIN:

11 Q I think I misunderstood what you testified
12 to. Did you testify that Forest City is not
13 requesting 201H exemptions?

14 A From the state.

15 Q Okay. But you are seeking them from the
16 community, is that right?

17 A Yes.

18 Q Okay. Thank you.

19 CHAIRMAN DEVENS: Is that it?

20 MS. MARTIN: That's it, thank you.

21 CHAIRMAN DEVENS: Mr. Yee.

22 MR. YEE: Thank you.

23 CROSS-EXAMINATION

24 BY MR. YEE:

25 Q I apologize. I wasn't here for your entire

1 testimony. I understand that you referred to
2 Petitioner's Exhibit 17, which is the Proposed
3 Findings of Fact, Conclusion of Law and Decision and
4 Order, is that right?

5 A Yes.

6 Q And that includes conditions to which Forest
7 City is prepared to agree to?

8 A Yes.

9 Q And you're aware that the Office of Planning
10 has been pushing in a number of dockets for LEED
11 conditions.

12 A Yes.

13 Q And in Petitioner's Exhibit 17 -- well, let
14 me backtrack. Prior to this hearing you've had
15 discussions in which the Office of Planning had been
16 pushing for a LEED condition as well, is that correct?

17 A Yes, that's correct.

18 Q And as a result of those discussions there
19 are conditions in Petitioner's Exhibit 17 for both
20 LEED-ND, LEED for Homes as well as LEED for new
21 construction, is that correct?

22 A Yes.

23 Q And those conditions are contingent upon
24 being practicable?

25 A That's correct, yes.

1 Q In addition to the LEED conditions did the
2 Office of Planning also approach you prior to this
3 hearing regarding Best Management Practices and runoff
4 quality, water runoff quality?

5 A Yes.

6 Q And as a result of those discussions are
7 there conditions, then, in this Petitioner's
8 Exhibit 17 which the Office of Planning has proposed
9 in which, for instance, Forest City has agreed to in
10 the Petitioner's Exhibit 17?

11 A Yes, that's correct.

12 Q Finally, with regard to traffic one of the
13 conditions requires that the TIAR be accepted by the
14 Department of Transportation, correct?

15 A Yes.

16 Q In fact condition 4 also requires that the
17 mitigation, direct mitigation measures as well as the
18 fair share of the regional improvements be agreed upon
19 by Forest City and the Department of Transportation?

20 A Yes.

21 Q And this agreement has to be reached prior
22 to subdivision submission?

23 A Yes, that's correct.

24 Q So Forest City will be motivated, then, I
25 assume, to reach an agreement with the Department of

1 Transportation in order to meet its deadlines for
2 subdivision approval?

3 A That's correct. We will be very motivated.
4 We also have the additional deadlines placed on us by
5 HHFDC to build this Project in a timely manner under
6 our development agreement. So, yes.

7 Q Forest City, is it correct that Forest City
8 has been meeting with the Department of Transportation
9 approximately once a month since December? Are you
10 aware of that?

11 A I'm just trying to do the calculation. You
12 said since...?

13 Q December.

14 A So that would be 10 meetings?

15 Q If you don't know that's okay.

16 A Based on my understanding of our consultants
17 that's approximately correct.

18 Q Is it Forest City's intention to continue
19 these discussions and negotiations in a good faith and
20 diligent manner to comply with the requests from the
21 Department of Transportation?

22 A Yes.

23 MR. YEE: I have no further questions.
24 Thank you.

25 CHAIRMAN DEVENS: Mr. Kudo, any cross?

CROSS-EXAMINATION

BY MR. KUDO:

Q Mr. Randle, I'd like to ask you a few questions about the development agreement that you have with HHFDC. Are you familiar with that document?

A I'm familiar with it. It's a long document so if you have detailed questions, forgive me for possibly having to defer to it.

Q Under that document as I have read it it requires that you complete all of the affordable housing within approximately a 13-year period from this year, correct, 2023?

A Yes. I believe that's correct.

Q But that period can always be extended for an additional five years. So it's an 18-year period that you can produce these affordable housing units?

A Yes.

Q Now, the agreement also provides that Forest City at any time, based on its own determination, can cancel the agreement, is that correct?

A Yes. I believe in concept that's correct.

Q Mr. Wallenstrom mentioned yesterday the fact that there was a loan that the HHFDC obtained to fund this particular Project, I think 25 million or so. Is that about the vicinity of that loan? It's called a

1 DURF loan or DURF funds.

2 A That I think what -- the loan is not one
3 that HHFDC has acquired. The question is?

4 Q Are those funds available to you to develop
5 this Project with what's called DURF funds?

6 A Yes.

7 Q It's about 25 million? Is that...

8 A Yes.

9 Q And in addition Mr. Wallenstrom said, he
10 didn't mention how much, that Forest City was putting
11 money into this Project. Do you know how much that
12 is?

13 A Off the top of my head no. But I can, if
14 you give me a moment of indulgence I can provide that.

15 Q Is it true that under the development
16 agreement that if it is canceled at your
17 determination, Forest City's determination, that
18 Forest City may be able to get a refund of a portion
19 or all of that monies? Is entitled to a refund of
20 those monies?

21 A Which monies are you referring to?

22 Q The monies that you put in.

23 A No.

24 Q Are you sure about that?

25 A I'd have to look at the details of the

1 document.

2 Q Okay.

3 MS. BENCK: I do have an objection, please.

4 CHAIRMAN DEVENS: Go ahead.

5 MS. BENCK: The line of questioning may be
6 appropriate but it's certainly not appropriate
7 directed to Mr. Randle. He's not the expert in the
8 project financing. He's the on-the-ground development
9 manager, for lack of a better term. I'm afraid -- I
10 don't want him to make representations to things that
11 he's clearly not that intimately familiar with.

12 If we were to have questions on the
13 development agreement, I would ask that we either have
14 someone from HHFDC or Mr. Wallenstrom, who would be
15 much more familiar with those matters.

16 CHAIRMAN DEVENS: Mr. Randle, if you don't
17 know the answer to the question you can say you don't
18 know or it's beyond your knowledge.

19 THE WITNESS: Okay.

20 CHAIRMAN DEVENS: We can accept that. But I
21 guess we won't know until we hear the question.

22 Q (By Mr. Kudo): Okay. Let me ask you some
23 questions about the exemptions. You're not asking for
24 the state for exemptions under 201H. That's correct?

25 A That's correct.

1 Q But you are asking for some 50 plus
2 exemptions from the county of Hawai'i, is that
3 correct?

4 A That's correct.

5 Q Was there any reason why the original 91 or
6 92 exemptions that you asked from the county a couple
7 weeks ago was reduced down to 54?

8 A Yes.

9 Q What is the reason for that?

10 A The reason that we are revising the number
11 of exemptions is based on communications with the
12 county and the agencies of the county. Our goal,
13 Forest City's goal, is to make sure that these
14 exemptions are such that the county is comfortable
15 with them. That's been stated in our county meetings.
16 And that will be addressed at the county council
17 meetings to come.

18 Q Were you present during the testimony of
19 Forest City and HHFDC's I believe urban planner
20 Mr. Joseph Scanga?

21 A Yes.

22 Q Now, Mr. Scanga said that the reason that
23 the exemptions are being asked for, in other words,
24 Forest City was forced to ask for these exemptions
25 because they need to comply with the Kona CDP and the

1 VDG, I believe. That's an acronym for Village Design
2 Guidelines and Kona concurrency law. Were you here
3 when h made those statements?

4 A Yes.

5 Q Do you believe that statement to be correct?

6 A Yes.

7 Q Let me turn to the transportation and
8 traffic issues, which I understand you're the person
9 that I'm supposed to be asking these questions of. I
10 draw your attention to the Office of Planning
11 testimony on transportation. Do you have a copy in
12 front of you? Just a moment please.

13 A Okay.

14 Q I draw your attention to the paragraph
15 labeled Transportation. In particular I believe
16 that's the second sentence of that paragraph. It
17 reads, "In addition, the Petitioner has agreed to
18 mitigate all project-generated traffic impacts on the
19 surrounding roadway system as recommended and/or
20 required by the Traffic Impact Analysis Report; and to
21 also pay a pro rata share of regional transportation
22 improvements."

23 Is that a correct statement? That is Forest
24 City/HHFDC has agreed to provide all these
25 improvements as called for in this sentence?

1 A We're, Forest City is currently, as
2 mentioned earlier, we're in the process of
3 negotiations, our discussions with the DOT on
4 completion of the TIAR and an agreement which
5 identifies the fair-share projects which will be
6 constructed by the Project.

7 Q Mr. Randle, I asked you: Is this statement
8 correct or incorrect?

9 A I think in the context of this complete
10 paragraph in which case the Office of Planning is
11 requesting that we complete a TIAR, form an agreement
12 with the DOT and complete the agreed upon improvements
13 it is correct.

14 Q What part of it is incorrect?

15 A I'm not a traffic expert so I have a little
16 -- I don't know if any parts of it are incorrect.
17 What I do refer to is the Condition No. 4 language.
18 That is what Forest City has agreed to with the Office
19 of Planning.

20 Q Well, I'm just asking you is this a correct
21 statement that the Office of Planning is making on
22 behalf of the Petitioner or is it incorrect? Is it
23 incorrect?

24 MR. YEE: I'd like to object to the
25 characterization of the representation "on behalf of

1 the Petitioner." The Office of Planning made a
2 representation. It's in there. But I don't think we
3 ever represented that we were making it on their
4 behalf.

5 MR. KUDO: Okay. I stand corrected.

6 Q I guess I took this as meaning that the
7 Office of Planning had confirmation that this was, in
8 fact, true.

9 A The item in particular is not one that I
10 believe we had consultation with the Office of
11 Planning on. That's why I referred to item No. 4 in
12 Petitioner's Exhibit No. 17.

13 Q So it's not a statement that they verified
14 with you or confirmed with you then?

15 A It's not one I verified, no.

16 Q Mr. Randle, yesterday Mr. Wallenstrom
17 mentioned about the fact that Forest City is a very
18 large company.

19 They've been in business for, I think he
20 said, for 90 years; have built thousands of homes
21 across the country, a very good representation in
22 terms of building homes and communities.

23 Does Forest City believe that if they create
24 a negative impact as a result of their Project that
25 they have a responsibility to mitigate that impact?

1 A So that I'm understanding the question
2 correctly, you're saying does Forest City believe that
3 they have a responsibility to mitigate negative
4 impacts?

5 Q The negative impacts that they create as a
6 result of building their projects.

7 A I think Forest City and this Project in
8 particular and all projects we commit to the law. We
9 commit to mitigating required impacts as under in this
10 case agreement with the Department of Transportation
11 if you're referencing traffic impacts. And will agree
12 to mitigate other impacts with other state agencies
13 and county agencies.

14 Q But I didn't ask you whether you were going
15 to follow the law, which may be a different issue.

16 I'm asking as a general principle do you
17 believe as a company that if you create a negative
18 impact as a result of your Project that you have a
19 responsibility and duty to mitigate that impact?

20 A I think in general Forest City makes
21 positive impacts. I think that's the goal of this
22 Project if there are negative impacts.

23 Q Well, let's assume just hypothetically that
24 you create a negative impact, that it isn't a positive
25 impact. I realize that affordable housing is a

1 positive impact.

2 A Agreed.

3 Q Just supposing you do create some negative
4 impacts as a result of this Project. Does Forest City
5 commit to have a duty and responsibility to mitigate
6 that impact? It's a simple question.

7 A Yes.

8 Q Yes.

9 A Definitely.

10 Q So let's take a hypothetical in terms of
11 traffic. If the existing Level of Service at an
12 intersection located adjoining your boundaries is at
13 level C, and as a result of your Project that level
14 goes to E, now, we've heard the testimony of
15 Mr. Okaneku that level D is the acceptable standard
16 according to the State Department of Transportation
17 and the County of Hawai'i.

18 Does Forest City commit to mitigating that
19 traffic impact at that particular intersection and
20 bring it back at least to D?

21 A Your question was a hypothetical. If an
22 intersection where? Sorry, this is a long question.
23 I'm having trouble following.

24 Q Let's say Palani Road adjoining your
25 property.

1 A Okay.

2 Q You're creating certain intersections as a
3 result of your Project on Palani Road. If at the
4 present time the Level of Service is C, and as a
5 result of your Project being constructed it goes to
6 level E, and we said, according to Mr. Okaneku, that
7 level D is the acceptable level for State Department
8 of Transportation and I believe the County of Hawai'i
9 standards, does Forest City believe it has an
10 obligation and responsibility to mitigate that
11 situation and bring that intersection by way of
12 roadway improvements or whatever to at least level D?

13 A I think what Forest City has a commitment
14 to do and has an understanding to do in this Project
15 is to complete a traffic report which identifies the
16 intersections --

17 Q What if that traffic -- excuse me. Go
18 ahead. I didn't mean to interrupt you.

19 A -- identifies the mitigation requirements of
20 those particular intersections. With regards, and
21 identifies and further comes to an agreement with the
22 Department of Transportation on the improvements, the
23 particular improvements that would satisfy the
24 fair-share requirements with the DOT.

25 Q I assume when you're referring to a traffic

1 impact report you're assuming the report is a valid
2 report done without any errors.

3 A I'm assuming that it's a report that's
4 acceptable to the agency.

5 Q Okay. So if that report indicates that
6 you're bringing an intersection from C to E, you're
7 saying that Forest City has a responsibility to
8 mitigate it to at least Level of Service D?

9 Let's say you did a TIAR report. Let's
10 assume it's a valid TIAR. It's done properly. I'm
11 just trying to get at what, how you're answering my
12 question. Is that what you're saying?

13 A I'm answering your question how it's layed
14 out in our item No. 4. I'm trying to. I mean I'm not
15 dancing around the question. We do a traffic report.
16 We give it to DOT. We work out a fair-share.

17 As Randy Okaneku identified we identify
18 costs of improvements, what the fair-share is and we
19 agree to do those improvements, particular
20 improvements that DOT recommends.

21 Q Now, DOT only has jurisdiction over state
22 roads, isn't that true?

23 A Just so I don't get the question wrong, that
24 might be a question for the traffic engineer. I don't
25 know what DOT's absolute scope of role is in this

1 state. I'm not a traffic expert.

2 Q Let's assume that that's the case and the
3 county has jurisdiction over their roads. There's
4 this principle about mitigating negative impacts that
5 Forest City creates, does that carry over between
6 state to the county as well? You were talking about
7 the State DOT. Let's go to the county now.

8 Suppose it's a county intersection we're
9 talking about now, and that Forest City's Project
10 brings that to a level of E. Does Forest City have a
11 responsibility and duty to mitigate that intersection
12 to at least level D?

13 A Forest City has a responsibility in this
14 case to build an affordable housing project. If that
15 is true, and it is an affordable housing project, it
16 is our duty to pursue any laws which allow it to
17 potentially to or that don't require an affordable
18 housing project to complete area mitigation items, if
19 that's what your question...

20 Q When you refer to laws are you referring to
21 the exemptions that you're allowed to ask for from the
22 county for traffic improvements?

23 A No. I believe I'm referring to the
24 concurrency ordinance in this case. This is a county
25 law.

1 Q The concurrency law allows you to get around
2 doing traffic improvements for intersections that
3 you've made worse as a result of your Project? Is
4 that what you're saying? Which law are you talking
5 about?

6 A I'm referring to the concurrency ordinance
7 law which I believe is Hawai'i County Code 25-2-46
8 which specifically states that "residential or other
9 rezonings where the Applicant commits to providing
10 twice" -- and I'm paraphrasing a little -- "twice the
11 number of affordable credits as normally required
12 under law."

13 Q This permits you to ask for exemptions from
14 traffic improvements and other negative impacts that
15 you might be creating, correct, from the county?

16 A No. I don't believe this law asks you to
17 ask for exemptions, one I'm referring to right now.

18 Q So how does this relate to your
19 responsibilities to mitigate negative impacts? I
20 don't understand.

21 A The law clearly states that affordable
22 housing projects at the county level that provide
23 twice the number of affordable housing credits, would
24 not be required to perform area mitigation
25 improvements.

1 Q Okay.

2 A That's not what we're saying. That's what
3 the law says.

4 CHAIRMAN DEVENS: Mr. Kudo, can you hold
5 the next question? We've been going over an hour. I
6 want to give our court reporter a short break, if you
7 don't mind.

8 MR. KUDO: Okay.

9 CHAIRMAN DEVENS: All right. Thank you.

10 (Recess was held. 10:30)

11 CHAIRMAN DEVENS: Back on the record.
12 Before we resume the cross why don't we make sure we
13 have properly identified the exhibits. Mr. Lim, the
14 two-page document that you've now provided us with
15 copies, that was Exhibit 110, is that correct?

16 MR. LIM: That's correct.

17 CHAIRMAN DEVENS: And it's entitled
18 "Kamakana Villages at Keahuolu, The Traffic Management
19 Consultant". Is that Exhibit 110?

20 MR. LIM: That's correct. It goes further
21 on to further to say, "Initial responses to QLT TIAR
22 figures and tables October 22, 2010."

23 CHAIRMAN DEVENS: Thank you. Then,
24 Mr. Kudo, you have additional exhibits you want marked
25 as Exhibit 36?

1 MR. KUDO: Yes.

2 CHAIRMAN DEVENS: These are copies you have
3 now provided to the Commission.

4 MR. KUDO: Yes. QLT 36 are the
5 discrepancies and errors that we've found in the TIAR
6 report dated August 9, 2010, the September 1st
7 version.

8 CHAIRMAN DEVENS: This will be collectively
9 Exhibit 36.

10 MR. KUDO: Yes. Was that Petitioner's
11 100...

12 CHAIRMAN DEVENS: One one zero was the last
13 exhibit they've marked for identification.

14 MR. KUDO: Thank you.

15 CHAIRMAN DEVENS: And your next exhibit will
16 be Exhibit 36 with the drawings, et cetera. So we can
17 speed this up, parties have any objection to QLT's
18 Exhibit 36 being admitted into evidence?

19 MR. LIM: No objection.

20 MS. MARTIN: No objection.

21 MR. YEE: No objection.

22 CHAIRMAN DEVENS: It will be so admitted.
23 Mr. Kudo, you want to continue with your cross?

24 Q (By Mr. Kudo): Okay. Mr. Randle, you
25 referred to a section in section 25 of the Kona CDP

1 ordinance, correct? Concurrency law.

2 A I don't believe it's in the Kona CDP
3 ordinance. But I'd have to defer to attorneys.

4 Q Hawai'i County Code.

5 A Yes.

6 Q Section 25-2-46 which is the concurrency
7 requirements, subsection H.

8 A Yes.

9 Q Is that correct?

10 A Yes.

11 Q And that says that if you submit -- "a
12 rezoning application shall be required to submit a
13 TIAR when required by this section but shall not be
14 required to perform area mitigation." Is that what
15 you're saying?

16 Because it's a 201H and you're complying
17 with this particular provision of supplying double the
18 amount of affordable housing, that you're exempt from
19 area mitigation? Is that what you said? I'm trying
20 to just clarify what you said.

21 A I didn't say because it was of a 201H. I
22 said in compliance with this law.

23 Q If this says what it is, that is that you
24 are not required to perform area mitigation, why are
25 you also requesting 54 or so exemptions from the

1 county?

2 A As was mentioned earlier by our planning
3 consultants, we are requesting exemptions primarily in
4 order for the Smart Code, LEED designed neighborhood
5 to comply with the Hawai'i County Code which involves
6 exemptions for things such as block widths, street
7 lights and many other things that total 54.

8 Q Are you also asking for exemptions from all
9 of the permit fees, licensing fees and inspections as
10 well? County inspections of the building --

11 A No.

12 Q -- requirements?

13 A That's not correct.

14 Q You're not asking for any exemptions from
15 the fees?

16 A We are asking for exemptions from fees. You
17 said "all".

18 Q Okay. So some fees, some of the fees
19 related to inspections, licensing, et cetera, of the
20 Project?

21 A We're not asking for exemptions from
22 licensing or inspections that I recall. We're asking
23 for particularly exemptions from permit fees for
24 building, plumbing and electrical for the affordable
25 homes in the Project so that we can help make them as

1 affordable as possible.

2 Q How does that relate to LEEDS, permit fees?
3 The exemption from the permit fees, how does that
4 relate to LEEDS? You just said that you're doing this
5 all for LEEDS. How does that relate to LEEDS?

6 A I said "primarily", sir.

7 Q Okay. So there's no relationship with LEEDS
8 then on those exemptions.

9 A There's no direct relationship between a
10 reduction in building permit fees and LEED.

11 Q So in addition to obtaining this particular,
12 that you're not required to perform area mitigation.
13 On top of that you're asking for the 54 exemptions, is
14 that correct?

15 That's the reason you're asking for the
16 exemptions it's not covered by this particular
17 provision of section 25 -- ordinance 25, right?

18 A Again, we're asking for exemptions. And
19 I'll state the same answer. We're asking for
20 exemptions so that the Project is designed, can comply
21 and be built. And in addition we're asking for
22 exemptions from fees.

23 Q Right. So the exemptions are in addition to
24 these, this particular section of 25 that exculpates
25 you from performing area mitigation.

1 A Yes. The exemptions, the 201H exemptions
2 are --

3 Q In addition to.

4 A -- are not, I mean this is the law. We're
5 asking for exemptions from things. It's just
6 different.

7 MR. KUDO: Okay. I have no further
8 questions.

9 CHAIRMAN DEVENS: Commissioners?
10 Commissioner Jencks.

11 COMMISSIONER JENCKS: Mr. Randle, good
12 morning.

13 THE WITNESS: Good morning.

14 COMMISSIONER JENCKS: A couple questions.
15 Typical in the 201 projects I've been associated with
16 in my past, they've been smaller projects,
17 well-defined and generally a hundred percent
18 affordable, without commercial components and schools
19 and those kinds of things.

20 So this is a little different Project in my
21 mind. You had Francis Oda and you had a
22 representative from Calthorpe and Associates here
23 yesterday talking about the time that was spent on the
24 plan in this community. Working with DHHL and also
25 the Kona community as a whole as part of the charrette

1 process in designing a plan that made sense.

2 The question I have for you is: This plan
3 that you've developed has a, you've created a specific
4 relationship between what you're proposing with the
5 state of Hawai'i and the local community.

6 In terms of the relationship between the
7 commercial uses and the existing commercial uses or
8 proposed commercial uses offsite, with DHHL, and the
9 residential communities that you abut, how do you feel
10 about, as a part of this approval that you would
11 receive from the state from this Commission, also
12 tieing that approval to a specific map?

13 In other words, you've proposed a land plan
14 that describes the residential components, the
15 commercial components, single-family/multi-family. Is
16 that something you would agree to or would you have a
17 problem with it?

18 THE WITNESS: I think in concept the Project
19 has a lot of constraints, to answer your question.
20 Has a lot of constraints. Has roads surrounding it on
21 two predominant sides, pretty much three if you count
22 Palani curving towards the east.

23 So because of that there are some
24 limitations in flexibility period. We would not be
25 able to do, put certain things in certain places

1 because of site limitations.

2 Where we run into difficulty locking things
3 down particularly would be with the efforts to do
4 neighborhood commercial. Neighborhood commercial, the
5 goal people think of that is the corner store. The
6 location of the corner store you need the ability to
7 place it kinda where people want to go.

8 We've identified the commercial areas where
9 we think they have the best chance of success, as you
10 mentioned, primarily adjacent to DHHL's commercial
11 area to the north because commercial area likes to
12 consolidate.

13 So the short answer to your questions is the
14 concern would be any reduction in the flexibility to
15 move some components around would be difficult. But
16 the site does have some constraints that kinda force
17 us into particular building patterns that are
18 reflected in the plan.

19 COMMISSIONER JENCKS: Okay. So any kind of
20 generic plan might be acceptable that would tie the
21 planning concept in this community to the adjacent
22 community as part of this approval.

23 THE WITNESS: Yeah. I don't think we'd be
24 adversely affected by that specifically if it referred
25 to locating the higher density housing on the flatter

1 areas adjacent to the transit. You know, those sort
2 of things are what we intend.

3 COMMISSIONER JENCKS: Couple questions about
4 affordability. We were talking to your associate last
5 night about affordability in the Project. And I asked
6 about a ratio between the rental component of the
7 affordability section and the owner-occupied component
8 of the affordability section.

9 One of the questions I had was how the
10 breakdown in affordability would occur. It sounds as
11 though -- everything I've read says it would be at
12 140 percent, a maximum of 140 percent in the
13 affordability section of the Project which is 100+, 51
14 of which will be single-family is what we were told
15 last night.

16 The question I have for you is: In your
17 discussions with the county to date with the housing
18 group with the county, have you negotiated any
19 breakdown of that total number of units in terms of
20 their affordability index?

21 Will a given number be at 80 percent of the
22 county median, let's say, and a given number at
23 100 percent?

24 Is there any breakdown that you've discussed
25 or have you asked to be relieved of any -- is that one

1 of your exemptions with regard to an allocation on
2 affordability?

3 THE WITNESS: No, we have not. What we have
4 provided to the county specifically has been our
5 proposed target market segments for the first phase
6 when asked by Councilmember Hoffman a couple of weeks
7 ago. But we have not agreed to a specific
8 segmentation of the price range below 140. And
9 there's a good reason for that.

10 I think not only anecdotally, but in the
11 past two years we've seen particularly a project in
12 Kona identified for the affordable market come on line
13 and have difficulty, large amount of difficulty
14 leasing up.

15 That project was identified in the lower
16 range of affordability. But what it provides is a
17 reminder that affordable projects have a limited
18 market. Below 140 percent is where this Project's
19 focused. Over 51 percent or over 50 percent.

20 But it's also identified for the people who
21 have the hardest time buying a home, usually the
22 people with the worst credit. Usually the people with
23 the least amount of money in the bank for downpayment.

24 So any stratification or agreement to
25 specific target markets under the 140 percent of area

1 median income make it very difficult for us to have
2 the flexibility as we proceed to sell product to
3 people who can actually buy it that are in that range.
4 It just makes it harder.

5 COMMISSIONER JENCKS: Would you say that
6 agreeing to a breakdown below 140 percent would also
7 then maybe compromise your financial capability to
8 build the Project?

9 THE WITNESS: It does. It does. Affordable
10 housing historically relies on incentives. Tax
11 credits are one of the bigger ones.

12 COMMISSIONER JENCKS: Sure.

13 THE WITNESS: And the purpose of
14 incentivizing certain price ranges you have the
15 ability to go after financing that encourages
16 certain -- the building to a certain AMI.

17 If for some reason that incentive went away
18 or was being utilized elsewhere in the state at a
19 given time, it would make it very difficult to finance
20 that particular part of the Project. So that
21 flexibility needs to be maintained for financing
22 reasons, as you stated.

23 COMMISSIONER JENCKS: Thank you.

24 CHAIRMAN DEVENS: Any other questions?
25 Commissioner Heller.

1 COMMISSIONER HELLER: Yes. I'd like to
2 reask a question I asked yesterday which was with
3 regard to there's two school sites shown on the plan.
4 What is the specific intent as to who is going to,
5 number one, own that land and, number two, pay to put
6 school buildings on it?

7 THE WITNESS: The DOE school site, which is
8 the larger school site shown in the center of the
9 plan, our agreement with DOE is that we would provide
10 land to DOE; that we would subdivide it and provide it
11 to them.

12 In addition, provide some extra land that
13 would be sold to them so that they can have an even
14 bigger parcel. So that's that the agreement.

15 In the agreement we have tried to allow for
16 the option for Forest City to construct a school
17 under -- if there's an ability of DOE to finance it,
18 to obtain financing, we would love to build the
19 school.

20 DOE builds schools. They have a staff that
21 builds schools. And they do a good job at it as well.
22 We would just love to keep that option open for that
23 school site.

24 For the other school site that's shown, the
25 civic site -- the school site to the north, which is

1 identified as a charter or private school under our
2 proposed plan, that one, as was mentioned by Jon
3 Wallenstrom, is something we would also love to build.

4 Forest City does have some history building
5 schools elsewhere in the nation. And they encourage
6 us to do that as well. Good schools make for good
7 communities. But the financing of those schools is
8 also very difficult and it's limited. There have been
9 some success stories on this island. But we would
10 need to team up with an appropriate school operator
11 and go after that financing.

12 COMMISSIONER HELLER: So the bottom line is
13 you'd be willing to be the contractor that builds the
14 schools. But that would involve a separate payment to
15 Forest City.

16 THE WITNESS: Yes.

17 COMMISSIONER HELLER: Thank you.

18 CHAIRMAN DEVENS: Any other questions?
19 Commissioner Kanuha.

20 COMMISSIONER KANUHA: Thank you,
21 Mr. Chairman. Race, the concept of this, your
22 proposal, your plan, is it driven by the incentives
23 that are available through this process, i.e. the
24 exemptions for items such as energy conservations,
25 LEEDS, et cetera, or is it just a good business

1 decision to do the Project the way you propose it?

2 THE WITNESS: I think it's just the right
3 thing to do. Whether or not it's a good business
4 decision I think Forest City has sustainability as one
5 of its core values. So it's encouraged.

6 It was something that was also encouraged by
7 HHFDC and was one of the top five things that the
8 community asked us to do when we met with them was
9 make that a core component or core theme of the
10 Project. So we planned it in. And as a result the
11 exemptions are to allow us to build it as planned.

12 COMMISSIONER KANUHA: So if that's the case,
13 then it makes sense to do this with or without those
14 exemptions. Is that what you're saying?

15 THE WITNESS: It makes more sense to do it
16 with the exemptions that allow us to build it per the
17 LEED, in our opinion.

18 COMMISSIONER KANUHA: I thought I read
19 somewhere that you're not asking for any kind of
20 zoning exemption for the county, is that correct?

21 THE WITNESS: The exemptions we're asking do
22 allow the Project to be built as it's designed on ag
23 zoned land. The 201H exemptions at the county allow
24 this Project to be built on the current zoning of the
25 parcel is what we're asking.

1 So it allows it to be as it's designed
2 constructed. We are also in, have submitted project
3 district rezoning application.

4 COMMISSIONER KANUHA: That's what I was
5 getting at. So there's another application for the
6 project district that's either going to be submitted
7 or has been submitted?

8 THE WITNESS: Has been submitted. Yes, sir.

9 COMMISSIONER KANUHA: And that goes through
10 the county process in a regular manner. Is that on an
11 expedited process or how does that work?

12 THE WITNESS: I don't believe that project
13 district rezoning application goes through any
14 different process than the standard county process.

15 COMMISSIONER KANUHA: Okay. Thank you.

16 CHAIRMAN DEVENS: Any other questions?
17 Commissioner Judge.

18 COMMISSIONER JUDGE: Thank you. Good
19 morning. I have a couple questions. I see in a lot
20 of the exhibits and your plans and figures "Smart
21 Code". Can you explain to me what that Smart Code
22 reference is to?

23 THE WITNESS: I'm not just -- I'm not a
24 planning expert so I know what it is, I don't know the
25 details of it in particular. But the Smart Code is a

1 planning tool. It's similar in concept to LEED
2 somewhat. But really the Smart Code's goals is a
3 form-based code.

4 It specifically says in particular location
5 if you want to build a mixed-use community it gives
6 design, it gives what's called design elements:
7 Street widths, it's block widths, block designs in
8 order to make the community fit in what the Smart Code
9 considers a Smart way.

10 Our planners are the experts in it. They
11 know how to use it as a planning tool. But it's
12 basically a movement that's being adopted. I think in
13 this case it was adopted by the Kona Community
14 Development Planning group as the tool by which to use
15 to encourage Smart Growth, the direct planning tool
16 that directs kind of the layout design of communities.

17 COMMISSIONER JUDGE: So the Smart Code -- so
18 the Kona Development Plan requires developers to use
19 the Smart Code going forward for their designs?

20 THE WITNESS: It's my understanding that in
21 order to build a project that's in compliance with the
22 Kona Community Development Plan that you need to
23 comply with the Smart Code as it's identified in the
24 Community Development Plan.

25 COMMISSIONER JUDGE: Okay. All right.

1 There were a couple things in the petition. And I
2 don't know if you have it in front of you. I think on
3 Page 29 it talks about solid waste and the landfill,
4 and the waste generated by the Project.

5 And there's a statement that "The Petitioner
6 will emphasize waste diversion and recycling as a part
7 of the Solid Waste Management Plan for Kamakana
8 Villages."

9 THE WITNESS: Yes.

10 COMMISSIONER JUDGE: Would you have any
11 objection to that being built into your conditions for
12 solid waste? Just that sentence?

13 THE WITNESS: That condition to emphasize
14 waste diversion, recycling? No, we would not have.
15 We, actually as part of LEED for neighborhoods that's
16 one of the encouraged components.

17 COMMISSIONER JUDGE: Okay. Then on page 33
18 in water there's a statement that the "County of
19 Hawai'i has prioritized construction of water reuse
20 infrastructure, and Kamakana Villages will make
21 accommodations to include reclaimed water in its
22 irrigation design."

23 Would you have any objection or Forest City
24 have any objection to that being included in your
25 water condition? That you would make accommodations

1 to include reclaimed water in your irrigation design?

2 THE WITNESS: The only disclaimer to that or
3 the only qualification would be that the water needs
4 to be brought up from the Kealakehe Wastewater
5 Treatment Plant which is 300 feet lower or 500 feet
6 lower than the site and about three quarters of a mile
7 away. So while we can accommodate it on site it's not
8 brought to the site yet.

9 So we'd be happy to design in the ability to
10 use it, but we would also need the assurance that it
11 would be brought to the site so that pipes installed
12 get utilized.

13 We'd be happy to use the water to reduce the
14 water consumption on the site. Water is very
15 expensive to develop as shown in our infrastructure
16 plan.

17 COMMISSIONER JUDGE: Okay. I guess members
18 we'll have to talk to the county a little bit more
19 about that if that's a priority for them. So I'm just
20 wondering what was the thinking in putting that
21 language in there if there's no accessibility to
22 reclaimed water.

23 THE WITNESS: We've been in discussions with
24 the county, specifically Department of Environmental
25 Management. When the stimulus funds came out last

1 year, one of the priority projects for the Department
2 of Environmental Management was to go after stimulus
3 funding to build reused infrastructure in the
4 Kealakehe area, part of the priority projects to
5 install their capacity both to produce reusable water
6 and then also the infrastructure so that it can be
7 taken to various areas around the wastewater treatment
8 plant.

9 That was the same time we were working on
10 this document, so we wanted to make sure that if they
11 were able to get the funding to do that that we'd
12 accommodate it.

13 COMMISSIONER JUDGE: Okay. So you don't
14 have any problem including that in your conditions
15 with your caveat that you're not going to produce the
16 water but you will have a system that will use the
17 water if it was made available to you.

18 THE WITNESS: Yes.

19 COMMISSIONER JUDGE: My last question is
20 about the open space and the parks. And I appreciate
21 your testimony today regarding that. As I go through
22 the submissions, you have a couple things that I refer
23 to as the -- in your parks and open space in your
24 plans and figures I think it's 5D that shows the
25 playgrounds.

1 And then in the Environmental Report Figure
2 2.4 is parks and open space. In the Environmental
3 Report it states that there's going to be 30 acres of
4 parks. And in the petition it says 20 acres of parks.
5 Do you know which one it is? Is it 28 acres or 30
6 acres?

7 THE WITNESS: I think it's 28 acres is the
8 number.

9 COMMISSIONER JUDGE: So you will be
10 committing to 28 acres of parks in the development.

11 THE WITNESS: Yes.

12 COMMISSIONER JUDGE: Okay. And this morning
13 elsewhere in the petition it talks about three large
14 parks and numerous smaller parks. And today in your
15 testimony you only made reference to two large parks.
16 Can you explain the difference?

17 THE WITNESS: In meetings with the county
18 parks and rec department they put emphasis on the
19 large parks because those are the parks that they have
20 the most efficiency in maintaining from a county
21 dedicatable standpoint. They have the tools to
22 maintain those and they encourage those to be built, I
23 think, more so than the smaller parks.

24 So while we plan to build both, it's our
25 understanding right now that we would have more of an

1 ability to dedicate the large, the larger parks that
2 are identified on the plan to the county. Although
3 we'd hope to be able to dedicate all of them.

4 COMMISSIONER JUDGE: So are you saying --
5 I'm trying to understand. I understand that you want
6 to dedicate as many parks as you can. But will you
7 build all the parks or are you only going to build the
8 parks the county will accept from you?

9 THE WITNESS: No, we'll build all the parks.

10 COMMISSIONER JUDGE: So you will build all
11 the parks.

12 THE WITNESS: With the only exception being
13 particularly if there is a park or a play area that's
14 associated with the elementary school, for example,
15 the elementary school has plans for a play area.

16 But they specifically say unless we form an
17 agreement where we build the school they would build
18 that play field.

19 COMMISSIONER JUDGE: Is that play field
20 included in your 28 acres?

21 THE WITNESS: I honestly would have to look
22 at the background of that number to get to know that
23 detail.

24 COMMISSIONER JUDGE: Okay. Are you going to
25 also -- so you're going to construct the parks,

1 28 acres of parks, let's say, and put in the play
2 structures that are on the Figure 5D?

3 Or I understand that things may change and
4 you may need to move them somewhere else, but you'll
5 be putting in the appropriate play structures as well?

6 THE WITNESS: In coordination with Parks and
7 Rec, yeah.

8 COMMISSIONER JUDGE: I think I heard you in
9 your earlier testimony, would you be willing to have
10 that one of your conditions that you will construct
11 the parks, the 28 acres of parks in -- I don't have
12 the exact wording -- but would you be agreeable to
13 having that be a condition for Parks and Recreation
14 that you will be able -- you build at least 28 acres
15 of parks?

16 THE WITNESS: We're actually asking for -- I
17 don't mean to not answer your question -- but we're
18 actually asking as one of our exemption requests with
19 the county that specifically we're allowed to build
20 the parks per the plan, which I believe totals the
21 28 acres you're referring to.

22 The only caveat would be the Department of
23 Education school. I do need to check, make sure we're
24 not including that because they made specific request
25 that they do design and build.

1 So I don't want to make the stipulation that
2 we would build it if they aren't agreeable to that,
3 the DOE.

4 COMMISSIONER JUDGE: Okay. But in concept
5 would you be agreeable to a condition for parks that
6 you would build X amount of acres, whatever we figure
7 it out to be, if it includes -- the 28 acres includes
8 or does not include the DOE area?

9 THE WITNESS: Yes. Yes.

10 COMMISSIONER JUDGE: Okay. Regarding the
11 DOE, I didn't quite get it. Do you have a signed
12 agreement with them? Or you're working towards a
13 signed agreement?

14 THE WITNESS: We're ready to sign. The
15 document I believe is with the AG for review and
16 approval of the final form. But it has been sent by
17 the DOE staff to the AG.

18 COMMISSIONER JUDGE: So do you think by the
19 November 4th dates you'll have a signed agreement
20 before then?

21 THE WITNESS: I don't know if we can do it
22 by November 4th. We're ready to sign right now based
23 on the form of the agreement. We're ready. I don't
24 know if I can answer for them.

25 COMMISSIONER JUDGE: Okay. Thank you.

1 CHAIRMAN DEVENS: Commissioner Chock.

2 COMMISSIONER CHOCK: Just to clarify on the
3 LEED-ND. Is it your intent to pilot LEED-ND or is it
4 to certify and register?

5 THE WITNESS: It's just -- it's my
6 understanding it came out of the pilot program and now
7 it's a fully approved program. So unlike our project
8 on the Marine Corps base, which was a pilot program,
9 this one would go under the standard program which
10 requires that we apply.

11 COMMISSIONER CHOCK: So you intend to
12 register and certify LEED-ND?

13 THE WITNESS: To the extent practicable,
14 yes. I think the one issue is LEED-ND requires in
15 order, as a prerequisite in order to qualify to get in
16 the program it does require certain things outside of
17 your control such as bus access to and from the site
18 on certain days of the week. So we have to make sure
19 that those things are available. Those are a little
20 bit outside of our control.

21 But, yes, it's our intention under the
22 agreement to apply for LEED-ND and reach those goals.

23 COMMISSIONER CHOCK: Is there an additional
24 cost to you as the developer to pursue that
25 certification?

1 THE WITNESS: There's an application fee.
2 There's additional costs in hiring specific
3 consultants that review the process and tabulate the
4 points and do the intersection with the U.S. Green
5 Building Council. So, yes, there's additional costs.

6 COMMISSIONER CHOCK: In general what's the
7 delta in terms of a percentage if you were not to
8 pursue LEED-ND versus doing it?

9 THE WITNESS: For LEED for neighborhoods I'm
10 not aware of the delta, to be frank. It is an upfront
11 cost for LEED for neighborhoods, it's over a longer
12 period of time so I'm not sure of the actual
13 percentage cost increase.

14 COMMISSIONER CHOCK: Are there any other Big
15 Island projects that are pursuing LEED-ND that you
16 know of?

17 THE WITNESS: I'm not aware.

18 COMMISSIONER CHOCK: What about in the
19 state?

20 THE WITNESS: Besides our project that was
21 just awarded on the Marine Corps base, I'm not aware
22 of any other projects that are currently pursuing
23 LEED-ND at this time.

24 COMMISSIONER CHOCK: Thank you.

25 CHAIRMAN DEVENS: Any other questions?

1 Commissioner Kanuha.

2 COMMISSIONER KANUHA: Thank you,
3 Mr. Chairman. Race, I just had a follow up question
4 to your discussion with Commissioner Judge regarding
5 the parks, the park situation.

6 Did I hear you say that you're asking for an
7 exemption, that's of the exemptions you're asking for
8 related to the construction of the parks? Is that
9 what you said?

10 THE WITNESS: I did, yes. That's a
11 difficult one because the County Code actually calls
12 for a project to provide 5 to 10 percent of land area
13 exclusive of streets for parks.

14 Based on our calculation that comes out to
15 on the range of I believe something like 15 to
16 20 acres or something like that, I think, maybe or 10
17 to 15 acres. We're actually asking for an exemption
18 in order to provide more.

19 But we want the exemption so we can build
20 what's shown on the plan is what we're asking for,
21 more so than an exemption to do anything less than
22 what's required under the parks requirement.

23 COMMISSIONER KANUHA: Thank you.

24 CHAIRMAN DEVENS: Commissioner Lezy.

25 COMMISSIONER LEZY: Thank you, Chair. Good

1 morning, Mr. Randle. Thank you for your testimony.
2 Commissioner Kanuha last night made mention of
3 something that's caused the Commission some trouble
4 particularly in West Hawai'i in recent years.

5 And that has to do with petitions that have
6 come before us where there were representations made
7 regarding in particular affordable housing.

8 And there were grand plans to provide
9 affordable housing. And demands made on the part of
10 Petitioner to press things through and ask for special
11 considerations because of the fact that affordable
12 housing was going to be provided.

13 Only then after the petition was approved,
14 then the Commission essentially watched those
15 representations languish and, frankly, turn into a
16 huge mess. So I think as a whole the Commission is
17 particularly sensitive to those issues.

18 And I'm wondering whether in this instance
19 and the representations that you've made and the other
20 testifiers have made regarding Forest City's and
21 HHFDC's intentions here, frankly they sound great.

22 It sounds like a very worthy project. But
23 still I think in the back of our minds we have
24 concerns about whether or not things will come to
25 pass.

1 So would Petitioner in this instance be
2 willing to agree to a provision for an automatic Order
3 to Show Cause as to why the Petition Area shouldn't
4 revert to its original classification if the
5 Petitioner fails to meet conditions as provided for in
6 any, if any, Decision and Order?

7 THE WITNESS: I just want to refer -- that
8 rings a bell to Office of Planning's condition of
9 approval that we've come to an understanding on the
10 automatic Order to Show Cause No. 23.

11 COMMISSIONER LEZY: This is typically
12 something that Office of Planning asks for and
13 petitioners uniformly object to.

14 THE WITNESS: I believe we're in agreement
15 with the current language which says "they shall".

16 COMMISSIONER LEZY: That you are in
17 agreement. You're representing to us that you will
18 agree that there will be an automatic Order to Show
19 Cause.

20 THE WITNESS: I'm sorry, I'm just not an
21 expert of the detail, the legal language. I'm
22 referring to the Exhibit No. 17 in which we are in
23 agreement that the Commission may issue and serve and
24 the Petitioner shall appear before the Commission.

25 COMMISSIONER LEZY: That's separate though.

1 THE WITNESS: Is it? Sorry.

2 COMMISSIONER LEZY: That's not an
3 automatic -- would you like to take a break and talk
4 with your counsel?

5 THE WITNESS: I'd love that, yeah. I
6 appreciate it.

7 COMMISSIONER LEZY: Chair, if you'd indulge.

8 CHAIRMAN DEVENS: Take a short break.

9 THE WITNESS: Thanks.

10 (Recess was held. 11:35)

11 CHAIRMAN DEVENS: We're back on the record.
12 Mr. Randle, do you have an answer to Commissioner
13 Lezy's last question?

14 THE WITNESS: Yes. I guess the answer is
15 that we are willing to comply with the infrastructure
16 deadlines that we're setting on the Project. And I
17 think that in the case of we're not performing in
18 addition to the powers of the Commission to call us
19 back and explain if there's ever an event where we
20 weren't performing, in addition we have HHFDC whose
21 requirements on us to perform our additional burden.

22 What I'll add to specific, I'm not an
23 attorney so I don't understand completely the
24 intricacies of the different language that you're
25 referring to.

1 But from a macro level any, any, any
2 differences on this Project from a standard project
3 elsewhere in Hawai'i which would have additional risk
4 associated with it or just additional differences,
5 make it harder to finance.

6 So the pushback from us would be anything
7 that makes it stand out and makes it potentially any
8 riskier in the eyes of a lender is hard for the
9 Project.

10 COMMISSIONER LEZY: So if I understand, your
11 response would be that Petitioner would not willingly
12 agree to a provision for an automatic Order to Show
13 Cause, the primary reason being that it may cause
14 difficulties as far as securing financing. Is that
15 the critical issue?

16 THE WITNESS: I think that's the most
17 critical issue is that, yes.

18 COMMISSIONER LEZY: All right. See how it
19 works out.

20 CHAIRMAN DEVENS: Any other questions?
21 Mr. Lim, do you have any redirect? I'm sorry.
22 Ms. Benck, do you have any redirect?

23 MS. BENCK: Thank you. Just one question
24 direct.

25 xx

1 xx

2 REDIRECT EXAMINATION

3 BY MS. BENCK:

4 Q Race, even after the discussion that we had
5 outside it is confusing. The condition, just to
6 follow up on Commissioner Lezy's question, it's
7 condition 23.

8 And if you could I'd like to just read the
9 sentence because I think it will help better
10 characterize. It's on Page 78. It starts off, "If
11 Petitioner fails..." go ahead if you would read it.
12 Do you have the condition?

13 THE WITNESS: Yes. "If the Petitioner fails
14 to comply with the deadlines contained in condition
15 21, the Commission may issue and serve upon the
16 Petitioner an Order to Show Cause."

17 Q And we can stop right there. So the party
18 with the burden of issuing the Order to Show Cause --
19 and I know this sounds kind of weird -- but is it the
20 Petitioner who's issuing the Order to Show Cause or
21 the Commission who issues the Order to Show Cause?

22 A It's appears in this sentence it's the
23 Commission.

24 Q Right. So I mean in terms of Forest City's
25 representations on whether or not the Commission may

1 or shall issue an Order to Show Cause, does Forest
2 City as Petitioner have the ability to dictate what
3 the Commission may or shall do?

4 A I don't believe so.

5 Q Now, if we could -- that's correct --
6 condition 21 the infrastructure deadline condition, I
7 won't pain everybody by asking you to read it. But
8 just read the opening clause. And that says what,
9 please?

10 A "Petitioner shall complete construction."

11 Q Thank you. And if you can go to the next
12 page which is subsection B. And that it says?

13 A "Petitioner shall complete construction."

14 Q So who's carrying the burden on these
15 conditions?

16 A That's us, Petitioner.

17 Q So do you represent that Petitioner shall
18 complete construction according to these schedules?

19 A Yes.

20 MS. BENCK: Thank you. I don't have any
21 further questions.

22 CHAIRMAN DEVENS: Any other questions from
23 the parties? Mr. Yee.

24 MR. YEE: One redirect and clarification
25 from a question of the DOE agreement asked by

1 Mr. Heller.

2 RECROSS-EXAMINATION

3 BY YEE:

4 Q In addition to the provision of land and the
5 option to purchase additional land, is there also a
6 cash contribution of approximately 2.68 million that
7 the Forest City will be making?

8 A Yes. Per unit, yes.

9 Q No. \$2.68 million...

10 A Sorry. (audience laughter). Yes. But my
11 reference to per unit is in the agreement the cash
12 contribution is made at the closing of each unit.

13 Q Okay.

14 A Not in a lump sum amount. I just wanted to
15 clarify that.

16 Q And that this amount may be used as an
17 offset against any purchase the DOE may make for the
18 additional lands, correct?

19 A I believe so.

20 MR. YEE: I have nothing further.

21 CHAIRMAN DEVENS: Any other questions?

22 None. Mr. Randle, I had one question. You understand
23 that the authority to give Order to Show Cause, that's
24 bestowed on the Commission? You understand that,
25 right?

1 THE WITNESS: Yes.

2 CHAIRMAN DEVENS: You also understand that
3 if we suspect that there's been a violation of the
4 Decision and Order or any conditions contained
5 therein, that we are *required* to issue the Order to
6 Show Cause. Do you understand that?

7 THE WITNESS: I do now, yes.

8 CHAIRMAN DEVENS: Well, you understand
9 that's part of our administrative rules? It's not we
10 may. We actually have to. It's a mandatory
11 requirement on this body that we issue an Order to
12 Show Cause if we suspect or have reason to believe
13 there's been a failure to perform according to the
14 conditions imposed. Is that your understanding?

15 THE WITNESS: Yes.

16 CHAIRMAN DEVENS: Thank you. Any other
17 questions? Hearing none, thank you very much.

18 MR. KUDO: Mr. Chairman?

19 CHAIRMAN DEVENS: Yes, sir.

20 MR. KUDO: I just wanted to put into
21 perspective that the development agreement, as I
22 pointed out in the cross-examination, has a clause
23 which allows Forest City to cancel at any time at
24 their discretion.

25 MR. IHA: Mr. Chairman, I'd like to object

1 to this. I don't know if Mr. Kudo was testifying. I
2 think it's already established that Mr. Randle wasn't
3 the best witness to speak about the development
4 agreement.

5 CHAIRMAN DEVENS: Why don't we let him
6 finish to hear what he has to say.

7 MR. KUDO: I just said in light of
8 Commissioner Lezy's concern about the automatic Order
9 to Show Cause, I'm not so sure whether that condition
10 would mean anything if an Order to Show Cause were
11 issued and Forest City decided to cancel the contract
12 and get a reimbursement.

13 Under the contract there's no further
14 obligations to Forest City if they cancel at their
15 discretion.

16 CHAIRMAN DEVENS: Okay. Why are you
17 bringing that up now?

18 MR. KUDO: I'm just saying that the
19 condition that the Commission is discussing may have
20 no force and effect --

21 CHAIRMAN DEVENS: But we're not taking
22 argument right now. We're still on the witnesses.

23 MR. KUDO: Okay.

24 CHAIRMAN DEVENS: You can reserve that for
25 argument later. Want to go with your next witness,

1 Mr. Lim?

2 MR. LIM: Mr. Chairman. We've passed out
3 the traffic summary which is only a page and-a-half.
4 So I'm assuming the Trust has had time and the other
5 parties have had time to review that.

6 CHAIRMAN DEVENS: I'm sorry. Which exhibit
7 is that? Is that 110?

8 MR. LIM: Our summital Exhibit No. 110. If
9 that's the case then we'll proceed with continuation
10 of Mr. Okaneku.

11 MR. KUDO: Actually I haven't had time
12 because I've been doing the cross-examination. So can
13 I have maybe 10 minutes to look at that?

14 CHAIRMAN DEVENS: Sure. Want to take a
15 break for that?

16 MR. KUDO: Yes, please.

17 CHAIRMAN DEVENS: Why don't we take a short
18 break.

19 MR. YEE: Chair?

20 CHAIRMAN DEVENS: Yes.

21 MR. YEE: Can I ask a question?

22 CHAIRMAN DEVENS: We're still on the record.

23 MR. YEE: If we're not going to break for
24 lunch I think that's fine. But if we are going to
25 break for lunch why don't we just continue with the

1 next witness and come back to Mr. Okaneku after lunch?
2 If we're not going to break for lunch I'm all for
3 giving Mr. Kudo an additional 10 minutes. But...

4 CHAIRMAN DEVENS: We are going to break for
5 lunch. Some of the Commissioners need to take that
6 break.

7 MR. YEE: Would it be acceptable to continue
8 with the next several witnesses? Because we have
9 plane flights. We'd really like to get our witnesses
10 on today.

11 CHAIRMAN DEVENS: Let me also ask the county
12 planning director. I know you have your own schedule.
13 And I want to accommodate you on that if we can.

14 MS. LEITHEAD-TODD: I would like to get out
15 of here by 1:30. But I'm going to make a call to my
16 staff in Hilo and have somebody else replace me at a
17 3:00 o'clock appointment so I can stay here if
18 necessary.

19 CHAIRMAN DEVENS: Mr. Lim, after Mr. Okaneku
20 you have one last witness?

21 MR. LIM: That would be our rebuttal. We're
22 going to reserve our rebuttal witnesses until after
23 the presentation of the parties' cases. We would be
24 willing to step aside at this time to allow the
25 planning director and OP to continue on with their

1 testimony.

2 CHAIRMAN DEVENS: Okay. Parties have any
3 objection if we took the planning director out of
4 order if we need to?

5 MR. KUDO: No objections.

6 CHAIRMAN DEVENS: OP, any objection if we
7 can --

8 MR. KUDO: Actually it would be a good idea
9 because my planning consultant is still studying the
10 sheet that Mr. Lim gave us.

11 MR. YEE: The Office of Planning has no
12 objection. Certainly we'd appreciate it. Actually
13 the county has graciously offered to allow the Office
14 of Planning to go first to allow us to present our
15 witnesses so that we don't have to bring them back.

16 CHAIRMAN DEVENS: So you want to go first
17 before her.

18 MR. YEE: Yes.

19 CHAIRMAN DEVENS: Okay. You're okay with
20 that?

21 MS. MARTIN: Yes.

22 CHAIRMAN DEVENS: So why don't we go ahead
23 with Office of Planning with the understanding that
24 Mr. Okaneku will be recalled as part of the
25 Petitioner's case in chief.

1 MR. YEE: Thank you. Our first witness will
2 be Mr. Ed Sniffen from the Department of
3 Transportation.

4 CHAIRMAN DEVENS: Good morning, Mr. Sniffen.
5 If we can swear you in.

6 EDWIN SNIFFEN,
7 being first duly sworn to tell the truth, was examined
8 and testified as follows:

9 THE WITNESS: Yes.

10 CHAIRMAN DEVENS: State your name and
11 address, please.

12 THE WITNESS: Ed Sniffen, 98-1791-C
13 Ka'ahumanu Street, Aiea, Hawai'i 96781.

14 CHAIRMAN DEVENS: Mr. Yee, your witness.

15 MR. YEE: Thank you.

16 DIRECT EXAMINATION

17 BY MR. YEE:

18 Q Mr. Sniffen, would you please provide us
19 with your position in the state.

20 A I'm the DOT Highways Administrator.

21 Q And are you familiar with the petition in
22 this docket?

23 A Yes.

24 Q Could you please provide a summary of the
25 Department of Transportation's comments on this

1 petition.

2 A In our testimony we stated that we've been
3 working with the Petitioner to get to an agreeable
4 TIAR so we can fairly mitigate any impacts on the
5 state highways facilities.

6 At this time we don't have a TIAR that we've
7 agreed with or have accepted with them. So we haven't
8 gotten mitigation at this point.

9 We have been meeting since December 2009
10 once a month and sharing information with the
11 Petitioner throughout that time. The Petitioner has
12 been very cooperative in working with DOT.

13 And we're going to keep moving forward to
14 try to get to that agreeable or acceptable TIAR and
15 agreeable mitigation system.

16 Q What areas have you generally reached
17 agreement on with respect to this Project?

18 A In general the Petitioner has come in with a
19 market-based approach in looking at or projecting the
20 future developments to include into the TIAR. They've
21 put together a trip generation based on those without
22 the Project, based on that market-based approach, and
23 a trip distribution based on that market-based
24 approach.

25 So without Project in general we're in

1 agreement where we are on that. It's with Project
2 that we've been having some concerns and questions
3 about the Petitioner's TIAR.

4 Q What are some of those concerns?

5 A Well, what jumps out at us in general when
6 we look at the projections without Project and we look
7 at the traffic assignments based on the Project
8 itself. Then we looked at the traffic projections
9 with Project. We expect to see some kind of adding up
10 in this area.

11 But we've been seeing, there's some areas
12 where we see the projected traffic in the future with
13 Project actually goes down. So when we talk to the
14 consultant he gave us some -- he let us know there's
15 some assumptions he's made that weren't documented in
16 the report.

17 So those are the kinds of things we're
18 trying to follow up on. We're trying to make sure
19 that we clarify and identify these situations, get
20 the assumptions that were made on the record and
21 documented and make sure we agree with them.

22 Q You need to work out these assumptions for
23 what purpose? Or how does it impact on your future
24 determinations?

25 A We strive to treat each developer fairly.

1 We want to make sure that they contribute their fair
2 share or we get to the fair-share amount that's owed
3 This TIAR is the basis of that fair-share amount.

4 So we have to have reasonable comfort with
5 the document to make sure that the assumptions that
6 were made are reasonable and we can get to that
7 fair-share amount based on the mitigations.

8 Q So you need these assumptions in order to
9 come, to determine what are the acceptable
10 mitigations.

11 A That's correct. We need these assumptions
12 to be lined out so we can be comfortable that the
13 impacts or the projected impacts of this development
14 are captured. Then we can come to the mitigations
15 that are necessary based on their impacts to our state
16 facilities.

17 Q They would also be necessary for you to come
18 to a fair-share determination of the regional impacts.

19 A That's correct.

20 Q Have you had an opportunity to -- I'm sure
21 you have not had an opportunity to seriously review --
22 but have you had an opportunity to review some of the
23 concerns raised by QLT?

24 A That was in the e-mail or these documents
25 that were provided today or e-mailed last night?

1 Q Yes.

2 A Yes. I took a look at it.

3 Q As a general matter are these the kind of
4 things that the Department of Transportation would
5 need to look at?

6 A Yes.

7 Q You would need to -- what would you do with
8 this information going forward?

9 A We had -- we had been in conversation with
10 Petitioner and we expressed our concerns about the
11 document, expressed our concerns. Things like the
12 AM/PM traffic in a certain intersection being the
13 same. It doesn't -- it doesn't make intuitive sense
14 when you look at it directly.

15 So we wanted to give them, let them know,
16 ask them: Is this a mistake? Or is there some
17 rational basis behind, you know, why the traffic
18 volumes are the same?

19 I can't say it's wrong because I haven't
20 heard their assumptions yet. Those are the kinds of
21 things we've got to get from them.

22 Q Based upon the information you have today do
23 you believe it's likely that you will be able to come
24 to an agreement or an acceptance of the TIAR and
25 agreement for the mitigation?

1 A I think so. Based on the cooperative nature
2 of the Petitioner, and based on their commitment to
3 meet with us quite a lot, frankly, I don't see a
4 reason why we could not reach on acceptable TIAR.

5 MR. YEE: I have no further questions.
6 Thank you.

7 CHAIRMAN DEVENS: Petitioner, do you have
8 questions for the witness?

9 MR. LIM: Thank you, Mr. Chairman.

10 CROSS-EXAMINATION

11 BY MR. LIM:

12 Q Good morning, Mr. Sniffen.

13 A Morning.

14 Q The Trust has been participating as an
15 intervenor in these proceedings with respect to their
16 allegation that somehow the Kamakana Villages Project
17 would not be paying for its fair-share of regional
18 traffic impacts or as reviewed by the State DOT.

19 Is there any kind of a special deal or some
20 kind of a lesser standard you're using just because
21 this is an HHFDC-based Project?

22 A No.

23 Q So there's no lessening of standards,
24 there's no extra things that you're going to be doing
25 for the Kamakana Villages Project.

1 A No.

2 Q Another allegation that they're making is
3 they're arguing that whenever a new project comes into
4 an area, and especially a large project like Kamakana
5 Villages, is that that new project by itself, as I
6 understand their argument, is required to maintain the
7 minimum Level of Service to D or better.

8 When you look at the Traffic Impact Analysis
9 Report for Kamakana Villages, you've been discussing
10 the application of the fair-share for their Project;
11 is that correct?

12 A That's correct.

13 Q Would the DOT, once you determined their
14 fair share -- that's I'm assuming a dollar number, is
15 that correct?

16 A That's correct.

17 Q -- would you then take that dollar number
18 for fair share for the Kamakana Villages Project then
19 go spend it on all the intersections in the area?

20 A No.

21 Q Why is that?

22 A Well, the approach -- and each
23 administration had a different approach. This
24 administration's approach is to get the improvements
25 sooner rather than later. So when we look at the

1 impacts to our state facilities, we assess -- based on
2 the TIAR and based on the costs that are estimated --
3 we assess what a fair-share would be for that
4 development in dollar amounts of course.

5 And then we negotiate projects that that
6 development would do in order to fulfill their share.

7 Q Thank you. You're aware that the Trust has
8 developable lands around this Kamakana Villages
9 Project.

10 A Yes.

11 Q Have you seen any recent traffic reports
12 from the Trust for review by the State Department of
13 Transportation?

14 A I don't recall.

15 Q When they come in for their proposed project
16 would they be required, likewise, to perform their
17 fair share of mitigation measures?

18 A Yes.

19 Q Would they be treated any different than
20 you're treating Kamakana Villages?

21 A No.

22 MR. LIM: I have no further questions.

23 CHAIRMAN DEVENS: County?

24 CROSS-EXAMINATION

25 BY MS. MARTIN:

1 Q When you talk about the fair-share is that
2 only for the state highways or does that include the
3 county?

4 A We're just looking at the state facilities.

5 Q Is there any consultation at all with the
6 county?

7 A I think my staff has been working with the
8 county. But I can't say how much they've been
9 speaking to the county.

10 MS. MARTIN: That's all I have. Thank you.

11 CHAIRMAN DEVENS: Mr. Kudo.

12 CROSS-EXAMINATION

13 BY MR. KUDO:

14 Q 'Morning, Mr. Sniffen.

15 A Good morning.

16 Q I want to refer you to your written
17 testimony that you filed in this proceeding. Do you
18 have a copy in front of you?

19 A I don't have a copy. (document handed to
20 witness) Sorry. Go ahead.

21 Q Okay. I refer you to the second paragraph
22 of your three-paragraph statement. It starts off with
23 the phrase "such a large development poses challenges
24 to regional traffic." What do you mean by
25 'challenges'?

1 A From our perspective it's difficult to --
2 it's difficult to measure the impacts of such a large
3 development on the regional traffic. That's the
4 challenge that we look at. And it's a challenge for
5 any, any development of this size, mixed use
6 especially.

7 Q You consider this to be a large project, do
8 you not?

9 A Yes.

10 Q Your statement also references that the "DOT
11 is pleased with the efforts of the developer who has
12 used a rational market study basis to develop future
13 development scenarios in which the Traffic Impact
14 Analysis is based," is that correct?

15 A Yes.

16 Q So your understanding is that Mr. Okaneku
17 and his TIAR was using what is called the rational or
18 regional market study basis in studying impacts.

19 A Yes.

20 Q Basically what you're saying here you find
21 that that methodology is appropriate and acceptable to
22 the Department, not that TIAR is but the method that
23 he's using.

24 A The method they used when they presented it
25 to us made sense. It made sense as a plausible

1 scenario.

2 Q In the brief testimony this morning by
3 Mr. Okaneku I believe, I'm not a traffic engineer, but
4 I believe Mr. Okaneku said he's not using this type of
5 method but he's using another method used by traffic
6 engineers called the gravity method. Are you familiar
7 with the gravity method?

8 CHAIRMAN DEVENS: We have an objection.

9 MR. LIM: I object to the question because
10 it's a mischaracterization of Mr. Okaneku's testimony.
11 Mr. Okaneku clearly stated in his report and his
12 testimony that he has used a market-based approach.

13 CHAIRMAN DEVENS: Do you have a response to
14 that, Mr. Kudo?

15 MR. KUDO: I believe if you review the
16 testimony he stated that he used a gravity method
17 which is a different method or gravity approach in his
18 TIAR study.

19 CHAIRMAN DEVENS: Mr. Lim.

20 MR. LIM: That's just a model that he used
21 as part of the approach.

22 MR. KUDO: Well, it's a model that's the
23 approach, right?

24 MR. YEE: If the Office of Planning could
25 just note: we have no objection to the question of did

1 Mr. Okaneku use a gravity model. The characterization
2 as whether this is consistent or inconsistent with the
3 market study is a question, a separate question.

4 So why don't we just ask the question was
5 the gravity model used.

6 CHAIRMAN DEVENS: You want to restate the
7 question, Mr. Kudo, along those lines and see what the
8 answer is first?

9 MR. KUDO: Okay.

10 Q Mr. Sniffen, is the rational or regional
11 market study method being used in Mr. Okaneku's TIAR
12 or is the gravity method being used?

13 A From what I understand both. The rational
14 market -- the rational approach to the market study
15 was used to develop the land use -- the developments
16 that are going to be considered in the TIAR.

17 The gravity method is used for the traffic
18 assignments.

19 Q So he used both methods in his report is
20 what you're saying.

21 A From what I understand, yes.

22 Q Okay.

23 A And these are the assumptions we need to
24 clarify with them. Now, from what we saw in the
25 traffic assignments without project, the traffic

1 assignments specific to project, traffic assignments
2 with project, we saw, like I said, I'd like to --
3 usually we see things adding up. We saw someone's
4 traffic going down with project.

5 So one of the responses from Mr. Okaneku was
6 that he was using this gravity approach. And that's
7 what redistributed traffic throughout the region. So
8 some of the -- some of the state facilities didn't see
9 that same traffic volumes because of this gravity
10 method.

11 Now, one of the things he had kind of let us
12 know it's kind of like living in Hawai'i Kai. You're
13 not gonna go down to -- you're not gonna go shopping
14 at WalMart in Kapolei. You'll usually stay in that
15 area, that kind of thing.

16 Q I understand the gravity method. It's kind
17 of an addition and subtraction based on absorption
18 assumptions. Isn't it true that TIARs -- well, not
19 TIARs but traffic studies that are based on the
20 gravity method have a chart in there that sets out
21 what the plusses and minuses are that's absorption
22 from the area?

23 A Yes.

24 Q Was that contained in this report?

25 A No.

1 Q Was there any mention of the gravity method
2 contained in Mr. Okaneku's report?

3 A No.

4 Q So how do we know what he was -- what
5 assumptions he was making, what he was using for his
6 numbers?

7 A As I said in my testimony that's the reason
8 the TIAR has not been accepted yet. These are the
9 types of assumptions that we're trying to clarify,
10 and document prior to accepting it.

11 Q Now, you had a chance to look at QLT's
12 Exhibit 36 which is all of the sheets from
13 Mr. Okaneku's reports. And there's handwritten
14 notices as to where we found discrepancies between the
15 existing trip generation tables and his analysis.

16 A Yes.

17 Q Have you had a chance to look at those?

18 A Yes, I did.

19 Q Are you in general agreement that these
20 discrepancies do exist?

21 A I'm in general agreement that there are
22 discrepancies and inconsistencies in the report.

23 Q Now, you're saying that he used two methods.
24 The first method that you're saying he's using is
25 called what you called the rational market study

1 basis. Is that study or method, does that rely on
2 some kind of regional market study?

3 A When it was presented to us, from what I
4 understand, it was presented as a demand-driven study.

5 Q I believe Mr. Okaneku in his TIAR says that
6 he's relied on a regional market study. Do you know
7 what regional market study he's relying on? I believe
8 he cited the Hallstrom Report.

9 A Yes, the Hallstrom Report, that's correct.

10 Q Were you here yesterday at the testimony of
11 Mr. Holliday who did the report for Hallstrom?

12 A No.

13 Q Were you aware that the Hallstrom Report was
14 not a regional market study?

15 A No.

16 Q That it only studied the market demand from
17 the Project itself?

18 A No.

19 Q Would you characterize the TIAR as having
20 significant problems at this point? Or are those
21 minor problems?

22 A It's hard for me to say that at this point
23 until we can clarify the assumptions and get that from
24 the consultant. I really cannot make that statement.
25 I can say there are inconsistencies. And I can say

1 there are things that we need to follow up on.

2 Q As I understand it what traffic engineers do
3 is they get the existing trips, which Mr. Okaneku has
4 said he can change at his discretion because he's
5 changed them and we don't see where he was changed
6 them -- but he has them in an appendix -- a table,
7 excuse me.

8 And he's changed it from what those tables
9 indicate. We don't know where or what he's changed
10 them to do but he said he's changed it to put it into
11 his model.

12 But let's assume he took it from those
13 tables as stated. Do you then add on, based on your
14 assumptions, additional trips that may be generated by
15 surrounding uses as well as the proposed Project to
16 that in order to get the total traffic impact?

17 A The total, yes.

18 Q Yes.

19 A Yes.

20 Q So if the existing trips are in error, let's
21 assume --

22 A Yes.

23 Q -- then the end result is not correct.

24 A I would agree. Generally I'd agree.

25 Q If the assumptions are incorrect then the

1 end result, which is the impacts, are incorrect.

2 A Generally I'd agree, yes.

3 Q Now, the traffic impacts that this equation
4 equals to is used to derive the mitigation measures
5 that are included in TIAR, right?

6 A That's correct.

7 Q So if the impacts are understated, let's
8 assume, then the mitigation measures would be
9 underestimated. Is that a fair statement?

10 A That would be a fair statement.

11 Q If this Commission does not impose a
12 condition on this Petitioner that their ability to
13 proceed forward would be subject to your department's
14 approval of its TIAR, and an agreement with regard to
15 mitigation measures both localized and regional, let's
16 assume that they are not able to do that or they
17 decline to do that, and you don't have a binding MOU,
18 Memorandum of Understanding or Memorandum of
19 Agreement, on or by the date that this Commission
20 approves this Project, would you have another
21 opportunity to impose conditions on the Petitioner in
22 so far as state traffic improvements are concerned?

23 A I don't think so.

24 MR. KUDO: Thank you. No further questions.

25 CHAIRMAN DEVENS: Commissioners? I have one

1 question. Is it unusual in the initial review of a
2 draft TIAR to find inconsistencies or discrepancies?

3 THE WITNESS: Not unusual. In general all
4 TIARs that come in have, we have some concerns with
5 them. After our review of them we'll find some things
6 that just don't add up.

7 But generally there were some assumptions
8 that weren't documented in there. So it's not unusual
9 to have some discrepancies within the TIAR.

10 CHAIRMAN DEVENS: Based on your review of
11 Intervenor's Exhibit 36, assuming that these are, in
12 fact, inconsistencies and discrepancies, is this more
13 than normal?

14 THE WITNESS: If they are, in fact,
15 inconsistencies and discrepancies, then, yes. But
16 again, like I said unless I know what are the
17 assumptions were made to get to that point, I can't
18 really state they are inconsistencies or
19 discrepancies.

20 CHAIRMAN DEVENS: If it turns out that there
21 are some assumptions that are wrong and the data
22 wasn't inputted correctly, what do you do from there?

23 THE WITNESS: We're going to continue to
24 meet with them to work on this TIAR until we get to a
25 point we can agree that it is a document that I can

1 make the decisions on.

2 I mean when I look at these documents we're
3 going to be making multimillion dollar recommendations
4 to the Administration to accept or reject. So it's a
5 document for me to justify our actions. So we're not
6 going to let it go until we have that comfort in that
7 document.

8 CHAIRMAN DEVENS: I take it that this
9 process is ongoing as we speak?

10 THE WITNESS: That's correct.

11 CHAIRMAN DEVENS: And the Petitioner has
12 been cooperating with you in trying to iron out any
13 potential inconsistencies?

14 THE WITNESS: Absolutely.

15 CHAIRMAN DEVENS: That's all I have.
16 Commissioners have any other questions? Commissioner
17 Jencks.

18 COMMISSIONER JENCKS: Good morning,
19 Mr. Sniffen.

20 THE WITNESS: Good morning.

21 COMMISSIONER JENCKS: How are you today?

22 THE WITNESS: Fine, thank you.

23 COMMISSIONER JENCKS: Terrific. Assuming
24 State DOT gets agreement on the TIAR and everyone's
25 happy, the Project moves forward. I was just

1 listening to a conversation that you were having with
2 the attorneys for QLT about additional opportunities
3 to review and comment.

4 My understanding of the process, even though
5 the TIAR is finalized and the Memorandum of Agreement
6 or Understanding goes forward and you understand what
7 each party is supposed to do, as this property is
8 subdivided in the future there'll be other
9 opportunities for you to adjust or reflect upon what
10 you agreed upon and maybe change the parameters for
11 improvements. Is that correct?

12 THE WITNESS: We have in the past in certain
13 developments.

14 COMMISSIONER JENCKS: So this is an ongoing
15 process. It's not going to stop with an agreement
16 with State DOT.

17 THE WITNESS: It depends on the negotiation
18 that occurs. Like I said, different administrations
19 approach things differently. So in some
20 administrations they negotiated and said: You do
21 these projects. We're done. You don't have to worry
22 about it anymore.

23 What we have done in the past also is make
24 an agreement with the Petitioner as to the projects
25 that would mitigate their fair-share at this time, but

1 we would request updates of the TIAR at certain
2 periods. And at those periods we would reassess their
3 fair-share impact.

4 COMMISSIONER JENCKS: Is that your intent
5 with this Project?

6 THE WITNESS: That's what we're looking
7 towards, yes.

8 COMMISSIONER JENCKS: All right. So there
9 will be times in the future, milestones where your
10 department would look at this Project in the context
11 of everything that's happening around it, whether it's
12 QLT's property or even DHHL and say: Look, conditions
13 have changed. We got more trips than we expected.
14 There's been a shift in demand. There could be many
15 things that would change the parameters for
16 mitigation.

17 THE WITNESS: Yes.

18 COMMISSIONER JENCKS: And you would have an
19 opportunity to modify the requirements?

20 THE WITNESS: Yes.

21 COMMISSIONER JENCKS: Thank you.

22 CHAIRMAN DEVENS: Any other questions? Any
23 redirect?

24 MR. YEE: No redirect.

25 CHAIRMAN DEVENS: Any questions from the

1 parties? Hearing none, thank you very much,
2 Mr. Sniffen. Next witness.

3 MR. YEE: Our next witness is Mary Alice
4 Evans.

5 CHAIRMAN DEVENS: What we'll do after this
6 witness we'll take a short lunch break.

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

10 THE WITNESS: I do.

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

13 THE WITNESS: My name is Mary Alice Evans.
14 My address is 235 South Beretania, sixth floor,
15 Honolulu, Hawai'i 96813.

16 CHAIRMAN DEVENS: Mr. Yee.

17 DIRECT EXAMINATION

18 BY MR. YEE:

19 Q Ms. Evans, what is your current position?

20 A My current position is special plans branch
21 manager.

22 Q And would you please provide the Office of
23 Planning's comments on the petition in this docket.

24 A First of all, I'd like to note that I'm
25 testifying on behalf of Abbey Seth Mayer, the director

1 of the Office of Planning, who was unable to be here
2 today because he's attending a Coastal Zone Management
3 conference in California. He sends his regrets. He
4 did wish he could be here.

5 The Office of Planning stands by our written
6 testimony, but we would like to add for your attention
7 several issues.

8 The Office of Planning supports affordable
9 housing. And this Project is an affordable housing
10 project. We want to note that the Project conforms to
11 the County General Plan and the Kona Community
12 Development Plan. And it conforms to the Hawai'i
13 State Plan. The LUC must weigh the impacts of
14 reclassification on agricultural resources.

15 In this case, unlike in other recent
16 dockets, the Office of Planning believes that the
17 projected Project -- proposed Project, excuse me,
18 would have no impact on the protection of agricultural
19 resources.

20 You've heard testimony on the educational
21 contribution agreement with the Department of
22 Education. It's the Office of Planning's
23 understanding that what the Petitioner noted that the
24 agreement has been completed to the agreement of both
25 the DOE and the Petitioner and is at the AG's office

1 being reviewed for form, and will be signed as soon as
2 that review is completed.

3 In regard to the development schedule the
4 Office of Planning supports approval for the entire
5 Project. We are not asking for incremental
6 redistricting in this particular docket.

7 In terms of cultural and historic resources
8 with regard to the state's duty to protect cultural
9 and historic resources, the Office of Planning pushed
10 very hard to get an approved Archaeological Inventory
11 Survey so that the Land Use Commission could comply
12 with the Ka Pa`akai decision that you know the
13 resources available, you know the impact that the
14 Project will have on those resources and you can weigh
15 and balance the impacts with the benefits of the
16 Project.

17 We believe that the additional time, expense
18 and effort that went into doing the addendum
19 Archaeological Inventory Survey were necessary and
20 will result in protection of more sites and the
21 resources on the Project site.

22 In terms of transportation the Office of
23 Planning's testimony, I think, makes clear that we did
24 not believe that there was an accepted TIAR.

25 That we are determined through condition 4

1 that we're recommending to you that that be, that the
2 Department of Transportation does need to approve the
3 TIAR and a mitigation agreement for the Project.

4 In terms of energy conservation the Office
5 of Planning is very pleased that this Project will try
6 to achieve LEED-ND certified or higher, LEED new
7 construction silver or higher, and LEED new homes
8 silver or higher.

9 We believe that this Project has the
10 potential to demonstrate the feasibility of including
11 energy conservation and sustainable elements in
12 affordable home development.

13 The protection of the water quality in the
14 Kaloko-Honokohau National Park is very important to
15 us. The Office of Planning worked closely with the
16 National Park staff to incorporate strong protections
17 of groundwater and surface waters draining toward the
18 National Park.

19 And we're very pleased that the National
20 Park and the Petitioner have agreed to Conditions 11,
21 12, 13, 14, and 18 and Petitioner's Exhibit 17 and in
22 our testimony.

23 I do want to note that on Page 9 under
24 Natural Hazard Measures we need to correct a mistake
25 in our testimony. We stated that in this Project is

1 in lava flow hazard zone 3. It's not. It's in 4.
2 And 4 is a lower risk zone than lava flow zone 3.

3 And, finally, we do want to reiterate that
4 we strongly support the automatic Order to Show Cause
5 language that's in the Office of Planning's testimony,
6 and that we do not have agreement with the Petitioner
7 on that particular condition.

8 In summary, the Office of Planning supports
9 this Project and recommends your approval for the
10 Project with the conditions as we have recommended.
11 Thank you.

12 MR. YEE: No further questions.

13 CHAIRMAN DEVENS: Petitioner?

14 MR. LIM: Thank you, Mr. Chair.

15 CROSS-EXAMINATION

16 BY MR. LIM:

17 Q Ms. Evans, I think you just said it, but
18 your understanding is that the Petitioner has agreed
19 to stipulate with the Office of Planning's recommended
20 conditions of approvals 1 through 28 with the
21 exception of condition 23 relating to the automatic
22 stay --

23 A That's correct.

24 Q -- automatic Order to Show Cause. I'm
25 sorry.

1 A Yes.

2 MR. LIM: We have no further questions.

3 CHAIRMAN DEVENS: County?

4 MS. MARTIN: No questions.

5 CHAIRMAN DEVENS: Mr. Kudo?

6 MR. KUDO: No questions.

7 CHAIRMAN DEVENS: Commissioners?

8 Commissioner Kanuha.

9 COMMISSIONER KANUHA: Thank you, Mr. Chair.
10 Mary Alice, did you participate in the Office of
11 Planning's testimony?

12 THE WITNESS: Yes, I did.

13 COMMISSIONER KANUHA: All right. Just
14 recently some comments made by Commissioner Jencks, I
15 think at one of the, either the last hearing or the
16 hearing before, that related to the possibility of
17 duplication of conditions which are already rules,
18 regulations, laws that have to be complied with anyway
19 and why the Commission should be restating those as
20 conditions here.

21 I was curious about whether or not there's,
22 you know, there's a lot of overlap between conditions
23 that should more rightfully be imposed, if any, by the
24 county versus the Commission. Drainage, for example.

25 Then I also note there is a lot of support

1 for the energy conservation and the LEED-ND concepts.
2 But as a condition that the Commission puts in, as
3 we've seen through the testimony the actual
4 implementation of that is through the county.

5 That's shown in this proceeding by the
6 exemptions that the Petitioner is requesting for the
7 county in order to implement a condition that the
8 Office of Planning is proposing to be attached to this
9 petition.

10 So I was just wondering was there any
11 consideration for that, given that testimony has shown
12 that this petition, this petition and other petitions,
13 assuming they get through the Commission, will have to
14 be reheard again at the county level?

15 And obviously there'll be conditions of
16 approval based on the specific application at that
17 time.

18 So I think what I'm trying to get at is
19 whether or not there's any thought of duplication in
20 terms of conditions that are more rightfully county
21 versus conditions that are more appropriate or related
22 to, you know, the overall state function, the state
23 roles as it relates to the Commission.

24 Was there any thought process of that when
25 the Office put together this testimony and the

1 proposed conditions?

2 THE WITNESS: Yes, Commissioner Kanuha,
3 there was. We do look at the areas of state concern.
4 There is necessarily some overlap between the county
5 and the state because we're both concerned with the
6 welfare and development of livable communities.

7 But we believe that the conditions that
8 Office of Planning has recommended do address
9 important areas of state concern.

10 COMMISSIONER KANUHA: I made a comment
11 earlier that I would hate to have the situation in
12 this particular petition where, you know, just through
13 the course of the proceedings, that the Commission
14 attaches a condition that the Petitioner gets an
15 exemption from at the county level.

16 So I think this is a good example of where I
17 think that that crosses between what gets imposed by
18 the county.

19 Because in actuality before any petitioner
20 can move forward with anything at some point in time
21 they'll have to get some rezoning, et cetera, and
22 that's done legislatively which is far better than
23 whatever conditions we can attach. It also allows the
24 county to impose additional conditions, et cetera.

25 And, you know, basically what it boils down

1 to is that once the property goes into urban, you
2 know, the complete control of that Petition Area is
3 with the county, albeit whatever conditions the
4 Commission attaches.

5 So that was just my concern. I wanted to
6 ensure that there was some thought put into that when
7 OP drafted their testimony and their proposed
8 conditions.

9 THE WITNESS: Thank you, Commissioner
10 Kanuha.

11 COMMISSIONER KANUHA: Thank you.

12 CHAIRMAN DEVENS: Any other questions? Just
13 one question. Prior to what you may have heard at
14 today's hearing regarding this automatic Order to Show
15 Cause provision, the way I read the law it's already
16 our obligation. It's already part of the law. I may
17 be reading it wrong, but that's the way I read it.

18 What concerns did the petition raise with
19 your office prior to what you've heard today regarding
20 having this condition as part of the Decision and
21 Order?

22 THE WITNESS: This is not a concern specific
23 to this petition. It's a general concern of the
24 Office of Planning that --

25 CHAIRMAN DEVENS: I'm sorry. Maybe my

1 question is bad. What was the concern raised by the
2 Petitioner --

3 THE WITNESS: Oh, sorry.

4 CHAIRMAN DEVENS: -- as far as not wanting
5 this automatic Order to Show Cause provision as a
6 condition?

7 THE WITNESS: Actually I can't address that.
8 I'd like to defer that to the Petitioner. I know what
9 our position is, but I'm not sure what their position
10 is.

11 CHAIRMAN DEVENS: But did they raise any
12 concerns with you during the negotiation process?

13 THE WITNESS: They did. They said they
14 would prefer to use the word "may" rather than
15 "shall". Their reason for it I'd like them to
16 address.

17 CHAIRMAN DEVENS: What did they tell you
18 folks were the reasons?

19 THE WITNESS: They prefer "may".

20 CHAIRMAN DEVENS: Why?

21 THE WITNESS: They didn't explain.

22 CHAIRMAN DEVENS: Did you guys ask?

23 THE WITNESS: No. I think we, we -- since
24 we've heard that concern in previous dockets we
25 assumed that it was a concern that petitioners have

1 often had about our position recommended to you to use
2 the word "shall" rather than "may".

3 CHAIRMAN DEVENS: Hearing what you've heard
4 today as the reason that it may affect their ability
5 to finance the Project, do you have any reason to
6 doubt that that is a genuine concern for them?

7 THE WITNESS: No. No reason at all. I
8 understand that that could be a very important
9 concern.

10 CHAIRMAN DEVENS: Thank you very much.
11 That's all I have. Any further questions?

12 MR. YEE: No.

13 CHAIRMAN DEVENS: Parties have any other
14 questions? That's all. Thank you very much. At this
15 point why don't we take a 45 minute lunch break.
16 Mr. Kudo, will that give you enough time to review the
17 additional exhibit from the Petitioner?

18 MR. KUDO: Yes, yes.

19 CHAIRMAN DEVENS: Why don't we do that.
20 It's now 12:15.

21 (Lunch recess was held.)

22 CHAIRMAN DEVENS: (1:30) All right. We're
23 back on the record. As I understand before we took
24 our lunch break, Office of Planning, you folks
25 presented all the witnesses intended in this matter?

1 MR. YEE: We submitted all our -- our case
2 in chief is finished. We're resting.

3 CHAIRMAN DEVENS: County, you ready to
4 proceed?

5 MS. MARTIN: Yes, we are.

6 CHAIRMAN DEVENS: Your first witness is?

7 MS. MARTIN: The Planning Director Bobby
8 Jean Leithead-Todd.

9 CHAIRMAN DEVENS: I understand she will be
10 your only witness in this case.

11 MS. MARTIN: Yes, that is correct.

12 CHAIRMAN DEVENS: If I can swear you in.

13 BOBBY JEAN LEITHEAD-TODD
14 being first duly sworn to tell the truth, was examined
15 and testified as follows:

16 THE WITNESS: Yes, I do.

17 CHAIRMAN DEVENS: Please state your name and
18 address.

19 THE WITNESS: Bobby Jean Leithead-Todd, 108
20 Lukia Place, Hilo, Hawai'i.

21 CHAIRMAN DEVENS: Thank you. Your witness.

22 DIRECT EXAMINATION

23 BY MS. MARTIN:

24 Q What is your title?

25 A I am the planning director for the county of

1 Hawai'i.

2 Q How long have you been the planning
3 director?

4 A Since March of 2009.

5 Q Are you familiar with the Kamakana Villages
6 Project?

7 A Yes.

8 Q And did the Planning Department provide
9 testimony to the LUC regarding this matter?

10 A Yes. We have written testimony that's been
11 submitted.

12 Q Do you have any corrections to that
13 testimony?

14 A There's one reference to the Hawai'i County
15 Code in terms of concurrency provisions. And there's
16 a typo on it. The reference is Hawai'i County Code
17 section 25-2-6. It should say Hawai'i County Code
18 25-2-46 which is the specific provision that governs
19 concurrency as it relates to affordable housing.

20 Q Okay. And that error that you're referring
21 to is that on Page 14 of your submission?

22 A Yes, it is.

23 Q What is the General Plan land use
24 designation for the Project Area?

25 A Basically it's for urban expansion.

1 Q And is the proposed development consistent
2 with this land use designation?

3 A Yes, it is with the LUPAG designation. The
4 zoning, however, for most of it currently is
5 agricultural 5 acres.

6 Q Are you familiar with the Kona Community
7 Development Plan?

8 A Yes, I am.

9 Q Does the Project comply with the policies
10 articulated in the Kona Community Development Plan?

11 A It substantially complies with the Kona
12 Community Development Plan.

13 Q Currently what's the status of this Project
14 at the county level?

15 A There is currently a 201H resolution in
16 front of the county council. It was first heard by
17 the housing agency which then sent it up to the
18 council.

19 The council has amended the exhibit to the
20 resolution with the changed list of exceptions which
21 was submitted on October 19th. And they have deferred
22 action on it at this time. They're going to go out
23 for a public hearing in Kona at the Keauhou Sheraton
24 on October 2nd. Then in theory it would reappear on
25 the county council's calendar on November 4th.

1 Q I think there was some mention as to the
2 action committee approving the Project plans. Is that
3 accurate?

4 A No, that's not accurate. There's been some
5 presentations made to the action committee. But the
6 action committee has not made any specific
7 recommendations to me, and they have not taken any
8 specific action in regards to this Project.

9 Q What's the current status of the agreements
10 or conditions regarding this Project at the county
11 level?

12 A When the number of exemptions were initially
13 proposed to the county it was sent out to all affected
14 departments and then we solicited input. Then as the
15 input came in we conveyed the concerns of the
16 different departments to Forest City's
17 representatives.

18 And we also suggested amendments, either
19 deletions to some of the proposed exemptions or
20 amendments.

21 Most of the concerns were that initially
22 they came in and were asking for exemptions from the
23 fees for the entire Project as opposed to just the
24 affordable units.

25 So to be consistent with what we had done in

1 the past we felt it should only apply to the
2 affordable units.

3 There were also some concerns in terms of
4 consultation or approval of specific design criteria.
5 So we had language in there to add in either DPW or
6 the Planning Department or the Department of
7 Environmental Management in areas that there might be
8 specific concerns such as for Environmental Management
9 the placement of sewer lines, sewer mains.

10 And some language if there's going to be
11 alternative materials that they use, that it would be
12 subject to consultation and approval of the Department
13 of Environmental Management.

14 And we've also asked that the language be
15 amended, and Forest City has agreed to it, to provide
16 requirements that they have to comply with any and all
17 conditions imposed on the Project by the Land Use
18 Commission.

19 So we wanted to ensure that it couldn't be
20 interpreted that the 201H resolution from the county
21 somehow wiped out any of the conditions imposed here.

22 We also made reference to a Memorandum of
23 Understanding that we have in terms of contribution to
24 the costs of the construction of Ane Keohokalole or
25 the mid-level road, which we had entered into.

1 Because we wanted to make sure if there were
2 existing agreements between the Petitioner and the
3 county that it was not going to be wiped out by the
4 201H exemptions.

5 We have a few things that we are still
6 trying to clarify. And one of those is we're still in
7 discussion over the issue of the TIAR and exactly what
8 the regional impacts to county highways will be and
9 what, if any, contribution there would be to that.

10 There is language in the County Code that
11 basically says that if you come in with double the
12 amount of affordable housing required under the
13 Chapter 11, which under our County Code it's
14 20 percent. So if you came in with 40 percent or more
15 that there isn't a specific requirement that you have
16 to mitigate regional impacts.

17 However, in discussions with my Director of
18 Public Works he feels that it doesn't mean that you
19 can't ask for some of that mitigation.

20 So we're still looking at that and we'll
21 have some kind of a recommendation both to the
22 Applicant as well as to the county council whether
23 there should be anything further above and beyond what
24 they've already contested.

25 In terms of parks they are working with

1 Parks and Recreation and we're hoping to have some
2 more information from the council on specifically
3 what's going to be on the ground.

4 Based on the information they've submitted
5 to us it's obvious that they're planning construction
6 on the parks, but we would like to know specifically
7 in terms of: Is it a bathroom? Is it a basketball
8 field? Is it a soccer field? Is there going to be a
9 basketball court?

10 So that it will, hopefully, dovetail with
11 any future plans the county may have for other park
12 facilities in the nearby region.

13 Q What's the Planning Department's position on
14 this reclassification?

15 A We support the reclassification to urban
16 because we believe that this is the appropriate land
17 use designation in this area. It is consistent with
18 both our General Plan and the urban growth area of the
19 Kona Community Development Plan.

20 It's also appropriate when you look at the
21 land use patterns in the area and the future
22 development plans for this area.

23 MS. MARTIN: Those are all the questions I
24 have. Thank you.

25 CHAIRMAN DEVENS: Petitioner?

1 MR. LIM: Petitioner has no questions.

2 CHAIRMAN DEVENS: Office of Planning?

3 MR. YEE: No questions.

4 CHAIRMAN DEVENS: Mr. Kudo?

5 MR. KUDO: Just a few questions.

6 CROSS-EXAMINATION

7 BY MR. KUDO:

8 A Ms. Leithead, the previous witness, Joseph
9 Scanga, had testified that Forest City was essentially
10 forced to ask for those exemptions because they needed
11 to comply with the Kona CDP, and I believe he said the
12 village design guidelines.

13 MR. LIM: I object to the form of the
14 question, Mr. Chairman.

15 CHAIRMAN DEVENS: What's the grounds?

16 MR. LIM: Mr. Kudo's asking the planning
17 director and indicating that Mr. Scanga said he was
18 forced to comply with the CDP. I don't think that was
19 his testimony.

20 CHAIRMAN DEVENS: Can you rephrase the
21 question.

22 MR. KUDO: I believe he said he was-- he
23 implied force. He said "required" to do it, like there
24 was no discretion in order to get the exemptions. The
25 reason for his exemptions was because of the Kona CDP

1 and BDG.

2 CHAIRMAN DEVENS: You want to rephrase the
3 question or...

4 MR. KUDO: I think I'm accurate in terms of
5 how I --

6 CHAIRMAN DEVENS: What was the question
7 again?

8 MR. KUDO: I'm asking her to comment on his
9 statement that Forest City -- because the question to
10 Mr. Scanga was why were they asking for the
11 exemptions. He said because Forest City was required
12 to ask for those exemptions because of the Kona CDP
13 and the BDG.

14 CHAIRMAN DEVENS: So what do you want her to
15 answer?

16 MR. KUDO: I'm asking her is that an
17 accurate statement.

18 CHAIRMAN DEVENS: You can say yes or no or
19 something else.

20 THE WITNESS: It's not entirely accurate.
21 Because there is a different mechanism that's
22 available, which is the Project District Application
23 where you can get many of the same exemptions from the
24 zoning or subdivision code. So basically you have two
25 different ways you could approach it.

1 You could do it through the 201H exemptions
2 or you could do it through the project district which
3 would give them greater flexibility in terms of what
4 they were going to plan and construct in the area.

5 Q (By Mr. Kudo) The exemptions are being
6 processed through a legislative action, is that
7 correct, through the county council?

8 A Yes, through a resolution.

9 Q If the council were to approve all the
10 exemptions as requested, would there be a cost to the
11 county in terms of these exemptions?

12 A I think I added it up. In terms of the
13 waived fees, I think it's around \$650,000. In terms
14 of some of the other issues, we're trying to work out
15 a maintenance agreement.

16 Because some of the standards that they
17 would like to use, which are consistent with the
18 vision and goals of the Kona CDP, are not necessarily
19 consistent with our standard requirements for road
20 construction.

21 Generally, DPW does not like to take on the
22 maintenance of landscaping. So we are going to be
23 discussing with them a maintenance agreement where
24 they want to put in landscaping that's within our
25 right-of-way, that they would do the maintenance of

1 the landscaping rather than the Department of Public
2 Works.

3 MR. KUDO: No further discussion.

4 CHAIRMAN DEVENS: Commissioners, any
5 questions? Commissioner Kanuha.

6 COMMISSIONER KANUHA: Thank you,
7 Mr. Chairman. Bobby-Jean, do you have any comment on
8 the proposed conditions offered by the Office of
9 Planning in their Exhibit No. 2?

10 THE WITNESS: I don't know that I have
11 Exhibit No. 2 here. But generally I think we did not
12 have any opposition to the Office of Planning's
13 conditions. On conditions we have not stipulated yet
14 because we have a few minor things that we're working
15 out with the Petitioner on some of their proposed
16 conditions.

17 Primarily in a couple of cases where it just
18 references the "state of Hawai'i" we want the county
19 added. So l,ike, I can't think of the number but
20 there's one the conditions is that you have no adverse
21 impact on state highways. We want it to say that also
22 "have no adverse impact on county highways." So most
23 of those the Petitioner's agreeable to.

24 Then I think the only one that we're really
25 discussing is the issue of regional mitigation for

1 county highways.

2 COMMISSIONER KANUHA: Thank you very much.

3 CHAIRMAN DEVENS: Any other questions?

4 Commissioner Judge.

5 COMMISSIONER JUDGE: Good afternoon.

6 THE WITNESS: Good afternoon.

7 COMMISSIONER JUDGE: I'm a little confused
8 by the process 'cause it's different here on the Big
9 Island than on Maui. If I understand you correctly
10 there's two ways to go about getting these exemptions.
11 You said the 201H route or the project district route.

12 THE WITNESS: The exemptions from the fees
13 would have to be pretty much done through the 201H.

14 The exemptions for the compliance with the
15 Kona CDP, which are really related to exemptions from
16 the subdivision zoning code, it has to do with yard
17 setbacks, lot sizes.

18 As an example, under our zoning code the
19 minimum lot size for a single family residential lot
20 would be 7500 square feet. And in the application
21 that Forest City has before the county it's
22 significantly less than 7500 square feet.

23 So you can do it through 201H or you can do
24 it through the project district where we would give
25 them greater flexibility.

1 COMMISSIONER JUDGE: Okay. Through the 201H
2 that's at the county council by resolution right now,
3 is that I think I heard Mr. -- Race say that that
4 isn't a request to allow them to build this project on
5 agriculture land. Is that correct?

6 THE WITNESS: It is because currently it's
7 zoned Ag 5. So there's currently no rezoning request
8 in front of the county. Instead, under the 201H they
9 would have an exemption to build this on
10 agriculturally zoned land.

11 COMMISSIONER JUDGE: Okay. If that is to
12 pass the county council would they then be required to
13 file a change of zoning application?

14 THE WITNESS: No, they would not.

15 COMMISSIONER JUDGE: Okay. So when --

16 THE WITNESS: They could but they're not
17 required to if they got the 201H exemption.

18 COMMISSIONER JUDGE: I'm looking at your
19 testimony on Page 19. It's saying: "Should the
20 reclassification be approved the Petitioner will be
21 required to file a change of zone/project district
22 application allowing the proposed uses."

23 THE WITNESS: When I went back and reviewed
24 the 201H exemptions, although we envisioned they both
25 would go through th 201H as well as the project

1 district and rezone, if the conditions are approved as
2 they currently stand I do not think that they have to
3 come back and get a rezoning of the property.

4 COMMISSIONER JUDGE: Okay. Will they have
5 to get a project district application for the proposed
6 uses?

7 THE WITNESS: As I read the 201H exemptions
8 they would not be required to come in and get a
9 project district. I mean they have an application in
10 our office. We assume that we will process it.

11 But in terms of a strict interpretation of
12 the 201H exemptions they would not be required to come
13 in for the project district application because the
14 201H exemptions, being requested would pretty much
15 give them enough flexibility to do the Project without
16 going through that project district process.

17 COMMISSIONER JUDGE: So the conditions that
18 are currently stated in the 201H process would allow
19 them to comply with the Kona CDP and the Village
20 Design Guidelines as they proposed, as it's been
21 presented to us.

22 THE WITNESS: Yes.

23 COMMISSIONER JUDGE: Okay. Thank you.

24 CHAIRMAN DEVENS: Any other questions?
25 Commissioner Jencks.

1 COMMISSIONER JENCKS: Good afternoon.

2 THE WITNESS: Good afternoon.

3 COMMISSIONER JENCKS: Couple of questions.

4 On the exemptions is there anything that you -- are
5 you requesting anything, any exemptions that would
6 limit the ability of the county to accept public
7 facilities?

8 For example, if roads are developed,
9 typically they're developed to a county standard. And
10 acceptance of those roadways for county maintenance
11 and ownership depend upon the standards used in the
12 codes.

13 Have they requested any exemptions that
14 would limit the dedication of the roads?

15 THE WITNESS: They aren't asking for any
16 exemptions because other than the issue of the alleys
17 that serve some of the homes, I think we're pretty
18 much in agreement that as long as the roads are built
19 to the requirements of the Kona CDP that the county
20 would accept dedication of those roads.

21 COMMISSIONER JENCKS: Same as the parks?

22 THE WITNESS: Subject to the maintenance
23 agreement on the landscape.

24 COMMISSIONER JENCKS: I understand. That
25 was a good point.

1 THE WITNESS: On the parks, I think a couple
2 issues arise on the parks. The two large parks, one
3 called the north park and the south park I think
4 clearly if built to the expectations of the Parks and
5 Recreation Department, the county would accept
6 dedication and maintenance of those parks.

7 I think where we will get into more
8 discussion is on some of the smaller, the neighborhood
9 parks, what they're calling pocket parks. And on some
10 of the those, depending on how they're configured and
11 where they're placed, the county might not be as
12 willing to take those. Then that would fall upon a
13 homeowners associations.

14 And part of that has to do with just
15 economies of scale in terms of the size of the parks.
16 We are taking a look at although they are exempt
17 from -- they're asking for exemptions from chapter 8
18 in terms of dedication and chapter 23 in terms of the
19 space, the amount of space that they would have to
20 dedicate.

21 The amount of land that they are currently
22 proposing to put into park use or open space or for
23 civic uses appears to more than satisfy the
24 requirements of those provisions if they were applied
25 without the exemptions.

1 The only area that I will probably be
2 talking to Mr. Fitzgerald at Parks and Recreation is
3 in terms of the amount of what we call developed
4 parks. Because the county code envisions that
5 basically you would have about 5 acres of developed
6 parks space per thousand residents.

7 And at full buildout based on the 2330 units
8 our formula is that on a single-family unit we
9 multiply it by 3.5 in terms of our assumptions, in
10 terms of how many people will occupy that unit.

11 In terms of a multiple-family unit we
12 multiply it by 2.1. Using those numbers we assume
13 that at full buildout the population in Kamakana will
14 be approximately 5,819 residents.

15 Based on a, what we believe is a need of
16 about 5 acres per thousand, then that would translate
17 to be between about 29 acres of park space. So the
18 question is whether the neighborhood parks would then
19 fit that definition.

20 Because if you look at their proposals I
21 believe it's very close to that number. It's about
22 28 acres. So it's very close to the numbers that we
23 would calculate under chapter 8 that they're proposing
24 to build.

25 So we would look at what those needs are.

1 In terms of whether it gets dedicated it really
2 depends on the size of those park units and whether it
3 makes it efficient for the county to take care of
4 them.

5 COMMISSIONER JENCKS: Thank you for that. A
6 couple more questions. If you were asked what the
7 affordable breakdown should be for the affordable
8 component, what would be your position on allocation
9 of percentages?

10 THE WITNESS: I would want it to be spread
11 out over the spectrum in terms of the units, that it
12 not all be at 140 percent. But I understand the
13 Applicant's, the Petitioner's concerns over this.

14 Because part of what we've found in the past
15 is that even if you target a specific income group, if
16 you have difficulty getting qualified buyers, because
17 a lot of them don't have the savings in order to put
18 the down payment; their credit ratings might not
19 qualify them for mortgages.

20 And in the past I've seen some situations
21 where subsequently people aren't able to make their
22 mortgage payments. So I think I'd be wanting to take
23 a look at some of those provisions in terms of what
24 you offer a price at and whether -- 'cause I haven't
25 closely examined the development agreement with HHFDC.

1 And I would want to see whether, if you were
2 going to do it at the, let's say, 80 percent and you
3 couldn't qualify people at 80 percent, whether you
4 would then offer it at that same price for 80 percent
5 but then to people at the 100 percent. It's just that
6 I know we have these tables that we come up with.

7 But I think -- maybe because I bought my
8 house a long time ago -- when I look at the numbers in
9 terms of what's considered an affordable unit at
10 140 percent of median, I sometimes really question how
11 affordable it is in terms of anyone being able to make
12 the mortgage payment and have the standard monthly
13 bills that you normally have.

14 Which kind of leads me to a second very
15 important component of this, which is the energy
16 efficiencies of these buildings.

17 Because to the extent that the affordable
18 units are more energy efficient when you lower the
19 monthly utility bills, then it becomes much more
20 affordable for people to maintain their mortgage
21 payments.

22 That's because historically Kona, because
23 it's warmer and sunnier, has a historical much higher
24 usage of electricity per capita than the east side of
25 the island. It also has a much higher historical

1 usage of water per capita than the east side of the
2 island because of people watering their lawns.

3 In Hilo that's almost unheard of because we
4 get enough rain. Some of the issues that we have and
5 that we're working with the Petitioner on is that
6 whatever landscaping they put in be a preference for
7 native plants and a preference for plants that are not
8 going to have a heavy reliance on irrigation.

9 That's because I'm concerned about what any
10 expenses paid by homeowners fees to the affordable
11 units. Because to the extent that you can keep those
12 costs down, then the units are much more affordable.
13 Because it's not just the mortgage payment. It's what
14 it's going to cost them for utilities and water.

15 COMMISSIONER JENCKS: I agree with all that,
16 I do, a hundred percent. The question remains you
17 don't have any specific formula yourself for
18 affordable breakdown.

19 THE WITNESS: We do not. I prefer that
20 there be a spectrum and not all at 140 percent. But I
21 do not have a formula.

22 COMMISSIONER JENCKS: Do you think the
23 council would impose anything on the final approval to
24 the Project?

25 THE WITNESS: We are going to be having that

1 discussion with the council over the next two
2 meetings. The deadline for the county is
3 November 19th. So we have two more council meetings
4 before the 19th. I think a lot is going to depend on
5 the amount of information that's gleaned from the
6 public hearing on the 28th.

7 Because the difference with the county and
8 what occurs at the Land Use Commission, because when
9 they set the council agenda there's so much other
10 stuff on the agenda that historically there hasn't
11 been the amount of time to do this kind of
12 presentation in front of the county council.

13 You folks are going to see this over a
14 period of maybe four or five days. The council
15 historically might end up getting, like, a 2-hour
16 presentation and then be relied to read everything.
17 Which is why Councilmember Enriquez asked for the
18 public hearing that then gives the council an
19 opportunity to have a forum where they're not as
20 constrained by the number of items on an agenda.

21 So at the public hearing the only item on
22 the agenda is Forest City. So that can go for several
23 hours. And my understanding is that most of the
24 councilmembers are planning to spend the night as they
25 anticipate that will go late into the evening.

1 COMMISSIONER JENCKS: Last question.
2 Assuming their success with the Commission and they
3 get to the council with the 201 application, and they
4 meet all those other threshold issues with the state
5 DOT so they could apply for a subdivision map and
6 start the development process, pull grading permits
7 and start the process, is that correct?

8 THE WITNESS: Well, in theory, yes. There
9 are a few issues, I think, that remain. Because I
10 don't know that what they actually have is --
11 ultimately I think they're going to build in
12 substantial compliance with what they're representing.
13 But once you get on the land itself sometimes you have
14 to tweak stuff.

15 But theoretically they could apply. We
16 would be looking and we have not reached total
17 agreement yet on the issue of bonding for
18 infrastructure improvements.

19 COMMISSIONER JENCKS: If they apply for a
20 project district application you're probably looking
21 at another year's worth of process?

22 THE WITNESS: Six months.

23 COMMISSIONER JENCKS: Six months. Thank
24 you.

25 CHAIRMAN DEVENS: Any other questions?

1 Commissioner Judge.

2 COMMISSIONER JUDGE: I was reminded when you
3 were discussing about the water usage, that we had
4 earlier testimony regarding the reuse of water and the
5 possibility of having, I guess you'd call it,
6 reclaimed water from the treatment plant. And that
7 there was some discussion about stimulus funds.

8 Do you have any information whether that's
9 actually a project that's going forward? And will
10 there be reclaimed water available for this
11 development?

12 THE WITNESS: At this time I'm unaware
13 whether we have any stimulus funds. We are
14 contributing on the Queen K project to put the lines
15 in for reclaimed water. But although we have plans to
16 upgrade the Kealakehe Wastewater Treatment Plant,
17 because right now we do not treat to R1.

18 And the goal is to get the facility up to
19 R1, but there are some other issues that need to be
20 addressed first.

21 There is also capacity issues. Because
22 currently based on the capacity of the wastewater
23 treatment plant it cannot fully accommodate Kamakana
24 at full buildout. So the plant has to be upgraded in
25 order to allow it to take on additional wastewater.

1 COMMISSIONER JUDGE: So even if this Project
2 -- so even if the stimulus funds haven't been
3 allocated to provide the ability to reuse the water,
4 at some point in the future when there is an upgrade
5 to the facility and an expansion of the facility,
6 there's a good possibility that it will also be able
7 to produce R1 water? And there may be an ability to
8 distribute that water?

9 THE WITNESS: Yes. And, in fact, under the
10 way you design wastewater treatment plants, once you
11 hit a certain percentage of the capacity, then you are
12 basically required to start planning for the upgrade
13 and the expansion.

14 And with the projects that are currently
15 being developed in this area for both DHHL as well as
16 Kamakana or in the nearby foreseeable future, we're
17 going to hit that trigger point, and the county's
18 going to be required under our existing regulations to
19 start planning for that upgrade.

20 COMMISSIONER JUDGE: So in your opinion it's
21 not unreasonable to think that within the next 20 to
22 25 years the upgraded facility will be producing R1
23 water that could be available to the development?

24 THE WITNESS: I think that's a reasonable
25 assumption that we will get there in the next 20

1 years.

2 COMMISSIONER JUDGE: Okay. Thank you.

3 CHAIRMAN DEVENS: Anything else?

4 Ms. Leithead, I had one question. Mr. Randle in his
5 written testimony categorized 56 exemptions. He said
6 48 were for the LEED-ND requirements, Smart Code
7 principles and/or the Kona CDP guidelines.

8 Six were to reduce the cost of constructing
9 the affordable units and community amenities, 2 were
10 to expedite the permits for the Project approvals. Do
11 you agree with that characterization?

12 THE WITNESS: That sounds like my
13 recollection of the proposals in front of the county.

14 CHAIRMAN DEVENS: Thank you. Is there any
15 redirect?

16 MS. MARTIN: No.

17 CHAIRMAN DEVENS: Any other questions from
18 the parties? Mr. Kudo?

19 RECROSS-EXAMINATION

20 BY MR. KUDO:

21 Q Ms. Leithead, you've expressed some concerns
22 from the county standpoint. Is there anything that
23 this Commission could do with regard to conditions on
24 this particular Project, if it was approved, that
25 would assist the county in its situation?

1 A There is a condition in terms of regional
2 mitigation that if they were saying that they had to
3 meet with regional mitigation, meaning with the
4 approval of DPW. That would more than take care of
5 any of the county concerns.

6 MR. KUDO: Thank you. No further questions.

7 CHAIRMAN DEVENS: Thank you. County, that's
8 the end of your case?

9 MS. MARTIN: Yes.

10 CHAIRMAN DEVENS: Mr. Lim, did you want to
11 bring Mr. Okaneku back on?

12 MR. LIM: Yes. We'd like to do that.

13 CHAIRMAN DEVENS: And this will be your last
14 witness for you case in chief?

15 MR. LIM: Yes. We have our rebuttal
16 witness. He'll be held in reserve after the
17 conclusion of other parties' cases.

18 CHAIRMAN DEVENS: Very well.

19 MR. KUDO: Mr. Chairman, I know the
20 Commission is pressed for time. I know that people
21 have to catch flights quite soon. In order to avoid
22 lengthy cross-examination of this witness by myself, I
23 was wondering, I'd like to ask Mr. Lim if he would
24 stipulate, based on QLT's Exhibit 36 and all of the
25 other, I'll use this word discrepancies that we have

1 found in these Figures 4 to 36, and the appendices to
2 Mr. Okaneku's report, whether Mr. Okaneku would
3 stipulate that these are, in fact, discrepancies.

4 If he does that I can avoid asking him
5 questions about each of the discrepancies.

6 CHAIRMAN DEVENS: Mr. Lim.

7 MR. LIM: Thank you, Mr. Chair. Mr. Kudo
8 had the courtesy to discuss this with us previously.
9 So we talked with our client.

10 And so long as it's clear that we are
11 stipulating that there are discrepancies between the
12 base data contained in the appendix, which is
13 essentially the person going out counting cars,
14 putting it on a chart, and the tables on his reports
15 as noted in QLT's Exhibit 36, 3 of 3 pieces that we
16 got.

17 And so long as it's stipulated that
18 Mr. Okaneku's explanation for those discrepancies will
19 still be on the record, then we have no problem
20 stipulating to that fact.

21 CHAIRMAN DEVENS: Mr. Kudo, is that
22 acceptable?

23 MR. KUDO: Does that also include the
24 figures that we gave them, 4 to 36, on the
25 intersections?

1 CHAIRMAN DEVENS: Mr. Lim, is that also
2 included?

3 MR. LIM: These are Exhibit 36?

4 MR. KUDO: Yes.

5 MR. LIM: I got three pieces.

6 CHAIRMAN DEVENS: So that will be part of
7 the stipulation, Mr. Lim?

8 MR. LIM: That's correct.

9 CHAIRMAN DEVENS: Mr. Kudo, is that
10 acceptable?

11 MR. KUDO: All of the, yes, Exhibit 36, if
12 that's what he's agreeing, that's acceptable.

13 CHAIRMAN DEVENS: The stipulation as phrased
14 by Mr. Lim, that is acceptable to you?

15 MR. KUDO: That is acceptable.

16 CHAIRMAN DEVENS: We'll accept that. Do you
17 have further cross?

18 MR. KUDO: I just have just a few questions.
19 I don't have a lot.

20 RANDALL OKANEKU
21 having been previously duly sworn to tell the truth,
22 was examined and testified as follows:

23 RECROSS EXAMINATION

24 BY MR. KUDO:

25 Q Mr. Okaneku, you mentioned in response to

1 our QLT's Exhibit 36 that the existing trip counts
2 that you took that are contained in the appendices,
3 the reason that they're discrepancies between those
4 appendices and the figures 4 to 36 is because you made
5 adjustments to the existing trip numbers for various
6 intersections, is that correct?

7 A Yes.

8 Q And those adjustments were made necessary to
9 fit into your model.

10 A They were made necessary for me to make, to
11 accept the quality of the data and to have some, I
12 guess, confidence in that the data represents the
13 existing condition.

14 Q In your study, and I didn't see it, but do
15 you have a chart or list of how or what those
16 adjustments were?

17 A No.

18 Q All right. Was there a reason why they
19 weren't included?

20 A I did not think that the detail was
21 necessary.

22 Q Now, you also mentioned that you were
23 utilizing, is it the gravity method or gravity study?

24 A It's a concept which is based upon the
25 gravity model.

1 Q And is the testimony of Mr. Sniffen correct
2 that you used two models to analyze data is what
3 Mr. Sniffen referred to as the rational market
4 methodology as well as the gravity methodology in your
5 TIAR?

6 A Not entirely correct. I have to clarify
7 what Mr. Sniffen's answer was. The market-driven
8 model provided me input for what the background growth
9 in the region was going to be. I didn't develop the
10 model. I didn't run the model.

11 Basically I accepted the results of the
12 model built by somebody else. That gave me the
13 background of telling me how many dwelling units were
14 going to be developed in the region, square footage of
15 the light industrial which kind of set the table for
16 me to overlay Kamakana Villages now.

17 Q Who did that model, the model you're
18 referring to?

19 A My understanding it's Hallstrom Associates.

20 Q You mean the Hallstrom Marketing Study?

21 A Yeah. To me the market study was done for
22 the EIS. It's my understanding that it's a regional
23 study that was based upon islandwide populations which
24 then were portioned onto West Hawai'i population.
25 From that derived the commercial services, light

1 industrial, and so forth.

2 Q Was that the study that Mr. Holliday was
3 testifying to?

4 A I believe so. I believe he pointed to Table
5 1 of his report to verify the regional concept of his
6 analysis.

7 Q Didn't Mr. Holliday testify that he didn't
8 do a regional study? That, in fact, he only studied
9 the internal market demand for this Project?

10 A It's my understanding that the
11 197,000 square feet of commercial was based upon
12 internal demand. Simply because from my perspective
13 the 197,000 commercial is basically neighborhood
14 retail. It's ground level retail with residents
15 upstairs. So it's kind of a small town type of
16 concept.

17 I think that's what he was talking about --
18 only the 197,000 commercial, not -- but there was an
19 assessment for the region as far as commercial/light
20 industrial, again, driven by population.

21 Q I guess I recall differently. I recall that
22 I asked him the question of whether he studied the
23 surrounding land uses.

24 MR. LIM: Mr. Chair, we object to the
25 testimony. We're trying to get this proceeding on

1 quickly. If he could just ask the question.

2 CHAIRMAN DEVENS: If he recalls, he recalls.
3 If he doesn't remember what the witness testified,
4 has a different recollection, that's his recollection.

5 MR. KUDO: Okay. No further questions.

6 CHAIRMAN DEVENS: Any other questions by the
7 Commission? None. Any redirect?

8 MR. LIM: One last question as a result of
9 all the new exhibits.

10 FURTHER REDIRECT EXAMINATION

11 BY MR. LIM:

12 Q Mr. Okaneku, based upon the exhibits from
13 the Trust, their Exhibit No. 36 and discussion that's
14 gone on, and the study you did last night, is there
15 any change in your opinion that the mitigation
16 measures provided for in your Traffic Impact Analysis
17 and the assumptions and conclusions therein, can be
18 expected to maintain the minimum Level of Service D or
19 better throughout the study area at buildout?

20 A Yes. (sic)

21 Q That's consistent with your -- you still
22 maintain that?

23 A Yes.

24 MR. LIM: No further questions.

25 CHAIRMAN DEVENS: At this point, Mr. Lim, do

1 you rest subject to calling potential rebuttal
2 witnesses?

3 MR. LIM: That's correct.

4 CHAIRMAN DEVENS: Mr. Kudo, you ready to
5 proceed?

6 MR. KUDO: Yes. I'd like to call to the
7 stand our first witness, Mr. Dennis Kauahi. With the
8 Commission's indulgence, I know time is of the
9 essence.

10 In order to set up Mr. Kauahi's testimony,
11 which is to give you an insight about the types of
12 services that the Queen Liliuokalani Children's Center
13 conducts in the community and in our state, we have a
14 10-minute video that's a very efficient way of giving
15 that information to you in a condensed form. We'd
16 like to show it. We're not introducing it as
17 evidence. It's just the foundation of demonstrable
18 evidence to support Mr. Kauahi's statement.

19 As a very small trust most people, we found,
20 don't really understand, realize what kind of services
21 to the Hawaiian community and the community at large
22 that the Children's Center conducts.

23 We feel that it's important that this
24 Commission be given an opportunity to see this. So
25 with the Commission's indulgence we ask that we be

1 permitted to show this short video.

2 CHAIRMAN DEVENS: I completely understand.
3 What's the relevance of that to the Project?

4 MR. KUDO: We want to show -- I think what
5 we're showing here there is another side to this
6 affordable housing issue. That is the tradeoff
7 between the impact to the Trust.

8 That is if we have to pay for mitigation
9 measures or other things that are not paid for or need
10 to be mitigated, and they were caused by this
11 particular Project, whether it's through the exemption
12 of the county or whether it's through the State
13 Department of Transportation or anybody else, that it
14 impacts the Trust.

15 So we're basically showing how the Trust is
16 going to be impacted by that. Since we're the
17 nextdoor neighbor and we operate a children's center,
18 and our properties are used to generate income to
19 support all of our social welfare services, we need to
20 indicate that to the Commission.

21 CHAIRMAN DEVENS: Can Mr. Kauahi just
22 testify to that just? We just adopt what you just
23 said and incorporate that?

24 MR. KUDO: Well, I think that I'd like to
25 have the opportunity to go through what exactly all

1 the different services that we do provide because most
2 people don't know.

3 MR. LIM: On behalf of the Petitioner this
4 is not an exhibit. I didn't think Mr. Kudo's admitted
5 that.

6 MR. KUDO: I'm not going to enter it as an
7 exhibit. I just wanted to use it.

8 MR. LIM: Even if Mr. Kudo plays it in front
9 of the Commission it is new evidence. We object to
10 the ability to have any new evidence being included at
11 this time. I'm sure Mr. Kauahi's quite well qualified
12 to explain the Trust's mission. And we would go with
13 that.

14 CHAIRMAN DEVENS: I didn't realize the video
15 was not marked. Is it referenced as an exhibit?

16 MR. KUDO: No. We were just merely showing
17 it as a demonstrable piece of documentation that
18 supports Mr. Kauahi's testimony. It's not being
19 submitted as a piece of evidence.

20 CHAIRMAN DEVENS: I gotta agree with
21 Mr. Lim. If it's being shown to us and you're asking
22 us to consider it, you just explained that you're
23 showing it to us to understand the background of how
24 it may impact the Trust, which I understand what you're
25 saying on that. But...

1 MR. KUDO: If the Commission feels it
2 appropriate then we would like to introduce it as an
3 exhibit. We didn't think it was necessary but we
4 would introduce it as an exhibit.

5 MR. LIM: Mr. Chairman, we would object
6 to -- this is -- we have been trying to be civil in
7 the proceeding. I think that we have been stonewalled
8 all the way through this by the Trust. I know that
9 they have a good mission but they haven't been playing
10 nice.

11 To give a little bit of background on what
12 I'm going to be saying: It's been our experience
13 throughout this proceeding that we get everything
14 late. They tell us, "You have a problem" but they
15 don't tell us what it is. When we serve them with our
16 stuff we attempt to take it hand delivery one block
17 down below. They will mail it to us. You know the
18 short timeframe. So we would appreciate that
19 consideration.

20 We're trying to do, I think, the right
21 thing. And we're trying to do it without hurting the
22 Trust. I think it's becoming increasingly clear to us
23 that this is less an exercise in impacts on the Trust
24 resulting from a land use decision as it is a
25 competitive issue for them.

1 MR. KUDO: Is he making argument or is he...

2 MR. LIM: I'm making the record. For
3 whatever reason, and I don't know if you know this
4 yet, but we've probably been served in the October 21,
5 2010 lawsuit in the First Circuit Court by the Trust
6 as plaintiffs against the Land Use Commission, the
7 State Hawai'i Housing Finance and Development
8 Corporation and Forest City Hawai'i Kona, LLC.

9 And they're claiming a motion for a
10 temporary restraining order and a complaint based upon
11 many of the issues they have raised here. Even though
12 they admitted in their earlier arguments that they had
13 to come here to exhaust some of those claims in
14 administrative proceeding before they filed them.

15 So at this point we have been, like I said,
16 been trying to play nice. But we are faced with a
17 Trust, for whatever reason, feels like they're
18 fighting for their life.

19 Like I said, I don't have any qualms against
20 their mission. It's a good mission. It's just how
21 the game is being played.

22 That's why I'm being a little hard ball. I
23 would normally, you know, I think not have any problem
24 with the presentation. I think it's time at this
25 point we've gotta kinda take a stand on the

1 Petitioner's side and say enough is enough.

2 MR. KUDO: I'd like to respond to that. I
3 think that's unfair. This is an expedited process.

4 CHAIRMAN DEVENS: I'll let you respond,
5 Mr. Kudo. Let me just respond to you, Mr. Lim. We
6 are aware of the proceedings that have been filed. I
7 personally have not had a chance to review any of that
8 and certainly don't want to pass judgment on the Trust
9 in doing whatever they need to do.

10 So I don't want to factor that into any kind
11 of decision here. But I appreciate you letting me
12 know that you're aware of it as well. You know for a
13 fact that I don't like litigating without having all
14 the materials. You know that.

15 And I don't like when it's not a level
16 playing field. I don't like things coming in last
17 minute. I think it's unfair. It causes extra work.
18 The witnesses aren't prepared. It causes delays.

19 I think part of the delay that we've had
20 here yesterday and today is because you weren't aware
21 of certain information. That I don't like. I don't
22 think any of the Commissioners appreciate any of that.
23 But, again, I don't want to weigh in on anything else.

24 I don't want to pass judgment on the Trust
25 as far as what they have or haven't done, anything

1 that may have gone on between you and Mr. Kudo.
2 Understand we are all trying to do our jobs on that.
3 Anything else you want to add, Mr. Kudo?

4 MR. KUDO: Yes. I think it's unfair to
5 characterize us as playing dirty.

6 CHAIRMAN DEVENS: I'm not accepting that
7 characterization.

8 MR. KUDO: We had two weeks to prepare for
9 this case. We were working all through the evening
10 all the way 'til yesterday morning getting this stuff
11 ready to address Mr. Okaneku's TIAR report.

12 We've only had a couple of weeks, really, to
13 work on this thing. It's not like we had a whole lot
14 of months to do this.

15 I think it's really unfair to characterize
16 whatever we're doing as being playing dirty. We're
17 trying to get everything as much as possible to the
18 parties as soon as we can. I tried to bring the
19 issues that were in the lawsuit, that we just said, to
20 the Commission first.

21 As I said before and I promised Mr. Lezy --
22 Commissioner Lezy, this Commission will have the
23 opportunity to address those issues before we took
24 anything to court. We did that.

25 I'm not playing dirty on this thing. We

1 were doing everything we told the Commission we were
2 doing. As far as getting things to -- it took us
3 three hours to get those papers copied over here
4 because the darn business center crapped out on us.
5 Pardon my English. And we had to get our people going
6 up to Waikoloa to copy stuff for this Commission. We
7 have been scrambling around. We were up to, I don't
8 know what, wee hours last night trying to get the
9 things that Mr. Lim has asked for in a form that his
10 people could transport to everybody else.

11 This is an expedited process. That's what
12 my concern is. So if you want to cut us off, and not
13 allow us to do this, fine. That's the concern we
14 always had.

15 This is expedited. And because it's
16 expedited the due process right of the parties have to
17 be looked at very carefully. We don't have time like
18 we have in a normal proceeding. Our time is very
19 short, you know.

20 Do you think that this is something that we
21 lightly do? No. The Trust is spending a lot of money
22 doing this. Why? Because we do feel it is a threat;
23 this is not some idle thing.

24 We are reviewed by the court, the Circuit
25 Court, every five years as to all the monies we spend

1 for all the different efforts. And when we perceive
2 something to be a threat to our viability and our
3 ability to service this community, we will take what
4 appropriate action to fulfill our fiduciary duties.
5 And that is what you're seeing today.

6 And I'm sorry if people believe it's dirty.
7 But it's not. You can believe me or not. But that's
8 the way it's come out.

9 CHAIRMAN DEVENS: I think I've already made
10 clear I'm not passing judgment on anyone playing
11 dirty. I've said that two times now. Nobody is trying
12 to cut you off. So I won't even use that word here.

13 We're trying to expedite. If he can testify
14 to the same thing in the video, let's hear it from
15 him. We've already wasted 10 minutes on this argument
16 going back and forth.

17 As I said, I'm not passing judgment on any
18 tactics, anything anyone has done. But I can tell you
19 I like a level playing field. If you were up late
20 last night, I can tell you that I know three other
21 Commissioners that were up late last night to 1:00,
22 1:30 in the morning. We're studying this stuff too.
23 We don't like getting stuff late.

24 It's going to take a lot of time for us to
25 go through the materials that you had. You obviously

1 had it yesterday because you were cross-examining the
2 witness.

3 MR. KUDO: We had it in very rough form.

4 CHAIRMAN DEVENS: Whatever form you had it
5 in you had it ready to cross-examine the witness.
6 We're all lawyers here. I know. You weren't doing it
7 off the top of your head. So there's no attempt to
8 cut you off in any way. He didn't know about the
9 video. He's objecting it wasn't listed. I'm going to
10 sustain that objection.

11 If he can still testify let's let him
12 testify and get it in. If you need background on the
13 Trust, he can testify to it, it's a different means,
14 it will probably be shorter, more efficient. That's
15 the ruling. Sir, swear you in.

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

19 THE WITNESS: Yes, I do.

20 CHAIRMAN DEVENS: State your name and
21 address.

22 THE WITNESS: My name is Dennis Kauahi. I
23 live at 92-6017 Kalemakapii Street, Makakilo, O'ahu,
24 Hawai'i 96707.

25 CHAIRMAN DEVENS: Mr. Kudo.

DIRECT EXAMINATION

BY MR. KUDO:

Q Mr. Kauahi, where are you currently employed?

A I'm currently employed by the Queen Lili'uokalani Children's Center.

Q How long have you been employed by the Trust?

A I've been employed by the Trust for 40 years.

Q What's is you position with the Trust?

A My position is deputy director.

Q Can you tell the Commission a little bit about yourself and your background.

A I'm a licensed social worker. I'm an expert in family and individual counseling, utilizing Hawaiian cultural concepts as well as western techniques. I've sat on commissions both statewide and nationally. I sat on the Hawaiian Homes Commission for six years.

I was on the Child Welfare League of America steering committee, the National Child Welfare Organization that's involved in children's rights, for five years.

I've worked extensively in communities,

1 primarily Hawaiian communities, in developing
2 leadership for adults, for youth and working with our
3 communities to make it safe.

4 My experience begins from working with
5 street gangs to working with policy-making
6 organizations in the 40 years that I've worked for the
7 Queen Liliuokalani Children's Center.

8 Q Mr. Kauahi, would you tell us something
9 about the Queen Lili'uokalani Trust.

10 A I'd just like to say that the story I'm
11 going to say, despite the adversarial feelings, is
12 really about our queen, a really remarkable woman in
13 Hawai'i who was the last reigning monarch of the
14 Hawaiian kingdom. And the reason I say that because
15 our Trust was established by her.

16 She was a remarkable woman because she lived
17 during a period to time of a very tumultuous history
18 full of political change. She's one that not only
19 witnessed but was a victim of the change from ali'i
20 rule to provisional government.

21 She also experienced within her own lifetime
22 the annexation of Hawai'i to the United States.

23 During this tumultuous time this woman was
24 able to focus and even deal with the difficulties, and
25 focus her resources on behalf of children. So in that

1 respect we consider her a very remarkable woman.

2 She established the Trust in 1909, which
3 makes her organization over a hundred years old. At
4 the time that she established this Trust, this Deed of
5 Trust, what it did do was establish the legal and
6 financial basis for our existence.

7 And our mission is to assist orphan and
8 destitute children in Hawai'i in all aspects of their
9 development with preference given to children of
10 Hawaiian ancestry.

11 It began in 1909. The Trust at that time
12 was worth about \$125,000. And through her management
13 we continue to grow and be able to service our
14 children in Hawai'i.

15 Q In 2000 did the Lili'uokalani Trust suffer
16 any type of financial crisis?

17 A Yes. It was actually between 2000 and 2003.
18 And we, because of economic conditions, there was a
19 significant drop in our resources which resulted in we
20 having to let go of 25 percent of our staff, which was
21 unprecedented in our history.

22 We had to close approximately three offices
23 including our satellite offices. We were not able to
24 provide the level of services that we had wanted to in
25 the communities that we served.

1 And as a result we needed to really kind of
2 come together and make drastic cuts in our programs.
3 And it was a difficult time for our agency.

4 Q Can you describe the QLC's current services
5 that you offer?

6 A Okay. Let me kind of go back and just
7 quickly give you guys a brief history of our services.
8 We really became established as a bona fide social
9 agency in 1945. In keeping in tradition with where
10 social work was in the United States as well as in
11 Hawai'i it was primarily counseling. At that time we
12 serviced in 1946 I think it was 57 children.

13 Over the span of 20 years we were able to
14 serve 19,000 children. Over the span of another 20
15 years we were able to serve 30,000 children.

16 Basically the Trust has, when the resources
17 were developed the lands were managed, we are like the
18 primary programmatic entity of the Queen Lili'uokalani
19 Trust. The monies that they developed we use to
20 service our communities.

21 Currently we service 60,000 children. Our
22 budget is about 16 million. We are located on all of
23 the major island except Ni'ihau. Our programs include
24 three areas: one is individual and family counseling.
25 The second is group.

1 And the third is community building, working
2 with communities. The nature of our beneficiaries are
3 orphans. Orphans by death of one or both parents
4 require us to do intensive, what we call, grief
5 resolution services to help our children work through
6 the loss of their parents. These losses come from,
7 either from natural causes. They have come from
8 violent episodes, they come from drug use, from
9 murders. So we have a whole host of reasons why
10 children loose their families.

11 And we know in the course of working with
12 them if this process of grief resolution is not
13 handled the right way, then it really impacts them on
14 their life as adults.

15 I'm kind of saying it briefly. So in that
16 respect we hire masters degree-level social workers
17 that understand that dynamic and can deal with them
18 directly.

19 The third level is in groups. And this has
20 to do with teenagers, primarily teenagers who have
21 difficulty working in the family or are close to being
22 incarcerated. And we use approaches to groups that
23 allow them to become responsible people.

24 The third is community building because we
25 believe that every Hawaiian child, every child needs

1 to live in a safe community.

2 These are, you know, goals that we set out
3 that are not often attained but we need to focus on
4 helping build communities. And our units are located
5 in communities. We are actually in Hawaiian
6 communities. So we work on those three levels.

7 The 60,000 children that we serve we don't
8 serve it alone. It's not something that I can claim
9 that we as QLC service them. A lot of those are in
10 conjunction with other nonprofits. A lot of those are
11 in conjunction with our communities. A lot of those
12 are in conjunction with Hawaiian Homestead
13 Associations.

14 Our work with them, for example, with
15 Nanakuli Homestead Association, we have worked there
16 since 1965. The one thing we can provide to Hawaiian
17 communities is staying power. If we go into the
18 community we don't pull out.

19 We may have differences on how we should use
20 our resources, but we have a history of staying in the
21 community and helping them build strength to nurture
22 our children.

23 Q Mr. Kauahi, could you explain what you see
24 as the current trends in social welfare needs for this
25 community and throughout our state?

1 A There's a number of trends both statewide
2 and nationally are occurring. Certainly given the
3 financial economic situation basic needs have been a
4 real concern: Food, shelter, housing, clothing. The
5 population that we work with when the families lose \$5
6 or \$10 the effect is immediate.

7 You know, this whole trickle down effect
8 about economies, for them it's like it happens right
9 there. So we see a tremendous need in basic needs.
10 Just food, shelter, and clothing.

11 We've addressed that because of our limited
12 resources. And I'm not saying that we shouldn't be
13 the one. We work with churches. We work with the
14 state. We are working with our non-profits. It
15 really takes a cooperative effort to do that.

16 The other trend we've seen is that there are
17 more and more grandparents taking care of
18 grandchildren. This is because of 1. Incarceration,
19 No. 2. Some parents are getting on drugs. No. 3.
20 Some are dying young. And the strain on the
21 grandparents has been tremendous. Because most of our
22 grandparents basically they're social security
23 recipients and they're really at a lower social
24 economic level in terms of finances.

25 How we have addressed that, again, is we've

1 helped organizations to enact laws in the State
2 Legislature to provide support for our grandparents.

3 We've organized communities to address that
4 problem. We've helped grandparents to stabilize the
5 needs of their grandchildren whichever way we can. We
6 work with the State Department of Social Services to
7 secure foster care funds for our children whichever we
8 can.

9 The other trend we see is that, and this is
10 the good news, it's a declining trend. For the
11 beneficiaries that we serve in the foster care system
12 the Hawaiian children make up 45 percent of the foster
13 care children. It was higher. It was 60.

14 So work that we've done with the state, with
15 this administration, and they've been very, very
16 cutting edge you know, Lilian Koller, the director, we
17 have great respect for her and what they have done to
18 help our foster care kids, which is essentially
19 finding family to care for them, rather than taking
20 them out of their family.

21 In the Hawaiian family system the
22 relationship that children have with their parents and
23 with their grandparents even in dysfunctional families
24 is almost sacred. That relationship goes beyond this
25 world. It's with their ancestors.

1 It may seem esoteric. But in lot of
2 families and communities we work with this is a very
3 strong identification. Those of us in the human
4 services helping field understand that. The state
5 understands it.

6 Therefore they have made policies and along
7 with those of us who understand how to work in
8 Hawaiian communities to make sure that all the
9 resources in the families to care for that child are
10 addressed.

11 The other trend I see is that communities
12 are stepping up. I mean we got all these problems,
13 all these challenges but we're seeing communities
14 kinda grabbing the bull by the horn. Saying, "You
15 know what? You guys wanna partner with us? Come
16 partner with us." That's the encouraging thing.
17 They're taking care of the kids. So we have some
18 negative trends.

19 We have some positive trends. I think we're
20 honored to be part of the journey that our communities
21 are taking. I think for us to come up here and say
22 we're doing all of this, we're really not. We're
23 doing it in partnerships.

24 We're doing it with other organizations.
25 We're doing it with the state. We just have the

1 flexibility as a private organization to kinda move.
2 And this opportunity for partnering we move. We move
3 in there.

4 Q Mr. Kauahi, are the number of beneficiaries
5 or people that need the services, children that need
6 the services from the Lili'uokalani Trust growing?

7 A Yes, it is. We're primarily responsible for
8 addressing the needs of the orphan children, as I say.
9 Right now we service 1400 because of the intensity of
10 the service. Our estimate puts the orphans out in
11 Hawai'i I think it's 30,000.

12 So again, you know, it impacts on us that if
13 our resources are curtailed it will impact on us. But
14 I gotta say it's not only us. It's really the
15 community and the people that are out there and really
16 our systems that are mandated to take care of not only
17 Hawaiian children but all the children in the state.

18 Most of us that work for the Trust we're
19 trained social workers. We're committed to our
20 children whether Hawaiian or non-Hawaiian. We're
21 committed to that.

22 So, yeah, it impacts on us but it's more
23 than us. I think it's something that we in the state
24 in the field of social services gotta address.

25 Q Could you discuss some of the outcomes of

1 your strategic statewide planning efforts at QLC?

2 A Throughout the history of our organization
3 we have at least between 5 and 10 years we have done
4 strategic planning with our communities. The last one
5 we did was in 2005. Prior to that it was 1995.

6 And part of that strategic planning really
7 is to get not only from our beneficiary population but
8 we also included people from DOE, from Human Services,
9 Hawaiian organizations.

10 We gave them a sense of what our mission is
11 and how did they see us fitting into addressing the
12 needs of Hawaiian children and their families.

13 So rather than going into the specifics,
14 we've used that input and come up with specific
15 programs that address that. It's something that's
16 built into our whole programming process that we need
17 to go back to our communities.

18 We need to go back to our beneficiaries.
19 And we need to get feedback from them in terms of what
20 we're doing, how effective. Then we need to be clear
21 the parameters of what we can do based on our mission.

22 Q What is the type of beneficiaries that you
23 have? What economic status do they generally fall in?

24 A Most of our beneficiaries are lower on the
25 economic level, primarily, you know, for the

1 grandparents, social security. We have a large number
2 of our beneficiary families receiving public welfare.

3 We have a large number of young
4 beneficiaries that are receiving public welfare but
5 are upward mobile. They're going to school. They're
6 doing fine. So socioeconomically it's on a lower
7 level.

8 Q Do you have any closing remarks that you'd
9 like to make to the Commissioners, Mr. Kauahi?

10 A Yeah. I'd just like to say I honor what you
11 guys are doing on this Commission. You folks have
12 a -- you folks have sacred responsibility to make the
13 decision to preserve our land and protect. And I
14 appreciate what you guys do.

15 For people like us in the field of social
16 services we really into not so much building houses
17 even though I used to be a carpenter in my younger
18 days. We are into building people. And we're into
19 building families so that they can qualify for these
20 houses.

21 We're into building social infrastructure.
22 We want people to live in communities that understand
23 how to immediate problems.

24 So we're on that other end of building the
25 people, building the community, getting good leaders,

1 making the community safe, teaching our youngsters
2 rites of passage that stealing and taking from mothers
3 is not a rite of passage. Being responsible.

4 So in your decisions what I hoped to do
5 today just to give you guys one picture of the world
6 that I work in that involves building communities from
7 a social, cultural standpoint. And to consider that
8 in your decisions. And I really appreciate being here
9 today. Mahalo.

10 CHAIRMAN DEVENS: Let me see if there's
11 cross-examination. Petitioner?

12 MR. LIM: No questions.

13 CHAIRMAN DEVENS: County?

14 MS. MARTIN: No questions.

15 CHAIRMAN DEVENS: Office of Planning?

16 MR. YEE: No questions.

17 CHAIRMAN DEVENS: Commissioners? None.

18 Thank you very much, sir. We've been going over a
19 hour. Why don't we take a short five minute break for
20 the court reporter.

21 (Recess was held. 3:00)

22 CHAIRMAN DEVENS: We're back on the record.
23 Just to let you know on our scheduling, we've got to
24 give our staff, Mr. Davidson, time to pack up and make
25 the flight. We'll make this one our last witness,

1 Mr. Kudo, for the day. We'll continue at the next
2 scheduled hearing.

3 Do you have an approximate time as to how
4 long you may need for this witness? Because I'd like
5 to finish the witness so that you don't have to break
6 her testimony up.

7 MR. KUDO: It's about 40 minutes, I think
8 30, 40 minutes.

9 CHAIRMAN DEVENS: I think we're looking to
10 shut down at about 3:30.

11 MR. KUDO: Okay.

12 CHAIRMAN DEVENS: So whatever you need to
13 do.

14 MR. KUDO: I'll try to rush it through.

15 CHAIRMAN DEVENS: Next witness is?

16 MR. KUDO: Next witness is Tanya Malia
17 Souza.

18 TANYA MALIA SOUZA
19 being first duly sworn to tell the truth, was examined
20 and testified as follows:

21 THE WITNESS: Yes.

22 CHAIRMAN DEVENS: Please state your name and
23 address.

24 THE WITNESS: Tanya Malia Souza, 1100 Alakea
25 Street, Honolulu, Hawai'i 96813.

1 CHAIRMAN DEVENS: Mr. Kudo.

2 DIRECT EXAMINATION

3 BY MR. KUDO:

4 Q Ms. Souza, what is your current occupation?

5 A Archeologist.

6 Q Do you have a specialty area with
7 archaeology?

8 A Yes. In archaeology I specialize in
9 recordation of petroglyphs or rock images in Hawai'i.

10 Q And where are you currently employed?

11 A Queen Lili'uokalani Trust.

12 Q What is your position and title there?

13 A I am a manager and archaeologist.

14 Q Would you briefly describe, quickly describe
15 your duties and responsibilities at QLT?

16 A Since my time at Queen Lili'uokalani Trust I
17 have been gathering and organizing all of the
18 archaeological records from previous archaeological
19 studies within all of the Queen Lili'uokalani Trust
20 properties.

21 I also have been taking part in the
22 Archaeological Inventory Survey of the historic
23 preserve area as well as working on -- I'm sort of the
24 manager of the up and coming interpretive center as
25 well.

1 Q Can you briefly describe for us some of the
2 recent projects which you have conducted recordation
3 of historical, archaeological and cultural inventories.

4 A Yes. Last summer I worked on the Queen
5 Lili'uokalani Trust property as an archaeologist with
6 Pacific Legacy under the direction of Roland Reeve and
7 Dr. Paul Cleghorn. During that I conducted field
8 surveys, site recordings, rediscovery of archaeological
9 sites, GPS location. Other projects I've worked on,
10 Kamehameha Schools Bishop Estate in Makalawena,
11 Pu'uakealia.

12 Other projects include Waikoloa area,
13 Kohanaiki, Kealakekua, a survey in Kealakekua and Mud
14 Lane and Auwahi Windfarm on Maui.

15 Q Do you have specialized knowledge regarding
16 the archaeological inventories within the Keahuolu
17 ahupua'a in which this Petition Area is located?

18 A Yes.

19 Q How did you obtain such knowledge?

20 A As I said as I was organizing and gathering
21 all the archaeological reports I reviewed them, read up
22 on them.

23 Again, I have done field work in Keahuolu.
24 And working at the Queen Lili'uokalani Trust I have
25 taken part in the inventory survey of the historic

1 preserve area.

2 Q Ms. Souza, what does the term "preservation
3 of historical archaeological and cultural properties"
4 mean in terms of the field of archaeology?

5 A Well, according to the Hawaii Administrative
6 Rules "preservation" means the mitigation form in
7 which historic properties are preserved. These
8 various forms may include the reconstruction. It
9 could be rebuilding, stabilization, conservation,
10 avoid and protect. Also it could be appropriate
11 cultural use or interpretation.

12 So really preservation is beyond just the
13 conservation of an historic property. It's beyond
14 just closing a site and keeping people out of it.

15 Really, preservation entails a sort of
16 long-term process which involves learning
17 archaeological and historical information and being
18 able to convey it to the future generation.

19 So really in time archaeology
20 interpretations will come together into this paradigm
21 which is really fit for telling a story. In
22 ancient -- in most cases an ancient ahupua'a it was an
23 economically self-sufficient extending element of
24 spiritual into its landscape.

25 And really through archaeology you can

1 really learn a lot about such traditions that did take
2 these in each ahupua'a traditions on dryland
3 agriculture or look at maybe field system
4 intensification or habitation construction.

5 So really archaeological research questions
6 pertaining to chronology, to land use activities,
7 those sorts of archaeological questions will provide
8 further insights into the functionality and history of
9 an ahupua'a.

10 Q Now, why are these historical properties or
11 sites that are located in the Keahuolu ahupua'a
12 important to the Queen Lili'uokalani Trust?

13 A As you can see, Queen Lili'uokalani's
14 Exhibit No. 3 Queen Lili'uokalani Trust owns majority
15 of the property except, of course, the properties that
16 was conveyed to the state. Because they are the
17 property owner of majority of the ahupua'a, the Trust
18 really carries a sense of stewardship towards --

19 Q Ms. Souza, excuse me for interrupting you.
20 But for purpose of the Commissioners is the area in
21 yellow the ahupua'a that you're referring to?

22 A Yes. That is the ahupua'a of Keahuolu. The
23 yellow is the properties owned by Queen Lili'uokalani
24 Trust.

25 Q Can you point out the Petition Area?

1 A I'm sorry. I didn't hear that.

2 Q The Petition Area.

3 A Oh, the Petition Area. It's right here.

4 Q Thank you.

5 A So, yeah, as I mentioned before, yes, Queen
6 Lili'uokalani Trust does own a majority of the
7 properties in the ahupua'a which is probably why they
8 sort of carry this sense of stewardship towards the
9 history of the ahupua'a.

10 Petitioner's Exhibit No. 32 you can go to
11 the next one. Haan and Associates 2010 Archaeological
12 Inventory Survey they have identified 149
13 archaeological sites consisting of a total 3,326
14 features.

15 Really out of the 149 sites, 24 of those
16 sites are set aside or recommended for preservation
17 including four sites for possible preservation.

18 Out of the 149 sites, 86 are recommended for
19 data recovery. During this process of data recovery
20 these archaeological research questions will be
21 addressed.

22 Therefore, the data recovery time, the
23 process in the historic preservation process is the
24 most critical when it's coming in terms of
25 archaeological interpretations.

1 So really all of the archaeological sites
2 within the Petition Area have a great potential in
3 contributing to the story of the ahupua'a of Keahuolu.

4 So really there is a lack of direct oral
5 histories pertaining to the upland area of Keahuolu.
6 So really Queen Lili'uokalani Trust is very highly
7 dependent on the archaeological to fill in the gaps for
8 the generations to come.

9 Q Ms. Souza, are you familiar with the
10 historical, archaeological and cultural inventories
11 within the Project Area in the North Kona district on
12 the Island of Hawai'i and the proper preservation and
13 recordation methodologies for such archaeological
14 sites?

15 A Yes.

16 Q How did you become familiar with that?

17 A I reviewed the 1990 Archaeological Inventory
18 Survey by PHRI authored by Teresa Sodana (phonetic).
19 I frequently reviewed that, especially last summer
20 when I participated in a reassessment project within
21 the 546 acres of Queen Lili'uokalani Trust properties.

22 Q Are you familiar with HHFDC's and Forest
23 City's Kamakana Village Project and the properties
24 that are the subject of these hearings?

25 A Yes.

1 Q How did you familiarize yourself with this
2 Project?

3 A I reviewed the Archaeological Inventory
4 Surveys in the Final EIS study as well as Haan and
5 Associates' August 2010 addendum Archaeological
6 Inventory Survey.

7 Q Could you please summarize your opinion
8 regarding the Petitioner's Archaeological Inventory
9 Survey.

10 A Yes. After reviewing the Haan & Associates
11 Archaeological Inventory Survey, I find that the
12 documentation of the identified sites as adequate.
13 It's good. Except for the portion on petroglyph
14 recording.

15 Now, the documentation of sites 28423 and
16 sites 28430 feature B. containing a total of 20
17 petroglyphs I suggest can be expanded.

18 Haan and Associates I can see did put a
19 great amount of effort into the recording process and
20 provide the necessary documentations, the maps, the
21 illustrations, the general descriptions.

22 Yet, however, when you take that
23 documentation and compare it to other petroglyph sites
24 that have been recorded along the West Hawai'i coast
25 of Hawai'i Island, its evident that this documentation

1 in the Petition Area can be expanded, can be
2 broadened. It can be recorded in more detail

3 Q Can you explain to the Commission the
4 significance of petroglyphs and why it is important to
5 document them properly.

6 A Yes. Petroglyphs are a profoundly
7 significant dimension of Hawai'i's cultural heritage.
8 Valued by historians and archaeologists, petroglyphs
9 provide glimpses of traditional culture, traditional
10 subsistence or traditional religion of the time and
11 place petroglyphs were made.

12 There have been numerous studies along the
13 West Coast of Hawai'i Island. And a large range of
14 these West Hawai'i landowners are currently
15 acknowledging the significance and relevance of proper
16 recordation of petroglyphs.

17 Now, as QLT Exhibit No. 5 shows, petroglyphs
18 can have been recorded by all types of landowners. We
19 have 1, the Mauna Lani Resort located at Puako. We
20 have #2, at the Waikoloa Beach Resorts here in
21 Anaeho'omalu. We have #3 the Hawai'i State Park in
22 Kiholo. We have #4 Kamehameha Schools Bishop Estate
23 at Kalaemano. And we have #5 Kona Village Resort
24 located at Kaupulehu. We have #6 at Kekaha Kai State
25 Park located at Mahaiula. We have #7 Discovery Land

1 Co. at Kohanaiki. We have #8 and #9 at the
2 Kaloko-Honokohau National Park located in Kaloko and
3 Honokohau. And we have #10 here which is the
4 Pu'uhonua Honaunau National Park located in South
5 Kona.

6 Now, we have here is where the Kamakana
7 Villages are, where the Petition Area, the importance
8 of the petroglyphs within the Petition Area. The
9 reason why it's so significant is because, one,
10 there's a total of 19 petroglyphs in one
11 concentration.

12 These 19 petroglyphs are located at 150
13 meters away from the nearest habitational site. It's
14 isolated. And this concentration of this petroglyph
15 field is located at 420 feet in elevation. That
16 itself is worthy of study.

17 So if there is detailed recording done on
18 the petroglyphs within the Petition Area, then it will
19 contribute to this compilation of rock art studies
20 that have taken place in the West Hawai'i region of
21 Hawai'i Island.

22 Also pertaining to petroglyphs itself
23 there's not much oral histories. There's not much
24 ethnographic information that really pertains to
25 petroglyphs.

1 So it really makes it difficult for
2 researchers to tell what the meaning of petroglyphs,
3 why they were created in the first place. Like, for
4 the Petition Area we don't know what the reason why
5 the petroglyphs were created.

6 We don't have any kind of associated
7 documentation or associated oral histories. So it
8 makes it very significant to make sure that there is
9 detailed recording so future researchers can study
10 them in a culturally appropriate and scholarly manner.

11 Q Can the Archaeological Inventory Survey be
12 improved in any way?

13 A Yes. As I mentioned all of the 10
14 aforementioned sites located here on the map were
15 recorded pursuant to a methodology by Edward and Diane
16 Stasack. Edward and Diane Stasack are the most
17 prominent rock art research recorders in all of the
18 Hawai'i Islands.

19 They had basically structured their
20 methodology into a highly standardized process. So
21 they've completed 30 final reports and 50 field
22 recordings, majority of it consisting on Hawai'i
23 Island.

24 These 30 final records are accessible at the
25 University of Hawai'i at Manoa Hamilton Library as

1 well as the State Historic Preservation Division or
2 actually some located at the State Historic
3 Preservation Division library in Kapolei.

4 Now, usually landowners have the Stasacks
5 themselves record the petroglyphs. Or they hire an
6 archaeologist that's willing to record their
7 methodology into their recording process. Now, to sum
8 up a little bit about their methodology, first of all
9 it doesn't require any kind of artistic skills. And
10 it doesn't involve any kind of invasive data
11 collection. What really it involves the integration
12 of photographs with filled illustrations.

13 As you can see on the Queen Lili'uokalani
14 Trust -- QLT's Exhibit No. 8 we have our photograph on
15 our left which is integrated is the field drawings.
16 This more integrated method is the least invasive and
17 the most efficient means of accurately depicting the
18 image.

19 Another important -- another thing that the
20 Stasacks do during their recordation process is that
21 they also record important variables which are a lot
22 of times omitted by archaeologists.

23 And these important variables really assist
24 rock art researchers during any kind of analysis. And
25 these variables it's actually -- you folks, I think

1 you have it in Exhibit 10. I don't think it's up yet.
2 So it's actually described in detail.

3 The Stasacks usually record the surface
4 quality of the rock, the color of the rock, the
5 direction or orientation of the petroglyph, the slope
6 of the rock surface, the overall dimensions of the
7 petroglyph, the average width, and if there is any
8 kind of lines in the petroglyphs, usually they record
9 the average width and depth of the line.

10 They also include the technique on how the
11 petroglyph was created. if it was abraded, if it was
12 packed, if it was bruised.

13 Also they have created categories for each
14 petroglyph if it was a human or anthropomorphic
15 figure, if it was a geometric figure, so on.

16 Q Ms. Souza, excuse me. Permit me to cut you
17 off. We're in a rush for time. You're recommending
18 that the Stasack illustration process or methodology
19 be used to record the petroglyphs that are located in
20 the historic sites within the Petition Area, is that
21 correct?

22 A Yes. I recommend that.

23 Q Let me draw your attention to the rest of
24 the resources other than petroglyphs in the historic
25 site areas.

1 A Yes.

2 Q What is your recommendation with regard to
3 mitigating impacts with those historical archaeological
4 resources in the Petition Area?

5 A Well, as I mentioned earlier there is --
6 actually there's relatively little oral histories, and
7 historical documentation that pertain directly to the
8 upland areas of Keahuolu. Therefore, you know, QLT is
9 highly, as I said, highly dependent to the
10 archaeological interpretations.

11 And really the next step into the data
12 recovery process and the preservation process is very
13 critical in receiving such information that contribute
14 to the story of Keahuolu.

15 As a perpetual ali'i trust and as a Native
16 Hawaiian organization, and as the landowner of
17 majority of the property, I could see that QLT would
18 want to play a role as the kahu or steward of ahupua'a
19 of Keahuolu and in conveying it to the future
20 generation. So, yeah, that's about it.

21 Q What are your recommendations specifically
22 with regard to the mitigation efforts?

23 A So I have five recommendations in terms of
24 mitigation.

25 The first is the consultation during all of

1 the historic preservation processes, that a lot of
2 native or all of the Native Hawaiian organizations and
3 individuals be consulted during the preparation and
4 implementation of the data recovery plan, the
5 preservation, the monitoring plan and the burial
6 treatment plan.

7 And in this case of Keahuolu I would suggest
8 that Queen Lili'uokalani Trust be a consulting party
9 as well as the cultural descendants of the ahupua'a.

10 My second suggestion is in terms of
11 long-term preservation. In addition to the
12 consultation process, if properly arranged, I suggest
13 that Queen Liliuokalani be allowed these controlled
14 visits to certain preserve sites. We have the north,
15 I know I've noticed the north and south archaeological
16 preserves in the Petition Area.

17 But being able to bring learners to these
18 sites so they can experience these sites and feel it
19 spiritually, see it, and acknowledge the importance
20 and behold the significance of the site would be very
21 important. It would contribute to this interactive
22 learning for the future generations.

23 Also the third request I have is the final
24 disposition of collections be placed in the Queen
25 Lili'uokalani Trust Keahuolu Interpretive Center, the

1 up and coming interpretive center.

2 After data recovery will be completed you'll
3 have all those archaeological collections. You'll have
4 all of these remains once it has gone through the
5 research processes by the contracted archaeologist.
6 So you will have all these cultural materials.

7 Currently there is a curation problem in the
8 state of Hawai'i or just in terms of their
9 repositories of such artifacts if they're going to be
10 housed properly, if there is room for them.

11 So what I would suggest since, you know, as
12 an example the Ane Keohokalole Highway, the County of
13 Hawai'i through mitigation had generously allowed
14 their artifacts be housed in the Keahuolu Interpretive
15 Center. So that way these artifacts will be used for
16 display, education and study more in depth.

17 Also this would be the pono way because the
18 artifacts have not left its ahupua'a. This would be
19 the most culturally and appropriate thing to do to
20 keep these artifacts in the ahupua'a and used for
21 educational purposes.

22 My fourth recommendation would be that in
23 the event of the archaeological monitoring during the
24 construction of this Petition Area, if it is approved,
25 to have an additional cultural monitor there, a

1 cultural monitor that is knowledgable of Keahuolu and
2 that is knowledgable in some of the protocol, cultural
3 protocol.

4 Of course during monitoring the historic --
5 of course in the monitoring that the historic
6 properties and if they do identify anything new to
7 consult with Queen Lili'uokalani Trust.

8 Of course, if there is anything found in
9 terms of cultural material then that too be housed in
10 the interpretive center.

11 And my fifth and final recommendation, as I
12 noted before, is to expand the petroglyph
13 documentation. All petroglyphs within the Project
14 Area sites 28423 and 284230 fetcher B should be
15 recorded using the Stasack's methodology. Thank you.

16 MR. KUDO: This concludes the testimony of
17 Ms. Souza. She's now available for cross-examination.

18 CHAIRMAN DEVENS: Petitioner, any questions?

19 MR. LIM: Thank you Mr. Chairman.

20 CROSS-EXAMINATION

21 BY MR. LIM:

22 Q Ms. Souza, if Ms. Otaka could indulge us
23 could you put QLT Exhibit No. 2 back up on the screen.
24 Ms. Souza, you said that you are familiar with the
25 1990 Archaeological Inventory Survey that was done by

1 QLT which supported the reclassification of its land
2 at Keahuolu.

3 Can you show the Commission with your
4 pointier what portion of the lands were covered by
5 this 1990 Archaeological Inventory Survey.

6 A Yes. We have here, which is our historic
7 preserve area as well as here, here and here, and
8 here. I believe it was 1100 acres.

9 Q When you're talking about "here" let the
10 record reflect she's including the Trust lands both
11 above and below the Queen Ka'ahumanu Highway and
12 including the Petition Area. Okay. In 1990 did the
13 Trust conduct a cultural impact analysis as required
14 by the SHPD rules?

15 A In 1990, yes. Or no. It was, there was
16 Hale Mottsmith in the appendices of the 1990
17 archaeological inventory survey by PHRI.

18 Q So in 1990 there were no requirements to do
19 an Archaeological Inventory Survey at that time.

20 A No, not at that time, no.

21 Q When you did the recent Archaeological
22 Inventory Survey for the historic preserve can you
23 point to where that is on the map?

24 A Here you see the boundaries of the preserve
25 area, the historic preserve area in the Queen

1 Lili'uokalani Trust properties.

2 Q That was included in the original 1990 AIS
3 study.

4 A Yes, it was.

5 Q Why did you do another study?

6 A For the same reason why the Petition Area
7 needed a new addendum survey because the site's
8 description -- the state felt the site descriptions
9 weren't as adequate. The maps weren't as adequate in
10 that the study needed to be reassessed.

11 So Queen Lili'uokalani Trust did hire
12 Pacific Legacy or I believe it was the county hired
13 Pacific Legacy through the Ane Keohokalole Highway
14 project to conduct the inventory survey.

15 Q So based on that is it true that the Trust
16 would now have to conduct another brand new AIS to
17 current standards for all the rest of their lands you
18 pointed out that were covered by the 1990 survey?

19 A Yes.

20 Q Is the Trust underway to do that now?

21 A I believe so, yes.

22 Q Where are you in that process?

23 A We are in the planning stages of it.

24 Q So no contract has been let.

25 A No contract.

1 Q So the Trust won't be able to move forward
2 with its project until that's done.

3 A Yes.

4 MR. LIM: No further questions.

5 CHAIRMAN DEVENS: County?

6 MS. MARTIN: No questions.

7 CHAIRMAN DEVENS: OP?

8 CROSS-EXAMINATION

9 BY MR. YEE:

10 Q You recommended five -- you have
11 recommendations, correct?

12 A Yes, five.

13 Q Would you suggest that these recommendations
14 be included in the preservation plan to be submitted
15 to the State Historic Preservation Division for
16 approval?

17 A Yes, I do recommend that.

18 Q Is that because these are the kinds of
19 issues the State Historic Preservation Division would
20 be considering in whether or not to approve a
21 preservation plan?

22 A Can up please rephrase that question.

23 Q Do you think that these are the kinds of
24 issues, these recommendations of yours, are the kinds
25 of issues that the State Historic Preservation

1 Division considers in whether, in deciding whether or
2 not to approve or not approve a preservation plan?

3 A Yes. With the consultation my first request
4 yes, it is required in all of the Hawai'i
5 Administrative Rules that organizations such as Queen
6 Lili'uokalani Trust be consulted during all of those
7 historic processes.

8 Also in terms of the disposition of the
9 artifacts the state has to approve on where those
10 artifacts will be housed. So, of course, they will
11 take part in that, yes.

12 The access portion of it the State Historic
13 Preservation Division would like to probably know
14 because it is a long-term impact to which will be --
15 or a long-term, something that they would like to know
16 long term in terms of preservation. So that would be
17 included in the preservation plan.

18 In terms of the Stasacks' methodology, no,
19 the State Historic Preservation Division does not have
20 any say in that. That's just something that will, is
21 probably the highest standards of recording the
22 petroglyphs.

23 Q Part of the preservation plan would not --
24 are you saying part of preservation plan would not
25 include whether or not the petroglyphs should or

1 should not be recorded?

2 A They're basically recorded. But what I'm
3 asking for is that these petroglyphs be studied more
4 or be re-recorded in a way that it's more detailed so
5 it can offer information for such rock art researchers
6 to do any kind of analysis on.

7 Q I'm just asking whether or not the State
8 Historic Preservation Division could require that type
9 of recording as part of its preservation plan.

10 A They could require it, but it's nothing --
11 it's not in the regulations. It's not by law.

12 Q With respect to the location of the
13 non-burial cultural materials and artifacts, would it
14 be fair to say consultation would be appropriate to
15 determine whether any other conflicting claims that
16 this should occur first before that decision is made?

17 A In terms of what now? Sorry.

18 Q In terms of where to locate any cultural
19 archaeological pieces and whether it should be the QLT
20 or someone else. Would it be fair to say you should
21 first do the consultation?

22 A Oh, yes, yes, definitely.

23 MR. YEE: I have nothing further.

24 CHAIRMAN DEVENS: Commissioners? One
25 question. You've obviously given much thought to the

1 five suggestions. I'm just wondering if you conveyed
2 that to the Petitioner at any time. If so what was
3 the response to your suggestions?

4 THE WITNESS: I have not conveyed it to the
5 Petitioner. These are my recommendations as an
6 archaeologist, not as an employee of Lili'uokalani
7 Trust.

8 CHAIRMAN DEVENS: I understand. Do you have
9 any plans to talk to them to see if they would be
10 agreeable to what you're proposing?

11 THE WITNESS: That's not in my purview.
12 That's not something that I would be able to do unless
13 I'm asked to do by the Trust.

14 CHAIRMAN DEVENS: So you personally have no
15 plans to pass on what you've thought of so far?

16 THE WITNESS: Um, no.

17 CHAIRMAN DEVENS: Thank you. Any redirect?

18 MR. KUDO: No further questions.

19 CHAIRMAN DEVENS: So we're going to wrap up
20 for the day. So we can plan for the next hearing.
21 Mr. Kudo, I understand you have three witnesses
22 remaining.

23 MR. KUDO: Yes.

24 CHAIRMAN DEVENS: Stand adjourned. Thank
25 you.

1 MS. BENCK: Excuse me, Chairman?

2 CHAIRMAN DEVENS: Yes.

3 MS. BENCK: I'm sorry to interrupt.

4 CHAIRMAN DEVENS: We're still on the record.

5 MS. BENCK: Yesterday the very first item on
6 the agenda there was a briefing schedule. I think it
7 was October 27, November 3rd. Then we went into the
8 next matter, did the motions in limine. I just wanted
9 to make certain that we're all of the same
10 understanding of what needs to be filed on what days
11 by whom.

12 CHAIRMAN DEVENS: Dan, do you have that?

13 MR. DAVIDSON: What briefing schedule are
14 you referring to?

15 MS. BENCK: On the Petition for declaratory
16 Order On DR10-39.

17 MR. DAVIDSON: It's October 27. For QLT's
18 response November 1 I believe.

19 MS. BENCK: And that's for both items in
20 that declaratory order.

21 MR. DAVIDSON: That's correct.

22 MS. BENCK: Thank you very much.

23

24 (The proceedings were adjourned at 3:35 p.m.)

25

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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 22nd 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