

1 LAND USE COMMISSION

2 STATE OF HAWAI'I

3 CONTINUED HEARING, ORAL ARGUMENTS,)
4 DELIBERATION AND ACTION) PAGE
5 A10-788 HHFDC/FOREST CITY) 5
6 HAWAI'I KONA, LLC)
7 _____)

8
9 TRANSCRIPT OF PROCEEDINGS

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11 The above-entitled matter came on for a Public Hearing
12 at Ballroom #1 and 2, King Kamehameha's Kona Beach
13 Hotel, 75-5660 Palani road, Kailua-Kona, Hawai'i,
14 commencing at 8:35 a.m. on Thursday, November 4, 2010
15 pursuant to Notice.

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20 REPORTED BY: HOLLY M. HACKETT, CSR #130, RPR
21 Certified Shorthand Reporter
22
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24
25

A P P E A R A N C E S

COMMISSIONERS:

KYLE CHOCK

THOMAS CONTRADES

VLADIMIR DEVENS (Chairman)

RONALD HELLER

CHARLES JENCKS

LISA M. JUDGE

DUANE KANUHA

NORMAND LEZY

NICHOLAS TEVES, JR.

EXECUTIVE OFFICER: ORLANDO DAVIDSON

ACTING CHIEF CLERK: RILEY HAKODA

STAFF PLANNERS: SCOTT DERRICKSON

DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

AUDIO TECHNICIAN: WALTER MENCHING

Docket No. A10-788 HHFDC/Forest City Hawai'i Kona, LLC
(201H) (Hawai'i)

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

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

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

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

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

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1 CHAIRMAN DEVENS: This meeting is called to
2 order. This is a meeting of the State Land Use
3 Commission. Today's November 4th, 2010. We're here
4 at the King Kamehameha Hotel for this agenda hearing.

5 First order of business is the adoption of
6 the minutes. Are there any changes or corrections?
7 Hearing none, is there a motion to adopt?

8 COMMISSIONER JENCKS: Move to adopt.

9 CHAIRMAN DEVENS: Is there a second?

10 COMMISSIONER CHOCK: Second.

11 CHAIRMAN DEVENS: All those in favor say
12 aye.

13 COMMISSIONERS VOTING: Aye.

14 CHAIRMAN DEVENS: It's unanimous. Next item
15 is our schedule. Dan.

16 MR. DAVIDSON: Thank you. Commissioners,
17 you have the tentative meeting schedule. As always
18 contact either Riley or myself if you have any
19 conflicts or questions about it. Thank you.

20 CHAIRMAN DEVENS: Thank you, Dan. Thanks
21 for keeping us on schedule with the various matters
22 that have been coming down.

23 Moving on, we'll go into item A10-788 HHFDC
24 Forest City, Kona, Hawai'i, LLC matter. This is a
25 continued hearing, oral argument, deliberations,

1 action meeting on this docket number to amend the
2 Agricultural Land Use District boundaries into the
3 Urban Land Use District for certain lands situated at
4 Keahuolu, North Kona; consisting of approximately
5 271.837 aces, Tax Map Key No. (3)7-4-021:020(por.)
6 (3)7-4-021:024, 3)7-4-021:025, (3)
7 7-4-021:026, (3)7-4-021:027. Will the parties please
8 identify themselves.

9 MR. LIM: Good morning, Mr. Chairman.
10 Steven Lim representing Forest City Hawai'i, Kona,
11 LLC. With me today are my co-counsel Jennifer Benck
12 and Bernie Bays.

13 CHAIRMAN DEVENS: Good morning.

14 MR. IHA: Good morning, Mr. Chair. Craig
15 Iha, deputy attorney general representing Petitioner
16 Hawaii Housing Finance and Development Corporation.

17 CHAIRMAN DEVENS: Good morning, Mr. Iha.

18 MR. BRILHANTE: Good morning, Mr. Chair.
19 William Brilhante, county of Hawai'i deputy
20 corporation counsel. Also present is Ms. Bobby Jean
21 Leithead-Todd, County of Hawai'i planning director.

22 CHAIRMAN DEVENS: Good morning.

23 MR. YEE: Good morning. Deputy Attorney
24 General Bryan Yee on behalf of the Office of Planning.
25 Mr. Abbey Mayer will soon be here from the Office of

1 Planning.

2 CHAIRMAN DEVENS: Good morning to you.

3 MR. KUDO: Good morning, Mr. Chairman and
4 members of the Commission. Ben Kudo and my co-counsel
5 Yuko Funaki representing Intervenor Queen
6 Lili'uokalani Trust.

7 CHAIRMAN DEVENS: Good morning to you,
8 Mr. Kudo. Let me go through the state of the record.
9 On October 25, 2010 the Commission received written
10 correspondence from OHA Trustee Robert Lindsey, Jr.

11 On November 1, 2010 the Commission received
12 the following: Written correspondence from Habitat
13 from Humanity, Diane S. Quitiquit, and written
14 correspondence via email from Cindy Whittemore, Gerry
15 Rott, Land Use Research Foundation of Hawai'i-
16 Mr. David Arakawa, Gene Bucky Leslie.

17 On November 3, 2010 the Commission received
18 the following: QLT's Written Motion Supplementing Its
19 Oral Motion made on October 21, 2010 to Dismiss the
20 Petition or in the alternative, Deem Petition
21 Defective; Memorandum in Support of the Motion and
22 Exhibits A through W.

23 Also received on November 3rd was
24 Petitioner's Amended Proposed Findings of Fact,
25 Conclusions of Law, and Decision and Order for a state

1 land use district boundary amendment, and Exhibit A.

2 Received today, November 4th, was a letter
3 from the Land Use Research Foundation of Hawai'i.

4 Before we continue on with the case we'll
5 first take public testimony. We'll call public
6 witnesses in the order that they have signed up. We
7 will give a 3-minute time limit for each witness.
8 Just a reminder that those who have testified before,
9 the testimony has been made part of the record and has
10 been transcribed. Dan, you want to call the names.

11 MR. DAVIDSON: We have 12 people signed up
12 on this docket. First is Jill Dian'ne followed by
13 Jonathan Lee.

14 JILL DIAN'NE
15 being first duly sworn to tell the truth, was examined
16 and testified as follows:

17 THE WITNESS: Yes, I do.

18 CHAIRMAN DEVENS: If you could state your
19 name and address, please.

20 THE WITNESS: Jill Dian'ne, 75-143 Hualalai
21 Road, suite 304, Kailua-Kona. I've been a resident of
22 West Hawai'i for 18 years, involved in residential and
23 commercial buildings since 1995 and a lead AP for the
24 past two years.

25 Since high school I aspired to be involved

1 in the creation of a sustainable community. And over
2 time have been pressed to define that concept. I,
3 like so many others, realize that sustainable
4 community is about more than just building green. It
5 is also about creating a self-reliant community that
6 sustains peoples' livelihood.

7 It is planning and building a community with
8 intention to promote sustainable living that is, yes,
9 environmentally sustainable but also economically
10 sustainable.

11 We find ourselves considering an old vision
12 versus a new vision. For the past 50 years or more
13 residential environments have been created from an old
14 vision, a suburb paradigm that's resulted in sprawl,
15 disconnection from community, increased reliance on
16 automobiles, a squandering of natural resources and
17 over all a reduced quality of life.

18 A new vision is being embraced. Sometimes
19 called new urbanism what it is creating, an old
20 fashioned neighborhood a new way with originality and
21 diversity.

22 This requires creative planning with
23 utilization of innovative principles, processes and
24 programs such as those identified in the Kona
25 Community Development Plan, LEED for neighborhood

1 development and Smart Code.

2 Forest City's proposed plan for Kamakana
3 Villages at Keahuolu is responsive to those innovative
4 principles, and incorporates many of the processes
5 defined in the KCDP and the LEED-ND program.

6 The proposed plan also responds to the needs
7 of the people in this community. This community needs
8 affordable housing, and its families need jobs that
9 will support a healthy and prosperous lifestyle. One
10 of our greatest resources is the land. It is
11 obviously important to make the most efficient and
12 effective use of this resource in order to meet the
13 needs of the people in this community.

14 The proposed project encompasses land that
15 is perfectly suited for the residential development
16 envisioned by the Kona Community Development Plan. It
17 offers a healthy environment in proximity to the
18 community at large including the complementary
19 development plans at La'i 'Opua 2020. It offers
20 educational opportunities not only at the nearby
21 existing Kealakehe Elementary, Middle and High
22 Schools, but the planned development of the schools
23 within the Project.

24 It offers economic development. This
25 Project offers employment, yes, construction jobs, but

1 also jobs created in ancillary support industries as
2 well as the retail/commercial/and entrepreneurial
3 opportunities that will be available within this
4 live/work design scenario. The proposed plan presents
5 us with all of these things. It offers diversity, a
6 lively mixture of different uses that will contribute
7 to the viability of the neighborhood.

8 MR. DAVIDSON: Thirty seconds.

9 THE WITNESS: HHFDC and Forest City Hawai'i
10 offer us a balance of affordability and
11 sustainability, a connected community where we can
12 live/work/play. I support this Project and urge you
13 to approve the boundary amendment request of HHFDC and
14 Forest City, Kona, Hawai'i, LLC. Thank you.

15 CHAIRMAN DEVENS: Let me see if the parties
16 have any questions for this witness. Hearing none,
17 thank you.

18 MR. DAVIDSON: Jonathan Lee followed by Mark
19 Travalino.

20 JONATHAN LEE,
21 being first duly sworn to tell the truth, was examined
22 and testified as follows: Yes.

23 CHAIRMAN DEVENS: If you can state your name
24 and address.

25 THE WITNESS: Jonathan Lee, 47-7761 Hui

1 Kelulo Street, Honolulu, Hawai'i 96741. Good morning.
2 My name is Jonathan Lee. And I'm speaking on behalf
3 of Reginald Casimeriz, business manager of the
4 Plumbers and Fitters UA Local 675 in support of
5 Kamakana Village Project. This proposed Project will
6 have a beneficial impact on the local economy and
7 provide business opportunities for many companies and
8 local businesses. Here on the Big Island, and at a
9 time when many of our members are suffering from the
10 downturn in the economy, the Kamakana Villages Project
11 is needed to stimulate the economy, to create
12 employment and provide affordable housing.

13 Our members and families support this
14 Project, support local construction jobs and support
15 building an affordable community where families can
16 work, play, live and go to school. On behalf of the
17 Plumbers and Fitters, UA Local 675 I strongly urge you
18 to vote in favor of approving the worthwhile and
19 needed Project. Thank you.

20 CHAIRMAN DEVENS: Parties have any questions
21 for this witness? Hearing none, Commissioners? None.
22 Thank you very much, sir.

23 MR. DAVIDSON: Mark Travalino followed by
24 Maria Elano Wakai.

25 MARK TRAVALINO,

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

3 THE WITNESS: Yes, I do.

4 CHAIRMAN DEVENS: State your name and
5 address.

6 THE WITNESS: My name's Mark Travalino, I
7 live at 73-1128 Hiolani Street, Kailua-Kona, Hawai'i.
8 Good morning everybody. This morning I'm submitting
9 testimony supporting the Forest City, Kona, Hawai'i,
10 LLC Kamakana Villages in Kona. I'm an organizer for
11 the Labor Union Local 368 and a resident of Kona for
12 over 20 years.

13 I believe that the economy is attempting to
14 recover. We still have many of our members on
15 unemployment. And unemployment is running out. We're
16 kinda desperate right now. We need this development.
17 I believe it's the right thing, the right time.
18 That's all I had to say.

19 CHAIRMAN DEVENS: Parties have any questions
20 for this witness? Hearing none, Commissioners? Thank
21 you for your testimony.

22 MR. DAVIDSON: Maria Elena Watai followed by
23 Jeremy Gambing.

24 MARIA ELENA WATAI
25 being first duly sworn to tell the truth, was examined

1 and testified as follows:

2 THE WITNESS: I do.

3 CHAIRMAN DEVENS: If you can state your name
4 and address.

5 THE WITNESS: Maria Elena Watai, 74-5128
6 Palihiole Place, Kailua-Kona. Aloha, Commissioners.
7 My name is Maria Eleno-Watai. I'm 13 years old and
8 I'm the corresponding and recording secretary of the
9 Kealakehe Youth Crime Watch.

10 On behalf of my fellow youth members we
11 support the Forest City Project to build affordable
12 homes instead of you adults telling us to get a job.

13 I've lived in Kealakehe, in Kona all my
14 life. This is my future and community. When I'm done
15 with high school and college I might want to live in
16 this place you folks are talking about today. Maybe
17 I'll rent an apartment first, then think about buying
18 my first home.

19 I'm a youth leader today learning about how
20 we are the youth testifying here to beg you to support
21 the Forest City Project because nothing is getting
22 done. I'm sorry to say but our government is useless
23 because of the bureaucracy. They have so many people
24 one job, nothing done. But I carry the idea of owning
25 my own home. Mahalo for your time and please support

1 the Forest City Project.

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

5 MR. DAVIDSON: Jeremy Gambing followed by
6 Emily Gambing.

7 CHAIRMAN DEVENS: Jeremy, if we can swear
8 you in.

9 JEREMY GAMBING,
10 being first duly sworn to tell the truth, was examined
11 and testified as follows:

12 THE WITNESS: Yes.

13 CHAIRMAN DEVENS: State your name and
14 address please.

15 THE WITNESS: Jeremy Gambing, 74-5040
16 Onipa'a Street. Aloha, Commissioners. My name is
17 Jeremy Gambing and I'm a freshman student at Kealakehe
18 High School. I represent my school because I'm the
19 vice president of the class of 2014 and I'm also the
20 president of the Kealakehe Youth Crime Watch.

21 When I'm finished with high school and even
22 college I might want to live here in Kona; get a job,
23 start a family and maybe live in this place you guys
24 are talking about today. I'm a youth leader today
25 learning about tomorrow's future.

1 This Project opens up many opportunities.
2 Many people can find jobs and afford homes because of
3 this. But I carry my idea of owning my own home. And
4 this is my future and I support the Forest City
5 Project. Thank you and mahalo.

6 CHAIRMAN DEVENS: Parties have any questions
7 for this witness? Commissioners? None. Thank you
8 very much.

9 MR. DAVIDSON: Emily Gambing followed by
10 Dillon Watai.

11 CHAIRMAN DEVENS: Emily if we can swear you
12 in.

13 EMILY GAMBING,
14 being first duly sworn to tell the truth, was examined
15 and testified as follows:

16 THE WITNESS: I do.

17 CHAIRMAN DEVENS: Can you tell us your name
18 and address, please.

19 THE WITNESS: Emily Gambing, 74-5040 Onipa'a
20 Street.

21 CHAIRMAN DEVENS: Go ahead.

22 THE WITNESS: Aloha, Commissioners. My
23 name's Emily Gambing. I attend Kealakehe Intermediate
24 School. I'm in the sixth grade. I'm 11 years old. I'm
25 vice president of the Kealakehe Youth Crime Watch. I

1 think it would be a great idea to have them build
2 this. Because when I'm your age I want to afford an
3 affordable house because when I'm done with high
4 school and college I want to live here in Kailua-Kona
5 where I was born and raised. And I want to get a job,
6 start a family, and live in this interesting place you
7 folks are talking about today.

8 Maybe I'll rent an apartment first, then
9 think about buying my first home. I carry the dream
10 of owning my own affordable home. Mahalo for your
11 time.

12 CHAIRMAN DEVENS: Parties have any questions
13 for this witness. Commissioners? None, thank you.

14 MR. DAVIDSON: Dillon Watai followed by
15 Elaine Watai.

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

19 THE WITNESS: Yes.

20 CHAIRMAN DEVENS: Can you tell us your name
21 and address.

22 THE WITNESS: Dillon Watai, 75-318 Aloha
23 Kona Drive, Kailua-Kona. Aloha, Commissioners. My
24 name is Dillon Watai. I'm 12 years old and I'm the
25 activities coordinator of the youth council. I live

1 in Kailua-Kona and this is my future community.

2 When I'm done with high school and college I
3 might want to live here in Kona, get a job, start a
4 family and live in this place you folks are talking
5 about today. Maybe I will rent an apartment first,
6 then think about buying my first home. When -- I'm a
7 youth leader today learning about how others are
8 having a hard time playing for their houses and start
9 to become homeless. But with this affordable homes
10 project we wouldn't have this problem.

11 Also learning about this future housing
12 project, I've been told this community will be a green
13 and better place. The places aren't far and stores
14 might be across the street, but I carry the idea of
15 building my own home. Please build these homes
16 because this is my future and not yours and you might
17 not be around. Mahalo.

18 CHAIRMAN DEVENS: Parties have any questions
19 for this witness? None. Commissioners? None, thank
20 you very much.

21 MR. DAVIDSON: Elaine Watai followed by
22 Hiram Rivera.

23 ELAINE WATAI
24 being first duly sworn to tell the truth, was examined
25 and testified as follows:

1 THE WITNESS: Yes, sir.

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

4 THE WITNESS: My name is Elaine Watai. And
5 I live at 74-895 Kealakehe Street Apartment 12B-A
6 Kailua-Kona, 96740.

7 CHAIRMAN DEVENS: Go ahead.

8 THE WITNESS: My name is Elain Watai, a
9 recent widow and a resident of Kealakehe, Kona. I'm
10 presently employed as the West Hawai'i supervisor for
11 the Alu Like Youth at Risk Prevention Program and
12 on-site manager for the ILWU housing project, Jack
13 Hall Memorial Housing.

14 I took on the second employment to continue
15 the 28-year tenure held by my beloved husband before
16 his departure. Living in the well-known housing
17 complexes, one of 4 housing complex in the Kealakehe
18 Keahuolu area, I speak from experience regarding the
19 necessity for more affordable housing, more schools,
20 parks, public transportation and community centers.

21 The Kealakehe/Keahuolu ahupua'a needs more
22 affordable housing for our working families. I have
23 met numerous times with folks from Forest City and I
24 like the Project. There will be a mix of housing as
25 our kids have mentioned. And this is good for us

1 here.

2 We need this as compared to 50 years ago
3 when we all lived in coffee houses communal style.
4 Our first housing was in Lanakila Housing in Hilo
5 because there was none in Kona. And we lived there
6 until we couldn't stand the much beautiful rain and
7 decided to come back to Kona. And at that time a few
8 homes were being built.

9 Working in the schools it is necessary that
10 we build more schools. We need the roads that connect
11 us. We need the parks and we need the open space
12 which will give our families of Kealahou other places
13 to play, visit each other and, of course, live there.

14 As a manager of a public housing we feel
15 their passion. We have lists that are very long.
16 People are standing in line to come in to affordable
17 homes. We support this Project, the Forest City.
18 Like our kids said it is needed for them. I probably
19 won't be here to see it built. But I hope that each
20 and every one of you here today will support a Project
21 like this because it is necessary. Mahalo and thank
22 you for your time.

23 CHAIRMAN DEVENS: Parties have any questions
24 for this witness? There being done, Commissioners?
25 None. Thank you very much.

1 MR. DAVIDSON: Hiram Rivera followed by
2 Wendell DeCoito.

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

6 THE WITNESS: I will.

7 CHAIRMAN DEVENS: State your name and
8 address.

9 THE WITNESS: Hiram Rivera, 74-4932 E
10 Mamalahoa Highway 96725.

11 CHAIRMAN DEVENS: Go ahead, Hiram.

12 THE WITNESS: Good morning, Commissioners.
13 My name is Hiram Rivera. I was born and raised here
14 in Kona. My family lives here for hundreds of years
15 in Keahuolu Beach. I'm here to testify in favor of
16 the Forest City Project. I'm also a general
17 contractor here, civil contractor.

18 We were fortunate in the past, some of our
19 employees were fortunate in the past housing projects,
20 low income housing projects to get housing. Those all
21 are done. There's no more affordable housing
22 available for them.

23 We have other employees that need this type
24 of housing and more so now today their children needs
25 this. They all growing up. We don't have any

1 housing. I know this is a long, drawn out process. I
2 know there's a lot of questions, a lot of obstacles.
3 But, guys, it starts with you guys today. If we get
4 this approved we're one step closer to making this
5 reality. So I urge you to consider and vote positive
6 on this. Thank you.

7 CHAIRMAN DEVENS: Parties have any questions
8 for this witness? There being none, Commissioners?
9 None, thank you.

10 MR. DAVIDSON: Wendell DeCoito followed by
11 Ken Melrose.

12 THE WITNESS: Good morning, Chairman.

13 WENDELL DeCOITO
14 being first duly sworn to tell the truth, was examined
15 and testified as follows:

16 THE WITNESS: Yes.

17 CHAIRMAN DEVENS: State your name and
18 address please.

19 THE WITNESS: Wendell DeCoito, 1850 Alanui
20 Street, Kamuela, Hawai'i 96743. I'm here today to
21 talk to you guys about the Kamakana Project. I'm in
22 support of this Project. Its affordable homes is
23 needed especially in Kona. My wife is actually a Kona
24 girl but because of the prices we actually relocated
25 to Waimea.

1 I can just basically paint two scenarios for
2 you guys from my point of view anyway. The first
3 scenario would be thriving new energy-efficient
4 community here in Kona which is greatly needed on this
5 island.

6 The second would be worst case scenario, no
7 affordable housing, more homeless on the beaches
8 destroying our lands that way, you know. And, ah, for
9 example, Honolulu, Maui, now they trying to fix the
10 problem. It's already too late. Please don't do that
11 to us here on the Big Island.

12 The Commission, you guys, can all decide on
13 that right now with Forest City. Get this place going
14 and make affordable community a dream come true for a
15 lot of local families here especially. And I'm sure
16 the queen would have wanted to see it that way, yeah,
17 and not more homeless. That's all I have to say.
18 Thank you.

19 CHAIRMAN DEVENS: Any questions for this
20 witness? Seeing none, Commissioners? None. Thank
21 you.

22 MR. DAVIDSON: Ken Melrose followed by
23 Janice Palma-Glennie.

24 KEN MELROSE,
25 being first duly sworn to tell the truth, was examined

1 and testified as follows:

2 THE WITNESS: Yes.

3 CHAIRMAN DEVENS: Please state your name and
4 address.

5 THE WITNESS: My name is Ken Melrose. I
6 reside at 81-950 Onouli Road in Kealahakua.
7 Mr. Chairman, members of the State Land Use
8 Commission, good morning. I was a member of the
9 selection committee for HHFDC that chose Forest City
10 with their previous experience at these types of new
11 urbanism communities elsewhere in the country. And I
12 support Kamakana Villages Project.

13 Throughout this exemption process Forest
14 City has been upfront and interactive as the first
15 Transit-Oriented Development opportunity to come
16 forward in the paradigm shift enacted by the Kona
17 Community Development Plan.

18 They have been flexible and professional in
19 finding ways to comply with the form of the present
20 village design guidelines in breaking this new ground.

21 They're challenged by the over 50 percent
22 affordable housing requirement. A majority of the
23 exemptions requested are to comply with the design
24 components of the Kona CDP which have not yet been
25 formally included in the other sections of the Hawai'i

1 County Code.

2 While the plan may not yet be perfect, more
3 of the details can be worked out as part of the
4 pending project district zoning application. In my
5 view it is worth the risk and we need to try. I ask
6 your approval for this petition. Mahalo.

7 CHAIRMAN DEVENS: Any questions for the
8 witness? None. Commissioners? None. Thank you.

9 MR. DAVIDSON: Janice Palma-Glennie followed
10 by Charles Flaherty.

11 JANICE PALMA-GLENNIE
12 being first duly sworn to tell the truth, was examined
13 and testified as follows:

14 THE WITNESS: I do.

15 CHAIRMAN DEVENS: State your name and
16 address please.

17 THE WITNESS: My name is Janice
18 Palma-Glennie. And my address is P. O. Box 4849
19 Kailua-Kona.

20 Aloha, Commissioners. I have to
21 respectfully disagree with my friends Ken Melrose and
22 Aunty Elaine. Forest City's plan, like every other
23 large development before it, is all about the
24 residents of this island dealing with future damage
25 control. I don't think its an exaggeration to say if

1 we had a nickel for every developer promise that's
2 been broken, every concession that was made in the
3 name of a developer's bottom line, every lie and half
4 truth that was concocted by developer, consultants and
5 lawyers, that there'd be enough money to provide an
6 affordable home for every Hawai'i resident.

7 For once it seems there was a project and
8 developers that were going to follow the new win-win
9 KCDP rules. Even a sceptic like me went to sleep at
10 the wheel thinking this time things would be okay.

11 The Kona Community Development Plan and the
12 will of the people of this island were written in
13 stone. Forest City said they were on board. How
14 wrong I was. This development does not conform to
15 KCDP standards. And if there's a single affordable
16 home built on this property in the next 20 years,
17 please come back to me so I can eat my hat. And whose
18 fault is it that yet another developer will get to
19 pull the wool over our eyes?

20 Every county and state decision-maker who
21 pretends that this developer is different and who
22 votes in support of a shifting sands development is
23 responsible for continued irreparable damage that's
24 done to this island, this community, the host culture
25 and taxpayers.

1 One of the most important basic KCDP
2 components is that a meaningful greenbelt surround a
3 planned mixed use community located with a TOD or TND.
4 This is not a give, give, give by developers, as they
5 reap many benefits by following this model.

6 At an August CDP presentation I commented to
7 Race Randle that there was an elephant in the room
8 disconnect between Forest City's plan and that basic
9 CDP principle.

10 Last week I asked the planning director if
11 that mistake had been corrected. And she told me
12 there's a 40-foot buffer in some places, that Palani
13 Road would be part of the so-called greenbelt, and
14 that in some places archaeological sites would add
15 slightly to the greenbelt of this huge and majorly
16 impacting development.

17 I've worked within the KCDP process since
18 its inception 5 years ago. And as a representative of
19 my community on the action committee, but not speaking
20 for that committee, I'm appalled at the blatant abuse
21 of the regional plan and the public will by developers
22 and county decision-makers.

23 If this proposal receives the nod by this
24 body with all its exemptions and
25 misrepresentations, not only will the people of this

1 county be nailed to the wall again, having to pay for
2 broken promises, but it could be the undoing of the
3 KCDP and all the effort, goodwill and money that went
4 into creating a win/win plan for everyone, not just
5 the public to follow. Mahalo for your time.
6 Appreciate it.

7 CHAIRMAN DEVENS: Any questions for this
8 witness? None. Commissioners? Thank you.

9 MR. DAVIDSON: Charles Flaherty followed by
10 Shannon Rudolph.

11 THE WITNESS: Good morning.

12 CHARLES FLAHERTY,
13 being first duly sworn to tell the truth, was examined
14 and testified as follows:

15 THE WITNESS: Yes.

16 CHAIRMAN DEVENS: State your name and
17 address.

18 THE WITNESS: Charles Flaherty, P. O. Box
19 922 Captain Cook, Hawai'i, 96704. Good morning,
20 members of the Land Use Commission. I'm opposed to
21 this petition for the following reasons. Hawaii
22 Revised Statutes 201H states that, "There can be no
23 issues as to ownership and control and/or public
24 safety and health." This application fails both
25 tests.

1 The Hawai'i Finance and Development
2 Corporation introduced a parcel of ceded lands in the
3 sale of lands to FHT Exchange, Incorporated. OHA's
4 taken the position that the state of Hawai'i has no
5 right to sell ceded lands and has been litigating this
6 issue for over 15 years. Because this litigation has
7 not been resolved by the court system, there's an
8 issue as to ownership and control.

9 In addition, as the Queen Lili'uokalani
10 Trust has already shared with you, they've testified
11 both here and yesterday at the Senate Ways and Means
12 Committee, which I hope you will watch if it's posted
13 on 'Olelo television, because it was very enlightening
14 as to some serious concerns that that Senate committee
15 had.

16 There was a condition of sale with the sale
17 of this property, a memorandum of understanding. What
18 the trustees of the queen wanted was one-third of this
19 property to be used as university or college, one
20 third as public recreational facilities for the
21 community, and one-third as 60 percent affordable
22 housing -- not 50 percent plus 1. Because the current
23 HHFDC proposal materially violates the MOU, QLT is
24 requesting that the sale of this land be rescinded.

25 With regard to procedure it was very

1 interesting to read the instructions, the explanation
2 of process within the HHFDC 201 application.
3 Obviously neither Forest City or HHFDC read these
4 instructions.

5 The process required that HHFDC and the
6 developer to address all county, state, and federal
7 agencies prior to submitting the 201H exemption
8 request package to the county council or to you. This
9 was not done.

10 For instance, the State Department of
11 Transportation has still to this day refused to accept
12 the developer's Traffic Impact Analysis Report, which
13 is a public safety issue. The county Police, Fire and
14 Environmental Management Agencies were not even
15 contacted prior to this item being agendized,
16 resolution 405 being agendized with the county
17 council. These agencies are essential to public
18 health and safety. Further, the development agreement
19 was signed --

20 MR. DAVIDSON: Thirty seconds.

21 THE WITNESS: Thank you very much. The
22 development agreement was signed prior to it being
23 submitted. And yet their own instructions state that
24 the development agreement can only be executed after
25 approval by you and the county council. So I don't

1 understand why there's an existing development
2 agreement.

3 The planning director yesterday testified
4 that the Kealahou Wastewater Treatment Plant does not
5 have the capacity to handle this development at
6 buildout. It doesn't have the capacity to handle
7 buildout for existing development; that there's going
8 to have to be two to three times capacity increase,
9 which is tens of million of dollars that's going to
10 have to come from somewhere.

11 The bottom line is that this application,
12 this petition, violates 201H. It should never have
13 come up. The way that it is now there's some serious
14 issues. I urge you to deny it so that these issues
15 can be resolved and they can bring it back before you
16 in six months.

17 CHAIRMAN DEVENS: Any questions for the
18 witness? There being none, Commissioners? None.
19 Thank you.

20 MR. DAVIDSON: Shannon Rudolph is the final
21 signed up witness.

22 THE WITNESS: Aloha. Thank you for coming
23 to Kona.

24 CHAIRMAN DEVENS: Shannon, can we swear you
25 in first?

1 SHANNON RUDOLPH,
2 being first duly sworn to tell the truth, was examined
3 and testified as follows:

4 THE WITNESS: Yes, I do.

5 CHAIRMAN DEVENS: Can you state your name
6 and address, please.

7 THE WITNESS: Shannon Rudolph, Holualoa
8 Hawai'i. I just wanted to point out the local paper
9 today has an article about what Chuck was talking
10 about. That the headline is, "Senator Upbraids State
11 Housing Agency on Kamakana Villages."

12 We're hurting here. We're hurting all over
13 the country. And this Project is really not gonna
14 help that. This started out to be a pretty good
15 project and I wasn't totally against it. But the more
16 I learn about it the more I'm worried about it because
17 in the past developers come along; they make all these
18 promises and then as soon as they get the permits they
19 go back on all the promises. Like this Project is
20 asking for 54 exemptions.

21 What happens is the taxpayers end up paying
22 for those exemptions down the road. These kids that
23 testified today will end up paying for these
24 exemptions down the road. And so much so that they'll
25 be paying so much in taxes that they won't be able to

1 afford an affordable house there. Because from what
2 I've read they need to make at least \$90,000 to be
3 able to afford an affordable house.

4 And I see in this article too it says
5 there's only 31 affordable houses out of 1,069 houses.
6 We've seen this so many times before with the big
7 promises, then the big promise is rescinded. Then
8 they sell the property. Then the taxpayer ends up
9 picking up the tab.

10 And it's not such a bad Project. But with
11 all the exemptions it's not a good Project because
12 we'll end up paying for it later. Thank you.

13 CHAIRMAN DEVENS: Parties have any questions
14 for this witness? None. Commissioners? Thank you.
15 Are there any other witnesses that wish to provide
16 public testimony? There big none, the Commissioners
17 want to thank all of you that have given testimony in
18 this matter, taking the time, especially the students
19 and the youth leaders. We appreciate the input and
20 the information.

21 As for the exhibits are there any additional
22 exhibits the parties wish to offer at this time?
23 Mr. Lim.

24 MR. LIM: None from Petitioner.

25 CHAIRMAN DEVENS: Mr. Iha?

1 MR. IHA: No, Mr. Chair.

2 CHAIRMAN DEVENS: County?

3 MR. BRILHANTE: None at this time.

4 MR. YEE: Nothing from the Office of
5 Planning.

6 MR. KUDO: Nothing.

7 CHAIRMAN DEVENS: We last left off,
8 Mr. Kudo, it was your case. You want to call your
9 witness to the stand? You want to continue with your
10 witnesses?

11 MR. KUDO: Yes. We'd like to call Mark Boud
12 to the stand.

13 MARK BOUD
14 being first duly sworn to tell the truth, was examined
15 and testified as follows:

16 THE WITNESS: I do.

17 CHAIRMAN DEVENS: Please state your name.

18 THE WITNESS: Mark Robins Boud.

19 CHAIRMAN DEVENS: Thank you. Mr. Kudo.

20 MR. KUDO: Mr. Boud has already been
21 admitted as an expert in the field of market analysis,
22 and economics.

23 DIRECT EXAMINATION

24 BY MR. KUDO:

25 Q Mr. Boud, I just wanted to ask you a few

1 questions about your area of specialization as a real
2 estate economist. What area of specialty within that
3 area do you do most of your work in?

4 A I mainly work with master planned
5 developments. I work on the design, on the
6 feasibility of those master plans, the appropriateness
7 in terms of how it fits with the surrounding area and
8 the surrounding buyer profile both in terms of
9 socioeconomically and demographics. And hopefully
10 what I do best is ensure that a mistake is not made
11 regarding the design of a given master plan in a given
12 area.

13 Q For how long have you been doing this?

14 A For about 25 years, since 1985.

15 Q Have you done work in the state of Hawai'i?

16 A Yes. I've done quite a bit of work. I
17 actually went to school here for part of my college
18 education. And in my professional career I worked
19 quite a bit on O'ahu. I'm currently working right now
20 on the Waiawa Master Plan. I worked on many other
21 master plans on O'ahu as well as Kauai. I've done
22 work on Maui. I've done quite a bit of work on the
23 Big Island, Hawai'i County specifically.

24 I worked in most recently, about two months
25 ago, a small community of condominiums for The Shopoff

1 Group in Kailua-Kona. I've worked at Waikoloa
2 Village, Waikoloa Resort. I've worked for Mauna Kea,
3 Mauna Lani, Brookfield, Parker Ranch, several others
4 on the Big Island.

5 Q Mr. Boud, are you familiar with the
6 HHFDC/Forest City Kamakana Villages Project and the
7 properties that's the subject of these proceedings?

8 A Yes, I am.

9 Q How did you familiarize yourself with this
10 Project?

11 A I have run across this Project in my
12 research and other studies I've done. And I've also
13 reviewed the Hallstrom Report.

14 Q You referenced the Hallstrom Report. Is
15 that Petitioner's Exhibit 3?

16 A Yes.

17 Q Now, are you familiar with the market
18 environment for the Project Area in the North Kona
19 District in the island of Hawai'i?

20 A Yes, I am.

21 Q Did you review the Petitioner's -- can you
22 please give us your opinion regarding the analysis and
23 conclusions that were set forth in Petitioner's
24 Exhibit 3, which we'll reference that as the Hallstrom
25 Report, in terms of the Kamakana Villages residential

1 and commercial absorption?

2 A Yes. Let me actually put up this slide.
3 Just before I go over this let me make a couple
4 comments. I very much appreciate the chance of
5 presenting this information in front of the
6 Commissioners.

7 I recognize that what you do is you gather
8 most, the best information available and then you make
9 the best possible decision for the people.

10 I'm impressed by these young people
11 especially who have come up and given their words
12 regarding this Project. Most of them were for it.
13 One of them said something I thought was rather
14 striking which was we won't be here, and I'm included
15 in that group. They will be here. They will be here
16 to take over this.

17 So it is crucial that we make the best
18 decision possible not only for us but especially for
19 them. So that's why I'm here. I think that's what
20 the Trust wants, the Queen Lili'uokalani Trust, and
21 hopefully I can add to that.

22 Regarding this, I guess, argument we have
23 had on density during the past hearing, and I'm sure
24 it will continue today. But I feel a very strong need
25 to really clarify that. Because some of the things

1 that have been said are just down right deceptive and
2 incorrect.

3 First of all, there was a testimony given
4 that 17.4 units per acre is incorrect for this
5 community. Well, it is correct. It's directly from
6 the Hallstrom Report. Now, granted that is a net
7 density. And what that means is it's basically
8 consigned to the net residential developable land at
9 Kamakana Villages. That's about 130 some odd acres.
10 That's how we get the 17.4. We divide 130 into 2330
11 and get about 17.4 acres.

12 There was a comment that that was incorrect
13 because really you should look at it in terms of gross
14 density. And I believe someone had quoted the gross
15 density for this community is 8.6 units per acre,
16 which is fine. 8.6 takes the entire acreage of the
17 community. It accounts for the roads, the parks, the
18 schools and so on. Both of those figures are commonly
19 used in defining master planned communities. The net
20 is more common but both of them are used quite a bit.

21 I need to share with you that 8.6 units per
22 gross density per acre on a gross basis is extremely,
23 as is 17.4 units per acre on a net basis. Both of
24 those numbers describe a community that, in my
25 opinion, is you won't find it outside of a -- well,

1 you won't find it on the Big Island and you probably
2 won't find it on O'ahu outside of a high rise
3 community. It's just an extremely high density for a
4 2300-unit community.

5 Comments were made in testimony that there
6 were several of these developments in Kailua-Kona.
7 Well, if you go along Ali'i Drive -- this was
8 mentioned -- yes, you will find individual
9 developments at 17.4 units per acre or 8.6 gross. But
10 you won't find a master plan of 2330 homes at 17.4
11 units per acre.

12 I'm the main economic consultant for Waiawa,
13 I mentioned that, on the Big Island. The net density
14 that we are recommending for that particular master
15 plan, which is a stone's throw from Honolulu, is 9.7
16 units per acre net. That compares with 17.4.

17 I just, I just found that such a
18 disingenuous argument regarding, regarding this issue
19 of density. Someone came up here and even said they
20 bristled when they heard about density. You need to
21 understand that there's not another defining
22 characteristic that will define this community more
23 than its density.

24 And having said that, I am all for master
25 plans. I mean master plans has fed my family for the

1 past 25 years. That's what I do as a specialty is I
2 help design and implement master plans throughout the
3 United States. And I feel I do a pretty good job.
4 I've never worked on a community with such a
5 socio-economic and demographic base as you find on the
6 Big Island at 17.4 units per acre.

7 The ones that I work on that are 17.4 units
8 per acre or higher tend to be in a very dense urban
9 setting, in a downtown setting or outside of a
10 downtown setting within a stone's throw of a major
11 metropolitan area. They're not found on the Big
12 Island. You won't find one at 2300 units at 17.4
13 units per acre or 8.6 gross.

14 Let me just -- again, I found that argument
15 so disconcerting that that night I went onto the
16 Forest City website. On their website they have a
17 part there that says "master planned subdivisions by
18 Forest City." I pulled that up.

19 There's a total of -- there's over 20 of
20 them. There's 16 of them that list not only the total
21 unit counts, the total number of homes that have been
22 built but also the total gross acres.

23 So I can give you the gross acres of what
24 they have done at least what they're posting on their
25 website. You can compare that with 8.6 gross acres

1 here.

2 I have 16. I'll just read a few of them:
3 Old Stone Crossing in Charlotte, North Carolina. It's
4 a thousand homes on 418 acres gross. it's 2.4 units
5 per acre gross.

6 Martin's Run, part of Monarch Grove in Ohio.
7 It has 1500 homes on 327 acres. It's 4.6 units gross.
8 That's the highest I found, by the way.

9 Gladden Farms in Marana, Arizona, 3600 homes
10 on 1350 acres, 2.7 units per acre gross.

11 Stapleton in Denver, Colorado 3,980 homes on
12 4,700 acres; 0.8 units gross density. Just to give you
13 an idea of how out of whack this is.

14 Let me read off some population numbers. In
15 a 30-mile radius of those communities, Old Stone
16 Crossing in Charlotte, has 1.84 million people within
17 a 30-mile radius. Martin's Run has 1.2 million within
18 a 30-mile radius. Gladen Farms has 927,000 within a
19 30-mile radius. Stapleton has 2.8 million people
20 within a 30-mile radius. On the Big Island
21 Kailua-Kona regarding Kamakana Villages within a
22 30-mile radius I believe there are 27,000 people.

23 I just -- there is a huge disconnect here.
24 A person had mentioned in their testimony earlier that
25 this is a community of shifting sands. And I've had a

1 hard time really analyzing this community. If you
2 look at the board, there are a couple tables that I
3 pulled from the Hallstrom Report. This is pretty much
4 all I got from that report in terms of describing the
5 type of product that is being introduced. (indicating)

6 MR. KUDO: Just for the record he's pointing
7 to Intervenor's QLT Exhibit 26.

8 THE WITNESS: So we have high density
9 residential at 36 units per acre. That was corrected
10 in the past hearing. It's actually 37 units per acre.
11 Medium-high density 20 units per acres; medium
12 low-density 14 units per acre, lower density
13 residential 11 units per acre.

14 By the way that's the first time I've ever
15 seen lower density residential at 11 units per acre.
16 It's usually 2 to 3 units per acre. Overall it's
17 17.4. Again, that's net. Cut that a little bit less
18 than half and you'll get gross.

19 You can see in terms of the makeup of the
20 community there are 1,137 affordable multi-family
21 homes. That's about 49 percent of the total. If you
22 look at the affordable mix that's 97 percent of the
23 affordable mix.

24 Let me just comment on that for a second.
25 Gleaning from the Hallstrom Report, and I recognize

1 this number isn't nailed down, but at a density of
2 17.4 units per acre going up to 37 units per acre,
3 they had to come up with a unit size average for those
4 1,137 homes. And that unit size average is 750 square
5 feet. It was commented, "Well, that's a range. Of
6 course they're not all going to be 750 square feet."

7 Well, if you go down to 500 square feet that
8 means you can only go up to about a thousand square
9 feet. That's still an awful lot of very small homes
10 up to 37 units per acre. That does not describe the
11 Kona-Kailua market. (sic)

12 There was comment that what we have done in
13 the past is a bunch of tract housing. I agree with
14 that. We've done way too much tract housing. Again,
15 I don't want to even remotely imply that I'm against
16 master planned development. I'm not. I live off of
17 Master Planned development.

18 I believe in appealing street scenes,
19 walkable communities and the TOD and parks and schools
20 and everything that goes into a master plan. There is
21 nothing in a master plan in this environment that says
22 that those give the justification for 17.4 units per
23 acre. It doesn't.

24 Most master plans as you read from Forest
25 City's own website is well below that density. So

1 what are we doing at 17.4 units per acre in this kind
2 of environment? There's just -- in my view there's no
3 justification for it. Sorry about the rambling.

4 Q Do you find the density of Kamakana Villages
5 unusual or disturbing even if you consider the fact
6 that it is affordable housing?

7 A Yes, I do. Again, I think we are pioneering
8 and not in a good way. To me affordable housing, and
9 I love what Hawaiian Home Lands does. I think they do
10 a great job. They, at last my understanding is, they
11 mostly focus on single-family homes. They certainly
12 do at Lai'opua Villages.

13 So there's a need for affordable housing.
14 But I got to think to myself how many families who are
15 in need of those affordable homes want to be stuck in
16 a 3-story condominium building at 750 square feet? To
17 me there is a significant mismatch between what little
18 product definition I've been given and that buyer
19 profile.

20 I mean you can hit those affordable price
21 numbers by squeezing the density so much and making
22 those units so small it eventually pencils. What
23 happens, those affordable homes are simply market rate
24 homes at very small sizes.

25 But there's a definite mismatch between

1 those particular 750 square foot average affordable
2 homes and at least what I think this buyer profile
3 wants. If it's a family with one to two children it's
4 going to be very difficult to make an effective living
5 in a 700 square foot condominium even if there's a
6 park across the street.

7 Q Mr. Boud, as a real estate expert with a
8 specialty in Master Planned communities, would you
9 have other concerns that you would raise to your
10 clients pertaining to the high density and other than
11 absorption?

12 A Well, I do. I've been impressed by so many
13 of you who have come up here and from the community
14 offered testimony. My sense is that most of those
15 testimonies are from those who really want the jobs
16 and the incomes and the activity that's generated with
17 such a large development.

18 But if those 54 exemptions deny the
19 developments of adjacent parcels, which I think there
20 is a very good chance they would, and some of the
21 those parcels including the Trust's lands -- the Trust
22 has land that's, what, three times the size of this
23 particular parcel, which means its master plan might
24 be two to three times larger. I don't know. It's
25 obviously not, not fully planned.

1 But aren't we in the short run gaining a few
2 jobs at the expense of far more jobs in the future?
3 To me there's a way to harmonize these two master
4 plans in such a way that they can both absorb
5 concurrently, both be designed in harmony and be able
6 to make one another feasible. This isn't part of what
7 I'm supposed to be an expert at, but it doesn't seem
8 logical to make a short run, small gain at the
9 sacrifice of a long run, huge gain in terms of jobs,
10 the economy and everything else.

11 Q Mr. Boud, let me turn your attention to the
12 commercial element of this Project. And I draw your
13 attention to the Hallstrom Report itself which is
14 Petitioner's Exhibit 3. Mr. Boud, what is your
15 opinion regarding the commercial demand and supply
16 analysis that's contained in the Hallstrom Report?

17 A Right. After reading the report, I think I
18 even have this here, let's see -- after reading the
19 report I kind of got stuck on the assumption that a
20 neighborhood commercial center at Kamakana Villages
21 would capture virtually a hundred percent of the
22 retail demand that's generated by Kamakana Villages.
23 I think that's what it states in the Hallstrom Report.

24 Q Now, what you've shown there is QLT's
25 Exhibit 26. But this is taken from the Hallstrom

1 Report?

2 A No, it's not. This is actually my redo of
3 their numbers?

4 Q Of their numbers. Okay.

5 A Their numbers generated a commercial center
6 of about -- or commercial space about 200,000 square
7 feet. And that assumed a hundred percent capture of
8 the population within Kamakana Villages, which I think
9 is highly unrealistic.

10 I mean as soon as Safeway at Crossroads has
11 a sale on bananas at 29 cents a pound everybody's
12 going to go over there. There's no way they'll get a
13 hundred percent capture. It's probably closer to 50
14 percent. I actually used, I believe 60 percent.

15 We worked some other numbers and came up
16 with 132,000 square feet of commercial space viable
17 for this community based upon their assumptions.

18 Then I -- these numbers were kind of taken
19 out of context because immediately after generating
20 this I stated that it's far too aggressive. In fact,
21 here it is, "a far too aggressive demand calculation"
22 because it does not -- anywhere in this report are the
23 Trust's holdings in terms of future commercial land
24 brought to bear. If you think about it, if the Trust
25 is an ongoing entity with the purpose of providing for

1 the indigent and the orphans, they need renewable
2 income. And that renewable income is generated by
3 leases on commercial land.

4 And so my feeling is that the Trust is going
5 to want to develop a lot of their land, especially
6 around Makalapua Center, which obviously already has a
7 start, a lot of that will be an expansion of
8 commercial. None of that is accounted for, that I can
9 tell, in the Hallstrom Report.

10 Once it is, you account for the fact that
11 that's going to expand, the Kona Commons will continue
12 to expand, that 132,000 square feet begins to shrink
13 pretty quickly.

14 Again, there's demand but it needs to be
15 distributed among not only the present but the future
16 centers throughout there. I just did not think that
17 that was effectively done.

18 Q Now, are there neighborhood shopping centers
19 in close proximity to the Kamakana Villages Project?

20 A Oh, absolutely. This is another reason why
21 I felt the capture rate was a little odd, to assume
22 you would capture a hundred percent of overall demand.
23 For example, there is -- I mentioned the Safeway at
24 Crossroads.

25 And bear with me while I find this. I

1 believe there's a total of four neighborhood shopping
2 centers within a five-minute drive time.

3 And in the Hallstrom Report demand for a
4 neighborhood center is defined within -- you have to
5 be within about a 8-minute drive time. So there is
6 the Kona Coast Shopping Center which is within 5
7 minutes. That has a KTA grocery store. There's the
8 Lanihau Center. There's a Sack 'N Save at the Lanihau
9 Center that's easily within 5 minutes. There is -- I
10 mentioned the Crossroads, Safeway at the Crossroads.

11 Then there are others that indirectly
12 compete. Obviously Wal-Mart and Kmart and Target are
13 regional, draw from a regional area, but there's
14 obviously some overlap with grocery stores. Kmart and
15 Wal-Mart and Target are within a 5 minute drive time.

16 There's also a Costco which is fairly close
17 by which directly competes with grocery stores. As
18 far as I could tell these were not considered in terms
19 of what that commercial base already looks like.

20 Q What would you say the real commercial
21 demand within the Project would be considering the
22 impact of surrounding current and future competitive
23 uses?

24 A Well, a lot of it depends on what is built.
25 If you go ahead with these 2300 homes at this

1 far-too-high a density, it obviously does create
2 commercial demand. Again, excluding the impact from
3 or largely excluding the impact from future
4 developments, but accounting for the impact from
5 what's already there, it may be, it may stretch up to
6 132,000 square feet which would be about a hundred
7 thousand square foot neighborhood center? The other
8 30,000 somewhat would probably be spread out
9 throughout other parts of the community.

10 But after accounting for the Trust lands,
11 for the Palamanui Town Center and for other future
12 developments, it may very well be half that. That
13 doesn't mean that those future competitive commercial
14 centers are also restricted to maybe 60,000 square
15 feet of space.

16 Because again it's based upon how many homes
17 are generated in those communities, how many homes are
18 going to be built on the Trust lands? How many will
19 be built at Palamanui?

20 Obviously they're doing their own
21 feasibility studies. So they won't be restricted to
22 those 60,000. But to me it's easily cut in half from
23 what the most optim - what I think is the most
24 optimistic assumption.

25 Q Mr. Boud, were you present during the

1 testimony of Tom Holliday who did the Hallstrom Report
2 in this Project?

3 A I was present for part of it. And I've read
4 through most of his, most of the transcript.

5 Q Mr. Holliday testified that his report,
6 Petitioner's Exhibit 3, did not do a regional
7 commercial study. Now you've had a chance to review
8 the Hallstrom Report. Would you agree with Mr.
9 Holliday that it's not a regional commercial study?

10 A Well, I guess it depends on how you define
11 "regional". But my assumption is that Kamakana
12 Villages is slated for a neighborhood, not a regional,
13 but a neighborhood shopping center of between a
14 hundred and a hundred ten thousand square feet with
15 other commercial being spread out among that.

16 Now "neighborhood" could have components of
17 regional and those other parts could also have
18 components of regional. I would have to know the mix
19 of what is being, what those commercial centers are
20 going to be.

21 Q Did the Hallstrom Report take into
22 consideration all the shopping centers that you
23 mentioned surrounding this property in doing its
24 analysis? Or did it just focus on the demand coming
25 from within the Project?

1 A Well, in my opinion it absolutely did not
2 account for, for example, shopping centers within 5
3 minutes, which I found to be a bit strange. But it
4 did give an overall number.

5 If I recall it was either an island number
6 or maybe it was a greater Kailua-Kona number in terms
7 of the existing square footage of commercial space,
8 just one number that described all commercial space,
9 if I recall.

10 Q Mr. Boud, in summary, how would you describe
11 the retail and commercial analysis contained in the
12 Hallstrom Report?

13 A I think the assumption that they will
14 capture a hundred percent of the population that is
15 drawn to Kamakana Villages is really misguided. I
16 think they are overstating the demand.

17 And I'm shocked that they're not accounting
18 for future supply at the Trust's lands, at the
19 Palamanui Town Center and other residential
20 developments with their commercial components that
21 would be built nearby.

22 MR. KUDO: Thank you. I have no further
23 questions. He's available for cross-examination at
24 this time.

25 CHAIRMAN DEVENS: Petitioner. actually we've

1 been going for over an hour. Why don't we take a
2 short break.

3 (Recess was held. 10:40)

4 CHAIRMAN DEVENS: (11:00) We are back on the
5 record. Petitioner, it was your cross.

6 CROSS-EXAMINATION

7 BY MS. BENCK:

8 Q Good morning, Mr. Boud.

9 A Good morning.

10 Q Mr. Boud, thanks for being here. I wanted
11 to start out by finding out, you indicated that you'd
12 done a good bit of work in Hawai'i. For how long have
13 you been doing work for QLT?

14 A I've done work for the Trust during the past
15 year, I would say maybe within the past six months.
16 They're a relatively new client.

17 Q So you were not the consultant who prepared
18 the market report that they presented to the
19 Commission back in 1989 or 1990 to get the
20 reclassification for all of the land across from the
21 mid-level road.

22 A No.

23 Q I notice on your CV that you list a 2010
24 Highest and Best Use Report for some QLT property.
25 Could you please tell us the paramaters of that study,

1 what land areas were covered, what your assumptions
2 were and, most importantly, what your conclusions
3 were?

4 A You bet. I was asked to do a preliminary
5 investigation on what the overall development
6 potential is for the lands in terms of residential,
7 mainly residential. Did a little bit of commercial as
8 well.

9 Q I'm sorry to interrupt. I just want to make
10 sure what lands we're talking about. It didn't say
11 clearly on your CV. Do you know the tax map parcels?

12 A The Queen Lili'uokalani Trust, Keahuolu
13 lands which... (pausing) all I'm abs -- unclear. I
14 don't have a map that would show their actual
15 boundaries.

16 Q For the record we're passing Mr. Boud, it's
17 an exhibit from the EIS that was filed, I think it was
18 Petitioners' Exhibit 2. It's the QLT lands that were
19 classified as state land use urban on that map. Are
20 those the lands there were covered in that report?

21 A I don't think that's the exact definition.
22 Definitely the makai lands from this and the part that
23 goes along Palani Road. But you're also including, at
24 least in the highlight, you're also including parts of
25 La'i 'Opuia Villages and other parts that aren't part

1 of the Trust, at least as I understand it.

2 Q But again the land that you studied for QLT
3 is that the land that's across the street from the
4 mid-level road alignment makai of the Project?

5 A Yes.

6 Q Okay. Thanks. Just so we know the
7 parameters we're talking about. You said that you
8 studied that to see if there was residential potential
9 on that land?

10 A Yes.

11 Q Can you tell us a little bit more about
12 that?

13 A The way I typically do a feasibility study
14 is I examine the potential for economic growth in a
15 given area. And the residential demand is going to be
16 a function not of population growth as much as
17 economic growth.

18 That's another thing I disagree with with
19 the Hallstrom Report is the population in and of
20 itself doesn't create housing demand. The population
21 has to be employed and has to have a way to pay for
22 those new homes.

23 So it's more clear to look at economic
24 growth potential in terms of what the overall
25 potential is for housing demand in a given area.

1 Also look at the future new home
2 communities, the present and the future new home
3 communities that exist in an area to get an idea as to
4 what the supply looks like.

5 The demand is created from, as I say,
6 economic growth, accounting for interest rates and
7 equity wealth and other factors that funnel directly
8 into price support.

9 The supply is measured by an examination of
10 building permit trends as well as an examination of
11 future new home communities that are in planning. And
12 I match the supply and demand up and see whether there
13 is mismatches or opportunities.

14 Q What were your conclusions just on the
15 residential analysis? How many residential units are
16 proposed for that QLT land?

17 A That's undetermined. But I will say that
18 the Hallstrom Report, and I think this was given in
19 testimony as well, they identified housing demand
20 between 7500 and 10,000 homes between now and 2028.

21 I have no disagreement with that at all. I
22 think that that demand is there. That demand will be
23 there. I don't think their demand -- I disagree with
24 how they came up with their demand forecast but the
25 actual numbers I think are realistic.

1 Q Now, that demand is just in the greater
2 Kailua-Kona area.

3 A Mm-hmm (nodding).

4 Q What sort of concerns did you describe in
5 your report in light of the fact that you knew that
6 Kamakana Villages Project was there to absorb some
7 2300 homes? How is that going to affect QLT's
8 proposed development or anticipated possible proposed
9 development?

10 A It depends on how these individual
11 communities are defined as to whether or not they
12 directly compete with one another.

13 Is there enough demand to absorb both of
14 them simultaneously? I think so if they're both
15 effectively designed and they match the buyer profile.

16 Q Thank you. So when you say we "effectively
17 designed" we're pretty familiar with the design of
18 Kamakana Villages. What's the residential design that
19 you were proposing in your highest and best use
20 report?

21 A Again, it wasn't fully proposed and it's not
22 fully finished. That's a work in progress. I can't
23 give you specifics on something that has not been
24 finalized.

25 Q As far as you know is that land legally

1 entitled for residential development?

2 A I would imagine there's some rezoning that
3 might need to take place. But this much I am safe, I
4 feel comfortable in saying, there's no way that 17.4
5 units per acre, 2300 units, would be developed at that
6 kind of high density, at least based upon my
7 recommendations, would be developed makai of Kamakana
8 Villages because I don't think it's feasible. So
9 based upon my recommendation that would not be built.

10 Q What percentage of those whatever units
11 would be put on the QLT property, what percentage is
12 intended to be affordable?

13 A You're asking me things that are not
14 defined. But if I understand the affordability
15 constraints, is it 30 percent? I don't know. I'd
16 have to examine that a bit closer. But again it's not
17 defined yet.

18 Q Okay. So that's not a standard part of your
19 analysis, even when you're working in the county of
20 Hawai'i, to take into account the county requirements
21 for affordable housing?

22 A Yes, I look at affordable housing but the
23 entire community is not defined.

24 Q What sort of commercial product did you
25 determine would be putting to best use the QLT lands?

1 A Specific commercial product definitions were
2 not set forth in terms of specific types of specialty
3 shops and retail uses. But the demand for retail
4 space is going to be a function of the number of roof
5 tops in a given community and in areas around that
6 community as well as the supply. And, again, that's
7 not fully defined yet.

8 Q So the internal demand for commercial square
9 footage on the QLT property in your highest and best
10 use analysis was what?

11 A I can't give you that specific number
12 because the total number of homes to be developed on
13 the Trust lands is not determined.

14 Q Because it is the number of homes in a
15 project that tells you what the internal demand will
16 be.

17 A I did not say that. I said it's a
18 combination of the number of homes within a given
19 community and the homes in the outlying areas that are
20 not effectively served.

21 Q Looking, and again I wish that your report
22 had been submitted -- it would have been incredibly
23 enlightening to all of us -- but looking back at the
24 most recent information we have, which is QLT's Land
25 Use Commission approval in 1990 or 1991, there was

1 supposed to be a regional-serving hospital.

2 Does that figure into your highest and best
3 use analysis?

4 A A regional-serving hospital. I'm aware of
5 it. And I have mentioned it in meetings not only for
6 Queen Lili'uokalani Trust but other consultants. It
7 is a demand driver. It's a healthy one. I think it
8 would be a good idea to develop a hospital in the
9 North Kona area.

10 Q So consistent with what the Land Use
11 Commission approved for the QLT lands in 1991, you
12 think a regional-serving hospital should be put on
13 that land or finally built since that's what was
14 approved to be built?

15 A I have not done a feasibility study for the
16 hospital, but a cursory review of it it seems like
17 it's needed. But you're asking me something that I
18 can't answer without doing a very detailed study
19 regarding the feasibility of a hospital. And I
20 haven't done one.

21 Q Fair enough. And let's take those same
22 questions and put them to the hotel, the business
23 hotel that was identified and clearly planned in the
24 QLT property back then.

25 Is that still part of what could be planned?

1 Did you identify that in your report as the possible
2 highest and best use?

3 A I haven't done a feasibility study on a
4 hotel. So I can't answer that.

5 Q So a lot of uses that were approved by this
6 Commission, doesn't sound like those uses are going to
7 be developed on the QLT land, if they were to, let's
8 say, take the guidance in your report.

9 A I didn't say it doesn't sound like they
10 would be developed. I just don't know.

11 Q Fair enough. Let's talk about density
12 because we heard an awful lot about density, and what
13 you say is very interesting. You also expressed an
14 appreciation for TOD or TOD developments.

15 Because you do work in the county of Hawai'i
16 I assume you're familiar with the Kona CDP.

17 A Mm-hmm. I haven't gone through every single
18 page.

19 Q It's a huge document, sure.

20 A But I'm familiar with the CDP.

21 Q What sort of densities are described for
22 the different transect zones in the Kona CDP? You
23 know what? If I could just step back for a minute
24 before I jump to that question.

25 When I say transect zones, you're familiar

1 with the term?

2 A I'm sorry. Would you repeat that?

3 Q When I transect zones?

4 A "Transit" zones?

5 Q Yes. Transects. Actually they're the
6 circles that go around each TOD development. There
7 sort of is an ever enlarging circles with highest
8 density in the middle. Are you familiar with those?

9 A I'm familiar with the concept, yes.

10 Q Okay. Great. So under the Kona CDP in a
11 TOD area, which is what the Kamakana Villages clearly
12 is, what's the density that's proposed for transect 5?

13 A You're asking me to answer something
14 specific in that document. And I'd have to have the
15 document in front of me. I would probably have to
16 have reviewed it a bit more carefully to answer those
17 specific questions.

18 Q So your analysis on the density and your
19 quite negative determination of the density of
20 Kamakana Villages was not tied to the review of the
21 Kona CDP?

22 A My understanding was tha, and my assumption
23 is that higher densities are assumed and approved for
24 a TOD. But a master plan definition does not need to
25 assume a higher density even with it including parks

1 and schools and walkways and a TOD. So, yes, you can
2 develop higher densities in a TOD district. My point
3 is that leaping from the norm to 17.4 units per acre
4 net is in my view foolish.

5 Q So, thank you. The Kona CDP T5 density
6 which is 30 units per acre gross, you think that's
7 foolish.

8 A Thirty units per acre.

9 Q Gross.

10 A And you're going to 37 units per acre which
11 makes me think why are you exceeding the zoning?

12 Q I'm sorry --I'm sorry --

13 A Just a thought.

14 Q -- let's not confuse gross with net.
15 Because that confusion got repeated, I think, at the
16 last hearing as well.

17 A Right.

18 Q So gross, 30 units per acre gross in the
19 middle of the TOD, you think that that's what the Kona
20 CDP is currently calling for and you think that that's
21 a foolish way to develop.

22 A I didn't say that. What I think is foolish
23 is 17.4 units per acre net or 8.6 percent unit -- 8.6
24 units per acre gross over the entire community.

25 If you're going to do 30 units per acre in

1 the TOD, then I think it should be offset with lower
2 density uses in other areas of the community.

3 But instead, what my understanding is is
4 that there are only 31 affordable single-family homes.
5 That to me is very strange. I mean, yes, 30 units per
6 acre in the TOD district, that works. Why not offset
7 that with reduced densities in other areas, greatly
8 reduced densities? I don't see that in the Hallstrom
9 Report.

10 Q Well, you know, it's definitely in figure 5B
11 of Petitioner's Exhibit 1 which is the gross
12 equivalent densities. It would be helpful if you had
13 been able to familiarize yourself with this because it
14 clearly identifies the various densities that range
15 anywhere from 0 units per acre to we've got 26 units
16 per acre in the T4 zone to 9 units per acre.

17 The ranges are all over the place, all
18 consistent with the Kona CDP. So it's a concern to me
19 that your analysis didn't take into account
20 actually --

21 CHAIRMAN DEVENS: Wait a minute. What's the
22 question?

23 Q (By Ms. Benck) The question is -- I'm sorry.
24 Your analysis of density, just to make it very, very
25 clear, assumed that that density would be the same

1 deployment the entire Project.

2 A You're telling --

3 Q I'm asking you is that your assumption that
4 the density was going to be equal throughout the
5 entire Project?

6 A Absolutely not. I never even approached
7 saying that. That's a little bit disingenuous to even
8 mention that. You mentioned 9 units per acre as the
9 lowest. Nine units per acre translates to about a
10 2500 to 3,000 square foot -- 2800 square foot lot. If
11 that is the lowest density that's generated in this
12 community I'm concerned.

13 It was mentioned also 8.5 units per acre
14 translates that 5,000 square foot lots. That was in
15 the Holliday testimony. It does not. 8.5 units per
16 acre translates to about a 3,000 square foot lot at
17 most. So to me 9 units per acre and higher is a very
18 high-density community.

19 Where are the same traditional single-family
20 homes on 6,000 square foot lots, 7200 square foot
21 lots, 5,000 square foot lots? Is there anything below
22 9 units per acre? In fact, my understanding is there
23 anything below 11 units per acre? I didn't see it in
24 the Hallstrom Report. It's not shown. And zero units
25 per acre means zero homes are built on that land.

1 It's open space.

2 Q So you had not a chance to look through the
3 gross equivalent density table that we submitted as
4 part of Petitioner's Exhibit 1?

5 A I reviewed the Hallstrom Report, as I
6 testified. And that's, the conclusions that I have
7 stem from the Hallstrom Report.

8 Q Let's talk, if we could, just a little bit
9 about the square footage. The average square footage
10 that you are anticipating for this Project in the
11 units was -- and I know you got this from the
12 Hallstrom study, I believe you said 750.

13 A Seven hundred fifty square feet was the
14 average associated with affordable, multi-family of
15 which there are 1,137 of them, 97 percent of the
16 affordable mix.

17 Q Can you compare that with, let's say, the
18 densities you might find -- I'm sorry, the square
19 footages that you might find in other areas in the
20 Kailua-Kona region?

21 A I know there are town home and condominium
22 communities directed toward the non-resort population
23 along Ali'i Drive. I can't think of one that's at 37
24 units per acre.

25 I can think of a few that are maybe 12 to 14

1 units per acre at most. I don't know what their
2 average square footages are. I doubt it's 750 square
3 feet.

4 Q Are you familiar with the Hualalai Village
5 project and the square footage of the units there?

6 A How many units are in Hualalai Village?

7 Q I don't know how many units are in Hualalai
8 Village.

9 A Yeah. Yeah, again, there are going to be
10 specific examples along Ali'i Drive and elsewhere of
11 developments that are high in density and small in
12 square footage. My concern is should it account for
13 97 percent of the affordable mix of this community?

14 Yes, there is a place for a 750 square foot
15 condominium in the Kamakana Villages master plan.
16 And, yes, maybe even at 30 units per acre there's a
17 place for that.

18 But to me in order to provide the full
19 spectrum of housing that will attract the full
20 spectrum of affordable buyers there needs to be a
21 representation of other product. And at 97 percent of
22 the affordable mix, 1137 homes that average 750 square
23 feet, I just don't see that breadth of product.

24 MS. BENCK: Chair, I apologize. I know at
25 the start of the first hearing we had asked for

1 permission to have more than one attorney do the
2 cross-examination. And that permission was granted
3 since there's Co-Petitioners here. May Mr. Iha ask
4 questions?

5 CHAIRMAN DEVENS: Yes, sure. Mr. Iha.

6 MR. IHA: Thank you, Mr. Chairman.

7 CROSS-EXAMINATION

8 BY MR. IHA:

9 Q Mr. Boud, earlier you testified about some
10 projects on the mainland that were master planned
11 communities of 3 units per acre, 8 units per acre. I
12 think those were in Arizona and Colorado, is that
13 correct?

14 A Those are master plans that I have not
15 worked on. Those are master plans that are defined on
16 the Forest City website.

17 Q Did you do any analysis of -- did you do any
18 kind of analysis of the development costs of these
19 projects?

20 A Of those projects?

21 Q Right.

22 A No. I never worked directly for Forest
23 City.

24 Q So you don't know, necessarily know whether
25 these projects are comparable to the Kamakana Project

1 in terms of affordable housing requirements, in terms
2 of development costs, those kinds of figures?

3 A I don't think I said that they were
4 comparable. I think what I was trying to do is give
5 examples of densities of master plans relative to this
6 master plan, and then examples of the population
7 densities surrounding those master plans relative to
8 the population density surrounding this master plan.

9 Q So basically what you're telling me is that
10 other than a generic unit per acre density figure, you
11 have no other basis to compare these projects to the
12 Kamakana Project?

13 A My goodness, if you don't think that has
14 meaning I respectfully disagree. I mean, again, the
15 population density, the population surrounding a given
16 master plan regardless of where it is, and the gross
17 density of a typical master plan, especially one
18 that's being built by Forest City, I think that needs
19 to be examined in light of what Forest City is doing
20 here. So, gee whiz, it's the same builder. Let's
21 take a look at what else that builder has done.

22 Q Are you telling us that it's feasible to
23 build affordable housing in meaningful numbers in
24 Kailua-Kona with the density of .8 units per acre?

25 A (Laughing). I don't recall saying that.

1 That's kind of a silly comment. Obviously affordable
2 housing is needed. I just don't think it is
3 appropriate to cram that affordable housing into such
4 a tight space and to such a small unit size that it
5 does not appeal to the families for which that
6 affordable housing is supposed to be directed.

7 Q So I also take it, then, that you're not
8 saying that it's feasible to build affordable housing
9 in Kailua-Kona with the density of 3 units per acre.

10 A No, I would need to do a study on that
11 affordable housing to see what is feasible. But,
12 again, is 17.4 units per acre feasible when it is
13 misdirected to the buyer profile for which it is
14 meant? I'm not sure. I think that's as valid a
15 question as to whether 3 units per acre is feasible.

16 MR. IHA: Thank you. No further questions.

17 CHAIRMAN DEVENS: County?

18 MR. BRILHANTE: None at this time.

19 CHAIRMAN DEVENS: OP?

20 CROSS-EXAMINATION

21 BY MR. YEE:

22 Q I've listened to your testimony on direct
23 and in cross-examination. I want to make sure I at
24 least have a general idea of what you're telling us.
25 You conclude first, if I'm correct, that the density

1 for this Project is too high to be marketable. Is
2 that correct?

3 A I think it is too high to effectively appeal
4 to the market audience for which it is meant.

5 Q Is that different than being marketable?

6 A Ah, not really. All I'm saying is -- I
7 guess this is what I'm concluding. I have a fear that
8 by the time you finish constructing the last home of
9 Kamakana Villages it will already be considered a
10 blight. Because there will be so many vacancies,
11 because it's not appealing to the buyer profile that
12 it was meant to serve, that we will regret this, you
13 know.

14 Again, I go back to my opening comments
15 where I'm just as concerned about building a master
16 plan that fits, that is appropriate for the buyer
17 profiles as anyone, except for possibly the
18 Commissioners whose decision it is to make sure that
19 this is a good decision for the future generations.

20 I don't think it is. Someone mentioned
21 earlier that they are, they bristle over the comment
22 on density. I think it's us who ought to be bristling
23 to make sure this is just an appropriate use of
24 residential development for the population that it's
25 meant to serve.

1 Q So you're concluding that there aren't going
2 to be enough people who will want to buy all these
3 houses because of the density is too high.

4 A The density is too high and the unit size is
5 too low. Again are we directing those 1,137
6 condominiums that average 750 square feet, is there
7 enough of an affordable population who wants to raise
8 their children in that kind of a unit? I would think
9 that there, are at least right now there is so much
10 selection, by the way, at lower prices than is quoted
11 in the Hallstrom Report, that this would be a very
12 hard sell.

13 Let me just take just a moment to give you
14 an example. The Hallstrom Report, if I recall, quotes
15 that these 1137 homes, condominiums at 750 square
16 feet, will be offered between \$300,000 and \$400,000.
17 Okay? That's within the affordable limits.

18 The average home -- the average sales price
19 of a single-family home right now on the Big Island is
20 \$327,000.

21 The average price of a condominium on the
22 Big Island is \$307,000.

23 And I fully agree that we will probably go
24 through another hyper-cycle. We will see double digit
25 appreciation sometime within the next eight years.

1 And that big gap between affordability and market rate
2 will widen. But for the first few years of
3 development, who in their right mind would buy an
4 affordable condo at 37 units per acre when you can get
5 a single-family home at the same price or lower in the
6 same area?

7 Q That particular analysis is based upon
8 current market conditions?

9 A Current market conditions. And you'd have
10 to believe that that a 307,000 condominium is going to
11 appreciate by over 30 percent in the next, what, two
12 years in order to make that price range of 300 to
13 \$400,000 look appealing at Kamakana Villages. I don't
14 think that's going to happen. I think it will happen
15 in the next six to seven years.

16 Q I want to take a step away from the numbers
17 that you're using and try to understand, I guess, some
18 more basic concepts. If I heard you correctly you are
19 in agreement that as a general principle density in a
20 TOD zone will tend to be higher than outside the TOD
21 zone.

22 A Yes. And it should be as long as it is
23 effectively offset in other areas of the master plan.

24 Q And I assume you'd also agree that the
25 density for around affordable housing community would

1 tend to be higher than density in a purely
2 market-priced set of homes?

3 A It depends on area where you're building
4 those but, yes.

5 Q And as a general principle there's a need
6 for both TOD and affordable homes on the Big Island.

7 A Yes.

8 Q So your disagreement is really centered on
9 the particular numbers for this particular Project
10 rather than the principle of higher densities and
11 development of the TOD zone, is that correct?

12 A I wouldn't say that.

13 Q Okay.

14 A I would say that it is the density and the
15 assumed design that is disturbing. I mean I
16 noticed --

17 Q Well, isn't that the number?

18 A -- in the PowerPoint presentation that was
19 given I didn't see a 37 unit per acre rendering thrown
20 up there on the board. You know, I think we need to
21 understand what that means. 37 units per acre looks a
22 lot different than the 1 to 2 to 3-story renderings
23 that were shown in the PowerPoint slide.

24 And 17.4 units per acre over all we really
25 need to understand what that means. When there was

1 such a huge difference between that and an effectively
2 designed master plan, I just think we better
3 understand those differences before we turn the first
4 shovel of dirt.

5 Q I'm trying to stay away from the numbers so
6 I'm trying to stay away with 17.4 or 8.6 or any of
7 these other numbers. I'm just trying to understand
8 the basic concepts. You're basically saying that the
9 size of the units are too small for the price or the
10 price is too high for the size of the units, depending
11 on the way you look at it, is that correct?

12 A That's one of the assumptions I make from
13 the information provided in the Hallstrom Group. I
14 don't see how you could come up with another
15 assumption. But the point is I'm not sure that you
16 can avoid the numbers. We're so anxious to get away
17 from the numbers. Why is that? Why --

18 Q If you give me a chance for me to proceed
19 with the cross-examination I have a sequence of
20 questions --

21 A Okay.

22 Q -- that I'll get to.

23 A I apologize.

24 Q Before I get to the numbers -- well, let's
25 address the question of the numbers. Whether any

1 particular number is too high or too low, whether
2 something is too big or too small, you know, when I
3 looked at your written testimony there was no analysis
4 of what the correct number or what number's too high
5 or too low.

6 Is that a fair statement? Your written
7 testimony doesn't get into that question.

8 A Yeah. I would be happy to do, if someone
9 would pay me, to do a study on the Kamakana Villages
10 and tell you what is appropriate.

11 Q So you didn't do a study of the Kamakana
12 Villages.

13 A Right.

14 Q Okay. You did provide us, I guess, with
15 some other examples of master planned communities on
16 the mainland as a way of comparison.

17 A Built by Forest City.

18 Q Built by Forest City.

19 A Or being built or planned.

20 Q Okay. Other than the communities on the
21 mainland, you would, I guess, need to then do a market
22 study to figure out what number's the right number.
23 Is that what I understood you to say?

24 A To apply...

25 Q I'm going to ask the question again.

1 A Okay.

2 Q Let me put the question a little differently
3 first. Would you agree that the numbers on the
4 mainland really aren't going to be enough to make a
5 decision about what the right numbers should be?

6 A No. I think that there are templates on the
7 mainland that can be applied here. I think there are
8 templates here that could be applied to the mainland.
9 I think that's just too general to assume that nothing
10 on the mainland can be applied to the Big Island.

11 Q I guess what I was saying your analysis of
12 the mainland numbers, really, you can't just apply
13 them to Hawai'i, right? You can't just look at those
14 and say: they have this number. That's going to be
15 appropriate for Hawai'i. That wouldn't be a correct
16 statement and you're not staying that either, are you?

17 A Well, what I'm saying is is that if you --
18 based on the numbers I shared in the beginning, the
19 Forest City numbers in terms of unit count and acres
20 and gross density with the surrounding population,
21 doesn't it seem a little odd that we're more than
22 doubling, tripling, quadrupling the density for this
23 master plan with a population base that is not even a
24 tenth of the density of the population surrounding
25 some of these other master plans that Forest City has

1 built?

2 I mean I agree that you can't take those
3 concepts and directly apply them to the Big Island.
4 But nor can you take a concept in New York and apply
5 it to California where a master plan, or Nevada and
6 apply it to Washington. Each one is unique. But
7 there's some common sense rules that you need to
8 follow.

9 And going so far out on a limb where it's
10 really, in my view when I first saw these numbers, was
11 absolutely shocking. I think it needs to be brought
12 in the light. That's what I'm trying to do.

13 Q So your conclusions are based upon what you
14 perceive to be common sense principles rather than a
15 market study of Kamakana Villages?

16 A It's based upon 25 years of experience in
17 analyzing and designing, helping to implement master
18 plans. And then coming across one that is so
19 anomalous that it takes my breath away.

20 Q Are you aware of any other affordable
21 housing projects in the TOD zone on the Big Island?

22 A Not that I can think of. And again I'm not
23 against affordable housing in a TOD.

24 Q Well, I was just asking because you referred
25 to as "anomalous". I was just wondering if there are

1 other affordable housing projects in a TOD zone on the
2 Big Island.

3 A The density, and I'm assuming the design,
4 although I haven't seen the design, the density, the
5 unit count associated with what would be considered a
6 reasonable master plan is what I find out of whack.

7 MR. YEE: Okay. Thank you.

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

10 COMMISSIONER HELLER: Just to make sure I
11 understand what your opinion is here. We've got a
12 parcel that's obviously a fixed size, 270 acres in
13 round numbers, right? And they're proposing to build
14 2300 housing units on it.

15 Your concern with the 17.4 density figure is
16 basically just a mathematical subtraction, right?
17 You take the acreage that we've got, subtract the
18 acres that are devoted to schools, parks, roads and so
19 on, divide by the numbers of units and that's where we
20 get 17.4, right?

21 THE WITNESS: Well, it's not the
22 mathematical equation that bothers me. It's the, I
23 guess, assumption regarding that density. Again --

24 COMMISSIONER HELLER: Okay. But if it's a
25 mathematical calculation there is only two ways that

1 we could reduce the 17.4. One would be to build fewer
2 housing units, correct?

3 THE WITNESS: Mm-hmm.

4 COMMISSIONER HELLER: And the other would be
5 to devote less land to schools and parks and roads.

6 THE WITNESS: Right.

7 COMMISSIONER HELLER: Now, is it your
8 professional opinion that this would be a better
9 project if it included fewer housing units?

10 THE WITNESS: Yes. I mean is it asking too
11 much to include a few 5,000 square foot lot homes,
12 6,000 square foot lot homes? Again, even 37 units per
13 acre doesn't bother me as much as the 17.4 net because
14 it tells me that there's not anything offsetting the
15 high-end -- or the high density with low density.

16 COMMISSIONER HELLER: Right.

17 THE WITNESS: If the lowest is 9 per acre or
18 11 per acre I think we're in trouble.

19 COMMISSIONER HELLER: Okay. I just want to
20 make it clear I understand it's your opinion that this
21 would be a better project with fewer housing units.

22 THE WITNESS: It's a little bit of a
23 simplification. It would be a better Project with
24 fewer homes designed throughout the spectrum of
25 density and far more than 31 affordable single-family

1 homes. I would break up that 1137 homes in a
2 heartbeat. That's just...

3 COMMISSIONER HELLER: But mathematically, to
4 get the number below 17.4 you would have to have
5 either fewer total units or more acres devoted to
6 housing.

7 THE WITNESS: And the way you do that is by
8 broadening the mix of density throughout the spectrum
9 of density instead of shoving it all above 11 units
10 per acre. So, yes, I think it would be a far better
11 community to offset the 37 per unit -- per acre unit
12 condominiums with 5,000 square foot single-family
13 homes; 5,000 square foot lot: 6,000 square foot lot,
14 7200 square foot lot.

15 COMMISSIONER HELLER: If it were done that
16 way instead of 2300 total units, what would be the
17 total number?

18 THE WITNESS: It would reduce the count. To
19 me a reasonable net density for a master plan, I'll
20 put it this way: I felt I was pushing it at Waiawa
21 when I designed 5,000 homes on a little over 500 acres
22 for a 9.7 unit acre net. Again, Waiawa is a stone's
23 throw from Honolulu.

24 COMMISSIONER HELLER: So are you suggesting
25 a net density should be, let's say, 10 instead of 17?

1 THE WITNESS: I would say something south of
2 10. I would say between 8 and 10 is going to pioneer
3 but it's doable if it's effectively designed.

4 COMMISSIONER HELLER: To get it down to 8 or
5 9 with the same acreage you would have to cut the
6 total number of units from 2300 down to about 11- or
7 1200.

8 THE WITNESS: Right. Which means you would
9 still keep higher density product. In the TOD
10 district you'd still do 30 units per acre. That's
11 fine. But you would counterbal -- you would balance
12 that with reduced densities, more single-family homes
13 in defined neighborhoods, walkable parks, schools,
14 everything else that's associated with the master
15 plan. You would implement a far broader range of
16 density and product types.

17 COMMISSIONER HELLER: So bottom line, your
18 professional opinion is this would be a better Project
19 if they were building 11- or 1200 homes rather than
20 2300 homes.

21 THE WITNESS: Well, again, I haven't done a
22 specific study on Kamakana Villages, but, yes,
23 absolutely.

24 COMMISSIONER HELLER: Thank you.

25 CHAIRMAN DEVENS: Any other questions?

1 Commissioner Judge.

2 COMMISSIONER JUDGE: Thank you, Mr. Boud.
3 I just have a question regarding when you're looking
4 at the similar products and you're looking at what was
5 done on the mainland and what has been historically
6 done in the state of Hawai'i.

7 Did you take into account the new sort of,
8 the new urbanism design of the Kamakana Villages?

9 (Mr. Mayer now present)

10 THE WITNESS: Absolutely. In fact, you know
11 this talk of new urbanism I think is important. And
12 we talk about it a lot. And let me just give you a
13 definition of new urbanism. Granted there's other
14 definitions but this is the one I commonly use. New
15 urbanism is an urban design movement which promotes
16 walkable neighborhoods and open space that contain a
17 range of housing and jobs. It's often associated with
18 a TOD. That's a definition directly from Wikipedia.

19 And there are other definitions that I've
20 read. In all of the definitions I've read regarding
21 new urbanism there's not one that mentions high
22 density, that it has to be high density.

23 There's an assumption that you can go higher
24 in density from a tract neighborhood because you are
25 offsetting, you are implementing parks and walkable

1 areas and greenbelts and schools and so on in an
2 effectively designed master plan. But there's nothing
3 that says that you have to go extremely high density
4 in order to get all of those other things.

5 COMMISSIONER JUDGE: Okay. In your
6 experience with the Waiawa Master Plan that you were
7 doing that was just a little bit below or in the 9
8 range, was that using the regular tract sort of...

9 THE WITNESS: No.

10 COMMISSIONER JUDGE: Or was that using the
11 new urbanism principle?

12 THE WITNESS: Absolutely. That includes
13 parks and schools and greenbelts and commercial
14 centers. It's certainly not tract. Now, again, I'm
15 not the one who draws it out. There are land planners
16 and architects that I work with. But it's definitely
17 a master plan in every sense of the word that includes
18 those new urbanistic qualities including a TOD center,
19 by the way.

20 COMMISSIONER JUDGE: Just to help me
21 visualize, you were saying the pictures that we were
22 shown don't really represent what you believe is the
23 plan to be built.

24 Just, for example, just thinking of some
25 high density areas that come to my mind are, you know,

1 in 'Ewa, the Gentry Homes down there that are
2 multiples that are sort of duplex or whatever, what's
3 the density down there?

4 THE WITNESS: Yeah, I would say I don't know
5 but I can guess. 'Ewa by Gentry is probably on a net
6 basis 6 and-a-half to 7 at the most. Now, they have
7 communities that go higher than that. But on a net
8 basis 6 and-a-half is probably generous. It's mostly
9 single-family. I believe there are some apartments
10 and condos as well. But that's kind of typical.

11 Ocean Pointe by Haseko, which is to me a
12 very good example of an effectively designed master
13 plan, is probably closer to 4 and-a-half to 5 net
14 density, maybe a little higher. They certainly have
15 small lot developments, but they also have a lot of
16 single-family.

17 And, you know, they offset their town homes
18 and their condos with single-family. Those don't even
19 approach the density that we're talking about here.
20 It's like night and day.

21 COMMISSIONER JUDGE: Okay. Thank you.

22 CHAIRMAN DEVENS: Commissioner Kanuha.

23 COMMISSIONER KANUHA: Thank you,
24 Mr. Chairman. Mr. Boud, your comments, again, were
25 based on your review of the Hallstrom Report, correct?

1 THE WITNESS: Yes.

2 COMMISSIONER KANUHA: Any other exhibits,
3 testimonies, et cetera, related to this Project have
4 you reviewed? Did any other elements of this Project
5 come into play during your review?

6 THE WITNESS: Well, I was given some general
7 maps. And this is part of one. And I believe these
8 were done by Calthorpe. The reason I included this is
9 it shows those densities. So it shows lower density.
10 The minimum this table shows is 11 units per acre. So
11 I had access to the Hallstrom Report and a couple maps
12 by Calthorpe.

13 COMMISSIONER KANUHA: Okay. Thank you. So
14 that being the case, doesn't it oversimplify your
15 response in terms of well, you know, based on your
16 experience and projects that you've worked on that
17 this density is better than that density both
18 market-wise, liveability, et cetera, without knowing
19 real specifics about the cost, the financing, you
20 know, profit margins, all the financial and business
21 components of what the Project is all about.

22 THE WITNESS: Yeah, that's a great question.
23 Obviously I'm working for clients. Most of my clients
24 are for-profit entities. But I guess my point is that
25 a master planned community has to be defined by an

1 examination of demand. Not by cost.

2 If you define it by figuring out this is how
3 much it's going to cost so this is what we're going to
4 build, you'll build it wrong pretty much all the time.

5 What you need to do is define: what is the
6 demand based upon the type and magnitude of the job
7 base, based upon the household incomes of the
8 population, based upon the socio-economic demographic
9 considerations, the quality of the schools. There's
10 all kinds of information that go into that demand.

11 And then you use that as the driving force
12 in the design. Then once you have those, that suite
13 of products that are viable, and prices that are
14 viable and directed for that particular buyer profile
15 that you define, then you start worrying about the
16 costs.

17 A lot of times it just doesn't work, it just
18 doesn't pencil and you have to make adjustments to
19 make sure it pencils. But if you start with costs and
20 say: Look, this is so expensive to build here. And
21 it's so, you know, it's so challenging, so difficult
22 so we're gonna, we're gonna build it based upon cost.
23 We're going to max out the density.

24 And this is what's viable based upon our
25 costs side without really accounting for who's buying

1 these homes. And you're asking for trouble. And I
2 think that's the situation that we're in with this.

3 COMMISSIONER KANUHA: But then, again, the
4 response is that's a component. But for this
5 particular analysis you have no further information
6 on --

7 THE WITNESS: -- the cost.

8 COMMISSIONER KANUHA: -- on the cost, on the
9 financing, all that, the business end of this Project.

10 THE WITNESS: Well, I've certainly been
11 exposed to direct construction costs and a lot of the
12 cost numbers that is associated with residential
13 construction. But specific to Kamakana Villages, no.

14 COMMISSIONER KANUHA: Thank you.

15 CHAIRMAN DEVENS: Commissioner Jencks.

16 COMMISSIONER JENCKS: Mr. Boud, question:
17 You just talked about the way you -- you could analyze
18 the feasibility of a project's cost and density. In
19 today's financial marketplace and ability to finance
20 do you think that's a viable way to finance a project?

21 THE WITNESS: Could you talk a bit more
22 about the ability to finance? I mean what am I to
23 answer?

24 COMMISSIONER JENCKS: If you want to build a
25 project and you simply looked at it in terms of cost

1 and density, could you go to a bank today and finance
2 a project based upon those assumptions and a pro forma
3 based on those variables?

4 THE WITNESS: I don't know. I mean I would
5 have to have information regarding the specific
6 community. I'm assuming regarding Kamakana Villages
7 would it be -- would you be able to get a bank loan?

8 COMMISSIONER JENCKS: No, I'm just saying
9 generally you put that out as one way to analyze a
10 project: Cost and density.

11 THE WITNESS: No. I'm saying you shouldn't
12 do that.

13 COMMISSIONER JENCKS: My question to you is
14 if you are a builder today would you build product at
15 the 35 DU's per acre if you knew you couldn't sell it?

16 THE WITNESS: No, I wouldn't. I would make
17 darn sure that the demand was there for that
18 particular type of product.

19 COMMISSIONER JENCKS: So you'd go to the
20 marketplace and you'd do some research what's being
21 sold, what kind of density, what do people want in the
22 units. You'd do some kind of market analyses,
23 correct?

24 THE WITNESS: Mm-hmm.

25 COMMISSIONER JENCKS: And then you would

1 base your proposal and your pro forma, design based
2 upon those inputs, correct?

3 THE WITNESS: Right.

4 COMMISSIONER JENCKS: So when you went to a
5 bank, just as Forest City would or whoever their
6 financial partners are, and say, "Look, I want to
7 build this Project." They would need to establish
8 that they could build it and sell it in a reasonable
9 timeframe, is that correct?

10 THE WITNESS: Yes.

11 COMMISSIONER JENCKS: Okay. So then I guess
12 my question is: You spent a lot of time talking about
13 the higher densities in the Project. I think we would
14 both agree if they couldn't sell it they wouldn't
15 build it.

16 THE WITNESS: Yeah. But see, that's where
17 this says you can sell it. I -- that's where my
18 disagreement is.

19 COMMISSIONER JENCKS: I'm trying to bring
20 this back down to reality where we are today in the
21 marketplace.

22 THE WITNESS: Yeah.

23 COMMISSIONER JENCKS: These proposals say 35
24 per acre, they say 11 per acre. But the reality is,
25 and I think we would both agree, if you can't

1 demonstrate clearly that you can build it at a
2 reasonable price and sell it for a reasonable price in
3 a reasonable timeframe, you're not going to build it.

4 THE WITNESS: Yeah, and I'm not sure you
5 can. That's the problem is that I think this thing
6 gets built, I'm not sure that all of those condos at
7 750 square feet are going to be sold.

8 COMMISSIONER JENCKS: Here's another
9 question. If you were the developer of the Project
10 and you have the right to build 197,000 square feet of
11 commercial to serve the Project, and you knew that the
12 marketplace would only bear 130,000 square feet, would
13 you build 197,000 square feet of commercial?

14 THE WITNESS: If I'm getting exemptions,
15 which means I don't have to pay for some of the social
16 cost of that space, then I may very well build it.

17 COMMISSIONER JENCKS: Even if you couldn't
18 lease it out.

19 THE WITNESS: Again, if those -- if there
20 are factors that greatly reduce the cost side and
21 allow me to hold it, take a longer period of time to
22 occupy it, you know, I'd have to think about that --

23 COMMISSIONER JENCKS: Sure.

24 THE WITNESS: -- as to how that impacts my
25 decision.

1 COMMISSIONER JENCKS: It's a risk equation
2 you have to consider. You mentioned a project you
3 worked on on O'ahu. I think it was Waiawa?

4 THE WITNESS: Right.

5 COMMISSIONER JENCKS: Koa Ridge.

6 THE WITNESS: Koa Ridge is across the
7 freeway and above it.

8 COMMISSIONER JENCKS: What was the gross
9 density you came up with on that project?

10 THE WITNESS: The net density was 9.7.

11 COMMISSIONER JENCKS: The gross.

12 THE WITNESS: The gross is about 5.

13 COMMISSIONER JENCKS: About 5.

14 THE WITNESS: Yeah.

15 COMMISSIONER JENCKS: Okay. That's all I
16 have.

17 CHAIRMAN DEVENS: Any other questions?
18 Mr. Kudo.

19 MR. KUDO: We have no further questions.

20 CHAIRMAN DEVENS: Any other questions from
21 any other parties? That's it. Thank you, sir.

22 THE WITNESS: Mahalo.

23 CHAIRMAN DEVENS: Mr. Kudo, you have two
24 more witnesses?

25 MR. KUDO: Yes, we do.

1 CHAIRMAN DEVENS: Do you have an estimate as
2 to how much time you're going to need for each
3 witness? Just a rough estimate.

4 MS. FUNAKI: Just for direct or considering
5 cross?

6 CHAIRMAN DEVENS: Just direct.

7 MR. KUDO: One hour for Keith Niiya and
8 about 20 minutes or so for LeeAnn Crabbe.

9 CHAIRMAN DEVENS: Okay. Petitioner, are you
10 intending at this point to call the two rebuttal?

11 MR. LIM: We may, depending on, I think
12 we're going to call Mr. Rashid on the traffic issue
13 and we anticipate probably 15 to 20 minutes on direct.

14 CHAIRMAN DEVENS: Him for sure. Not sure
15 about the second one?

16 MR. LIM: Yes.

17 CHAIRMAN DEVENS: OP, are you folks planning
18 at this point to call any other rebuttal?

19 MR. YEE: You know, our only concern is that
20 we haven't heard Mr. Niiya yet on traffic. But we
21 don't anticipate calling the other two rebuttal
22 witnesses. I'm tending to think we won't need it, but
23 we'd like to hear Mr. Niiya's testimony first.

24 CHAIRMAN DEVENS: Okay. County, I believe
25 you folks didn't have any rebuttal witnesses, is that

1 correct?

2 MR. BRILHANTE: That's correct.

3 CHAIRMAN DEVENS: Okay. What we'll do then
4 is we'll take our lunch break at this point. We have
5 been going over an hour. We'll take 45 minutes and
6 we'll start with your witness, Mr. Kudo.

7 MR. KUDO: Thank.

8 CHAIRMAN DEVENS: Thank you.

9 (Recess was held. 11:50)

10 CHAIRMAN DEVENS: (1:25) Back on the record.
11 I apologize for the delay on our side. Mr. Kudo, you
12 have your next witness ready?

13 MR. KUDO: Yes, we do. Our next witness is
14 Keith Niiya.

15 CHAIRMAN DEVENS: Can I swear you in.

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

19 THE WITNESS: I do.

20 CHAIRMAN DEVENS: State your name for the
21 record.

22 THE WITNESS: Keith Niiya, from Austin,
23 Tsutsumi & Associates. Address is 501 Sumner Street,
24 Suite 521, Honolulu, Hawai'i 96817.

25 CHAIRMAN DEVENS: Thank you. Mr. Kudo.

1 MR. KUDO: Mr. Niiya has already been
2 admitted as an expert in the field of traffic
3 engineering.

4 DIRECT EXAMINATION

5 BY MR. KUDO:

6 Q Mr. Niiya, where are you presently employed?

7 A I'm employed by Austin Tsutsumi &
8 Associates.

9 Q In your employment there have you done
10 Traffic Impact Analysis Reports before?

11 A Yes, I have.

12 Q How many, approximately, have you done of
13 these types of reports?

14 A I would say between 40 and 50.

15 Q Now, before we start your direct
16 examination, do you have any changes to your exhibits?

17 A Just one that I noticed when I was preparing
18 for the testimony today. I think it's QLT Exhibit 36.
19 When I was going through it last night I noticed on
20 figure 31, which is the 22 of 22, the numbers that are
21 depicted on top that sheet are from the state, the
22 LUC's website. Which from when I looked at is wrong.
23 We had gotten from the Petitioner a newer exhibit.

24 It's just that when we were going through
25 late Thursday night trying to write the numbers out,

1 we picked the wrong printout that we had. If you look
2 at QLT, the other one, which is 1 of 6 the corrected
3 figure is in that on the last page 8 of 8.

4 Q Is that 1 of 6 or 1 of 8?

5 A Oh, 1 of 8. Sorry, 8 of 8, the last page.

6 Q Mr. Niiya, are you familiar with the HHFDC
7 and Forest City Kamakana Villages Project and the
8 properties that are the subject of these proceedings?

9 A Yes, I am.

10 Q How did you familiarize yourself with this
11 Project?

12 A I reviewed the four traffic impact studies
13 that were developed for the Project.

14 Q Can you give us the dates of all of these
15 TIARs prepared for this Project?

16 A Okay. The first one is the December 22nd,
17 2009 TIAR. There was also a March 17, 2010. There
18 was also an August 9, 2010. Then the last one is the
19 August 9th, 2010 with September 1st revision.

20 Q Now, can you briefly describe to the
21 Commission how a Traffic Impact Analysis Report is
22 prepared?

23 A Okay. For our Traffic Impact Study Analysis
24 there's five steps that we go through. The first
25 step is the existing conditions. And basically what

1 it is is how are the intersections operating
2 currently. We go out collect data from the
3 intersections. We put it in our synchro model. We
4 calibrate the model so that whatever comes out of the
5 model looks like it is what is happening out at the
6 intersection.

7 Step 2 is the future without project.
8 Basically what that is is what happens in the future
9 if this Project were not to go, what kind of impacts
10 do the surrounding projects have on the roadway
11 system.

12 Step 3 is trip generation and trip
13 distribution. Here you generate how much traffic is
14 the Project going to generate. We distribute it onto
15 the roadway network. We utilize the Institute of
16 Transportation Engineers Trip Generation Handbook
17 which is a collaboration of data all across the nation
18 for different land uses.

19 So we take the individual land uses and the
20 number of units, each one has its own trip rate, and
21 we calculate how much trips the Project will generate.

22 The fourth step is the future traffic with
23 project. That one what it is is we take the future
24 without project and we add the project traffic
25 together to come up with a future with project. We

1 take those numbers. We put it into our analysis model
2 and we run the analysis.

3 The 5th step is determining the mitigation
4 measures. Basically here based on the output of the
5 model, come up with roadway improvements or
6 intersections improvements that would mitigate the
7 traffic generated by the project.

8 Q Now, what specifically are TIAR's used for?

9 A Specifically the TIAR's used for three
10 things. One is to come up with a mitigative measures.
11 The second one is to come up with magnitude and cost
12 of their improvements. Basically what we do is we get
13 from the analysis, say, if it requires an additional
14 left-turn pocket, the analysis will give you how long
15 does that left-turn pocket need to be. Therefore you
16 can come up with costs.

17 The third thing that we use the traffic
18 impact study for is to determine pro rata share.

19 Q Now, in regard to a TIAR report would it
20 disclose the data that is being used in the report,
21 the different types of assumptions being made by the
22 preparer, the methodologies being used by the
23 preparer, any studies that are relied upon in the
24 analysis, and any adjustments being made by the
25 traffic engineer doing that report?

1 A Yes, it would.

2 Q Now, why is it important that this
3 information be included in a report?

4 A Well, first of all, you know, what you want
5 to do is to disclose all the information to a
6 third-party so, say, like state of Hawai'i Department
7 of Transportation or the county, so they can go back
8 review it to make sure that the analysis and the
9 assumptions and the mitigations are all correct.

10 Q Thank you. Are there any problems with the
11 Kamakana TIAR in terms of step one, the existing
12 traffic condition estimate?

13 A Yes. If you take a look at figure 4 and 5,
14 which illustrate the existing AM/PM peak hour
15 traffic --

16 MR. KUDO: The witness is referring to
17 Petitioner's Exhibit 28 appendix A-9.

18 A Yeah. And also, you know, if you have QLT's
19 Exhibit 36 the 1 of 22 and 2 of 22. Up here is an
20 excerpt of the information that we provided. If you
21 look at the volumes at these two intersections it
22 doesn't match the numbers that were collected from the
23 traffic data.

24 For instance, this is the southbound right
25 turn here. It's showing 142 trips. And the

1 southbound is 149. In fact if you look at the two
2 volumes between AM and PM, the left one is AM the
3 right one is PM, the numbers are exactly the same. In
4 all my years counting traffic or doing traffic studies
5 not all the movements have the same volume.

6 Q The numbers that you're showing are existing
7 trips that were taken measured in the field, correct?

8 A Correct.

9 Q Now, were you present during Mr. Okaneku's
10 testimony?

11 A Yes, I was.

12 Q Did you also read Petitioner's Exhibit 110
13 which is, I guess, Mr. Okaneku 2-page response to some
14 questions on cross-examination?

15 A Yes, I have.

16 Q Do you recall what he stated or wrote
17 regarding the errors for his existing counts on
18 figures 4 and 5 that you have up there?

19 A He stated in quote, "That these errors are
20 isolated and were not carried forward," and therefore
21 it does not affect his findings.

22 Q Were these errors isolated and not carried
23 forward?

24 A I don't think so. If you look at the
25 numbers, you know, especially if you look at the PM

1 peak hour over there, the 96, if you look down here
2 the volume is actually 209 trips for the eastbound
3 right turn. He's showing 96.

4 Q Mr. Niiya, could you speak into the
5 microphone because they might not be able to hear you.

6 A Okay. This is a blowup of the data. In
7 figure 5 he shows 96 trips during the eastbound right
8 turn. In the appendix 9, A-9 which is from
9 Petitioner's Exhibit 28, it shows that the eastbound
10 right turn during the peak hour is 290 cars. There's
11 a significant difference.

12 Now, when we go to the first future year
13 without Project, and this is from figure PM, the
14 2014 PM without traffic, it shows that the volume is
15 256. What he's showing right now is the traffic going
16 down.

17 And again, never in my years as a
18 professional engineer has the volume gone down. In
19 fact, if you look at this 245 is the eastbound left
20 turn here, it actually goes up to 333 in the future.
21 So, you know, in my estimation there is a possibility
22 that he did carry this 96 volume through into the
23 future.

24 Q Now, are there other similar errors for
25 existing traffic counts in his report?

1 A Yes. At the Hina Lani/Queen Ka'ahumanu
2 Highway intersection which is the other side.

3 Q Besides the erroneous numbers does the TIAR
4 have other problems regarding existing counts of trips
5 in figures 4 and 5?

6 A Yes. He's missing the intersection of
7 Manawalea and Keanalehu Street intersection. If you
8 look at QLT Exhibit 1 and 2 the intersection is
9 actually in the middle. The existing counts are not
10 there even though my understanding is it was completed
11 in September 2009.

12 Q The intersection was completed in 2009.

13 A Correct.

14 Q Now, Mr. Niiya why is it important to have
15 the correct numbers and depiction of existing
16 intersections in the figures illustrating the existing
17 traffic conditions?

18 A Your existing conditions, basically in order
19 to get to the future traffic we apply a growth rate to
20 the existing counts. If you don't have existing
21 counts there's no, I mean you can't apply the growth
22 rate to it. So the existing counts is the foundation
23 for all future analysis.

24 Q Is my understanding correct that because
25 step one, the existing counts, are as you say, a

1 foundation of a TIAR report, that errors thereto would
2 permeate through steps 2 and 5 and ultimately affect
3 the last step with regard to determining what
4 mitigation measures might be called out?

5 A Yes.

6 Q Are there any other significant issues with
7 the existing analysis in Mr. Okaneku's report?

8 A Yes. He's actually missing -- to me he's
9 missing three intersections. The first one that he's
10 missing is the Queen Ka'ahumanu Highway/Civic Center
11 or Police Road. It's an existing signalized
12 intersection that's located between Kealakehe and
13 Makala Boulevard.

14 And it's important that in the future in
15 2029 with Project Mr. Okaneku has in his report that
16 Queen Ka'ahumanu Highway has to be widened to six
17 lanes from both Kealakehe Parkway/Queen Ka'ahumanu
18 Highway and Makala Boulevard and Queen Ka'ahumanu
19 Highway. Now, logic would have it that there's a good
20 possibility this intersection that in between the two
21 would also have need to be widened to six lanes. But
22 we don't know because he didn't study the
23 intersection.

24 Similarly, a second intersection that he's
25 missing is the Queen Ka'ahumanu Highway/Mauna Lani

1 Street intersection. This intersection is an existing
2 intersection that was recently signalized. It is
3 located approximately 900 feet south of the Henry
4 Street/Queen Ka'ahumanu Highway intersection.

5 Its importance is that as part of the TIAR
6 in the southbound direction Mr. Okaneku recommended
7 that three lanes be provided for Queen Ka'ahumanu
8 Highway.

9 As you look at this intersection, Mauna Lani
10 and Queen Ka'ahumanu Highway it narrows down to single
11 lane south of that intersection.

12 So there's a chance tha with all this
13 additional traffic coming through that intersection
14 that I'm recommending be included in the TIAR, it
15 could queue back all the way to the Henry Street
16 intersection and affect. Again, if was studied we
17 could find out if it does or not.

18 The third intersection that's missing from
19 the TIAR is the Henry Street/Halekapila/Wal-Mart
20 driveway. This intersection is in between the Palani
21 Road/Henry Street, AKH mid-level roadway and the Queen
22 Ka'ahumanu/Henry Street intersection, two
23 intersections that are studied by Mr. Okaneku.

24 If you look at the TIAR on Henry Street he's
25 recommending improvements at both of those

1 intersections. So again we don't know what's going to
2 happen at this intersection that's in between the two
3 but he does recommend improvements at both ends.

4 Q Now, let's turn our attention to step 2 of
5 what you describe as part of the five-step process in
6 the TIAR. That's projecting the future traffic
7 without the Project. Now, does the Kamakana TIAR have
8 any problems with step 2 of the process, which is that
9 projection of future traffic without the Project?

10 A Yes. If you take a look at Petitioner --
11 from the traffic study, which is Exhibit 28 on
12 Page 23, shows the land use for, in the Kona area. If
13 you take a look at his study he includes these two
14 projects, one being Palamanui here, and the second one
15 being the Makalei Golf Estates.

16 But as part of his trip generation -- or
17 future project surrounding projects he doesn't include
18 the UH West Community College which is under
19 development here. And he also doesn't include phase 3
20 of the Kona Commons Development. Phase 1 is right up
21 the street on Makala Boulevard where Sports Authority
22 is. Phase 2 is the new Target in this area. Phase 3
23 is just makai of Target.

24 Q Are there any other issues regarding step 2
25 besides the inconsistent choice of surrounding

1 projects?

2 A Yes. In regards to methodology and
3 generating trips from the surrounding projects there
4 doesn't seem to be, you know, there's a discrepancy
5 between what the text says and what was actually done.

6 If you look at Page 17 of the TIAR it states
7 that the commercial traffic was allocated between
8 identified commercial projects in the area on an
9 unweighted pro rata basis.

10 To me that means there's not enough demand
11 for all the commercial developments that are being
12 proposed in Kona or North Kona.

13 And, you know, basically if you looked at
14 the March 17 TIAR there was no capping or limitation
15 of the commercial development. But starting with the
16 August 9th TIAR they now are reducing the amount of
17 commercial industrial development.

18 Q So this capping term that you use is where
19 the traffic engineer in his determination limits the
20 amount of growth of a particular commercial area. Is
21 that what you're saying?

22 A Yes.

23 Q And that's for purposes of doing the TIAR
24 report, correct?

25 A Yes.

1 Q What are the risks involved in this capping
2 maneuver that traffic engineers do?

3 A I guess the problem would be is that if the
4 development were to exceed what is capped, then the
5 roadway improvements might not be able to handle that
6 additional traffic generated by these projects.

7 Q So if you cap a project too low and the
8 reality is that the project grows beyond that, then
9 you may be underestimating the traffic, is that
10 correct?

11 A That's correct.

12 Q Now, you stated that the Kamakana Villages
13 TIAR caps certain commercial developments while others
14 were not capped. Can you give us some of the examples
15 of this in his report?

16 A Okay. As far as those that were not capped
17 Kamakana Villages itself was not capped at the
18 197,000 square feet in their report.

19 Lanikai -- the expansion of Lanikai Shopping
20 Center Phase 2 was another one that was discussed in
21 the TIAR, but was not capped.

22 Another project that's coming up before the
23 State Land Use, O'ahu Beachside Village O'ahu
24 Beachside Village, there's no discussion of any
25 capping of the commercial area. But in review of

1 their TIAR there's about 200,000 square feet of
2 commercial space.

3 And the third one is Palamanui. This is a
4 figure from the land use for Palamanui. It does show
5 commercial area here. And it also shows a business
6 park on this side.

7 MR. KUDO: He's pointing to QLT Exhibit 34 I
8 believe.

9 Q Was the arbitrary capping done by
10 Mr. Okaneku based on any basis that you could
11 determine?

12 A No, it wasn't. Not that I know. I'm sorry.
13 In the report it does state that they used the
14 Hallstrom data.

15 Q Mr. Niiya, Mr. Holliday from the Hallstrom
16 Group testified on October 21st before this Commission
17 that he did not do a regional-wide commercial study.
18 And that the marketing analysis does not include
19 commercial demand and supply beyond the Project's
20 boundaries.

21 Now, can you tell us how a TIAR that
22 utilizes capping of commercial areas, of the
23 surrounding commercial developments based on a
24 particular marketing study such as the Hallstrom
25 Report, what is the effect of that?

1 A If you cap the Project and everything,
2 what's gonna happen is you can underestimate the
3 traffic being developed or on the surrounding roadways
4 of the Project. A lot of things could happen as a
5 result of, you know -- I mean in this case, you know,
6 it doesn't seem like he's used an unweighted pro rata
7 basis to evenly distribute the commercial traffic to
8 all the projects in the area or all the projects that
9 he has in his traffic impact study.

10 Q So if the Hallstrom Report did not study the
11 regional commercial developments around the Project --

12 A Mm-hmm.

13 Q -- what basis would Mr. Okaneku be using to
14 determine what projects should be capped or not?

15 A I wouldn't know. There's no discussion in
16 the TIAR.

17 Q Now, you said that QLT's Project is capped
18 at 280,000 square feet. What's your opinion regarding
19 this capping?

20 A For me, you know, if -- there's no basis for
21 it. If you looked at the March 17 TIAR that Kamakana
22 Villages did, they assumed 600,000 square feet of
23 office space. As part of this August 9th TIAR all of
24 a sudden the land use changed to, I think,
25 33,000 square feet of commercial and 247,000 square

1 feet of light industrial.

2 So I don't know how they came up changing
3 from office space in March 17th to commercial and
4 light industrial in August 9th.

5 Q Mr. Niiya, the Makala Boulevard and the AKH
6 mid-level road intersection is missing from the
7 figures which illustrate the traffic without the
8 Project. Does this have any effect on the traffic
9 analysis and the resulting mitigation measures and the
10 calculation of Kamakana's pro rata share of those
11 mitigation measures?

12 A Yes, it does. Basically, you know, like I
13 said before, you utilize the traffic study to develop
14 your mitigation measures on top of the magnitude and
15 the cost of the improvements as well as the pro rata
16 share. If the future without project isn't there, how
17 do you calculate your pro rata share? How do you come
18 up with your costs?

19 Q Thank you. Now, turning to step 3 of your
20 TIAR process, and this is the trip generation that a
21 traffic engineer does for the Project itself, the
22 proposed Project, does the TIAR have any problems with
23 step 3 of this analysis in terms of the trip
24 generation numbers for the Kamakana Villages Project?

25 A Yes. On Page 9 of the TIAR it states in

1 there that elementary school traffic will be all
2 internal. What it assumes is that parents will be
3 dropping off their kids on their way to work. This is
4 during the AM peak hour.

5 And the problem with that is you have
6 administrator, you have teachers, you have staff that
7 are coming into the school at the same time. So, you
8 know, to come in and say all the traffic is just
9 parents dropping off their kids to school seems a far
10 fetched.

11 If you take a look at the trip generation on
12 table 3 on Page 48 of the TIAR, the amount of traffic
13 coming into the school that generates 136 trips. And
14 the traffic exiting is 111. Now, the two don't match.

15 You know, that difference is, you know, you
16 have more people coming in so the administrators,
17 teachers, things like that. Although it's not a
18 significant number, I think it's only about 25 cars
19 difference, but added up it could be significant in
20 the type of improvements that are necessary for the
21 Project.

22 Q Now, are there any other problems with the
23 distribution of trips generated by the Kamakana
24 Villages Project?

25 A Yes. If you take a look at Petitioner's

1 Exhibit 28 page 84 this is the future figure 31 which
2 is the year 2029 traffic with Project. Again this is
3 from QLT's Exhibit 36 which is shown up here.

4 As I stated earlier the volumes on top --
5 the printed volumes on this sheet are the wrong ones.
6 But the numbers that you see, the exiting and entering
7 traffic that I have handwritten is from the correct
8 figure.

9 Q Would you point to those figures for the
10 Commissioners so they know what you're talking about.

11 A Okay. This handwritten part here is
12 actually out of the corrected figure. All these
13 numbers inside, all the printed numbers inside here
14 are on the table is actually, if you look at the
15 figure right before figure 30 they're actually all the
16 same numbers. That's how we can tell there's a
17 problem with it.

18 And, you know, as part of this figure here
19 the entering and exiting traffic should match what is
20 in the tables 3 and -- table 3 which is the trip
21 generation for the Project.

22 Q And I gather it doesn't match.

23 A It doesn't. Right here we have what is
24 shown in table 3 which is 1264 exiting, and 1616
25 entering the Project.

1 Q Now, let's turn our attention to step 4 of
2 your TIAR analysis. Are there any problems with step
3 4?

4 A Yes, there is. As I stated earlier normally
5 what you do is we take future without project. We add
6 project traffic together to come up with the future
7 with project. In the Kamakana TIAR they don't add up.
8 That was what we submitted to the state, the Land Use
9 Committee (sic) last time is figures QLT Exhibit 36,
10 the 1 through 8.

11 Q Now, Mr. Okaneku in Petitioner's Exhibit 110
12 states that "You do not account for traffic that will
13 be diverted to Manawalea Street through the Project
14 site to AKH or Queen Ka'ahumanu Highway."

15 Does this explain why the numbers don't
16 match up?

17 A No, it doesn't. In fact if we go back to
18 this figure here, if you take a difference -- and what
19 I did is if you take a difference between the 1671 and
20 this thousand 74 and than the 1639 versus the 1341,
21 there comes out to be roughly a 300 car, roughly,
22 difference between entering traffic and exiting
23 traffic.

24 What these two numbers here are, one is
25 accounting table 3 directly from the trip generation.

1 Mr. Okaneku also says that some of the traffic inside
2 Kamakana will stay within Kamakana. So what is in his
3 table 7 we took out the internal trips. So if you
4 subtract the two, the two don't match.

5 And because we are already accounting for
6 the traffic within the Project, you know, the entering
7 traffic and the exiting traffic should be similar. In
8 fact it's a 2 to 1 ratio. One is 600 trips and then
9 the other one is 300 trips.

10 Q So what you're saying is that the future
11 traffic with the project is usually generated by
12 adding the project-only traffic with the future
13 traffic without the project, is that correct?

14 A Correct.

15 Q Now, in Petitioner's Exhibit 110 Mr. Okaneku
16 states that the numbers do not add up because he used
17 a very basic concept in transportation planning called
18 the gravity model. The gravity model. Does the TIAR
19 disclose that Mr. Okaneku is using that model or
20 methodology in his report?

21 A I didn't see anything in the report.

22 Q Does the Kamakana TIAR disclose the types of
23 impedance or friction factors which are generally
24 associated with that gravity model in his report?

25 A No, it doesn't.

1 Q Does it or his Exhibit 110 show how he
2 applied the gravity model to the Kamakana Villages
3 Project?

4 A No, it doesn't.

5 Q Does the TIAR disclose anything in regard to
6 its use of the gravity model period?

7 A No.

8 Q Now, Mr. Niiya, does the gravity model
9 explain all of these errors, so called "errors" in the
10 Kamakana TIAR for future traffic numbers with the
11 Project?

12 A No, it doesn't.

13 Q Can you explain why?

14 A Okay. Up on the screen now I have an
15 excerpt from figure 14 which is the year 2020 AM peak
16 hour traffic without project. So this is without
17 project.

18 Q Again, you're referring to Petitioner's
19 Exhibit 28, correct?

20 A Correct. On the lower right-hand side is
21 year 2029 AM peak hour traffic with project. If you
22 start taking a look at the numbers they're exactly the
23 same: 677, 677. 714 over here, 714. You can go
24 around to the three intersections which are Queen
25 Ka'ahumanu/Henry; Queen Ka'ahumanu/Palani and Palani

1 Road and Kamakaeha Avenue.

2 Q Does this mean that with the project there's
3 no impact? Is that what his figures are...?

4 A You could say that. But I mean basically
5 what you're looking at he didn't include the project
6 traffic.

7 Q Trips.

8 A Right.

9 Q Okay. Now, are there other problems with
10 the TIAR's future traffic with project that cannot be
11 explained by the gravity model?

12 A Yes. Again, from Petitioner's Exhibit 28,
13 which is the traffic study, I have up on the screen
14 figure 25 which is a year 2024 PM project traffic. So
15 this is only the project traffic itself.

16 And then on the right-hand side I have
17 figure 27 which is a 2024 PM traffic with project. If
18 you go down each one of these intersections,
19 Mamalahoa/Hina Lani, Palani Road/Uluaoa and Palani/
20 Keaukaha and Palihilo you look again the numbers on
21 both of them are exactly the same. So what you're
22 saying is the Project traffic -- there's no traffic in
23 the future year without Project. If you were to
24 subtract the future with Project from the Project
25 traffic.

1 Q Why are the numbers with project only and
2 future traffic with the project the same?

3 A I wouldn't know why they were the same.

4 Q They shouldn't be the same.

5 A They should not be the same.

6 Q Now, how would having those numbers wrong
7 impact the conclusions of this report or the findings
8 of the traffic engineer?

9 A Well, when you take a look at it, you know,
10 at the figures and everything and they're not right,
11 we don't know what the future year with project is. I
12 mean it doesn't show any of the project traffic
13 or...um, then the other thing you can't do with it is,
14 you know, you can't figure out what the pro rata share
15 with the project because I don't know what the project
16 traffic is at this intersection. There's no way of
17 calculating the pro rata share.

18 Q Mr. Niiya, would the errors that you found
19 in the Kamakana TIAR be considered significant errors
20 which I believe Mr. Okaneku has testified to be beyond
21 the 5 percent margin of error?

22 A In my opinion, yes, it is significant. You
23 know, they're way beyond the 5 percent in some cases.
24 I mean he has project traffic that's not even showing
25 up on his figures.

1 It's like there's no additional traffic
2 burden by the project. And that will affect your
3 mitigation measures as well as the cost and as well as
4 the pro rata share.

5 Q Could that possibly result in understating
6 the mitigation measures for this Project?

7 A It could.

8 Q Now, let me turn your attention to step 5
9 the final step of a TIAR process, which is the
10 proposed mitigation measures. Does the Kamakana TIAR
11 have problems with step 5 in determining the
12 mitigation measures?

13 A For me the problem is the four other
14 previous steps. There's all problems with each one of
15 those steps. So, you know, with the numerous errors,
16 the omissions, the inconsistencies, the incorrect
17 assumptions and everything, you know, there's almost
18 no way to determine whether or not the mitigation
19 measures are correct. And because of that you can't
20 determine what the cost nor the pro rata share for the
21 project.

22 Q Now, does this mean also that if the pro
23 rata share is incorrect and the mitigation measures
24 are incorrect, that the State Department of
25 Transportation can't calculate what the improvements

1 may be needed on a regional basis with this Project?

2 A Yes, you're correct.

3 Q So the commitment of state funds, for
4 instance, for any type of roadway improvements on a
5 regional basis can't be calculated.

6 A No it can't.

7 Q So, Mr. Niiya in your professional opinion
8 do you believe that the Kamakana TIAR in combination
9 with Mr. Okaneku's explanation and testimony regarding
10 the errors, gives sufficient information for anyone to
11 make a sound decision or informed decision relative to
12 the traffic impacts of this Project?

13 A No, it doesn't.

14 MR. KUDO: I have further questions at this
15 time.

16 CHAIRMAN DEVENS: Petitioners?

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

18 CROSS-EXAMINATION

19 BY MR. LIM:

20 Q You said you prepared many Traffic Impact
21 Analysis Reports, call them TIARs.

22 A Yes.

23 Q How many have you prepared for the Land Use
24 Commission proceedings?

25 A I don't know. I mean a lot of my projects:

1 Waiawa Gentry, was here back in August for A&B North
2 Kihei residential. We've done Wailea. We've done
3 Palamanui. There's a lot of them that I have done.

4 Q So you've done those and presented those to
5 the Land Use Commission as part of the petition for
6 reclassification.

7 A Yes.

8 Q How many of those Traffic Impact Analysis
9 Reports were approved by the State Department of
10 Transportation when you came to the Land Use
11 Commission?

12 A I'm not sure how many were approved. I've
13 done it for 20 years.

14 Q By "approved" I mean going through all of
15 your five steps of Traffic Impact Analysis Report,
16 where DOT is agreeing in the end to the mitigation
17 measures.

18 A All of them.

19 Q You've got the DOT to approve your
20 traffic --

21 A Not approve but they did not have any more
22 comments on top my TIAR.

23 Q Okay. So my question is did you get any of
24 them approved.

25 A For us, State DOT does not approved traffic

1 impact studies. Basically in the end they come back
2 and say they don't have any more comments on the TIAR.

3 Q Would you say it's fair to say that they
4 accept them then?

5 A I would say yes.

6 Q So did you get any accepted at the Land Use
7 Commission stage?

8 A At the land use stage, what do you mean?

9 Q Did you get any of the TIARs accepted by the
10 State Department of Transportation when you were at
11 the Land Use Commission proceedings?

12 A Prior to this?

13 Q Yes.

14 A There were some, yes.

15 Q How many?

16 A Couple.

17 Q Would you say that would be an unusual
18 circumstance?

19 A Unusual circumstance in what sense?

20 Q Less than 50 percent of your traffic
21 reports.

22 A That is possible.

23 Q Do you agree that traffic engineers can make
24 and do make assumptions in developing their traffic
25 reports?

1 A Yes, they do.

2 Q Are you saying that the gravity model that
3 Mr. Okaneku was referring to is something that's
4 beyond the pale as people don't use that?

5 A No, I did not say that. All I said was that
6 there's no justification or information in the traffic
7 study on the gravity model so I can't ascertain
8 whether he did it right or wrong.

9 Q So it could be right?

10 A It could be right.

11 Q So you know the traffic report is being
12 reviewed currently by State Department of
13 Transportation.

14 A That is my understanding.

15 Q Are you aware that the traffic report's
16 assumptions on the Queen Lili'uokalani Trust
17 commercial buildout were a result of us not receiving
18 a response from QLT to our inquiry?

19 A I heard about it. But, you know, the thing
20 is if you look at -- you can go onto OEQC's (sic)
21 website and Kona comments is up on the OEQC's website.
22 Usually as part of our traffic study we do look at
23 sites like OEQC and we will download projects in this
24 specific area and we'll review.

25 Q You indicated that the Makala Boulevard and

1 the Ane Keohokalole roadways assessment was missing
2 from the TIAR.

3 A Mm-hmm. For the future without project,
4 yes.

5 Q Are you aware that it's the QLT's duty to
6 develop that roadway pursuant to its Land Use
7 Commission approvals for that area?

8 A No, I'm not.

9 Q And you talk about the numbers not matching
10 up in terms of trips in, trips out. Once the project
11 is developed is it not true that there will be
12 multiple ways to get in and out of the Project Area
13 that are not there now?

14 A Yes. There will be newer ways, yes,
15 correct.

16 Q When you stated that based upon the errors
17 or inconsistencies that you saw in the traffic report,
18 you indicated that the overall conclusion that would
19 be is that traffic report was unacceptable.

20 Did you or were you able to conduct an
21 analysis that went piece by piece through the whole
22 traffic report and determine that the level of, let's
23 say, margin of error was 5 percent, more or less?

24 A No, I didn't go through and do the analysis.

25 Q You went and picked certain pages, you

1 picked out the inconsistencies that you saw that
2 you're talking about today.

3 A Oh, let's put it this way. Actually the
4 first time that I went through the report, you know, I
5 didn't find the specific errors or anything. But then
6 the Trust asked me to take a look at the pro rata
7 share calculation that was given to 'em by Kamakana
8 Villages.

9 That's when trying to go in to check the
10 percentages, pro rata share, that's when I started
11 finding all those errors. Even to this date I don't
12 think I have all the errors that are found in the
13 traffic -- or inconsistencies as part of the traffic
14 study.

15 Q I was going to say the inconsistencies are
16 numbers of inconsistencies where you look at them you
17 can't tell why it was done. So you would probably
18 have to talk to Mr. Okaneku to find out why those
19 inconsistencies were there, at least in some of the
20 cases.

21 A In some of the cases. In other cases, you
22 know, I mean to me it's blatantly there's an error.
23 When two figures have exactly the same numbers, one
24 with and one without project and yet he's showing
25 project traffic, I don't think they're inconsistencies.

1 Q Is it quite possible -- I mean could he have
2 made an assumption that the traffic in that particular
3 intersection was far enough away from the Project with
4 the addition of the new roadways that there would be
5 no impact?

6 A Well, I mean if you look at it he shows --
7 in his traffic assignment on his figures, he does show
8 traffic there. He shows project traffic. And yet
9 without project he shows traffic at that intersection
10 as part of the Project and future with Project it's
11 the same number.

12 Q But he could have imposed engineering
13 judgment to make that call.

14 A He could have. But for 132 cars? I mean,
15 you know, one of 'em is the Henry Street/Queen
16 Ka'ahumanu Highway, the left turn he's showing with
17 project is 132 cars for the westbound left. So you're
18 pretty much eliminating 132 project-related trips.

19 Q Okay. When were you engaged by QLT to study
20 the traffic report?

21 A I was engaged probably earlier this year.

22 Q What month?

23 A I don't remember.

24 Q Do you recall whether it was before or after
25 the March version of the TIAR?

1 A It was before the March.

2 Q At what point in time did you do the
3 analysis of the intersections?

4 A You mean review of what I found? This was
5 not until probably, what, October when we got the
6 current version.

7 Q The initial review of the traffic report by
8 QLT was done somewhat earlier.

9 A Mm-hmm.

10 Q And they were telling us that there were
11 errors and discrepancies but didn't tell us what they
12 were or where they were. Were you the one that was
13 doing that review for them?

14 A Yes.

15 Q That was something like February, March or
16 something like that.

17 A Somewhere around there.

18 Q And I guess wrapping up, to make it clear
19 the State Department of Transportation will, I guess
20 the word is accept the traffic report in the end. Is
21 it -- as part of that acceptance are they going to go
22 through the review of step 1 data collection?

23 Step 2 the assessment of future without
24 project.

25 Step 3 the trip generation of the project

1 itself.

2 Step 4 the future with project.

3 And No. 5, and most importantly, the
4 mitigation measures.

5 Does the State Department of Transportation
6 look at and review and I guess accept all of those
7 five elements of the TIAR for any TIAR?

8 A Well, I can't speak for State DOT. But, you
9 know, by them accepting the TIAR they would be
10 accepting how it was put together.

11 Q So if the Kamakana Villages TIAR eventually
12 gets accepted by State DOT, you would assume that they
13 had done their job.

14 A Yes.

15 Q Are you aware of any favors or special deals
16 that the Kamakana Villages TIAR is getting from State
17 DOT because it's partly an HHFDC project?

18 A No, I'm not aware of any.

19 MR. LIM: I have no further questions.

20 CHAIRMAN DEVENS: Mr. Iha, do you have any
21 questions?

22 MR. IHA: No, Mr. Chair.

23 CHAIRMAN DEVENS: County?

24 MR. BRILHANTE: County has no questions.

25 CHAIRMAN DEVENS: Mr. Yee.

CROSS-EXAMINATION

BY MR. YEE:

Q You testified that there were a couple of TIARs that were accepted by DOT before you had to testify in front of the LUC. Do you remember that? Do you remember saying that?

A Yes.

Q First of all, congratulations. Second of all, what were the projects? What were those two projects?

A The one that comes to mind, my mind right way off the top because it was just last year, the A&B's North Kihei residential.

Q Do you remember any other project?

A Um, not to my knowledge.

Q How many TIARs have you done that were submitted and presented to, if you have a rough estimate, that were submitted to the LUC? Do you have a range?

A I would say between 10, 10 to 20.

Q So out of the 10 to 20 you can remember one that was actually accepted by DOT prior to your testimony before the LUC.

A That I can remember, yeah.

Q Now, I read your written testimony in this

1 case and I've obviously heard your oral testimony
2 today. It would be fair to state there's a
3 substantial amount of information in your oral
4 testimony that's not in your written testimony,
5 correct?

6 A Yes.

7 Q Have you reduced this information that
8 you've given today in writing? Have you documented
9 this as a narrative of some type?

10 A You mean can I do that?

11 Q No. Have you done it?

12 A I have my notes, things, typed up, yes.

13 Q Okay. Have you submitted these notes to
14 either the Petitioner's consultant or to the State
15 Department of Transportation?

16 A No, I haven't.

17 Q Have you met with either Petitioner's
18 consultant or the State Department of Transportation
19 about these concerns?

20 A No, I haven't.

21 Q Do you have any intention of either
22 submitting these notes or meeting with Petitioner's
23 consultants or the State Department of Transportation?

24 A You know, that would be up to the Trust
25 because I'm hired by the Trust.

1 Q You have no instructions to do that then.

2 A No, I don't.

3 Q If you wanted to resolve these issues, if
4 you wanted to fix the TIAR, if you wanted to make sure
5 the TIAR was done correctly, would it be fair to say
6 that it would be reasonable to then go to the
7 consultants, Petitioner's consultants, and to the
8 State Department of Transportation to meet with them
9 and express these concerns to them?

10 A Yes, I would. Just to comment on something
11 earlier. I did, as part of March, the March 17th
12 review, I did talk to Mr. Okaneku about some of this,
13 the concerns specifically including certain
14 intersections, the two out of the three intersections
15 I listed he should study 'em. He was aware of those.

16 Q So you met with Mr. Okaneku -- well --

17 A Called him on the phone.

18 Q You called him on the phone and you said
19 that, "There are a couple intersections you should
20 take a closer look at"?

21 A Yes.

22 Q Did you get into this level of detail with
23 him?

24 A No, I didn't. But I told him at least why I
25 thought that he should study those intersections.

1 Q Did you talk to the Department of
2 Transportation and make similar suggestions?

3 A Maybe in passing with a couple of the
4 people.

5 Q In that level of detail?

6 A Not in the level of detail.

7 Q Can you tell me who you talked to at the
8 Department of Transportation?

9 A I've worked with Ken Tatsuguchi and Rob
10 Miyasaki on numerous projects. And there are some
11 times that we talk about projects in general.

12 Q So would it be fair, then, to characterize
13 this as a comment in passing rather than a meeting
14 about this?

15 A Yes.

16 Q I assume that if you were hired to review or
17 to work on this TIAR you could fix these various
18 issues that you've listed.

19 A Yes.

20 Q So it would be fair to say that if you could
21 fix them, presumably the Petitioner's consultant can
22 fix them as well?

23 A Correct.

24 MR. YEE: That's all the questions I have,
25 thank you.

1 CHAIRMAN DEVENS: Commissioners?
2 Commissioner Kanuha.

3 COMMISSIONER KANUHA: Thank you,
4 Mr. Chairman. Mr. Niiya, why is it so difficult to
5 get DOT to accept a TIAR?

6 THE WITNESS: That would be something that I
7 think you would need to ask DOT. In all of my years,
8 20+ years of experience, DOT has never accepted a TIAR
9 from us. They always come back to the point where
10 they say "no further comment".

11 COMMISSIONER KANUHA: Okay. Who is the TIAR
12 usually -- who requests that? Is it usually DOT?

13 THE WITNESS: It could be DOT. It could be
14 the county.

15 COMMISSIONER KANUHA: But some, one of
16 those --

17 THE WITNESS: Public agencies, yes.

18 COMMISSIONER KANUHA: How many folks like
19 you, your firm, you as an individual do TIARs in the
20 state?

21 THE WITNESS: Besides myself and Mr. Okaneku
22 there's Phillip Rowl and Associates, Julian Ng.
23 There's also Parsons Brinkerhoff, Wilson Okamoto. I
24 know that also Wilber Smith does some traffic studies,
25 and Kikaku or Burns and Pierce I think is who bought

1 Kikaku out.

2 COMMISSIONER KANUHA: Okay. If someone were
3 to give each one of you a project, the same
4 information, would your TIARs come out the same or
5 would they be different?

6 THE WITNESS: They probably, they
7 probably -- there's a good possibility that it comes
8 out the recommendations might not be the same, yes.

9 COMMISSIONER KANUHA: Thank you.

10 CHAIRMAN DEVENS: Any other questions? I
11 had one question. You know, based on your extensive
12 experience and working with DOT, do they go through
13 the same kind of evaluation and review that you did
14 when they receive a TIAR?

15 THE WITNESS: You know, realistically, no I
16 don't think so. Basically, as I stated before, even
17 the first time I went through this August 9th TIAR I
18 didn't pick up any of these errors. But it's because
19 the Trust entrusted me to look at the pro rata share
20 and I started going back.

21 The first one that I took a look at is 2029.
22 And the reason why we look at 2029 is because that has
23 all the mitigative measures in it. When I started
24 looking at the percentages between with and without
25 project, one of things that I brought up is the two

1 figures are exactly the same.

2 So I can't calculate the pro rata share. So
3 then I started looking into the numbers more closely.
4 But initially on first pass I didn't pick up any of
5 this.

6 CHAIRMAN DEVENS: If DOT does pick up of the
7 discrepancies and inconsistencies that you described,
8 then there's Mr. Sniffen who said they have picked up
9 some of that information. What's the process, based
10 on your experience? Do they go back to the traffic
11 engineer and tell him to recalculate it again? Go out
12 in the field, get more data? What happens?

13 THE WITNESS: Basically they'll come --
14 there's two things that could happen. One is they
15 could put it in writing. A lot of times they'll send
16 a letter back to us saying, "We have questions about
17 this, this, this, and this." We'll either take more
18 data or respond back in writing.

19 The other way that we've been doing recently
20 is we'll go meet with State DOT. And I think the
21 Petitioners have been meeting directly with State DOT.
22 And they'll work out the concerns and the issues with
23 them directly instead of putting things in writing.
24 It's more of an informal meeting.

25 CHAIRMAN DEVENS: So I think you say DOT

1 doesn't formally approve the TIAR but there's some
2 point where they say, "No more comments."

3 THE WITNESS: Correct.

4 CHAIRMAN DEVENS: And at that point as a
5 traffic engineer you interpret that to mean it's been
6 approved or they passed on it.

7 THE WITNESS: Yeah.

8 CHAIRMAN DEVENS: So is it your
9 understanding that this process will still continue on
10 between DOT and the Petitioner until they reach a
11 point where they either pass on it or say there's
12 still problems?

13 THE WITNESS: I mean if track record for us
14 is the same in the future, yes. I think it will
15 continue on to the point where they have no more
16 comments on the TIAR.

17 CHAIRMAN DEVENS: Thank you. Any redirect?
18 I'm sorry. Commissioner Kanuha.

19 COMMISSIONER KANUHA: Thank you,
20 Mr. Chairman. Just a follow up on that, Keith. So if
21 that's the case then how would any traffic consultant
22 ever be able to calculate your client's fair-share?

23 THE WITNESS: Pardon?

24 COMMISSIONER KANUHA: If a fair share
25 distribution of what your improvements would be based

1 on impacts, if the way the TIARs are reviewed or
2 evaluated and it appears that it's kind of arbitrary,
3 then how would you ever be able to calculate a
4 fair-share?

5 THE WITNESS: Well, that's where it came
6 back is there's no documentation in the TIAR. So like
7 the gravity model, you know, the assumptions that he
8 made. So when we go to DOT if the assumptions are in
9 the traffic study they start approving or looking at
10 the assumptions. And they either agree or don't agree
11 with the assumptions.

12 And once they get to the point where they're
13 comfortable with the assumptions and the description
14 of the TIAR, then they will allow, you know, the
15 calculation of the pro rata share.

16 COMMISSIONER KANUHA: Okay. Thanks.

17 CHAIRMAN DEVENS: Any other questions? Any
18 redirect, Mr. Kudo?

19 MR. KUDO: Yes.

20 REDIRECT EXAMINATION

21 BY MR. KUDO:

22 Q Just to reiterate, Mr. Niiya, the pro rata
23 share calculation generally isn't done until the base
24 information such as the assumptions and the existing
25 traffic counts are in an acceptable form or are

1 acceptable to DOT, is that correct?

2 A That's correct.

3 Q Now, since a lot of projects don't have
4 accepted TIARs before they reach this Commission,
5 isn't it true that projects come before this
6 Commission if they don't have an accepted TIAR with an
7 agreement in principle or MOU with the Department of
8 Transportation that at least indicates that there's
9 significant progress made with the project petitioner
10 in so far as traffic assessments are concerned?

11 A Yes. It's either MOA, Memorandum of
12 Agreement or MOU, Memorandum of Understanding you're
13 correct.

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

15 CHAIRMAN DEVENS: Any other questions from
16 the parties?

17 MR. LIM: Just one.

18 CHAIRMAN DEVENS: Go ahead, Mr. Lim.

19 MR. LIM: Just based on that last set of
20 redirect.

21 RECROSS-EXAMINATION

22 BY MR. LIM:

23 Q Mr. Niiya, you're aware of the September 23,
24 2010 letter from the State Department of
25 Transportation letter to Forest City?

1 A Yes.

2 Q Okay. And that's Petitioner's Exhibit No.
3 66. Is this your idea of something that would be in
4 an MOA?

5 A No, it isn't.

6 Q Okay. How many of the projects that you
7 process through the Land Use Commission did have MOAs
8 or MOUs?

9 A Um, none that I know of right now. They
10 either have a letter -- the North Kihei Residential
11 had an agreement from the State DOT, at least a letter
12 saying that they had no more comment.

13 Q So a letter from the State Department of
14 Transportation states that they're in agreement with
15 the general mitigation concepts being proposed, et
16 cetera, that's in this Exhibit No. 66. That would be
17 the functional equivalent of what you're talking
18 about?

19 A Well, if I look at this letter they still
20 say they are reviewing the application and the TIAR.
21 So I can't state for sure what their intent is in the
22 letter.

23 Q Okay. And you're confident that the State
24 Department of Transportation's going to do its job and
25 assess the correct mitigation measures for the

1 Kamakana Villages Project?

2 A Yes.

3 MR. LIM: Thank you. No further questions.

4 CHAIRMAN DEVENS: Mr. Yee, you had
5 additional questions?

6 RECROSS-EXAMINATION

7 BY MR. YEE:

8 Q Just a clarification. Of the 10 to 20
9 projects or 10 to 20 TIARs that you've done and
10 presented, had presented to the Land Use Commission,
11 how many of them can you name in which there was an
12 MOA, an MOU or an agreement in principle prior to your
13 testimony before the LUC?

14 A You know, lot of times for us we don't get
15 involved after we complete the TIAR. So I wouldn't
16 know specifically the timeframe of whether or not they
17 have an accepted MOU or MOA. Usually what we'll see
18 is a letter back from the State Department of
19 Transportation.

20 Q How many of those projects did you get a
21 letter back saying that there are no questions prior
22 to your testimony before the LUC?

23 A I don't know. It's a while.

24 Q Okay. Thank you. Nothing further.

25 CHAIRMAN DEVENS: Mr. Kudo, do you have

1 anything else?

2 MR. KUDO: No further questions.

3 CHAIRMAN DEVENS: It's been about an hour.
4 We'll take a 5 minute break and then your last witness
5 will be Ms. Crabbe. Okay.

6 (Recess was held. 2:20)

7 CHAIRMAN DEVENS: (2:40)back on the record.
8 Mr. Kudo, you have your last witness.

9 THE WITNESS: Yes.

10 MR. KUDO: Yes. I'd like to call to the
11 stand LeeAnn Crabbe.

12 CHAIRMAN DEVENS: Ms. Crabbe.

13 LEEANN CRABBE
14 being first duly sworn to tell the truth, was examined
15 and testified as follows:

16 THE WITNESS: I do.

17 CHAIRMAN DEVENS: If you could state your
18 name and address for the record.

19 THE WITNESS: LeeAnn Crabbe, 1100 Alakea
20 Street, Honolulu, Hawai'i 96813.

21 CHAIRMAN DEVENS: Thank you.
22 Mr. Kudo.

23 DIRECT EXAMINATION

24 BY MR. KUDO:

25 Q Ms. Crabbe, where are you currently

1 employed?

2 A Queen Lili'uokalani Trust.

3 Q How long have you been at the Trust?

4 A A little over eight years.

5 Q What is your current title or position with
6 the Trust?

7 A Vice president.

8 Q Would you briefly describe your duties and
9 responsibilities for the Queen Lili'uokalani Trust.

10 A Until March of 2006 I functioned as the
11 chief financial officer. Presently my duties
12 encompass the planning and potential development of
13 all Hawai'i owned real estate. I'm also responsible
14 for overall operations of our Trust office.

15 Q Could you explain to the Commissioners the
16 Trust revenues and expense?

17 A For calender year 2010 we have budgeted
18 total revenues of \$26.7 million. That comes from two
19 different sources: Recurring rents from developed
20 real Hawaiian real estate of 21.1 million and
21 investment income of 5.6 million from our endowment
22 portfolio. We have also projected nonrecurring
23 revenue from lands sales of a little over \$5 million.

24 Our expenditures, operating expenditures for
25 this year are projected at \$22.5 million. For our

1 mission-related purpose, which is running our Queen
2 Lili'uokalani Children's Centers for the benefit of
3 orphaned and indigent children, we are projecting to
4 spend \$16.2 million, again, operating numbers and to
5 run our endowment, meaning our Hawai'i real estate and
6 our investment portfolio, we're looking at about
7 6 million to run that. We also anticipate about \$3
8 million in capital expenditures for our children
9 centers.

10 Q How many children centers does the Trust run
11 or operate?

12 A We operate nine children centers statewide,
13 four on the island of O'ahu, two on this island, one
14 in Hilo, one in Kona, actually just less than a mile
15 away and three others on Molokai, Maui and the island
16 of Kaua'i.

17 Q On the island of O'ahu where are the
18 children's centers located?

19 A Mu'uolani which is our Honolulu unit
20 operates from Waipahu all the way to Hawai'i Kai. We
21 have Waimanalo, Ko'olaupoko and our Windward unit.

22 Q How many children does the Queen
23 Lili'uokalani Children's Center benefit?

24 A In 2009 we served over -- we directly served
25 over 10,000 orphan and indigent children. We have

1 served tens of thousands of others throughout the
2 state of Hawai'i through our group services and
3 community building efforts.

4 Q Ms. Crabbe, you said that the Trust budgeted
5 recurring revenue in 2010 is approximately
6 26.7 million. How much of that is allocated towards
7 the children's center expenditures?

8 A A little over \$19 million.

9 Q Can you give us the county breakdown of the
10 19.1 million?

11 A I can. About 10.7 million goes to the
12 County of Honolulu. On this island we spend
13 approximately \$3.7 million, Maui County \$3.4 million
14 and on the island of Kauai, we are not currently
15 serving Ni'ihau, we spend \$1.3 million.

16 Q Now, we're involved in this particular
17 petition because of the potential that traffic and
18 other kinds of mitigation measures may not be required
19 of this Petitioner because of its affordable housing
20 201H process.

21 What happens if the Trust had to incur
22 additional expenses to make up for those traffic
23 improvements within this region?

24 A The way we allocate income to our programs
25 is basically determined by the Internal Revenue

1 Service. Under the Internal Revenue Code we are
2 classified as a private operating foundation. And
3 unlike our fellow ali'i trusts, the Kamehameha Schools
4 and the Queen Emma Foundation, we are not allowed to
5 have for-profit subsidiaries and actively develop our
6 land. So all we can do is plan, entitle and install
7 backbone infrastructure on our properties. We are not
8 developers. I'd like to make that very clear. We are
9 not.

10 We need to make our real estate holdings
11 productive for income to run our programs. If we had
12 to cut back, if we had to spend money on traffic
13 mitigation, we would basically have to sell land or
14 some of our investment properties, cutting into the
15 corpus of our Trust. And that would basically mean no
16 additional funds to run our programs in perpetuity.

17 We're constantly balancing the needs of
18 current keiki that are before us whose needs are very
19 evident and growing by the day, with the needs of
20 those who're yet to be born with perpetual Trust.

21 And as an example, one of the reasons we
22 don't like to sell land, and I think that's come up in
23 prior conversations on different testimony from other
24 people -- I'd like to note that we have sold some of
25 our Waikiki, the lease fee under some of our Waikiki

1 condominiums. And that has been on the recommendation
2 of our court-appointed master. We have a master that
3 reviews our accounts every year under the auspices of
4 the probate court.

5 The diversification of the income stream is
6 really, really important for what we do. That's why
7 the development here in Keahuolu is important to the
8 Trust in terms of that diversification of the income
9 stream.

10 We have -- the trustees have mandated and
11 it's basically determined by our Queen's Deed of Trust
12 that we don't like to sell land. The example of
13 Lunalilo Trust was given earlier. Again, we are a
14 perpetual trust. And this land feeds us. It feeds
15 our keiki. It feeds our staff statewide. We cannot
16 keep cutting at our asset base by selling property.
17 And we are not a large trust.

18 Q Could you explain to us what a perpetual
19 Trust is.

20 A Again, as I mentioned under the Queen's Deed
21 of Trust we exist for the benefit of orphaned and
22 indigent children. And I would love to say we'd be
23 put out of business in the near future when there are
24 no more orphaned or indigent children of Native
25 Hawaiian ancestry in the state of Hawai'i. But

1 unfortunately that does not appear to be happening.

2 We see the needs growing statewide. It's a
3 hard thing for us. I'm sorry I'm getting passionate
4 about that. But we, again we need to consider not
5 just the short-term consequences of the decisions we
6 make today but the long-term effects. Perpetuity
7 means forever. Endowment assets are permanent assets.
8 We are constantly balancing this need.

9 I've been lecturing on some of the boards I
10 sit on as well. We've got to maintain the purchasing
11 power of this endowment over time. Meaning that we
12 keep up with inflation and we can grow our programs to
13 meet the needs of the beneficiaries that are out
14 there.

15 One of the financial imperatives for a
16 nonprofit is intergenerational equity. Meaning we've
17 got to look at the decisions we make in managing this
18 endowment, again real property, in an investment
19 portfolio that spans generations. And that's a
20 difficult balancing act. And we struggle with this
21 constantly in the endowment group and what we have to
22 do.

23 Q Now, the Trust made recent improvements to
24 Makala Boulevard and Luhia Street in conjunction with
25 the Kona Commons project. How were these road

1 improvements financed?

2 A Hawai'i County allows a subdivider to apply
3 for subdivision approval, and to gain subdivision
4 approval with the promise to install the necessary
5 offsite infrastructure. For the Kona Commons the
6 initial phase, those infrastructure improvements,
7 meaning roadways, drainage sewer, et cetera, came to
8 about to \$6.9 million.

9 And those would be typically bonded with a
10 performance bond. In this market it's a little bit
11 difficult. It's onerous to get a surety bond. The
12 cost of that bond is usually about 1 to 2 percent of
13 the bonded amount.

14 What we did with our Kona Commons offsite
15 improvements was we worked in agreement with the
16 County of Hawai'i. We gave them a promissory note for
17 the \$6.9 million, a promise that we would install
18 those necessary improvements. And we guaranteed that
19 promissory note with a stock pledge agreement of some
20 of our investment assets.

21 The agreement stated, and I thought County
22 was being pretty clever in this, was that the
23 collateral needed to be 120% of the bonded amount. So
24 on a \$6.9 million note we had to pledge \$8.2 million
25 of our investment assets.

1 And I'd like to note that we pau. We've
2 completed those improvements to the satisfaction of
3 the county of Hawai'i. And we paid for those out of
4 our cash flow and investment assets that were
5 specifically set aside for that purpose.

6 It was part of our financial model in terms
7 of recovering the cost of those improvements through
8 the ongoing cash flow from the commercial leases that
9 we were able to sign as part of the Kona Commons
10 development.

11 Q If we, the Lili'uokalani Trust, had to incur
12 roadway improvements of, say, \$30 million worth, how
13 would the Trust be able to finance that kind of a
14 debt?

15 A If we were to follow that similar model, the
16 promissory note secured by a stock pledge agreement,
17 at a \$30 million funding level, we'd be talking again
18 at 120% pledge, \$36 million pledge from our investment
19 portfolio, which would be quite onerous on the
20 portfolio.

21 It'd substantially affect our liquidity, and
22 the use of the investment portfolio for ongoing
23 operations. So we would not be able to do it at that
24 level, that same type of agreement with the county of
25 Hawai'i.

1 Q Now, Ms. Crabbe can you explain to the
2 Commission why the Trust is improving its land when
3 its mission's to help or finance destitute children
4 within the state of Hawai'i?

5 A Like many of our fellow ali'i trusts we were
6 land rich and cash poor. I actually worked at the
7 Bishop Estate in the days when they couldn't make
8 payroll before the mandatory fee sales program
9 started. We need to develop our lands to make them
10 productive, to provide income for our programs. Over
11 70 percent -- well, approximately 70 percent of our
12 recurring rental income comes from 16 acres in
13 Waikiki, and over 50 percent of our recurring revenue
14 is hospitality related.

15 So diversification is key to ensuring the
16 viability of funding our charitable programs. And
17 Keahuolu is a large part of that. We own 6400 acres
18 statewide. A lot of people think that's a lot of
19 land. It's not. And people come to us frequently
20 asking for additional road, for road dedications,
21 additional roadways, parks, et cetera. But this is
22 what we've got to live on in perpetuity.

23 Q If you had to incur additional expenses to
24 mitigate impacts created by the Kamakana Villages
25 Project, how would that impact the Trust financing?

1 A Absent a fair-share contribution from the
2 Kamakana Villages Project and participation by any
3 other adjacent landowners, and again I'd like to
4 remind you that Department of Hawaiian Home Lands is
5 just north of this Project, the burden really we
6 believe would fall on us. Funding problematic.

7 As a tax exempt organization we're not
8 allowed to use debt heavily. We can judiciously. We
9 choose not to at this point because it causes
10 different kinds of issues for us as a 501C3
11 organization.

12 So ultimately we would -- if we wanted to
13 continue with our development and absent, again, any
14 participation by the state or county or any other
15 adjacent landowners, we would probably have to sell
16 land or liquidate some of our investment portfolio.

17 So effectively we feel, absent, again,
18 fair-share participation or other agencies coming
19 forward, there'd be an effective moratorium on our
20 ability to develop our land and provide income for the
21 ever increasing needs of Hawai'i's kamali'i.

22 Q Ms. Crabbe, can you tell us how QLT has been
23 involved in the Kamakana Villages Project?

24 A We have attended community meetings. And
25 I'd like to correct Mr. Randle's testimony from two

1 weeks ago. Michelle Otake, my development manager,
2 and I went over to Group 70 and met with Mr. Oda and
3 Mr. Randle to review the master plan. We had other
4 comments besides just the way our lands were shown on
5 their map. I'd like to correct that. That's what
6 Mr. Randle had testified.

7 I gave them three direct items that I wanted
8 explanation or clarification on. One of them being
9 they had moved the transit stop into their
10 development, I believe, to get additional LEED points.
11 We said that wasn't -- we didn't think that was pono.
12 We have all been spending a lot of time on Ane
13 Keohokalole Highway which is the transit corridor.
14 Leave the bus stop on Ane Keohokalole. They agreed to
15 do that.

16 The other item was claiming a piko on a
17 commercial center. We didn't think that was
18 culturally appropriate. They continue to do it. And
19 that's okay. That's their choice.

20 The third item, they had shown a north/south
21 road and they called Keahuolu Boulevard. Many of you
22 may be aware ahupua'a run mauka/makai. And on this
23 island not north/south.

24 So that was not appropriate. That was not
25 an appropriate name for that road and they did agree

1 to take that off.

2 Q Ms. Crabbe, do you have any concluding
3 remarks to this Commission?

4 A I do. We are different. As a mentioned I
5 spent most of my adult career at the Kamehameha
6 Schools Bishop Estate. That trust owns 360,000 acres
7 statewide. We own 6400 acres on two islands, O'ahu
8 and this island. We don't have a lot of land.

9 And I hate being redundant, but I'm very
10 passionate about this because this is for our kids.
11 And this is what gets us going. In all sincerity,
12 this is what gets us going. You come after our kids,
13 pau, it's on. And that's what this is about. We
14 don't take these actions lightly. We are a nonprofit
15 small trust. We don't have the resources. I don't
16 like spending all of my time doing this.

17 But, again, we have a fiduciary
18 responsibility to do what is right, what is pono
19 because they're coming after us.

20 If they're not paying their fair-share,
21 that's what we teach our kamalii, yeah? You make a
22 mess, you clean it up. Don't expect other people to
23 do it. That's kuleana. That's what I teach my two
24 kids. That's what I like to think we teach all of our
25 kids that come into our programs.

1 So that's what this is about. Don't be
2 Kolea. Don't come here, eat all our worms, go back
3 Alaska. That's not appropriate. We come before you
4 which we don't do often. You don't see us testifying
5 at the Legislature, the county council. It's not what
6 we do. We stick to our knitting. We go about our
7 business.

8 But, again, fiduciary responsibility our
9 financial base, our ability to fund our programs is
10 being threatened which is why we are here today and
11 which is why we are taking these actions.

12 MR. KUDO: Thank you, Ms. Crabbe. At this
13 time she's available for cross-examination.

14 CHAIRMAN DEVENS: Petitioners?

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

16 CROSS-EXAMINATION

17 BY MR. LIM:

18 Q Good afternoon, Ms. Crabbe.

19 A Good afternoon.

20 Q As the development manager, that's the
21 correct term, for Queen Lili'uokalani Trust, you're in
22 charge of running the proposed development of the
23 Trust lands?

24 A Correct.

25 Q Would that include the area about 200 acres

1 or so just immediately makai of the mid-level road?

2 A Yes.

3 Q Below the Project.

4 A Yes.

5 Q That area received Land Use Commission
6 approval in about 1991?

7 A Correct.

8 Q To urban?

9 A (Witness nodding head.)

10 Q And that's the area that's currently zoned
11 general commercial is that true?

12 A CG10.

13 Q Is there any residential allowed on that
14 zoning?

15 A It could be, under the county zoning.

16 Q Is the QLT going to come in to the Land Use
17 Commission to revise the 1991 LUC approval that you
18 got -- I'll give you Docket No. A89-646, in 1991?

19 A I'm sorry. What was your question?

20 Q Does the Trust plan to come in to update
21 your substantial compliance with the representations
22 before the Commission in Docket No. A89-646?

23 A To update our substantial compliance.

24 Q Yes, to update your proposed development
25 let's say.

1 A Yes, we are.

2 Q Okay. When are you going to do that?

3 A We are working on some concepts right now
4 and we are trying to devise a new plan to prepare a
5 new EIS.

6 Q Okay. Would that include any of the
7 following uses that was proposed back in 1991: a
8 centralized business and financial plaza and retail,
9 commercial office space?

10 A I think it's too early to say yes or no on
11 that.

12 Q What about the government center or civic
13 plaza now that the county has its own civic center up
14 the road?

15 A Well, absent county participation I know
16 judiciary is looking for a new site. So, again, we
17 are still in the conceptual stages. I wouldn't say
18 that we have, I could tell you yes or no on any of
19 those uses at this point.

20 Q Okay. Another use that was proposed was a
21 regional shopping center. I think there's been some
22 testimony that's a relatively large thing. You have a
23 shopping center there at Makalapua Center, is that
24 what it's called?

25 A Makalapua Shopping Center, yes.

1 Q How many square feet of leasable area do you
2 have for those uses?

3 A Let's see. Macy's is 50,000. I'm not sure
4 on the actual square footage of Kmart. I think it's
5 over a hundred thousand square feet. And the Wallace
6 Theaters I'm unclear, maybe 15,000 to 20,000 square
7 feet. We do have an obligation under the development
8 agreement to provide another 70,000 square feet of GLA
9 in the near future.

10 Q The development agreement's with?

11 A With the developer of that parcel.

12 Q Who controls the remainder of that parcel?
13 Let me back up. I understand that the developed area
14 at Makalapua is in a separate TMK parcel, is that
15 correct?

16 A Correct.

17 Q So the bigger land area that's around there
18 that's all controlled by QLT?

19 A Correct.

20 Q Any future plans within the next year or so
21 to further develop commercial?

22 A Commercial, no, not in the next year.

23 Q Other uses that were proposed back in 1991
24 were region-serving hospital. Is that something
25 that's possible in the new plan?

1 A To be honest because we are in the
2 conceptual design feasibility stages anything is
3 possible at this point.

4 Q What about a business park and light
5 industrial center?

6 A Again, it's possible.

7 Q What about a business-serving hotel complex
8 with conference center, exhibit hall?

9 A Possible.

10 Q What about the college campus for West
11 Hawai'i?

12 A Probably improbable.

13 Q You do have an historic preserve in that
14 area I know. One of the issues that transitions in
15 and out of these proceedings, though not directly, is
16 the 201H exemption requested by Forest City. You're
17 familiar with that because you've been testifying at
18 the county council, is that correct?

19 A Correct.

20 Q In your October 28, 2010 letter to the
21 Hawai'i County Council on resolution 405-10 you stated
22 that "Forest City continues to request an exemption
23 from Hawai'i County code section 25-2-46 concurrency
24 requirements under the Kona Community Development
25 Plan. In regards to traffic this would allow Forest

1 City to be exempt from, No. 1, the requirement to
2 perform or otherwise satisfy area mitigation
3 requirements, and No. 2, the requirement for
4 acceptable traffic levels of service prior to
5 occupancy of the Project."

6 Does that sound familiar?

7 A Mm-hmm.

8 Q Is it your understanding that Hawai'i County
9 Code section 25-2-46, which I think most of all the
10 concurrency ordinance, does that give an exemption --
11 is Forest City requesting an exemption from that
12 ordinance?

13 A I think you should ask Forest City.

14 Q Is it not true that that particular section
15 provides that for projects that provide double the
16 affordable housing requirement for the county that
17 they are exempt by law from area mitigation for
18 traffic?

19 A I, off the top of my head I couldn't say
20 that your entire statement was true.

21 Q Do you understand or do you believe that
22 Forest City or HHFDC is requesting any state
23 exemptions under 201H?

24 A Not that I'm aware of.

25 Q With respect to the Petitions for

1 Intervention that have been filed in this particular
2 matter by QLT, the earliest was, I'll represent to you
3 it was March 31, 2010. Then the second one was in
4 September 14, 2010. Does that sound about right?

5 A Correct.

6 Q At that time you indicated that QLT was
7 willing to cooperate and stipulate with Petitioners as
8 to the matters to the extent practicable and feasible.
9 What sort of cooperation did QLT have in mind at that
10 time?

11 A As we've expressed some concerns about the
12 treatment of the archaeology preserves. We can -- we
13 could -- I'm sorry. Again, could you ask the question
14 one more time? I got caught up in the dates.

15 Q No problem. The Petitions for Intervention
16 filed in March and September of 2010 indicated that
17 QLT was willing to cooperate and stipulate with the
18 Petitioners as to such matters to the extent
19 practicable and feasible I think is what it said.
20 What kind of cooperation and stipulations was QLT
21 considering at that time?

22 A We've been cooperating and reviewing, I
23 think they have sent over some draft D&O measures for
24 our review which we have not been able to respond to
25 because the traffic -- a lot of data we have been

1 receiving has been changing over time so we have not
2 responded to that at this point.

3 Q So you recall receiving proposed conditions
4 of approval, let's say, in this docket number from
5 Kamakana Villages.

6 A Yes. We do recall getting that.

7 Q Those things cover such things as treatment
8 of archaeological sites, recognition of the QLT's
9 easement rights from mauka through the Kamakana
10 Villages Project, an agreement by Kamakana Villages to
11 record an easement against their property indicating
12 that they recognize that the QLT commercial
13 development may cause noise impacts, those type of
14 things?

15 A I recall some of that. I couldn't testify to
16 the specifics. It was a while ago.

17 Q So it's your testimony that because of the
18 traffic issues that you couldn't agree to those other
19 unrelated issues?

20 A We didn't feel it meaningful to respond to
21 those other issues and close the door on that because
22 of the traffic issues.

23 Q Because it related to the traffic? Or was
24 it just leverage?

25 A It wasn't leverage. I mean it didn't seem

1 efficient to respond to a list that was, you know, at
2 that point incomplete because we weren't sure where we
3 were going on traffic.

4 Q With respect to the Petitions for
5 Intervention, much of the -- at least the pleadings
6 have said that QLT is concerned about the traffic
7 impacts from the Project at Kamakana and that the
8 Trust or QLT would be forced at some point in time to
9 pay more than their fair share; is that correct?

10 A I don't know that the word "forced" was
11 used.

12 Q But you would end up paying more than your
13 fair-share?

14 MR. KUDO: I believe the counsel is
15 misstating what we said. I think we're saying that we
16 would pay for somebody else's, what somebody else
17 should have mitigated. I don't think it's a -- I mean
18 he's using the words "fair-share". I don't think we
19 used the words "fair-share".

20 CHAIRMAN DEVENS: Can you rephrase the
21 question.

22 Q (By Mr. Lim): If you can, if you want to
23 answer that question that's fine. It's the same
24 thing.

25 A I'm not sure what question I'm responding

1 to.

2 Q Does QLT believe that because of the
3 deficiencies in the Kamakana TIAR that you would end
4 up paying more than your fair-share?

5 A From a practical standpoint, yes.

6 Q And why is that?

7 A As I mentioned earlier, absent the county or
8 the state coming forward, if we had a potential
9 tenant, and given we were through the land use
10 proceedings and our county zoning process, absent
11 mitigation by another party, if we wanted to sign a
12 commercial lease we would likely be forced or required
13 by some governmental agency to mitigate whether it was
14 our fair-share or not from a practical standpoint.

15 Q As a practical matter that's not a -- that's
16 not decided yet, correct?

17 A Decided by who?

18 Q The state or the county.

19 A I'm not understanding. I'm not
20 understanding what you're asking.

21 Q My question is if you're saying that you're
22 going to be -- you're afraid you're going to be -- QLT
23 is going to be forced to pay more than its fair-share,
24 my question is: At what point in time would you know
25 that? Would you know that when the state and county

1 assess the fair-share against you or against Kamakana
2 Villages?

3 A At what point in time would we know?

4 MR. KUDO: I'm not sure what the counsel's
5 question is.

6 THE WITNESS: I don't know.

7 MR. KUDO: Maybe he can restate it.

8 MR. LIM: I'm trying to figure out when,
9 whether it's ripe to ask the question.

10 Q I mean until -- let's say Kamakana Villages
11 goes through, gets approved, we get the DOT to finally
12 not make comments on our traffic report and thereby
13 accept it. At that point in time do you believe that
14 the Trust or QLT will know whether you're being forced
15 to pay more than your fair-share?

16 A No, we wouldn't know at that point because
17 just DOT not having any comments on the TIAR doesn't
18 mean that an MOA or MOU has been reached with Kamakana
19 Villages.

20 Q Let's assume that they reached the MOA or
21 MOU and the mitigation measures are set. Would QLT
22 know at that time whether you're being forced -- or
23 let's see, whether you're going to end up paying more
24 than your fair-share of traffic impacts?

25 A We wouldn't know. I mean at this point we

1 have seen the schedule that's been put forth in terms
2 of what Kamakana believes its fair-share is. We don't
3 know who's paying the rest of that.

4 Q So you understand that the State Department
5 of Transportation has to approve all of that.

6 A Yes, I do understand that.

7 Q Isn't it true that when you come in, when
8 QLT comes in with its new development that you will
9 also contribute to the traffic in that region?

10 A Correct.

11 Q So I guess the reason for my question is at
12 that point in time when you do get your traffic report
13 accepted by DOT, that's the only time that you'll know
14 whether you are injured or not?

15 A Perhaps.

16 Q When QLT sold the land to the state back in
17 the early '90s I think it was?

18 A 1992.

19 Q That was about 450 acres that includes the
20 Petition Area.

21 A Correct.

22 Q Okay. Was that under threat of
23 condemnation?

24 A That's my understanding from reading the
25 paperwork.

1 Q But you did get paid fair market value for
2 the land at the time?

3 A That's my understanding.

4 Q When you spoke about the Trust's method of
5 being a land developer -- excuse me, I don't want to
6 mischaracterize -- you said you were not a land
7 developer but you do plan, entitle and build
8 infrastructure for your Trust lands, is that correct?

9 A For the lands that we plan to make leasable.

10 Q Then what happens after you finish the
11 infrastructure?

12 A We sign a commercial lease or we devise a
13 development agreement with a developer who comes and
14 takes things vertical.

15 Q So your definition of a developer is
16 somebody who takes the buildings vertical.

17 A Correct.

18 Q And it doesn't count if you entitle and
19 build the infrastructure.

20 A I think it matters. You're saying it
21 doesn't matter.

22 Q I'm asking whether those are land
23 development activities.

24 A I think it's semantics.

25 Q Is that -- in terms of the proposition let's

1 say you develop the 200 acres or so right below
2 Kamakana Villages. But for a portion of the total
3 cost of the development of that land even going
4 vertical would it be to do the infrastructure versus
5 the vertical?

6 A I don't know. We don't have a plan for
7 those lands right now.

8 Q Is it fair to say that the development of
9 the lands by entitling it because you'd have to go to
10 the, I'm assuming do an EIS, State Land Use
11 Commission, county zoning, is that correct?

12 A Correct.

13 Q And then you would then have to develop
14 design plans for your infrastructure. Is it fair to
15 state that those are significant land development
16 expenses?

17 A Again, I think you're calling them
18 significant land development expenditures. We refer
19 to those as just infrastructure costs, soft and hard
20 infrastructure costs to make our lands leasable and
21 income producing.

22 Q Is it fair to say that those would be in the
23 millions of dollars?

24 A At a certain point, yes. As I mentioned the
25 Kona Commons offsite infrastructure improvements were

1 \$6.9 million.

2 Q Back in 1991 when the Trust applied and then
3 received urbanization for the lands just makai of
4 Kamakana, what -- how were you going to finance the
5 infrastructure needed for that land?

6 A The modus operandi at that time was to sell
7 property to fund improvements.

8 Q That's what you were planning to do at that
9 time.

10 A That's what QLT was intending to do at the
11 time under institutional management.

12 Q Is it fair to state that present plan by QLT
13 for its makai lands just below this Project are fairly
14 similar to the Kamakana Villages Project?

15 A I couldn't say because we don't have a final
16 plan. We have concepts.

17 Q Would it include commercial?

18 A Yes.

19 Q Would it include relying on the transit
20 stations for the Transit-Oriented Development?

21 A I couldn't say at this point.

22 Q Would it include park space?

23 A Yes.

24 Q Would it include affordable housing?

25 A Perhaps.

1 Q That's required by the county.

2 A Under the current entitlements it is not
3 unless we were to build, I think, hotels, a number of
4 tourism-related jobs under the current entitlements.
5 But, again, we plan to obtain new entitlements. So it
6 really depends on what we plan and propose to do on
7 those lands.

8 Q Is it fair to state that you will lose some
9 residential at least in that new plan?

10 A I don't know at this point in time because
11 residential development would infer a fee sale.

12 Q At what point in time does QLT intend to
13 build what was called in your 1991 LUC approval the
14 Queen Lili'uokalani Boulevard, which I think is now
15 called the Trust Makala Boulevard?

16 A Again, it depends on the way our land plan
17 evolves. But I could not say at this point in time.

18 Q How much of the proposed commercial zoned
19 area is now developed? What percentage about?

20 A Let's see, I think it was originally
21 300 acres and we have 50 that's actually not entirely
22 developed. But we have 50 acres that are subdivided
23 of that urban Phase I parcel.

24 Q So maybe about 1/6th of the property is
25 developed?

1 A Thereabouts.

2 Q That was off of urbanization that was done
3 20 years ago now.

4 A Correct.

5 Q When does the Trust anticipate moving
6 forward on that project?

7 A Again, we need to clarify entitlements. And
8 again it will depend on market conditions.

9 Q There's an exemption in the county
10 concurrency ordinance that relates to commercial
11 development. And that would be in section 25-2-46
12 where it says that, "Where the council determines the
13 project will reduce regional traffic congestion by
14 providing the necessary commercial or light industrial
15 opportunities to serve an area where there's a
16 shortage of available space zoned for such uses and
17 substantial residential development has already been
18 approved." This is one of the exemptions from
19 performing area mitigation.

20 Does the QLT intend to take advantage of
21 this exemption from area mitigation in developing its
22 commercial project?

23 A Again, Mr. Lim, absent a final plan I could
24 not say.

25 Q But it's possible.

1 A Anything's possible at this point.

2 Q I would assume if the QLT decided to build
3 at least two times the number of affordable housing in
4 your project, that you would also maybe take advantage
5 of the exemptions from performing area --

6 MR. KUDO: Objection. I think the counsel's
7 question calls for speculation. We have no such
8 proposal before this Commission or anybody.

9 He can create any hypothetical he wants and
10 ask what conditions we would be willing to accept
11 based on that. I mean where is the counsel leading
12 this?

13 MR. LIM: I'm just trying to determine
14 whether QLT has a principal objection to the use of
15 any of these exemptions from area traffic mitigation.
16 Because they've said that about us. I wanted to see
17 if they were willing to give that up, if that's what
18 their position is.

19 CHAIRMAN DEVENS: I guess she can answer to
20 the extent she knows. But I think she's made it
21 pretty clear the plans they have aren't fixed yet.
22 But to the extent she knows.

23 Q (By Mr. Lim): With respect to the feedback
24 from the QLT on the traffic issues, do you recall
25 through your counsel receiving in about July 1, 2010 a

1 table from the Petitioner entitled "Assumptions for
2 future development, trip generation" with a request
3 for providing feedback on our traffic assumptions?

4 A If you could show me an example that might
5 refresh my memory.

6 Q Maybe we can just ask you generally. Have
7 you received any communications from the Petitioner
8 requesting information on the future trip generation
9 for the QLT project for use in its TIAR?

10 A Have I ever received any direct
11 communication from the Petitioner requesting that
12 information? Is that your question?

13 Q That's correct.

14 A I do not believe so. I did get a call from
15 our civil engineering firm saying they had been asked
16 to provide that information. And we instructed them
17 to have the inquiring party contact us directly.

18 Q I'm going to show you a copy of a letter
19 dated July 1, 2010 from myself to your attorney Ben
20 Kudo, which states that "Enclosure 2 is a table
21 showing our assumptions on the residential/commercial
22 and light industrial developments and trip generations
23 for the QLT lands, the Villages at Lai'opua and
24 Kamakana Villages.

25 "Please let us know if our assumptions with

1 respect to QLT are appropriate. Your comments will
2 help ensure that the Department of Transportation has
3 all the information necessary for a thorough review of
4 the Kamakana Villages TIAR."

5 I'll show that to you now. Do you recall
6 that letter?

7 CHAIRMAN DEVENS: Mr. Lim, what's the
8 exhibit number on that?

9 MR. LIM: It's not an exhibit yet. I'll ask
10 if she can identify it.

11 THE WITNESS: I don't recall seeing this.
12 It may have been with my development manager.

13 Q One of the issues has been the improvements
14 that are required under the agreement with the state
15 on the purchase of the land.

16 You've raised that in some of the pleadings
17 that you've filed recently. What is it that the QLT
18 wants to see on Palani Road in terms of road
19 improvements?

20 A I couldn't say at this time. Again, we're
21 having difficulty in reviewing the TIAR and the
22 impacts this Project will have on Palani Road.

23 Q Do you think that the State Department of
24 Transportation is going to give the Kamakana Villages
25 TIAR special treatment so they don't have to do some

1 of the area mitigation or regional traffic
2 improvements?

3 A I don't know how to answer that question.
4 Is that my personal opinion?

5 Q Yes, whatever.

6 A I would say no, not at that point in time.

7 Q Is part of the concern by QLT regarding the
8 fair-share traffic improvements based upon the fact
9 that the lands around you are state lands, some of
10 them are DHHL lands?

11 A Yes.

12 Q Why is that?

13 A 'Cause DHHL is not required to mitigate.

14 Q And who said that?

15 A That's our understanding.

16 Q You don't know that for sure. Has DOT told
17 you that?

18 A No.

19 Q This is just something you think is
20 happening.

21 A Correct.

22 Q So it could be that the State DOT would at
23 some point in time assess the traffic coming out of
24 the, I think it's the La'i'Opuia.

25 A I don't know. We're not privy to those

1 discussions.

2 Q Okay. You mentioned that QLT was worried
3 about a moratorium on development or occupancy of your
4 project. Is that because of the Level of Service on
5 the traffic going from D down to E or F?

6 A I don't think, you know -- I don't want to
7 answer it in those specific terms.

8 Q You can answer it however you want.

9 A I think, and I called it an effective
10 moratorium on development again because of the
11 financial considerations due to lack of mitigation by
12 others in the area.

13 Q So this is not a legal reason for having a
14 moratorium. It's just a financial reason that the
15 Trust has personally?

16 A It's just a choice of words.

17 Q So the Trust, when they come in for their
18 new project would agree they would be responsible to
19 fund or construct their fair-share of regional and --
20 let's call it state and county regional roadway
21 improvements?

22 A Yes.

23 Q And you're not aware that Kamakana Villages
24 is getting any special deal on that.

25 A A special deal with whom? I'm sure --

1 Q With the state or the county.

2 A -- not that I'm aware of.

3 Q With the state or the county?

4 A Not that I'm aware of.

5 MR. LIM: No further questions.

6 CHAIRMAN DEVENS: Mr. Iha, do you have any
7 questions?

8 MR. IHA: No, Mr. Chair.

9 CHAIRMAN DEVENS: County?

10 MR. BRILHANTE: No, Mr. Chair.

11 CHAIRMAN DEVENS: Mr. Yee.

12 CROSS-EXAMINATION

13 BY MR. YEE:

14 Q You testified -- if I heard you correctly
15 you testified about the possible impacts to QLT if QLT
16 was required to pay for mitigation which should be
17 borne by Forest City, correct?

18 A Others in the area, yes.

19 Q Or others. And others in the area?

20 A Mm-hmm.

21 Q I think you testified if there were no
22 negative impacts QLT would have no opposition to the
23 petition. Or let me ask the question: If there were
24 no negative impacts to QLT would QLT have any
25 objections to the petition?

1 A We are concerned about the community at
2 large, not just QLT. So if there are negative impacts
3 to the community at large we perhaps might have some
4 opposition to the project.

5 Q Do you have or have you expressed in your
6 testimony today community impacts, negative community
7 impacts from this petition?

8 A Again, the traffic concerns. We all
9 traverse these county and state roads.

10 Q Okay. I just need to figure out are you
11 testifying that QLT will have to bear the cost of
12 mitigation that should be borne by Forest City? Or is
13 that assumption you make and then now tell us what the
14 impacts are? Do you understand the question?

15 A No, I do not.

16 Q Clearly you testified that if QLT had to
17 bear these costs the following negative impacts would
18 occur, right?

19 A On QLT.

20 Q On QLT, right?

21 A Correct.

22 Q Okay. I'm asking the next question of: Are
23 you testifying that QLT is going to have to bear these
24 costs? Or is that just the assumption you're making
25 and then explaining what the impacts are if that

1 assumption were true?

2 A If we were to choose to make these lands
3 leasable, we are assuming that we may have to pick up
4 some of that burden, yes.

5 Q Okay. So I'm going to make a statement and
6 ask you if I have understood you correctly. So then
7 you're not determining or opining that QLT is going to
8 have to bear these costs which should have been borne
9 by Forest City.

10 You're saying -- you're just assuming that
11 then explaining what the negative impacts to QLT would
12 be if that occurred, is that correct?

13 MR. KUDO: You know I think what the counsel
14 is getting at is, you know, the reason we're before
15 this Commission is expressing a concern or fear about
16 the future. I don't think she's saying for certain
17 that we're going to pick up that cost. But it's a
18 concern of ours.

19 That's why we're intervening because we
20 don't know what you all are going to do, what the
21 county's going to do with regard to the exemptions. I
22 don't think we're saying right now we're going to have
23 that but it's a concern.

24 CHAIRMAN DEVENS: I understand. I think
25 Mr. Yee's question was merely whether or not he was

1 reciting what she had said as being accurate or not.
2 You can answer if it was accurate or not.

3 THE WITNESS: Can you repeat it, please.

4 Q (By Mr. Yee): Okay. If I understood your
5 testimony correctly, you are not opining today that
6 QLT is going to bear the cost, these mitigation costs
7 which should be borne by Forest City.

8 You are, instead, saying that if these costs
9 have to be borne by QLT, then there are a variety of
10 negative impacts to QLT that will occur.

11 Is that a correct understanding of your
12 testimony?

13 A I think it may be a combination of both. It
14 just, it depends. Because we know a final decision
15 has not been rendered at this point. So it's going to
16 depend on what the outcome is.

17 Q In that case let me ask some questions about
18 whether or not QLT is going to have to bear mitigation
19 costs which ought to be borne by Forest City. And if
20 you don't know, certainly you can tell me if you don't
21 know. I'm proceeding because of your answer. So do
22 you understand where I'm going to be going with this,
23 the parameters of my questions?

24 A Not really, not really but you can go ahead.

25 Q Let me ask the question, make it clearer.

1 You're aware -- are you aware that the LUC is not
2 being asked to give any exemptions from any state
3 requirements?

4 A Yes.

5 Q And you're aware that there is a proposed
6 condition that QLT has agreed to which requires QLT to
7 pay for its fair-share of regional traffic
8 improvements upon state roadways?

9 A No, I'm not aware of that.

10 Q I'm sorry. I said QLT didn't I. Let me
11 rephrase that.

12 A I didn't think we were part of this deal.

13 Q My misstatement. (Laughter) You're aware
14 that -- are you aware that there's a condition
15 proposed by Petitioner that Petitioner will be paying
16 for the fair share of regional traffic improvements to
17 state roadways?

18 A I can't recall seeing that in OP's position.

19 Q Okay. I assume you would be in favor of that
20 condition.

21 A Yes.

22 Q If that condition is imposed in the Decision
23 and Order, what other mitigation costs would be borne
24 by QLT that should be paid for by Forest City within
25 the jurisdiction of this Commission?

1 A Our concern is the flaws in the TIAR.

2 Q Okay. So because the TIAR is flawed you
3 don't know what the final Memorandum of Agreement is
4 going to be.

5 A Correct.

6 Q And because you don't know you're concerned
7 that the final decision may be wrong and QLT would
8 have to bear some costs that it shouldn't have to pay
9 for. Is that correct?

10 A Yes.

11 Q Then here's my question. Who's going to
12 require you to pay for traffic improvements that are
13 not caused by QLT?

14 A Again, as I mentioned earlier, from a
15 practical standpoint to bring any kind of project on
16 board absent mitigation by another party, we would
17 likely be required to do that to bring our project on
18 board.

19 Q By whom?

20 A Whichever agency that has jurisdiction.

21 Q And I'm a little perplexed because I'm not
22 quite sure why the LUC or the State Department of
23 Transportation would require QLT to pay for traffic
24 improvements that are not caused by -- or to pay to
25 resolve problems that are not caused by QLT. Do you

1 have any other answer other than the one you've given?

2 CHAIRMAN DEVENS: I think it's getting
3 argumentative already. She's answered the question
4 the best she can.

5 MR. YEE: All right. Thank you.

6 CHAIRMAN DEVENS: Unless you want to add
7 something to that?

8 THE WITNESS: No, I choose not to. Thank
9 you.

10 MR. YEE: I think that's fine. We have no
11 further questions.

12 CHAIRMAN DEVENS: Commissioners?
13 Commissioner Kanuha.

14 COMMISSIONER KANUHA: Thank you,
15 Mr. Chairman. LeeAnn, can you tell us a little bit
16 more about the working plans that QLT has? You
17 mentioned several times that you're working on
18 something. I think you also mentioned preparation of
19 a new EIS.

20 THE WITNESS: That's correct.

21 COMMISSIONER KANUHA: How long have you been
22 doing it and when do you expect something to happen?

23 THE WITNESS: We have actually been working
24 on this since 2002 when we came on board, when we took
25 our assets back from First Hawaiian Bank.

1 Again, we're a small trust. We have been
2 sidetracked by different kinds of projects. The last
3 eight to 10 months we have been working -- I've had
4 one staff member working on almost full time on Ane
5 Keohokalole Highway with multiple memorandums of
6 agreement; with archaeological studies, with cultural
7 consultations, that sort of thing.

8 So we are back on track. We understand
9 what's going on around us. So we have begun planning
10 in earnest again. We probably initiated some of those
11 meetings in May.

12 We've brought some new consultants on board,
13 one of them being Mr. Boud, who testified earlier,
14 who's doing some general market studies for us to get
15 an idea of where we should be heading with these
16 concepts.

17 We can't just build what we think this
18 market needs. We need to build to demand. So we are
19 in that process. And we have retained a consultant to
20 begin working on the EIS prep notice.

21 COMMISSIONER KANUHA: So when do you expect
22 something to come out of all of this?

23 THE WITNESS: Our hope, again, absent
24 another U-turn or left turn, is sometime in the first
25 quarter of 2011.

1 COMMISSIONER KANUHA: You also indicated
2 that of the 300 acres that were urbanized that at
3 present only 50 acres --

4 THE WITNESS: It's 49.9, yes.

5 COMMISSIONER KANUHA: -- have been
6 developed.

7 THE WITNESS: Yeah.

8 COMMISSIONER KANUHA: Okay. Thank you.
9 That's all the questions I have.

10 CHAIRMAN DEVENS: Commissioner Lezy.

11 COMMISSIONER LEZY: Thank you, Chair. Good
12 afternoon, Ms. Crabbe. Thank you for your testimony.
13 A few questions for you, one that just came to mind as
14 you answered Commissioner Kanuha's question. You had
15 mentioned that Mr. Boud, apparently in addition to his
16 work on your involvement, on QLT's involvement with
17 this petition, is providing consulting services in
18 connection with your own development plans, correct?

19 THE WITNESS: Correct.

20 COMMISSIONER LEZY: I'm wondering what kind
21 of market concepts has he suggested to you folks at
22 this juncture would be appropriate for your lands?

23 THE WITNESS: They're still very broad, and
24 without giving away any kind of competitive edge on
25 some of the key elements and economic drivers within,

1 I will acknowledge that residential is on the table
2 and is being looked at.

3 And, again, as a Native Hawaiian trust
4 that's very reticent in selling land, we have to
5 seriously consider that and discuss that with our
6 leadership team.

7 COMMISSIONER LEZY: What type of residential
8 development is he suggesting?

9 THE WITNESS: It's very broad. Again, as he
10 mentioned, I think there's a demand for 7 to 10,000
11 units. So he believes that demand is there in this
12 market. And because of who we are as a Native
13 Hawaiian trust we would focus, I think, on primary
14 housing. But we're still -- it's still very, very
15 early in the process for me to conjecture about what
16 product is going to be in the final plan.

17 COMMISSIONER LEZY: Okay. Then you had
18 testified earlier, I believe in connection with your
19 explanation of some of the concerns that the Trust
20 has, regarding the plans for Kamakana Villages.

21 And in particular I think you pointed out
22 that there were some concerns on the Trust's part that
23 may overlap with concerns that adjoining or adjacent
24 landowners have. Is that a fair characterization of
25 your testimony?

1 THE WITNESS: I don't recall saying anything
2 like that. If you can fill in the blanks for me a
3 little bit.

4 COMMISSIONER LEZY: I'm sorry. I thought
5 you had expressed that the Trust had some concerns
6 that the impacts that the Kamakana Villages may have
7 will impact not only the Trust but also adjacent
8 landowners.

9 THE WITNESS: And as us as the primary
10 adjacent landowners, we are above them, south and
11 below them.

12 COMMISSIONER LEZY: What other adjacent
13 landowners are in the area that the Trust at least
14 perceives may be impacted by this Petition Area
15 development?

16 THE WITNESS: State of Hawai'i Kealakehe is
17 to the north. South of us the Rapozas own some
18 property. There are -- there's a Cross-Roads Center.
19 And then north there are some other projected
20 developments. There's Lanihau, McClean and TSA and
21 the Kaloko Makai Project as well.

22 COMMISSIONER LEZY: And in light of the fact
23 that obviously the Trust has significant concerns
24 about these potential impacts, did the Trust ever meet
25 with any of these other landowners in an attempt to

1 share these concerns and perhaps bring the other
2 landowners into this process?

3 THE WITNESS: We have not had any formal
4 meetings. We have had casual conversations with some
5 of the other landowners. But that's been the extent
6 of it. We're not organizing any kind of opposition.

7 It's actually giving us a little bit of
8 heartburn to come out in opposition 'cause we're not
9 against affordable housing or job creation. We're
10 actually very pro that, based on the population that
11 we serve but we're just looking at the impacts.

12 COMMISSIONER LEZY: Do you have any
13 understanding of why none of the other adjacent
14 landowners have made a decision to join in these
15 proceedings?

16 THE WITNESS: I couldn't say.

17 COMMISSIONER LEZY: Or to express concerns?

18 THE WITNESS: I couldn't say. All I can
19 speak for is QLT. And this is not an inexpensive
20 venture for us. My guess might be maybe the cost and
21 the time consumption in this kind of an intervention
22 proceeding.

23 COMMISSIONER LEZY: Thank you very much.

24 THE WITNESS: Thank you.

25 CHAIRMAN DEVENS: Any other questions?

1 Commissioner Kanuha.

2 COMMISSIONER KANUHA: Thank you,
3 Mr. Chairman. LeeAnn, I knew there was something else
4 related to that last question I asked you about how
5 much of the 300 acres was developed. When those
6 50 acres that were developed, were developed were
7 there traffic mitigation requirements?

8 THE WITNESS: Yes, there were. We built
9 Makala Boulevard. On the mauka side it stops at Kmart
10 right now. We constructed Makala Boulevard down to
11 Kuakini Highway. And we also constructed Kuakini
12 Avenue which is from right now Palani Road over to
13 Makala.

14 COMMISSIONER KANUHA: In your opinion, then,
15 those were justifiable improvements as it related to
16 just the QLT lands.

17 THE WITNESS: Correct. If we don't get road
18 and sewer in we can't lease property.

19 COMMISSIONER KANUHA: Okay. Thank you.

20 CHAIRMAN DEVENS: Any other questions?
21 Ms. Crabbe, I had a question. You know, you make some
22 strong and important points with the testimony you've
23 given. I certainly understand and sympathize with the
24 concerns, at least the potential impact that could
25 happen.

1 If the Commission was inclined to deny the
2 Petition, what reasons or basis would you offer that
3 we could use to deny the petition? With the
4 understanding we are bound by this decision-making
5 criteria that we have to analyze and evaluate given
6 what we have in front of us.

7 THE WITNESS: My understanding is if you
8 were to deny the petition the Petitioner could reapply
9 in a 6 month period. And our recommendation or our
10 na'au tells us that six months is probably an adequate
11 amount of time for them to resolve the issues with the
12 TIAR and reach a Memorandum of Agreement with the
13 Department of Transportation on a fair-share
14 calculation.

15 CHAIRMAN DEVENS: Aside from the TIAR is
16 there anything else out there that gives you and the
17 Trust concern about the Project itself?

18 THE WITNESS: We've mentioned concerns about
19 density. I know our agency has been involved in
20 ho'oponopono and neighborhood resolution in the
21 Kapolei area. Our concern would be eventually because
22 of the density here, once the developer leaves town
23 that our agency may be called upon yet again to
24 resolve issues within a community that's maybe not the
25 best planned.

1 CHAIRMAN DEVENS: Thank you for your
2 testimony.

3 THE WITNESS: Mahalo.

4 CHAIRMAN DEVENS: Any other questions? Any
5 redirect.

6 MR. KUDO: No redirect.

7 CHAIRMAN DEVENS: Mr. Lim, you have any
8 further questions?

9 MR. LIM: Just a short set here.

10 CHAIRMAN DEVENS: Sure.

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

12 RECROSS EXAMINATION

13 BY MR. LIM:

14 Q You just said that "when the developer
15 leaves town". Is it your understanding the developer
16 would leave town after getting these approvals?

17 A Is it my understanding?

18 Q Yes.

19 A No. I'm saying when the project perhaps is
20 completed in the 18-year period.

21 Q After 18 years?

22 A Yes.

23 Q Following up on Commissioner Lezy's
24 question, is it true that QLT has chosen not to
25 participate in the Lai'opua 2020, your neighbor's

1 development plans?

2 A That is not true.

3 Q What have you done with them?

4 A We have attended a couple of their initial
5 meetings. At one point we had made a decision to
6 site our Kona unit at the center. After discussion
7 with our staff they wanted to remain in Keahuolu.

8 And we honored that choice by our agency
9 staff. Meetings have been called with some short
10 notice. And because I'm based on O'ahu I've not
11 always been able to attend their meetings with the
12 notice given.

13 Q When is the last time you attended a meeting
14 with Lai'opua 2020?

15 A I do not recall.

16 Q Is it true that QLT chose not to comment on
17 the EIS prep notice or the Draft EIS for the Kamakana
18 Villages Project?

19 A I do not believe that is true.

20 Q You're saying that you did write a comment
21 letter in?

22 A I believe we did, yes.

23 Q If I were to tell you that you wrote in a
24 short letter responding to a pre-application letter,
25 but did not make any formal comments to the Draft EIS,

1 would that be correct?

2 A I could not say at this point. I do not
3 recall.

4 Q At that point in time you did receive notice
5 of the EIS, correct?

6 A The EIS for the, for the, that HHFDC
7 performed?

8 Q That's correct.

9 A Yes.

10 Q And that project was -- was that project
11 similar in scope to the present Project?

12 A It's been a while since I've reviewed that
13 EIS.

14 Q Did it involve at least a thousand units and
15 a large amount of commercial?

16 A Yes, I believe there are three different
17 concepts presented.

18 Q So essentially the same -- I guess you've
19 answered the question. Other than the fears by QLT
20 that somehow the Kamakana Villages Project would be
21 exempt from some requirement or other that would then
22 end up costing the QLT money, and other than any
23 competitive disadvantage, what else would cause QLT to
24 spend more money than you would normally have to do?

25 A I don't recall us mentioning a competitive

1 disadvantage.

2 Q Did you think your proposed project would
3 not be in competition with Kamakana Villages?

4 A I don't know what our proposed project is.
5 As I mentioned we're still in the conceptual stages.

6 Q I see. You're within the Kona CDP area
7 where they've got relatively set what they call
8 Transit-Oriented Development nodes?

9 A Yes.

10 Q You're in the same node as Kamakana
11 Villages.

12 A We are actually in two nodes.

13 Q Is it adjacent to each other?

14 A No. One is makai.

15 Q What about the project that is immediately
16 makai of the mid-level road? Is that within the same
17 TOD node?

18 A Which project would that be? You mean our
19 lands makai of Ane Keohokalole Highway?

20 Q That's correct. And above between Queen K.
21 Highway.

22 A Yes, that's my understanding.

23 Q That's the same TOD.

24 A Yes.

25 Q Like Kamakana Villages you would have to be

1 consistent with your project plan with the Kona CDP.

2 A Yes.

3 MR. LIM: No further questions.

4 CHAIRMAN DEVENS: Mr. Iha.

5 MR. IHA: No questions, Mr. Chair.

6 CHAIRMAN DEVENS: County, OP, any further
7 questions.

8 MR. BRILHANTE: No.

9 MR. YEE: No questions.

10 CHAIRMAN DEVENS: Mr. Kudo? This is your
11 last witness. You rest at this point?

12 MR. KUDO: Yes.

13 CHAIRMAN DEVENS: Why don't we take a short
14 break. We've been going over an hour. Then we'll
15 start out with Mr. Lim, your rebuttal witness.

16 MR. LIM: Thank you.

17 (Recess was held 3:45)

18 CHAIRMAN DEVENS: We're back on the record.
19 Just before the break QLT had called their last
20 witness and has rested. Petitioner, do you have a
21 rebuttal witness that you want to call?

22 MR. LIM: Thank you, Mr. Chairman, members
23 of the Commission. We have just one rebuttal witness.
24 I would call now Sohrab Rashid from Fehr & Peers, a
25 traffic engineer.

1 CHAIRMAN DEVENS: Sir, if we could swear you
2 in.

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

6 THE WITNESS: Yes, I do.

7 CHAIRMAN DEVENS: If you can state your name
8 and address for the record.

9 THE WITNESS: Sure. Sohrab Rashid.

10 CHAIRMAN DEVENS: Thank you. Mr. Lim.

11 MR. LIM: Mr. Rashid has been stipulated as
12 an expert in traffic engineering analysis. His
13 exhibits are his CV is Exhibit 75 and his direct
14 written testimony is Exhibit 76 for the Petitioner.
15 I'll cut short a lot of that and essentially --

16 DIRECT EXAMINATION

17 BY MR. LIM:

18 Q Sohrab, what were you retained to do in this
19 matter?

20 A We were retained to peer review the TIAR
21 prepared by Randy Okaneku, basically to review it in
22 terms of consistency with industry, agency standards
23 for here on the Big Island. We looked at key
24 assumptions including trip generation, trip
25 distribution. In fact, in one case we actually did a

1 separate analysis to verify some of the assumptions
2 that Mr. Okaneku had completed in his study.

3 We also looked at basically reasonable
4 roadway operations under existing and future
5 conditions in general. If we saw Queen Ka'ahumanu
6 Highway and Palani Road at Level of Service A in 2029
7 I think we would have had a concern.

8 And we also looked to make sure that the
9 mitigation proposed was reasonable and expected based
10 on those conditions.

11 Q You've had other past experience with
12 traffic reports in the area, is that true?

13 A That's true. That's true. Our firm has
14 completed -- we actually completed the Transportation
15 Impact Analysis Report, TIAR for the Kamakana Villages
16 Project, completed that in 2007 which was used in the
17 subsequent EIS. We also performed the traffic work
18 for the Ane K. Highway, the mid-level road.

19 Q That's for the county.

20 A For the county, right.

21 Q Does the Okaneku TIAR include any trip
22 reduction assumptions in light of the fact that the
23 Project is a mixed-use Project?

24 A Not specifically. What Mr. Okaneku did was
25 assign trips from the residential portions of the

1 Project to the commercial portions but did not take an
2 overall trip reduction or trip internalization. Nor
3 did he take one for future transit use.

4 Q What types of reductions in trip generations
5 might that have generated?

6 A I'm sorry, can you re --

7 Q What percentage were those trip generations
8 going to go down by?

9 A The analysis that we did, it's in my written
10 testimony so I won't provide all the details, but on
11 the order of somewhere between 10 and 15 percent. I
12 think the numbers we had were 11 and 13 in the peak
13 hours and about 14 percent over all.

14 Q So you reviewed the methodology, the
15 assumptions that Mr. Okaneku used in his TIAR.

16 A Correct.

17 Q Was that determination consistent with that
18 used by traffic engineers generally?

19 A Yes, it is.

20 Q The TIAR by Mr. Okaneku also proposed
21 traffic mitigation measures. Are you familiar with
22 those?

23 A Yes, I am in a general sense.

24 Q When you compared the Okaneku TIAR that's
25 been in discussion here, versus the TIAR that was your

1 TIAR that was attached to the Final EIS, what were
2 your findings on that comparison?

3 A The findings were generally what we would
4 have expected. I did sort of select comparisons at
5 certain intersections from a traffic volume
6 standpoint. When we looked at the comparison of kind
7 of overall growth projected, overall the mitigation
8 measures -- the results of the mitigations measures
9 where higher, in other words there were more, more
10 mitigation required in Mr. Okaneku's study. And that
11 made sense.

12 One of the examples would be Queen
13 Ka'ahumanu Highway where we did not have any
14 additional lanes recommended at several intersections
15 and in Randy's study he recommended additional lanes
16 at a couple locations.

17 In one particular case, I believe it was Ane
18 Keohokalole and Palani, we actually recommended an
19 additional turn lane based on the previous study that
20 we conducted because of the future volume. So those
21 are the kind of modifications we suggested.

22 Q You were sitting here listening to Mr. Niiya
23 for the QLT's traffic engineer.

24 A Yes.

25 Q You heard him go through a series of

1 inconsistencies in Mr. Okaneku's report.

2 A Yes.

3 Q Can you comment on your analysis of those
4 inconsistencies that they raised?

5 A Sure. I think -- I think there have been
6 several words used to describe the issues. One is
7 error, one is inconsistencies, discrepancies. I think
8 there are several locations, intersection locations
9 where, as Mr. Niiya and was previously pointed out I
10 believe in the last set of meetings, where the volumes
11 are incorrect. And those intersections need to be
12 rerun, essentially, in order to finalize the analysis.

13 There are other situations where there are
14 what appear to be inconsistencies but, in fact, are
15 not. And, you know, for example, there's the issue of
16 this discussion of the gravity model.

17 One of the things that Mr. Okaneku -- he
18 described it in his traffic study, probably could have
19 elaborated on it a little bit more -- is basically the
20 fact when you put a project of this size into an area
21 it's going to change travel patterns substantially. I
22 don't think anybody would argue with that. His study
23 reflects that.

24 What you can't do, however, in this case is
25 sort of take a simplified approach of looking at the

1 no-project volumes and the with-project volumes and
2 expect to subtract those and get exactly the project
3 trips. It's just not possible in this case.

4 I just want to elaborate one more thing.
5 Typically with a project of this size and in general
6 what we'd like to do is have a computer travel demand
7 model that provides the redistribution of those trips.
8 That wasn't available in this case.

9 There's one currently being developed for
10 the Long-range Land Transportation Plan for the Island
11 of Hawai'i. So in this case Mr. Okaneku did it
12 essentially manually.

13 Q But, again, applying the gravity model and
14 showing the change in trips distribution once the
15 project was in place, in this case did any of the
16 inconsistencies that you reviewed or you heard
17 discussed today by Mr. Niiya, affect your opinion on
18 the TIAR that Mr. Okaneku did?

19 A In a general sense no. In other words, the
20 findings and the proposed mitigation would generally
21 be the same. Again, we sort of had an independent
22 comparison, if you will, with our previous study
23 compared to what he's proposing.

24 I can't say for sure at one specific
25 intersection there may need to be an additional lane,

1 for example. But over all in terms of the order of
2 magnitude that we would expect for impacts in
3 mitigations I think his study is generally complete
4 and accurate.

5 MR. LIM: No further questions.

6 CHAIRMAN DEVENS: County, any questions for
7 this witness?

8 MR. BRILHANTE: No.

9 CHAIRMAN DEVENS: OP?

10 MR. YEE: No questions.

11 CHAIRMAN DEVENS: Mr. Kudo.

12 CROSS-EXAMINATION

13 BY MR. KUDO:

14 Q Mr. Rashid, if you say that this TIAR is --
15 how did you describe it in acceptable form?

16 A No, I did not. I said once the corrections
17 are made to the errors that I described and some
18 additional explanation of the discrepancies provided
19 that I believe it would be -- it would be in a
20 condition where it could be acceptable to the state.

21 Q You mentioned the gravity model. And I
22 think you said that it was mentioned in the study or
23 described. Can you tell us where that is?

24 A Yeah. I don't know if I said this. On Page
25 39 and on subsequent pages there is a reference to how

1 the trips were assigned. If you'll just give me a
2 second I can read where that is. So Mr. Okaneku did
3 not use the term "gravity model". But he effectively
4 used that method. So at the bottom of Page 49 when he
5 talks about the year 2014 peak hour traffic
6 assignment, and I believe he uses the same text in
7 subsequent sections, he talks about the year 2014 AM
8 and PM peak hour site generated traffic --

9 MS. ERICKSON: Could you slow down, please.

10 THE WITNESS: I'm sorry. I apologize. The
11 year 2014 AM/PM peak hour site generated traffic
12 assignments were developed based upon existing traffic
13 circulation patterns within the Kealakehe area and
14 anticipated patterns resulting from future roadways
15 and destinations within, continued on the next page,
16 the study area.

17 So that is effectively what he's talking
18 about in terms of using the gravity model.

19 Q (By Mr. Kudo) But isn't the gravity model
20 based on a statistical theory?

21 A Yes.

22 Q Isn't it true that the gravity model is
23 based on the base theorem of statistics, probability?

24 A In general, yes. I think we're using that
25 term here has an approach, not a specific use of the

1 gravity model.

2 Q Isn't it true that the gravity model has a
3 friction coefficient that's applied when you take
4 trips generated from one point that's absorbed by
5 another point and those friction coefficients affect
6 the amount of trips that actually reach a particular
7 point?

8 A Regarding the theory that is correct, yes.

9 Q And where in this particular reference that
10 you've given on Page 49 does it describe that? 'Cause
11 the way I read it it just says he's using existing
12 traffic circulation patterns.

13 A And anticipating patterns resulting from
14 future roadways and destinations. In other words,
15 once you put in future destinations, for example, the
16 commercial in this Project, that's going to change
17 where existing and even future vehicles will travel to
18 and from.

19 Q But isn't that true of a market or regional
20 study analysis that typically is done by traffic
21 engineers, that you anticipate where trips are going
22 to be going using existing traffic patterns,
23 circulation patterns?

24 A Can you rephrase the question, I'm sorry,
25 again?

1 Q What makes this particular statement that
2 you said "anticipated patterns" which I guess gives
3 you the impression that he's describing the gravity
4 model. Isn't it true that most traffic engineers
5 anticipate or project forward where traffic is going
6 and movements? I mean as a general course without the
7 gravity model being used?

8 A If we were looking at a very small project,
9 you could probably look at existing travel patterns
10 and base your trip assignment from your project on
11 that.

12 In the case of -- on the order of, what,
13 2330 dwelling units 200,000 square feet of commercial
14 in 2029, you're going to -- patterns will change
15 substantially. You can't just take existing patterns
16 and do that.

17 That's what we has quoted here is using,
18 looking at existing patterns and looking at future
19 patterns as well. I think that's consistent with how
20 studies would be done.

21 If he had done this with a computerized
22 model that's exactly what the model would have done.
23 Would reassign traffic based on future destinations
24 and roadways.

25 Q When you do TIARs do you normally omit

1 descriptions in there with regard to methodology or
2 models that you're using or even assumptions?

3 A I think the answer is no we don't.

4 Q What methodology is Mr. Okaneku using in
5 this report? What methodology of traffic analysis is
6 he using in this report? We know he's using the
7 gravity model to determine distribution patterns. But
8 what methodology is he using for traffic impact
9 analysis?

10 A I think he's using the standard impact
11 analysis. I want to be clear about the use of the
12 term 'gravity model'. That is a description of
13 normally what a computerized model does.

14 In this particular case Mr. Okaneku
15 essentially manually reassigned trips between
16 different destinations.

17 Q But did he use a methodology, method of
18 analysis in analyzing the traffic impacts?

19 A I'm not sure I understand the question. I
20 think he used engineering judgment to complete what he
21 did, which is all you could do without a computer
22 model in this case.

23 Q Okay. Because in your testimony in answer
24 to, I think that was question 25 line 11 and 12, page
25 10 you say "The analysis appears to include a

1 market-based analysis."

2 A The very -- Question 25 in my written
3 testimony?

4 Q Yes.

5 A That's in reference to the QLT TIAR, not the
6 Kamakana Villages' TIAR.

7 Q I stand corrected. Did you see anywhere in
8 Mr. Okaneku's report where or what type of method he
9 was using for his analysis, his traffic analysis?

10 A There's no description of the method. He
11 documents the future roadways he includes in the TIAR
12 in terms of his future study scenarios. He describes
13 the future land uses. He mentions a growth factor.
14 So he describes essentially how he comes to develop
15 his future conditions through that information.

16 Q Do you have his TIAR report in front of you?

17 A I do.

18 Q If you turn to Page 17.

19 A Yes.

20 Q If you look at paragraph roman numeral IV,
21 subparagraph A "regional development." And he
22 describes in there the type of analysis or approach
23 that he used.

24 A Yes.

25 Q Do you see that?

1 A Yes.

2 Q "The future development in the region
3 between the Kona International Airport and Keahuolu
4 Village was analyzed by Hallstrom and Associates." Do
5 you see that?

6 A I do.

7 Q That paragraph, does that describe the
8 particular methodology that Mr. Okaneku used?

9 A Again, you're asking for a name of a
10 methodology. I think what traffic engineers and
11 transportation planners do is they make assumptions
12 based on future land use.

13 Q Okay.

14 A And in this particular case from what I
15 understand in speaking with Mr. Okaneku about this, is
16 that he made some assumptions -- and again he's doing
17 this in consultation with DOT, direction from DOT.
18 And they are determining what future land use
19 absorption might be.

20 And the Hallstrom Study I believe assisted
21 him with that process. Then he uses those land uses
22 to develop future traffic projections.

23 Q Okay. In your testimony you were looking at
24 the QLT TIAR in which I guess it was you referred to
25 the term "market-based analysis."

1 A Correct.

2 Q Okay. Mr. Sniffen, who is the State
3 Department of Transportation representative, testified
4 before this Commission in his written testimony before
5 this Commission, used rational market or regional
6 market analysis as a methodology that was acceptable
7 to DOT.

8 Is Mr. Okaneku using the regional market
9 analysis in his study or you don't know?

10 A Well, first of all, I've heard the term
11 regional market analysis used a couple different ways
12 what Mr. Okaneku is doing is taking a -- using
13 market-based assumptions to project future land uses.

14 So he looked at -- my understanding is in
15 consultation with the report, looked at future
16 residential, looked at the commensurate amount of
17 commercial that would be absorbed, and then
18 distributed that kind of through the study area and
19 then based on that developed traffic projections.

20 That's a very reasonable thing to do.
21 Again, if a model was available that information would
22 be in the model.

23 Q Do you normally, when you do that type of
24 report, rely on a market study, a regional market
25 study? Or how do you get that information?

1 A Most of the time it's through socio-economic
2 forecasts provided by the particular agency whether --
3 usually it's at the state level, but it's reduced at
4 the county level.

5 Q In this case Mr. Okaneku relied on the
6 Hallstrom and Associates Study. Have you reviewed
7 that study?

8 A I have not, no. I've reviewed the
9 assumptions that Randy used based on that study but
10 not that study in particular.

11 Q If Mr. Okaneku relied on that study to
12 provide him information about what was going on in
13 terms of land uses around the project, but that study
14 contained none of that, do you know how Mr. Okaneku
15 came up with his assumptions of the land uses as you
16 say and the trips generated by the surrounding land
17 uses?

18 A Yeah. There were really two pieces to the
19 future forecast. Again, you've cited Page 17. That's
20 exactly where it's listed.

21 He assumed a half percent a year growth,
22 factor for essentially regional growth which is just
23 sort of generic, if you will, but his counts for
24 growth inside and outside the general Kona area.

25 Then he also took specific projects and

1 assumed a certain level of absorption, a certain
2 number of employees per thousand residents as an
3 example. Then again based the forecasts on that.

4 MR. KUDO: Okay. No further questions.

5 CHAIRMAN DEVENS: Any questions,
6 Commissioners? Commissioner Heller.

7 COMMISSIONER HELLER: Yes. I think you said
8 in implementing the gavity method Mr. Okaneku took the
9 trip data, and I think your words were, reassigned
10 trips using engineering judgment. Is that another way
11 of saying using subjective judgment as opposed to a
12 mathematical formula?

13 THE WITNESS: Yes. Which is a fundamental
14 part of a traffic study if you don't have a computer
15 model. That's correct.

16 COMMISSIONER HELLER: And in your view is
17 the preferable way to do it to have a computer model?

18 THE WITNESS: Ideally, would, yes.

19 COMMISSIONER HELLER: But what was actually
20 done in this case was the process of making subjective
21 adjustments?

22 THE WITNESS: That's correct. But I want to
23 be clear that a traffic model of that magnitude -- you
24 would not develop a traffic model for the West Hawai'i
25 area as part of an individual study.

1 It's sort of beyond the scope of an
2 individual study. It's usually done, again, at the
3 state or county level.

4 COMMISSIONER HELLER: And if subjective
5 adjustments are being made, is it also fair to say a
6 different traffic engineer looking at the same set of
7 data might have come up with different adjustments?

8 THE WITNESS: Yes.

9 COMMISSIONER HELLER: That's all.

10 CHAIRMAN DEVENS: Any other questions?
11 Mr. Lim, do you have any follow up questions?

12 MR. LIM: No questions.

13 CHAIRMAN DEVENS: Any other questions from
14 the parties? Hearing none, is that your last witness?

15 MR. LIM: That's our last witness. And we
16 rest. Thank you.

17 CHAIRMAN DEVENS: Given that the parties
18 have now completed their presentations and have
19 rested, the evidentiary portion of this proceeding
20 will now be declared closed.

21 As all of the parties are aware, this is an
22 expedited Chapter 201H hearing. Accordingly, we will
23 now move on to our argument. Each party will be given
24 15 minutes to present oral argument in support of its
25 position, in support of or opposition to the

1 Petitioner's proposed Decision and Order marked as
2 Petitioners's Exhibit 17, any proposals it has
3 regarding findings of fact, conclusions of law or
4 conditions. The Petitioner may reserve a portion of
5 this time for rebuttal.

6 At the conclusion for oral argument, and
7 after questions from the Commissioners, and the
8 answers thereto, the Commission will begin its
9 deliberations. Petitioner?

10 MR. KUDO: Mr. Chairman?

11 CHAIRMAN DEVENS: I'm sorry. Mr. Kudo.

12 MR. KUDO: Just a household thing. We have
13 the declaratory relief order that is still
14 outstanding, petition that's still outstanding. We
15 also have our oral Motion to Dismiss that's still
16 outstanding, one of the issues that probably is moot
17 at this point. But the other issue is still alive.
18 Is the Commission going to deal with that after
19 closing arguments? Or I just wanted to know.

20 CHAIRMAN DEVENS: The oral motion is...

21 MR. KUDO: We made an oral motion at the
22 outset the beginning of the hearings last, two weeks,
23 whenever it was.

24 CHAIRMAN DEVENS: Right.

25 MR. KUDO: We renewed the declaratory relief

1 issues and said we made a Motion to Dismiss the
2 proceeding based on the defective notice and the MOU
3 issue. And we also filed a Supplemental Memorandum in
4 Support of our Oral Motion. And that is still pending
5 before this Commission in this docket.

6 CHAIRMAN DEVENS: As far as the petition for
7 the dec order, that has to be scheduled. I don't know
8 if Mr. Davidson has scheduled that yet. I understand
9 that is under a separate docket.

10 MR. KUDO: That's a separate docket, right.

11 CHAIRMAN DEVENS: I guess we'll have to deal
12 with that separately. I guess it will be scheduled
13 when Mr. Davidson can schedule it. Let me look back
14 on that oral motion. Why don't we take a short break,
15 let me look at that. Thanks for raising that.

16 (Recess in place)

17 CHAIRMAN DEVENS: Back on the record.
18 Mr. Kudo, for my understanding can you just refresh my
19 memory and just clarify what the oral motion is that
20 you believe is still pending.

21 MR. KUDO: Okay. I'll read from the
22 transcript actually. This is the October 21st, 2010.
23 And this is, "As I indicated earlier our intent was to
24 file an oral motion anticipating that the declaratory
25 order would be deferred or otherwise denied.

1 "So we make a motion at this time in this
2 particular docket to find that this petition before
3 this Commission is defective for the two reasons
4 stated in our declaratory relief petition.

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

10 "Secondly, that the Notice of Intent failed
11 to meet the statutory requirements under this
12 Commission's rules and the state law that dictates
13 statewide and countywide publications.

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

20 And after that you deferred the motion.

21 CHAIRMAN DEVENS: And you were just reading
22 from the transcript.

23 MR. KUDO: Yes.

24 CHAIRMAN DEVENS: So the second issue it
25 seems that we did deal with that one by way of the in

1 limine arguments.

2 MR. KUDO: Yes, yes.

3 CHAIRMAN DEVENS: So would you agree that
4 that has been ruled upon in your oral motion?

5 MR. KUDO: That has been ruled upon, yes.

6 CHAIRMAN DEVENS: So the outstanding issue
7 would still be the first.

8 MR. KUDO: The first issue, yes.

9 CHAIRMAN DEVENS: Okay. I'm going to move at
10 this time to go into executive session just to confirm
11 our authorities and powers.

12 COMMISSIONER TEVES: Second.

13 CHAIRMAN DEVENS: Everyone in favor raise
14 your hand. Unanimous. So we'll take a short break.

15 (Executive session was held. 4:35)

16 CHAIRMAN DEVENS: (4:45) We're back on the
17 record. I agree, Mr. Kudo. I think we have to deal
18 with those matters before we go into closing argument
19 just to dispense with it one way or the other. Is
20 there any motion by the Commission? Commissioner
21 Heller.

22 COMMISSIONER HELLER: Yes. I'd like to make
23 a motion that we deny QLT's Motion to Dismiss
24 referring both to the oral motion made on October 21
25 and the written motion received on November 3rd, on

1 the grounds that as to the notice issue we've already
2 address that issue and decided it. As to the contract
3 issue we find that to be outside of our jurisdiction.

4 CHAIRMAN DEVENS: Is there a second?

5 COMMISSIONER JENCKS: Second.

6 CHAIRMAN DEVENS: Commissioner Jencks makes
7 the second. Any discussion? Hearing none, Dan take
8 the vote.

9 MR. DAVIDSON: Motion to deny QLT's Motion
10 to Dismiss with the grounds stated.

11 Commissioner Heller?

12 COMMISSIONER HELLER: Yes.

13 MR. DAVIDSON: Commissioner Jencks?

14 COMMISSIONER JENCKS: Yes.

15 MR. DAVIDSON: Commissioner Chock?

16 COMMISSIONER CHOCK: Yes.

17 MR. DAVIDSON: Commissioner Contrades?

18 COMMISSIONER CONTRADES: Yes.

19 MR. DAVIDSON: Commissioner Judge?

20 COMMISSIONER JUDGE: Yes.

21 MR. DAVIDSON: Commissioner Kanuha?

22 COMMISSIONER KANUHA: Yes.

23 MR. DAVIDSON: Commissioner Lezy?

24 COMMISSIONER LEZY: Yes.

25 MR. DAVIDSON: Commissioner Teves?

1 COMMISSIONER TEVES: Yes.

2 MR. DAVIDSON: Chair Devens?

3 CHAIRMAN DEVENS: Yes.

4 MR. DAVIDSON: Motion passes 9/0.

5 CHAIRMAN DEVENS: Actually I should have
6 asked the parties -- it's kind of late now and I
7 apologize for this. I just thought of it. Was there
8 anything else that the parties wanted to add to the
9 filings? I know that Mr. Kudo's filing came in
10 yesterday. I'm not even sure if all of you received
11 it. It was the written motion supplementing its oral
12 motion. Did the parties all receive that pleading?

13 MR. IHA: Yes, Mr. Chairman, we received it
14 late yesterday towards the end of the day.

15 MR. BRILHANTE: Likewise.

16 CHAIRMAN DEVENS: OP, did you receive a copy
17 of that?

18 MR. YEE: The Office of Planning went to get
19 a copy or got copy from the LUC.

20 CHAIRMAN DEVENS: Is there anything the
21 parties want to add to the record as far as...

22 MR. IHA: Yes, Mr. Chair. If we could just,
23 particularly because QLT has this pretty lengthy late
24 submission, we'd like to incorporate into the record
25 in this docket our Petitioner's November 1st

1 Supplemental Memorandum in Opposition to QLT's
2 Petition for Declaratory Order in the DR docket, just
3 to make the record more complete in this case.

4 CHAIRMAN DEVENS: I believe we incorporated
5 by reference when we took the in limine oral
6 arguments. Mr. Kudo, I don't know if that's your
7 recollection as well.

8 MR. KUDO: (Nodding head).

9 CHAIRMAN DEVENS: I assume none of the
10 parties have an objection to that offer. Anything
11 else the parties want to add to this matter?

12 MR. YEE: Nothing from OP.

13 CHAIRMAN DEVENS: Okay. Thank you.
14 Petitioner, did you want to reserve any part of your
15 time for rebuttal?

16 MR. LIM: Yes, we'd like to reserve five
17 minutes for rebuttal. I'm going to have Mr. Iha start
18 out with the presentation. I will conclude in the
19 first 15 minutes and reserve the last five minutes.

20 We'd like to make it clear that we will be
21 referring to the proposed Decision and Order that was
22 filed by Petitioner on November 3rd, 2010 at 3:55 p.m
23 that is the updated version of the proposed Decision
24 and Order that we'll be working off.

25 CHAIRMAN DEVENS: Very well. You can start

1 whenever you're ready.

2 MR. IHA: Thank you, Mr. Chair. I'll give
3 some very brief introductory remarks before I yield to
4 Mr. Lim. I think that it's come out in these
5 hearings, and particularly with the public testimony,
6 is that there are many needs in a community. But the
7 development of affordable housing serves a very
8 important public purpose.

9 In fact, an entire statutory scheme is
10 devoted to promoting the development of affordable
11 housing, which is HRS 201H.

12 Yet I think, as one member of the public
13 testified earlier, there are many obstacles to
14 developing affordable housing. Perhaps these are cost
15 concerns, perhaps even some skepticism, disappointment
16 generated by earlier projects in the past.

17 But I think, as Stan Fujimoto stated in his
18 undisputed written testimony, this particular project
19 is a culmination of years of planning by HHFDC and its
20 predecessor agency HCDCH and HFDC. This is an HHFDC
21 project.

22 Forest City Hawai'i has a development
23 agreement with HHFDC to be the master developer of
24 this Project. Forest City Hawai'i was the successful
25 offeror to requests for proposals issued by HHFDC in

1 which a number of criteria were considered including
2 the developer qualifications, the maximum number of
3 affordable units, livability, feasibility of the
4 project, the range and mix of proposed affordable
5 units.

6 And after this lengthy vetting process HHFDC
7 and its board of directors determined that Forest City
8 Hawai'i was the most qualified developer to build the
9 project on this site.

10 I think with that background with the
11 state's involvement established I'd like to defer to
12 Mr. Lim on more specifics.

13 CHAIRMAN DEVENS: Thank you.

14 MR. LIM: Thank you, Mr. Chairman. I'll try
15 to be brief. The HHFDC and Forest City Hawai'i Kona
16 LLC would like to thank the Commission, the staff and
17 other parties and especially to our public witnesses
18 who came time and time again to support the
19 development of the Kamakana Villages Project such as
20 Bo Kahui of Lai'opua 2020 and Dora Aiyu from Lai'opua.
21 We appreciate the support by them and we appreciate
22 the work by the Commission.

23 The Petitioner's position is that this
24 Petition Area should be reclassified from the
25 Agricultural Land Use District to the Urban District

1 and it's pursuant to the rule of law. We meet the
2 standards for determining Urban District boundaries in
3 section 15-15-18.

4 I think the issue for the Commission to
5 decide is whether or not this land should remain
6 agriculture or should go to urban. I don't think that
7 even the QLT witnesses are telling you that it should
8 remain in agriculture. The Project is a special
9 Project developed pursuant to the state plan, the
10 county general plan and the recently adopted Kona
11 Community Development Plan.

12 As you can see from many of the submittals
13 it was a relatively detailed process to go through.
14 We are also going through at the same time at the
15 county of Hawai'i what they call a 201H exemption
16 approval. That 201H exemption package, which ended up
17 to be approximately 54 exemptions, is now pending
18 before the county council. Those exemptions do not
19 relate in any way to any state facilities or services.
20 So to be clear we're not requesting any 201H
21 exemptions from the state.

22 As Mr. Randle testified, the vast majority
23 of these 201H exemptions are the result of complying
24 with the Kona Community Development Plan. That's kind
25 of a new Smart Code paradigm that we are seeing out

1 here in Kona where they took the Smart Code and
2 imposed it on the Kona community.

3 The result was the standards for developing
4 a project such as the width of roads, the number of
5 houses that you can build off of a cul-de-sac, those
6 types of standards and subdivision requirements were
7 changed.

8 At least the Kona CDP suggested they be
9 changed. And the result after that was the Forest
10 City complying with the Kona CDP. And 46 of the 54
11 exemptions are based upon compliance with the Kona CDP
12 and the LEED standards that we've been talking about.

13 We feel that the Project is ready to be
14 developed. It's in the core of the Kona urban area.
15 We feel that the incremental development plan for the
16 6 phase development by the Petitioner and the need for
17 financing of the Project does not require incremental
18 redistricting pursuant to your rule 15-15-78.

19 We believe that the conditions of approval
20 proposed in the Petitioner's amended proposed findings
21 of fact filed on November 3rd, will address all impact
22 issues raised during this proceeding. In particular,
23 we ask you to look at Condition No. 4 which is
24 relating to the traffic impact analysis conditions.

25 It's called Condition for Transportation in

1 which the Petitioner shall mitigate all
2 project-generated project impacts to the roadways as
3 recommended and/or required by the Traffic Impact
4 Analysis Report prepared for the Project that has been
5 reviewed and accepted by the State Department of
6 Transportation.

7 Effectively, the condition goes on to say
8 that the Petitioner will not even submit application
9 for a subdivision of the residential lots until such
10 time as they have executed an agreement with DOT
11 committing to the implementation of all the mitigation
12 measures for the direct impacts of the Project to the
13 state roadway system, as well as the level of funding
14 and participation for Petitioner's pro rata share of
15 state regional transportation improvements.

16 We believe that the testimony shows that the
17 issues raised by QLT with respect to the methodology
18 on the TIAR are interesting, but do not rise to the
19 level of a problem with respect to the continued
20 reclassification of the Project because the State
21 Department of Transportation in the end will be
22 approving all methodology assumptions and mitigation
23 measures.

24 The 201H exemptions were processed in order
25 to increase the affordability of the Project with

1 respect to being developed in the middle of
2 Kailua-Kona within the urban core.

3 We took special care to look at the impact
4 of the Land Use Commission-proposed conditions on the
5 201H exemptions to make sure there weren't any
6 conditions going at cross purposes. And we can
7 confirm that that is the case.

8 We believe that the Petition Area clearly
9 meets the standards for determining the Urban District
10 boundary for this Petition Area.

11 We ask for your support and we ask that the
12 HHFDC and Forest City Hawai'i Kona, LLC be allowed to
13 proceed forward with this worthy Project. Thank you
14 very much.

15 CHAIRMAN DEVENS: Thank you, Mr. Lim.
16 County?

17 MR. BRILHANTE: Good afternoon, Chair,
18 fellow Commissioners. The county of Hawai'i supports
19 this Project, this petition. The Project meets the
20 decision-making criteria for boundary amendment
21 pursuant to section 15-15--77 of the Land Use
22 Commission rules. The reclassification to the Urban
23 District is also consistent with the County's, Master
24 Plan for Kailua-Kona as well as consistent with the
25 goals and policies of the General Plan and the LUPAG

1 or Land Use Pattern Allocation Guide map which
2 identifies the Petition Area as urban expansion and
3 low density.

4 Further, the reclassification of the
5 Petition Area is consistent with the guiding
6 principles, elements and major strategies of the Kona
7 Community Development Plan and the County's master
8 plan for the Kailua-Kona region.

9 Further, the reclassification from ag to
10 urban will not have an adverse impact on the resources
11 within the Ag District. As the planning director's
12 written testimony previously identified, the Petition
13 Area is not currently being used for any agricultural
14 purposes.

15 Further, soils in the Petition Area
16 primarily classified as E or very poor by the Land
17 Study Bureau. Accordingly, a reclassification from
18 urban to ag will be consistent and will not adversely,
19 as stated, impact important ag lands.

20 There's generally -- the Project generally
21 conforms to the village design guidelines of the Kona
22 CDP because the Project proposes parks and open
23 spaces, archaeological preserves and cultural features,
24 connectivity and transportation choices, housing
25 choices, recreational opportunities, educational

1 opportunities, and a compact village that offers
2 increased density with mixed uses and employment
3 opportunities.

4 Further, the Project offers a mix of housing
5 choices and approximately 1,169 affordable housing
6 units which supports, again, the Kona Neighborhood
7 Development Plan.

8 The Project will increase housing choices in
9 particular for low and moderate income residents
10 without removing viable agricultural lands from
11 production as previously addressed.

12 Finally, the county is requiring updated
13 TIAR studies be submitted every five years which the
14 Petitioner will be required to provide additional
15 infrastructure improvements for the full development
16 of the Project. Thank you very much.

17 CHAIRMAN DEVENS: Thank you. Mr. Yee.

18 MR. YEE: Two weeks ago when we started this
19 hearing I remember QLT had stated in its opening
20 argument that it felt as they were standing in front
21 of a steaming locomotive. Two thoughts came to me.

22 The first was, well, I know how that feels.
23 Because the Office of Planning has stood in front of
24 steaming locomotives a time or two. And we've told
25 developers to stop. In fact, in this case we told the

1 Petitioners that they had to stop.

2 We believed that the Archaeological
3 Inventory Survey submitted originally in A10-785 was
4 insufficient. Even though the petition had been filed
5 and everyone was ready to move forward and everybody
6 wanted affordable housing, the Office of Planning said
7 stop, because we believed and the OP director
8 understood -- I'm sorry because we believed it was
9 necessary to have another AIS done.

10 Now, the OP director had understood that
11 this was going to be expensive and time consuming.
12 And if you literally have people walking across
13 270 acres of land as trained archaeologists on an
14 expedited basis, it was not going to be cheap. We got
15 that.

16 We also understood the immediate need for
17 affordable housing and construction jobs on the Big
18 Island. But Abbey took the position and firmly
19 believed that you couldn't support a project if it
20 wasn't going to mitigate its impacts and if it wasn't
21 going to satisfy the criteria for classification,
22 including the requirements under Ka Pa'akai O Ka'aina
23 of the LUC.

24 So we told Petitioners that they had to
25 stop. And to their credit the Petitioners did. Our

1 support for this affordable housing project is not
2 because we have to.

3 Our support for this affordable housing
4 project is because we are firmly convinced that any
5 negative impacts will be adequately mitigated. The
6 Petitioners made the investments, expensive though it
7 was, and produced an excellent AIS addendum.
8 Petitioners and OP also used the additional time to
9 come to agreement on all of the conditions in this
10 case except one.

11 For example, we used that time to consult
12 with the National Park Service. Based in large part
13 upon the conditions in Shopoff and Waikoloa Mauka we
14 came up with a more concise set of conditions to
15 ensure water quality.

16 Ms. Sally Buchal from the National Park
17 Service testified before you and informed you that OP
18 had consulted with the National Park Service. That the
19 National Park Service had expressed some concerns
20 about the earlier drafts. But that with changes the
21 National Park Service was satisfied that the water
22 quality in the National Park water quality would be
23 preserved.

24 We also used that time to come to an
25 agreement on LEED. Petitioners agreed to make the

1 effort to design and build according to LEED, and OP
2 agreed to insert the qualifier "if practicable". We
3 agreed to ensure that Petitioners were given the
4 necessary leeway to account for higher than expected
5 costs or issues which were not within its control.

6 For example, one of the requirements for
7 LEED-ND is connection to a mass transit line. That is
8 not an issue which is necessarily within their
9 control. Although it is planned, you never know
10 what's going happen in the future.

11 OP also agreed to language which required
12 that the construction meet LEED Silver standards, LEED
13 for Homes and LEED for New Construction without
14 requiring the actual certification. This allows
15 Petitioners to self certify with their LEED-qualified
16 consultants. And this was a compromise. It allowed
17 Petitioners to avoid some of the uncertainty and
18 expense in relying upon a third-party decision-maker.

19 OP believes this was an fair compromise. It
20 was a compromise that occurred because Petitioners
21 were willing to substantively engage with the Office
22 of Planning about this condition rather than simply
23 objecting to it.

24 OP had hoped to have an agreement on the
25 traffic mitigation measures because the parties were

1 working diligently on the TIAR. As it turned out we
2 were overly optimistic. But the lack of an MOA on the
3 traffic mitigation measures is an example or
4 demonstrates the integrity of the process.

5 For the reasons explained by Mr. Sniffen
6 from the Department of Transportation, DOT had
7 reviewed the TIAR and was requiring additional
8 clarification and explanation. The TIAR was not being
9 approved just because the Project involved affordable
10 housing.

11 Mr. Sniffen acknowledged the concerns
12 submitted by QLT in cross-examination, but also said
13 that TIARs often have discrepancies which need to be
14 explained.

15 This was confirmed by Mr. Niiya's testimony
16 in which he had said there are very few cases in which
17 the TIAR at the time of the LUC hearing will have
18 resolved -- will have been accepted by the Department
19 of Transportation because often these issues are
20 resolved subsequently.

21 So in this case the Department of
22 Transportation is requiring explanations and
23 additional information. When the Department of
24 Transportation finishes its valuation some of the
25 those explanations will be accepted. Some won't be.

1 The TIAR may need to be amended or improved or
2 tweaked. But as Mr. Sniffen testified, the DOT will
3 be performing that analysis.

4 Petitioners were being cooperative in
5 providing information. And Mr. Sniffen believed an
6 agreement was likely to be reached in this case.

7 The TIAR would then establish the value of
8 Petitioner's fair-share and the agreement would then
9 be reached as to which specific traffic improvements
10 of an equivalent value to that fair-share would be
11 made or done by Petitioner.

12 We could not reach agreement on the Order to
13 Show Cause. We respectfully disagree with the
14 allegation that the automatic Order to Show Cause
15 would make financing excessively difficult.

16 We believe under the LUC's own rules an
17 Order to Show Cause is required if the LUC has a
18 reasonable belief that a condition has been violated.

19 We continue to argue that the automatic
20 Order to Show Cause does no more than apply the LUC's
21 rules in a particular circumstance relating to the
22 infrastructure deadline, emphasizing the importance of
23 timely construction.

24 But in short, the Office of Planning has
25 required this Petitioner to jump through all the hoops

1 that every other Petitioner has to jump through. And
2 the director's supporting this Project because he's
3 convinced that the negative impacts will be adequately
4 mitigated.

5 I want to take a few moments to briefly talk
6 about some of the concerns raised by QLT. They raised
7 some issues with their archaeologist. And we pointed
8 out these are issues that will be resolved through the
9 preservation plan that has to be submitted to and
10 approved by the State Historic Preservation Division.

11 One of their concerns actually needs to come
12 after the preservation plan process. Because the
13 determination of where archaeological artifacts are
14 kept can only be done after the consultation with all
15 of the interested parties, which is part of that
16 preservation plan development.

17 They did raise an interesting issue
18 regarding the method of recordation. We believe that
19 that is an issue that could be raised to the State
20 Historic Preservation Division. And we believe it's
21 appropriately submitted to them, and that the
22 conditions resolve that issue.

23 The testimony from Mr. Boud I found actually
24 very interesting. Because normally when I come before
25 you I'm generally arguing to you that the developer

1 shouldn't develop as many luxury homes as they're
2 trying to develop, and that the densities that the
3 developer wants needs to be higher; they need more
4 affordable housing; that they need to provide, you
5 know, smaller homes in order to put higher densities
6 around transit lines because obviously there's a lot
7 of money to be made in luxury homes.

8 So we felt it interesting to hear Mr. Boud
9 suggest that, well, that's just not going to be
10 workable in this case. All I can say is you have to
11 recognize that it's an affordable housing project in a
12 TOD zone which naturally lends itself to higher
13 densities.

14 If it later turns out that the matter isn't
15 marketable, the developer has no particular incentive
16 to build something that can't be sold.

17 And it's unlikely they're going to get a
18 financier who will give them the money to develop a
19 project that cannot be sold.

20 And there's nothing really within the D&O
21 itself that's going to require them to develop that
22 particular number. So we are comforted and secure in
23 the fact that this Project is sufficient, is
24 sufficiently capable of being developed on that issue.

25 I've already talked to you about the issue

1 of traffic. With respect to the question of whether
2 or not QLT has to bear some burden, excessive burden
3 that isn't theirs to bear, I just have to note that I
4 just don't understand why QLT would have to do that
5 from any state requirement.

6 If QLT came to the LUC and asked to develop
7 property, the standard condition is that they pay
8 their fair-share regardless of what other requirements
9 or improvements need to be made. The Department of
10 Transportation looks at the impacts from that project
11 and establishes a fair-share based on the impacts of
12 that project.

13 So I'm not aware of a state requirement that
14 would be implicated or state requirement that would
15 say QLT would have to pay for more than their fair
16 share of traffic improvements.

17 With respect to any county questions that's
18 really just beyond the scope of this Commission.

19 Let me also stop here to comment that QLT
20 suggests that the standard you should apply is whether
21 Petitioners will clean up their own mess. Although I
22 don't think QLT is using this as the literal legal
23 test, I also have to say that if this were the test
24 you'd never approve any project. More houses mean
25 more energy use, more water use, more solid waste.

1 The fact that the Project has minimized the
2 energy use, water use and solid waste production
3 doesn't mean that there's no mess or there's no
4 impact. It means that the impacts have been
5 mitigated. There are inevitable tradeoffs in
6 development.

7 And it is certainly fair to examine what
8 those tradeoffs mean. But to suggest a development
9 must clean up its own mess is to imply the development
10 cannot have any impact. And that's an incorrect
11 statement and an unrealistic expectation.

12 Having said that, the Petitioner has not
13 received any special favoritism by being an affordable
14 housing project in order to mitigate the impacts,
15 doesn't mean that their 201H designation is
16 irrelevant. Hawai'i needs affordable housing.

17 Although it may not seem like it to
18 Petitioner, 201H represents a policy choice by this
19 state that the need for affordable housing justifies
20 the award of incentives to those developers willing to
21 step up and develop projects with 50 percent
22 affordable units.

23 We are especially comforted by the
24 involvement of HHFDC in this process. This state
25 agency provided the land, \$25 million in initial

1 financing and access to low-income house tax credits,
2 rental housing, trust fund loans, the Rental
3 Assistance Revolving Fund Loan and exemptions from the
4 GET. Just as important as a partner in the process,
5 HHFDC provides a project management oversight and a
6 level of assurance that the Project will move forward
7 in a timely fashion.

8 The involvement of HHFDC in the 201H
9 designation differentiates this Project from other
10 projects that we have seen. You know, at the start I
11 said that I had two thoughts when QLT talked about
12 standing in front of a steaming locomotive. The first
13 was, well, I knew how that felt.

14 But the second was that this is really not a
15 steaming locomotive. Because Forest City had to go
16 through a procurement process with the state. And
17 "steaming locomotive" has never been an adjective or
18 reference that you'd use for procurement.

19 (Audience laughter)

20 They met with the community. They did a
21 LEED-ND analysis. They came up with design plans.
22 They were forced to stop to do an Archaeological
23 Inventory Survey. They had to consult with the Office
24 of Planning, the Department of Transportation and the
25 National Park Service.

1 They now need your approval. They're going
2 to be needing various county permits and approvals.
3 They will probably have to defend this case in circuit
4 court.

5 And I just can't justify calling them a
6 steaming locomotive. But if they persevere and follow
7 this Project through to the end and construct 1,104
8 affordable units, then I think that they should at
9 least deserve to be called "the little engine that
10 could".

11 The Office of Planning strongly supports
12 this Project and asks that you approve this
13 reclassification request. Thank you.

14 CHAIRMAN DEVENS: Thank you, Mr. Yee.
15 Mr. Kudo.

16 MR. KUDO: I don't know how I can top that.
17 (Audience laughter). I had a prepared text, but I'm
18 going to ad-lib it here because I can't resist. I now
19 know how Bryan Yee feels. And it's not a real good
20 feeling.

21 As most of you know I'm always on the other
22 side supporting projects and asking for this
23 Commission's approval of many types of different
24 projects over the years.

25 And QLT, my client, has also not been an

1 opposer of projects. They've also been very
2 supportive because they're part of this community and
3 been part of the state community and the island
4 communities for many decades.

5 I'd like to thank the Commission for its
6 patience, and its indulgence during this past month or
7 so. I have to disagree with Bryan, though. Because
8 having lived these last three or four weeks I feel
9 like I've been dragged under a train. But that's just
10 me personally.

11 It's been a very interesting experience.
12 And I think that my participation in this effort is
13 one which I believe there are some serious concerns.
14 But I think there's some good that has come out of it.

15 Ultimately this Commission may approve this
16 Petition. I know that. Ultimately the county council
17 also may approve the Project. And we realize that's a
18 reality that may occur.

19 But when we appeared before this Commission
20 weeks before we announced that they had asked for 91
21 exemptions. Today, as we stand here weeks later those
22 exemptions have been lowered to 54. Perhaps it wasn't
23 us. Perhaps it was other extenuating circumstances
24 that made those exemptions decrease. But I think
25 hopefully, we have sensitized this Commission to some

1 of the concerns that we have.

2 This case presents an interesting decision.
3 And it's not about the TIAR and all these other things
4 that, you know, I put on the record and whatever. It
5 pits two types of good uses. It pits affordable
6 housing, which we support. And affordable housing is
7 a legitimate state interest. And it helps this
8 community.

9 But it also pits what we represent which is
10 the social welfare services. If the social welfare
11 services must give way because of the affordable
12 housing, then the choice is homes over families, homes
13 over children. I have a problem with that.

14 I don't think that should be the choice that
15 we make or the decision we make. I think that it's
16 our obligation to make sure that our communities have
17 good families and have good children.

18 Anyway, some of the concerns that have come
19 up during this hearing -- I'm not going to reiterate
20 all our legal arguments and such because I think you
21 have had enough of TIAR issues and all those kinds of
22 things. Bryan mentioned the fact that, well, why is
23 QLT going to be stopped if their fair-share doesn't
24 dictate that they have to put in this intersection or
25 widen that road?

1 Well, as a practical matter that does
2 happen. It happens because if nobody puts in the
3 improvement that they have caused in terms of the
4 mitigation measure, then the next project that comes
5 up, even though they had nothing to do with taking
6 that intersection from level D to E, has to either pay
7 for that improvement or their project gets delayed.

8 That's what I think LeeAnn was mentioning
9 about the moratorium. Maybe this was misunderstood.
10 The practical matter is your project gets delayed
11 because the traffic can't, the roadways can't handle
12 the additional traffic because someone didn't fix up
13 the problem.

14 And that's the kind of concerns we're
15 concerned with. We surround this property, as you
16 know. We want to make sure that whatever they do that
17 they're responsible and they're going to mitigate
18 those kinds of impacts.

19 We hope that this Commission will take that
20 concern seriously in the Decision and Order that you
21 reach on this particular petition and the kinds of
22 conditions that you fashion hopefully that protect the
23 landowners and this community from bearing that
24 burden.

25 The other concern we had is, you know,

1 Commissioner Kanuha mentioned a couple weeks ago
2 concern about this Commission approving a lot of
3 affordable housing projects in the past that have
4 never come to fruition, empty promises I guess someone
5 called it.

6 We have concerns about this particular
7 Project. And basically, you know, when we looked at
8 the development agreement between HHFDC and this
9 Forest City group -- and I know that everybody's
10 saying, well, HHFDC's behind it so, you know, we can
11 be comforted and rest assured it's going to happen.

12 But when you look at the development
13 agreement -- and I encourage you all to really read
14 that document -- it allows Forest City to get out of
15 this contract at its sole discretion at any time based
16 on its own call of infeasibility. There is no kind of
17 standard that's set out in the development agreement.
18 There's no discussion that's going on between or
19 approval that goes on between HHFDC. Forest City can
20 simply walk.

21 This Project is 15 to 18 years, 15 to 18
22 years it has 6, 7 phases. So what happens is they
23 take down each phase over that period of time. The
24 amount of money that you put in, that Forest City has
25 to put in for this Project thus far probably is very

1 little. In fact, they put a million dollars down once
2 they've gone through the county and this Commission's
3 approval. And that's nonrefundable. But they're
4 entitled to management fees. They're entitled to
5 reimbursement of predevelopment costs, overhead and
6 they get a guaranteed 18 percent internal rate of
7 return on any profits that are generated from the
8 Project. And at any time if they believe the Project
9 is infeasible they can bag.

10 What we are concerned about, the nightmare
11 that we're concerned about is this Project goes
12 forward and at some point during the next 15 or 18
13 years Forest City suddenly decides that they had
14 enough. The product mix doesn't sell. The
15 restrictions on affordable housing that are imposed by
16 state law make the product unmarketable. So they bag.

17 What about the infrastructure? What about
18 the rest of the homes? Well, HHFDC says, "we're going
19 to find another developer." But our concern, as
20 expressed yesterday by the Senate committee, was,
21 well, if one party has determined a viable,
22 experienced developer like Forest City has determined
23 that it's unfeasible, what makes you think you're
24 going to find somebody else out there that's going to
25 take their place?

1 So what are you going to have? Are you
2 going to have a project that's 10 percent built?
3 15 percent built? Roads that lead nowhere?

4 We understand development. You can't put in
5 all of the stuff all at once. It comes in increments
6 as you make profits. So our concern is that this 2300
7 home Project, you know, is a big Project. And there
8 doesn't seem to be any assurances that this developer
9 will be around tomorrow or a year from now or 15 years
10 from now. And we're concerned because we're the
11 neighbors.

12 If those impacts are not mitigated, if the
13 roads are incomplete, the infrastructure is not
14 completely done, the promises are not kept, who's
15 going to be left holding the bag? Well, this
16 community will be and our client, my client will be.
17 So it is concerning us very much.

18 Anyway, I'd like to close by saying thank
19 you very much for listening to us and for your
20 patience.

21 CHAIRMAN DEVENS: Thank you very much,
22 Mr. Kudo. Mr. Lim, you had reserved -- I'm sorry --
23 Mr. Iha, you reserved the 5 minute rebuttal.

24 MR. IHA: Thank you, Mr. Chairman. I just
25 want to address some of the things Mr. Kudo said about

1 the development agreement. I'd like to impose a
2 general objection in that almost nothing of that is
3 actually in evidence. And I think the Commission
4 should give it very little weight, if any.

5 QLT had the opportunity to cross examine
6 Stan Fujimoto on the terms of the development
7 agreement. And I think that that part of the closing
8 argument is prejudicial because if QLT had
9 cross-examined Stan Fujimoto they would have found
10 that under the development agreement HHFDC has the
11 right, has to approve any changes to the affordability
12 or phases of the Project.

13 HHFDC has to grant its approval before any
14 land is transferred or leased to the developer. HHFDC
15 has to grant its approval before any construction of
16 any phase starts.

17 The developer has to provide HHFDC with very
18 detailed submittals and obtain approvals at every step
19 of the process.

20 It's structured so that the developer can't
21 front-end load the Project with market units, make its
22 money and then just cut out. There are a number of
23 criteria that go into HHFDC's approval as the project
24 progresses, including proof that the developer has the
25 financial ability to complete each successive phase.

1 And so there are a number of safeguards that
2 really haven't been addressed, you know, in this
3 proceeding. And I think it would be unfair for the
4 development agreement to be characterized a certain
5 way, especially when most of those statements aren't
6 into evidence. And there's really been no opportunity
7 to cross-examine or to redirect, examine Mr. Fujimoto
8 on that issue. Thank you.

9 CHAIRMAN DEVENS: Your concerns are noted
10 and your objection is noted. But Mr. Kudo's statement
11 were merely part of his closing argument. It was just
12 argument, not evidence. But note your objection for
13 the record.

14 MR. IHA: Thank you.

15 CHAIRMAN DEVENS: The Commissioners, have
16 any questions for any of the parties? Commissioner
17 Kanuha.

18 COMMISSIONER KANUHA: Thank you,
19 Mr. Chairman. I have a question for the county.
20 Apparently there's a stipulation on proposed
21 conditions between OP and the Petitioner. And I was
22 just wondering if the county has any comments, what
23 their position is on any or all of those conditions.

24 MS. LEITHEAD-TODD: I think there were only
25 two remaining conditions that we had some concerns

1 over. One was condition 4 where we had originally
2 asked the Petitioner for some language indicating that
3 there would be a pro rata share towards the regional
4 mitigation for county roads.

5 And number 16 where we asked that the County
6 Department of Civil defense be consulted. I am at the
7 moment less concerned about that since the 201H
8 resolution at the County Council -- you may have
9 noticed I disappeared for a little while -- it was
10 amended to provide in the 201H resolution and the list
11 of exemptions that they can or can't get, that there
12 would be updated TIARS provided to the county because
13 we are looking at this as over a 20-year period. And
14 that based on those TIARs there would be
15 local/regional mitigation required.

16 COMMISSIONER KANUHA: So in short, then, you
17 have no objections to the conditions.

18 MS. LEITHEAD-TODD: I can live with these
19 conditions because we have taken care of the concerns
20 at the county level. I'm sure that the state civil
21 defense will, in fact, consult with the county whether
22 it's in the condition or they will consult with us.

23 COMMISSIONER KANUHA: Thank you,
24 Ms. Leithead-Todd.

25 CHAIRMAN DEVENS: Any other questions?

1 Commissioner Judge.

2 COMMISSIONER JUDGE: In the county condition
3 for the updates of the TIAR over the 20 years, do you
4 have time periods? How is that -- can you share that
5 with us.

6 MS. LEITHEAD-TODD: We didn't specifically
7 state in the most recent amendment that I looked at.
8 We were looking at every five years, but we wanted to
9 be a little bit more flexible on that because I think
10 a lot of it depends on the phasing of the Project.

11 If the phasing of the Project is delayed,
12 then there may not be a trigger for the next TIAR.
13 But we wanted to have something in there that
14 protected the county's concerns over regional
15 mitigation.

16 But it's also taking into account that some
17 of the work that Forest City is gonna do on their list
18 of projects may, in fact, qualify for regional
19 mitigation.

20 It's just that until we see the actual
21 plans, what they're going to do in the various
22 intersections, we don't know whether they qualify for
23 just something that's required specifically by the
24 Project or whether it qualifies as regional
25 mitigation.

1 COMMISSIONER JUDGE: Is there a county
2 condition that identifies the allocation of the
3 different product in the affordable ranges?

4 MS. LEITHEAD-TODD: No, there is not. There
5 was some concern raised by some of the councilmembers
6 over that. But I have reviewed the development
7 agreement.

8 And although it says in the development
9 agreement that the actual types, counts, prices and
10 rents of each phase shall be determined by the
11 developer based on market conditions at the
12 commencement of the development of each phase, there
13 is language after that that says, "subject to HHFDC's
14 approval, which shall not be unreasonably withheld or
15 delayed." So I think there has to be some
16 consultation. And the intent is that it would be
17 reasonably similar to the Project's scope, which is
18 included on Page 2 of the development agreement which
19 shows that they are trying to target homes, the rental
20 units at the 80 percent and then a number of units for
21 sale at 80, 100, 120, 140?

22 And even the market units have some of the
23 sale units at 180 percent of median income, which is
24 consistent with the Kona CDP which recognizes that
25 workforce housing, which we consider to be the

1 180 percent of the median income, also needs a housing
2 that they can afford too.

3 COMMISSIONER JUDGE: Thank you.

4 CHAIRMAN DEVENS: Commissioner Heller.

5 COMMISSIONER HELLER: Just a question
6 regarding the amended proposed findings and
7 conclusions that we submitted yesterday. Since it was
8 filed late yesterday afternoon and we just actually
9 received it this morning, I was wondering if you could
10 quickly tell us if there's anything that's
11 substantively different in the new proposed findings
12 and conclusions.

13 MS. BENCK: The biggest changes that you'll
14 see in the amended proposed findings that we filed
15 yesterday is in the procedural section more accurately
16 documenting what's happened from the beginning. By
17 that I mean in January when the Petitioner first
18 sought to, first filed its Notice of Intent to File a
19 Petition. So the procedural section's been updated
20 significantly to better reflect the record.

21 The guts of the rest of the facts we updated
22 it citation-wise so it no longer just refers to the
23 first 37 exhibits that we filed. It also now refers
24 to the subsequent exhibits because we didn't have
25 those at the time when we first drafted it.

1 There have been some changes, actually
2 things that I had discussed with the Office of
3 Planning, you know, very quickly over this past week
4 to better reflect what National Park Service had said.

5 If you may recall they took issue with one
6 of the findings that we had. They were all draft
7 findings. So it was somewhat modified to reflect
8 NPS's statement that it's not been determined that
9 there'll be no effect on groundwater.

10 Nevertheless, with the conditions that we
11 have proposed and that the Office of State Planning's
12 approved and NPS apparently is comfortable with too,
13 they believe that those conditions will adequately
14 address whatever impacts there may be.

15 And finally -- so there's bits and pieces
16 that have been changed, but nothing very tremendous.
17 Then in the actual conditions of approval there have
18 been some minor changes but I'll go over them.

19 In the transportation condition we made it
20 clear that we're talking about state roadways because
21 we're dealing with the State DOT. That's why the word
22 "state" was in there. It wasn't in there originally.

23 In the Condition No. 5 streetlights, there
24 was the addition of the words "for county approved
25 energy efficient streetlights" which I don't think is

1 tremendously significant but it's in there.

2 Also on condition 12, and you'll find this
3 actually at the top of Page 87, it's a fairly long
4 condition. And it's storm and surface water runoff
5 quality. These are things, again, that were driven by
6 the Office of State Planning and the National Park
7 Service, and the Petitioner was very comfortable with
8 them.

9 But upon reflection we -- and this is
10 actually thanks to the Planning Department as well,
11 their concerns with, hey, you're going to do all this,
12 it sounds pretty good but is there going to be any
13 friction between this condition and the 201H
14 exemptions? So the additional language is that in
15 fulfilling this condition "Petitioner will comply with
16 the Hawai'i County Code as the same may be amended by
17 any 201H resolution."

18 So that just covers us no matter what, we're
19 going to do it. If we need to get a variance we'll
20 get a variance if it's not approved through the 201H
21 resolution. And that's it.

22 COMMISSIONER HELLER: Thank you.

23 CHAIRMAN DEVENS: Any further questions?
24 Commissioner Contrades.

25 COMMISSIONER CONTRADES: For the county.

1 Can you tell me what 180 percent of the median income
2 means?

3 MS. LEITHEAD-TODD: Let me see if I can find
4 our chart here. Of course these are older numbers.
5 Unfortunately, this one only goes up to the
6 140 percent. But the Kona CDP had envisioned that
7 there were a need beyond 140 percent for people that
8 might exceed the 140 percent.

9 So they had wanted to change the definition
10 of "affordable" to go all up to 180 so that there
11 would be a range 80, 120, 140 all the way up to 180
12 because we were looking at school teachers, police
13 officers and firefighters who sometimes with a
14 combined income with their spouse exceed the 140, yet
15 there isn't housing that's really built for that
16 market.

17 But based on the 2006 median incomes, and
18 these have to be adjusted. I just don't know where it
19 is, but I think they have it in their exhibits. A
20 family size of 4 at 140 percent of median that would
21 be an income of \$81,480. But that was the 2006 median
22 income.

23 I think those numbers have gone up since
24 then. Oh, here. They're giving me the most recent
25 one. Okay. For a family of 4 at 140 percent the

1 median income would be \$93,380 which means that since
2 I have five kids at home living with me I would
3 qualify for this.

4 COMMISSIONER CONTRADES: What year was that
5 from?

6 MS. LEITHEAD-TODD: This is the 2010. It's
7 Petitioner's Exhibit No. 56. And obviously the 180
8 would be a little bit higher than that. I think just
9 as a general comment about affordable housing, I think
10 when we look at numbers we frequently look at numbers
11 based on this assumption that people don't have any
12 other debt; that you're not paying for a car. You're
13 not paying for college tuition, and all these other
14 things. And the reality in Hawai'i is that there are
15 a lot of these expenses.

16 So one of the things that I like about
17 Forest City is the LEED that they're going to try and
18 do on the houses because that reduces the utility
19 bill. Trust me, with five kids at home I know about
20 utility bills, particularly boys who take showers
21 after football practice.

22 And so in many instances when I used to look
23 at these income limits it just seemed like what you
24 needed was a house that was built at the 80 percent,
25 but you could allow people up to 140 to buy it.

1 Because there just wasn't enough at the lower middle
2 class or middle class.

3 I think that this has a nice range. The
4 development agreement seems to lock in that there's
5 going to be a range between the affordable rentals at
6 80.

7 And even the market units have a vision of
8 trying to hit some people that are just a little bit
9 above what is considered affordable. And I like that.
10 That's something that was never discussed in this
11 process, that they're actually trying to target some
12 people who are a little bit above the 140 in terms of
13 market units. Isn't high end.

14 And I think that if done well that this will
15 work. Frankly, if this doesn't work you really have
16 to ask whether we can ever develop affordable. If you
17 don't, if you don't have a project where you're
18 getting the land from the state and we're waiving fees
19 and we're waving some of these standards, and if
20 Forest City can't make this work, then how in the
21 world does anybody develop any affordable housing, you
22 know? So I really want to see this work. I want to
23 see it happen.

24 And I think there's a tremendous need on
25 this side of the island because this is where our jobs

1 are. But we have people commuting two hours in the
2 morning to go to work and two hours at home in the
3 afternoon. And it means that's four hours they're
4 away from their kids. And it has a huge impact on
5 families.

6 So I have some questions about this Project.
7 But I'm crossing my fingers and I'm hoping that this
8 really works because there's a huge need because we're
9 a large island. And people commute long distances to
10 where the jobs are.

11 So I'm hoping that this will be a model,
12 that this will work and that maybe in the future we
13 can use this model to build other mixed income
14 communities where we have a mix from the rentals all
15 the way up to market units, because we really don't
16 want to separate the community and just have the low
17 income live in apartment high-rises and then other
18 people live in single-family houses.

19 I want mixed communities. I don't want
20 people isolated by their income level. And that's one
21 of the things I like about the vision that this has.
22 So I'm hoping that that vision becomes reality.

23 COMMISSIONER CONTRADES: But don't you think
24 maybe part of the problem is that people don't want to
25 live in apartments that are 750 square feet?

1 MS. LEITHEAD-TODD: Depends on how big your
2 family is. I have a son who's a firefighter, wife and
3 one child. They live in a 2-bedroom apartment in Hilo
4 that isn't much bigger than that. And they chose to
5 live in it. They have been very happy in it.

6 Part of it is because they're able to save
7 money towards a down payment for a house some day.
8 And to look at the building, you'd worry about this
9 building. But there are a lot of people that choose
10 to live in small apartments because that's what's
11 available.

12 In Hilo we have studios that people live in.
13 In Honolulu people lived in small units. I think we
14 all dream of having a 3-bedroom 2 bath. But the
15 reality is sometimes when you're starting off in the
16 market you have to start with something smaller.

17 The 750 is really designed for smaller
18 families for, it's a one bedroom. It's possibly for
19 seniors. It could be for couples with just one child.

20 But I'm thinking how I started out, you
21 know. I was renting a room with my kid and house, my
22 girlfriend with her baby was in the other room and we
23 had somebody else in the third bedroom. And that's
24 how we could make ends meet in Manoa Valley because
25 not one of us could afford. But we basically were

1 having three families live in the same house.

2 If I could have found an apartment, one
3 bedroom that I could have afforded with my kid, I
4 would have done it. But there's a reality for a lot
5 of families out here. And you gotta start somewhere.
6 And the dream is you start with something at 750 or a
7 thousand square feet. Then you can move up. Later on
8 you can sell that unit to someone else. Then you can
9 get into a bigger house.

10 I've see my friends do it both on O'ahu and
11 here. Sometimes it takes 20 years before you can sell
12 the first house and move on to the second one. But
13 I've see people do it.

14 But if you don't provide something where
15 they can start, then they're going to be like I was 20
16 some odd years ago where you just gotta go share a
17 house, and you have more than one family in the house.
18 And you're kinda living under the radar because that's
19 all you can find. It's not perfect.

20 I think there are -- it's not what you might
21 want to produce but I think it's a start. It is
22 needed, especially in Kona. And I'd rather take the
23 risk that we start and they're not able to do it.
24 Because they're going to pull out if they can't do
25 this fiscally and if they can't market the units.

1 They have to do that analysis. Otherwise they won't
2 get the funding.

3 But it has so many neat components to this:
4 The walkability, the attempt to put it next to transit
5 corridors so people can take the bus to work. The
6 attempt to put commercial in the area. The fact that
7 we have a variety of different parks that people can
8 utilize from the regional to the small pocket parks.
9 I think it's a good plan.

10 I think it's a lot denser than what most
11 people were used to conceptually. And yet our Kona
12 Community Development Plan does call for greater
13 density. And it's consistent with the kind of density
14 we're calling for because we wanted to try and prevent
15 urban sprawl.

16 We had a vision that you would have
17 basically compact dense urban nucleuses so that you
18 didn't have everything merge into each other. And I
19 don't know whether it's going to work out as we
20 implement it. But the idea was that we wanted to try
21 and preserve as much open space as we can. And in
22 order to do that you have to have greater density in
23 some areas.

24 I think the trick is going to be, you, know
25 whether we're able to implement the open space and the

1 greenbelts that we have in our plan. Because this
2 particular Project didn't quite fit in terms of the
3 amount of greenbelt that we would have wanted around
4 it. I think that's partially a tradeoff because it's
5 a 50 percent affordable. And it would have impacted
6 this much more if we had that, you know, hundred, 200
7 feet of greenbelt surrounding the thing.

8 You would have had to either give up parks
9 or you would have had to do much more density in order
10 to make the numbers work.

11 CHAIRMAN DEVENS: Any other questions from
12 the Commission? Commissioner Jencks.

13 COMMISSIONER JENCKS: Mr. Chair, yeah, just
14 a question of the planning department. Looking at the
15 Petitioner's documents and looking at the affordable
16 housing allocation, they're suggesting that the -- I
17 think they were saying that the affordable housing
18 component would be completed by 2023.

19 MS. LEITHEAD-TODD: My understanding is that
20 at every phase there will be a portion that is market,
21 a portion that's commercial and a portion that's
22 affordable. It's not that they're going to front load
23 just the market units.

24 COMMISSIONER JENCKS: Where is that defined?

25 MS. LEITHEAD-TODD: I know I saw it

1 somewhere because it was in the phasing.

2 MS. BENCK: If I could, Petitioner's
3 Exhibit 27 is the incremental development plan. And
4 there is a number of pages in the back that breaks out
5 exactly what kind of units and how many affordable and
6 market to be built in each phase.

7 MS. LEITHEAD-TODD: I don't remember the
8 exact page, but I know I looked for it and it was in
9 the documents that they presented that the phased
10 development has the market units included in it.
11 Because I had that same question. I said, "What if
12 they develop just the commercial and the market and
13 then decide, 'oh, we can't afford to build the
14 affordable units'?

15 COMMISSIONER JENCKS: Sure.

16 MS. LEITHEAD-TODD: So I went through the
17 documents and I saw that phasing. And it's a
18 requirement and it's also something that HHFDC is
19 gonna hold their feet to the fire.

20 COMMISSIONER JENCKS: That's something the
21 county would also require.

22 MS. LEITHEAD-TODD: They're not going to get
23 approval for second phase, plan approval from us if
24 they haven't put in the affordable units in the first
25 phase. It's just not going to happen.

1 COMMISSIONER JENCKS: Do you happen to know
2 what the county median household income is at 100
3 percent?

4 MS. LEITHEAD-TODD: If I had that chart back
5 that they had. At a hundred percent the county's --
6 let me just do it for a family of four. Okay? For a
7 family of four the median income is \$66,700 a year. I
8 know that sounds like a lot. But what you're talking
9 about is both mom and dad are working.

10 COMMISSIONER JENCKS: That's what I figured
11 it would be, somewhere in the mid 60 to \$70,000 a
12 year. That's what I was guessing.

13 MS. LEITHEAD-TODD: Mm-hmm.

14 COMMISSIONER JENCKS: And correct me if I'm
15 wrong, but I thought I heard you say that in the
16 context of the offsite improvement requirements,
17 specifically roadways, there wouldn't be, certainly
18 you can't control what the state does, but I thought I
19 heard you say there wouldn't be any exemptions
20 provided for any offsite county roadway improvement
21 requirements.

22 MS. LEITHEAD-TODD: What we are requiring is
23 an updated TIAR. Then based on what we see in those
24 update TIAR, if it is required we are going to require
25 local, county, regional mitigation.

1 COMMISSIONER JENCKS: So there is no
2 exemptions provided for in this approval, this 201
3 approval for county facilities.

4 MS. LEITHEAD-TODD: Not for the county
5 regional. We have given exemptions, about
6 \$1.4 million in fees that we have exempted. We're
7 exempting some of the subdivision and roadway
8 standards which should make it cheaper.

9 COMMISSIONER JENCKS: That's fine. I'm
10 concerned about the roadways that serve this property,
11 the county roadways.

12 MS. LEITHEAD-TODD: We're going to require
13 that. And that's partially because of our concern
14 that, you know, what the county's ability is to
15 mitigate. And the regional impact is everybody else
16 in the area.

17 We're requiring everybody else coming
18 through the pike with the possible exception of DHHL,
19 because they are to some extent kind of exempt from
20 us. We require everybody else to do regional
21 mitigation.

22 And we felt that it was fair even if this is
23 affordable because part of it is commercial and part
24 of it is market. So we gave exemptions from fees on
25 the affordable units. We gave exemptions from some of

1 the standards so that -- hey, the minimum lot size in
2 the County Code is 7,500 square feet.

3 So to do lot sizes that are 1800 square feet
4 to give the kind of density that this Project has is a
5 huge give for the county. But we felt on the roads
6 that we needed to have the flexibility to evaluate.
7 And part of that was based on the fact that we had
8 some questions about the current TIAR and the
9 assumptions, because we weren't sure what those
10 assumptions were.

11 So we wanted some flexibility in the event
12 that the updated TIARs show that the impact is
13 significantly more than we currently anticipated, we
14 wanted some ability to negotiate that.

15 COMMISSIONER JENCKS: The county will review
16 the TIARs as well as the state.

17 MS. LEITHEAD-TODD: Yes.

18 COMMISSIONER JENCKS: Review the same
19 document, correct?

20 MS. LEITHEAD-TODD: Yes.

21 COMMISSIONER JENCKS: Okay. And once you
22 get through that review you can understand what the
23 state wants these folks to do. You understand clearly
24 what you want, what the county wants these folks to do
25 in terms of adjacent roadway improvements and regional

1 roadway improvements.

2 MS. LEITHEAD-TODD: We should.

3 COMMISSIONER JENCKS: Okay. So I just want
4 to make it real clear that there are no exemptions
5 requested from these local and regional roadway
6 improvements that are as a result, that are mitigation
7 that are determined in the TIAR.

8 MS. LEITHEAD-TODD: There is none that's
9 being given.

10 COMMISSIONER JENCKS: Okay. That's all I
11 have.

12 CHAIRMAN DEVENS: Commissioners, any other
13 questions? We'll take our last break and when we
14 reconvene we'll go into deliberations.

15 (Recess was held. 6:00)

16 CHAIRMAN DEVENS: We're back on the record.
17 Did the Commission have any more questions for any of
18 the parties? Commissioner Heller.

19 COMMISSIONER HELLER: Yes. Just going back
20 to the question of kind of assuring that there's a
21 reasonable number of affordable units in the Project
22 as it goes forward. We do have Petitioner's
23 Exhibit 27, the Incremental Development Plan, which
24 indicates the approximate numbers of different types
25 of units in each phase.

1 I'd like to know if we can kind of put that
2 in the context of the proposed conditions in the
3 Proposed Decision and Order, specifically No. 22,
4 which says, "Petitioner shall develop the Petition
5 Area in substantial compliance with the
6 representations made to the Commission."

7 For purposes of that condition would it be
8 correct to say that Exhibit 27 and the breakdown of
9 units in each phase basically constitutes a
10 representation to the Commission as to the development
11 plan?

12 MS. BENCK: Yes, Commissioner Heller.

13 COMMISSIONER HELLER: Okay. So in effect
14 our conditions include building out the increments in
15 substantial compliance with that development plan.

16 MS. BENCK: Correct. Substantial compliance
17 as we all know doesn't mean absolute precision. But
18 absolutely the percentage of affordable to market and
19 generally the breakout of the units there are
20 substantially representations to you.

21 COMMISSIONER HELLER: Thank you.

22 CHAIRMAN DEVENS: Commissioner Jencks.

23 COMMISSIONER JENCKS: I just have one,
24 Mr. Chair. In Mr. Kudo's documents, Exhibit H, which
25 is the development agreement Kamakana Villages, he

1 references -- well, the development agreement
2 references on Page 2 a schedule of units affordable
3 and market relative to the percentage of county median
4 income.

5 And the question I have is similar to the
6 question previously asked relative to the makeup of
7 the units being developed. Is it your representation
8 that the affordable component will be built in
9 substantial compliance with this breakdown relative to
10 percentage of county median and number of units?

11 MS. BENCK: Yes. Our representations are
12 what's in the development agreement. I'm going to add
13 a little something to that. And our client's right
14 here so if I don't quite get it right I hope that he's
15 going to correct me. But there is two things. Those
16 are percentage breakdowns of the intended affordable
17 units.

18 Certainly, like Craig Iha mentioned before,
19 if there's going to be any kind of substantial
20 deviation from that it's always going to have to be
21 vetted through HHFDC. As you may recall from Race
22 Randle's testimony, and I believe also from Planning
23 Director Leithead that the breakdown of affordable
24 units is going to have to be somewhat market driven.

25 For instance, we can't be forced to sell X

1 number at 120 percent because there may not be
2 120 percent buyers. There may be a whole lot of
3 80 percent buyers. Okay. So this isn't an effort to
4 try to say we're going to max out at 140 percent, if
5 you follow me.

6 There's a breakout, 3 all I'm trying to
7 suggest, again correct me if I'm not saying it
8 correctly, 140 is the ceiling. And whether every unit
9 is built X number at 80, X number at 120, X number at
10 140 is more or less as you see in the development
11 agreement. If the market cannot, if there's not
12 enough 140 percent buyers, we're going to have to sell
13 it cheaper.

14 Is that -- so it will be the development
15 agreement breakouts, but again as modified by HHFDC.
16 And I believe HHFDC is aware, too, that there is a bit
17 of a market issue there finding the affordable buyers
18 who can qualify at 100 percent. We might have to sell
19 more at 80 percent.

20 I believe we did proformas or you did
21 proformas you were averaging at 120? Or even lower,
22 at 100 percent. Okay. So that was just to figure out
23 feasibility. Have I answered the question?

24 COMMISSIONER JENCKS: Yeah. My concern is,
25 and I understand where you're going. I'm in the same

1 position in my business. Believe me I understand the
2 problem. But my concern is you need the flexibility.
3 And I understand that. Because you gotta finance
4 this. And you gotta build it.

5 But I think there needs to be a commitment
6 from you, from Forest City and HHFDC, relative to
7 building the affordable component and how it's going
8 to break down. I would prefer to see some kind of
9 agreement as to how many units, what percentage
10 income. Because you can't tell me that there isn't a
11 demand for a certain number of units at 80 percent and
12 100 percent.

13 MS. BENCK: Is it permitted to have the
14 client answer directly?

15 CHAIRMAN DEVENS: Sure.

16 MS. BENCK: Thank you. Jon Wallenstrom.

17 MR. WALLENSTROM: Jon Wallenstrom with
18 Forest City. There is a commitment in the development
19 agreement. I mean that was a hotly negotiated
20 commitment. It was structured in a manner that is
21 responsive to financing. It was structured in a
22 manner that has been replicated across the country.
23 It was structured in an manner that was replicated in
24 the Marine Corps and at the Navy.

25 So it's a form of agreement that's

1 acceptable and there are commitments in there that
2 have been talked about today. So there is a
3 commitment.

4 But there is flexibility because as you go
5 out to finance these things, bankers require that
6 flexibility. If anyone here says to anyone that, "We
7 will build 80 units at 120 percent of median income,"
8 yet another affordable housing project dies. And this
9 state is littered with dead affordable housing
10 projects. So there is a commitment. But some
11 flexibility is needed in order to get that financed.

12 COMMISSIONER JENCKS: So your position then
13 is that the provisos in this agreement are it.

14 MR. WALLENSTROM: The provisos in this
15 agreement were negotiated for months.

16 COMMISSIONER JENCKS: I understand. I'm
17 just asking the question.

18 MR. WALLENSTROM: We're about to go before
19 the county. We're about to go before the attorney
20 general. We're getting called before the Legislature.
21 We're going to keep -- I mean, my gosh, we're going to
22 get some more commitments and some more extractions.
23 So, um, I don't -- I just can't imagine -- there is a
24 commitment. And it's not that it's it. It's that in
25 order to get these done banks have to finance them.

1 Equity comes in. We're talking about putting \$60
2 million into this. We're already over a million
3 dollars into it. So there is a commitment. There's
4 is a million dollar commitment right now.

5 And in order for this to go forward there's
6 a continued commitment that needs to continue on. So
7 we are perfectly comfortable with the guidelines. And
8 I think, I think we did a very good job of describing
9 that. But without question there's a commitment. And
10 it exists. it's existed from well before we ever even
11 started this process.

12 COMMISSIONER JENCKS: That's all I have,
13 Mr. Chair.

14 CHAIRMAN DEVENS: Any other questions?
15 Hearing none, one thing I want to confirm on the
16 record is whether or not any of the parties did not
17 receive Mr. Davidson's notification that he sent out
18 earlier this week that gave the parties an opportunity
19 to submit supplemental or proposed findings of fact
20 and conclusions law.

21 Did anyone not receive that? I believe he
22 gave the parties until the close of yesterday to admit
23 anything in addition to what has already been
24 submitted by the parties. All right.

25 Let me note, as noted earlier, this is an

1 expedited hearing pursuant to chapter 201H-38 Hawaii
2 Revised Statutes. Because the Commission has a
3 statutory obligation to make a decision on this
4 petition for district boundary amendment within a
5 45-day timeframe, it is impractical to have the
6 parties submit any additional briefs or proposed
7 decisions and orders other than what has already been
8 submitted.

9 Therefore, I propose that for good cause the
10 provisions of subchapter 9 of the Commission's
11 administrative rules to the extent it applies to the
12 filing of briefs and the submission of proposed
13 decision and orders by the parties be waived by the
14 Commission.

15 Does any Commissioner have any objection to
16 that waiver? Hearing none, it will be so waived.

17 We will now enter our formal deliberations.
18 As noted earlier, with the conclusion of oral argument
19 the Commission will now begin its formal deliberations
20 concerning whether to grant the Petition, whether in
21 whole or in part, or to deny the Petition.

22 If the Commission decides to grant the
23 petition in whole or in part, it needs to determine
24 what conditions of approval to impose. I would note
25 for the parties and the public that during the

1 Commission's deliberations we will not entertain
2 additional input from the parties or the public unless
3 those individuals or entities are specifically
4 requested to do so by this body. If called upon I
5 would ask that any comments be limited to the question
6 that is posed.

7 The Commission also held hearings on the
8 merits of this petition on October 21st and 22nd of
9 this year. Commissioners, let me confirm that each of
10 you have reviewed the record and read the transcripts
11 for any meeting that you may have missed and are
12 prepared to deliberate on the subject docket. After I
13 call your name would you please signify with an aye or
14 nay that you're prepared to deliberate on this matter.

15 Commissioner Chock?

16 COMMISSIONER CHOCK: Aye.

17 CHAIRMAN DEVENS: Commissioner Jencks?

18 COMMISSIONER JENCKS: Aye.

19 CHAIRMAN DEVENS: Commissioner Judge?

20 COMMISSIONER JUDGE: Aye.

21 CHAIRMAN DEVENS: Commissioner Kanuha?

22 COMMISSIONER KANUHA: Yes.

23 CHAIRMAN DEVENS: Commissioner Lezy?

24 COMMISSIONER LEZY: Yes.

25 CHAIRMAN DEVENS: Commissioner Teves?

1 COMMISSIONER TEVES: Yes.

2 CHAIRMAN DEVENS: Commissioner Heller?

3 COMMISSIONER HELLER: Yes.

4 CHAIRMAN DEVENS: I'm also prepared to
5 deliberate on this matter. I'm sorry. Commissioner
6 Contrades?

7 COMMISSIONER CONTRADES: Aye.

8 CHAIRMAN DEVENS: Sorry. I don't know who
9 wrote this script for me. (Laughter). The goal today
10 is to determine by way of motion the Commission's
11 decision on whether to grant in whole or in part the
12 Petitioner's request to reclassify the subject
13 property or deny the petition.

14 If a decision is reached today, and based
15 upon the Commission's guidance, staff will be directed
16 to prepare Findings of Fact, Conclusions of Law,
17 Decision and Order reflecting the Commission's
18 decision.

19 What is the Commission's pleasure?
20 Commissioner Kanuha.

21 COMMISSIONER KANUHA: Mr. Chairman, in the
22 matter of the petition of Hawaii Housing Finance and
23 Development Corporation and Forest City Hawai'i Kona,
24 Inc. to amend the Agricultural Land Use District
25 Boundaries into the Urban Land Use District for

1 certain lands situated at Keahuolu, North Kona, Docket
2 No. alpha 10-788 for discussion purposes I move for
3 the approval based on the proposed Findings of Fact,
4 Conclusions of Law and Decision and Order.

5 COMMISSIONER JENCKS: Second.

6 CHAIRMAN DEVENS: There's been a motion.
7 It's been seconded. Discussion? Commissioner Judge.

8 COMMISSIONER JUDGE: Thank you, Chair. I'd
9 like to propose that we add one condition that the
10 Petitioner agreed to when Mr. Randle, Race Randle
11 spoke. It's regarding parks and playgrounds.

12 And it would read that "The Petitioner shall
13 design and construct a minimum of 28 acres of parks
14 and shall include at least 10 playground facilities."

15 And then I have one other addition. And it
16 was regarding the solid waste management plan, again
17 another issue that the Petitioner agreed to was that
18 we just add at the end of that first sentence that
19 says, "Petitioner shall develop a solid waste
20 management plan in conformance with the Integrated
21 Solid Waste Management Act, HRS Chapter 342G and this
22 plan shall emphasize waste diversion and recycling."

23 CHAIRMAN DEVENS: So noted. Any further
24 discussion? Commissioner Jencks.

25 COMMISSIONER JENCKS: Mr. Chair, I would

1 like to propose that we amend the condition on water
2 conservation measures. There was some discussion
3 about the use of reclaimed water on the Project. And
4 I would like to suggest we modify the condition as
5 follows: That at the end of the current condition we
6 add the following wording: "Petitioner shall design
7 for and utilize for all irrigation purposes reclaimed
8 water from the Kealakehe Sewage Treatment Plant when
9 that source is delivered to the project boundary."

10 CHAIRMAN DEVENS: Is that it?

11 COMMISSIONER JENCKS: I have one more.

12 CHAIRMAN DEVENS: Okay.

13 COMMISSIONER JENCKS: I'd also like to
14 suggest in the transportation condition there's
15 reference to timing relative to subdivision
16 submittals. And, you know, part of the reason we're
17 doing this is an expedited approval to get this
18 Project going and to save time and money for the
19 public.

20 I would like to suggest that we reword the
21 transportation condition as follows: It says, I'll
22 read from the beginning, "Petitioner shall mitigate
23 all project-generated traffic impacts as recommended
24 and/or required by the Traffic Impact Analysis Report
25 parenthetical (TIAR) closed parens, prepared for the

1 Project that has been reviewed and accepted by the
2 state Department of Transportation parenthetical (DOT)
3 closed parens and the county of Hawai'i."

4 Then this is my recommendation, "No final
5 subdivision approval shall be issued until the
6 Petitioner has executed an agreement with DOT and the
7 county of Hawai'i committing to the implementation of
8 all necessary measures to mitigate the direct impact
9 of the Project on the surrounding roadway system, as
10 well as to the level of funding and participation for
11 Petitioner's pro rata share of regional transportation
12 improvements." Period.

13 CHAIRMAN DEVENS: Is that the last one?

14 COMMISSIONER JENCKS: Yep.

15 CHAIRMAN DEVENS: Okay. Commissioner Heller
16 had some.

17 COMMISSIONER HELLER: Just a question in
18 response to the proposal from Commissioner Judge on
19 the parks. I think, if I heard correctly, she said
20 28 acres. I think in the proposed findings it says
21 approximately 25 acres of parks. I agree in concept
22 with the idea but I just want to make sure we have the
23 right number.

24 COMMISSIONER JUDGE: Thank you, Commissioner
25 Heller. I'll check. I was going off the Petition.

1 See what it says in the petition. I was going off
2 page 28 of the Petition where it says, "A total of
3 approximately 28 acres are planned to be distributed
4 within three large park areas." And I believe he
5 agreed to that on the record at the last meeting.

6 COMMISSIONER HELLER: Okay. There may have
7 been some change then. Because in the proposed
8 findings and conclusions paragraph 198 says a total of
9 approximately 25 acres.

10 COMMISSIONER JUDGE: Just give me a minute.
11 There was a second one we referenced that was from
12 their figures as well. I'll go with the friendly
13 amendment. 25 would be fine.

14 CHAIRMAN DEVENS: Anything else,
15 Commissioner Heller?

16 COMMISSIONER HELLER: No, thank you.

17 CHAIRMAN DEVENS: Commissioner Lezy.

18 COMMISSIONER LEZY: Thank you, Chair. Just
19 a couple of points. First, actually I'd like to thank
20 all the parties and in particular our staff for all
21 their hard work on this petition.

22 Certainly this compressed time schedule
23 created some significant challenges to the folks that
24 were making their cases and to the folks who had to
25 organize us and allow us to consider the case being

1 made. So, again, thank you very much.

2 Just one editorial comment. For what it's
3 worth I seriously question whether or not the 45-day
4 deadline is a feasible deadline certainly at this
5 level of consideration. I don't expect that there
6 will probably be any change to that but I thought it's
7 worth voicing the concerns.

8 In so far as the Petition is concerned I'd
9 just like to make a couple of comments. This was a
10 curious proceeding in my mind in that I think that if
11 you cut off the end of the table here and took
12 Intervenor out, this would have been a fairly
13 non-controversial petition.

14 The Kona community has certainly proven to
15 be a very vocal community when it comes to petition
16 matters that are before it. And I note that there,
17 with very minor exceptions, there was very little
18 opposition from the public to this petition. I, based
19 on my review of what's been presented to us, think
20 that this is a very worthy project, very commendable.

21 And I share the County's comments that I
22 very much hope, unlike some of the predecessor, that
23 this Project is a success. I think it will be of
24 great value to the community.

25 Having said that, though, I certainly

1 appreciate the concerns that were raised by the
2 Intervenor. And I'd like to comment on the fact that
3 what the Intervenor does for the community that it
4 serves is invaluable. I will avoid any railway-based
5 analogies. (Laughter) But I will say that I do
6 believe, and I do hope, that not only will it be
7 recognized that Intervenor brought forth issues I
8 think that added to the process, but I also hope that
9 what Intervenor is leaving this process with it seems
10 to me that the Petitioners are committed to addressing
11 the issues that the Intervenors raised.

12 And it's my hope as well that after this
13 process is over, and I understand there's litigation
14 pending, and I know that's not going to go away, but
15 that perhaps there can be some dialogue between
16 Intervenor and Petitioner in an attempt to try to come
17 to a solution rather than additional litigation.

18 But that said, I think that this is a
19 valuable Project and I will support it. One question
20 I would like to pose to Petitioner now that we have
21 had a number of modifications to certain of the
22 conditions that have been proposed.

23 And I'd just like to know whether the
24 Petitioners have any concerns about those or whether
25 they're willing to accept them as proposed.

1 MR. LIM: The Petitioners reviewed the
2 conditions. Of course we're just listening to you.
3 From what we could hear we agree.

4 COMMISSIONER LEZY: Thank you.

5 CHAIRMAN DEVENS: Commissioner Judge.

6 COMMISSIONER JUDGE: I have one more
7 question -- and this is to my fellow Commissioners
8 really -- is in looking at the affordable housing
9 condition, and I know there was just a lot of
10 discussion regarding the representations made and we
11 referenced Petitioner's No. 27 and also the
12 development agreement.

13 I don't know if -- we don't make any
14 reference to that or any of the representations made
15 to us in that affordable housing condition. I don't
16 know if that's necessary or if we stand on what's
17 written. 'Cause right now it simply reads as, "Under
18 such terms as being mutually agreeable between the
19 Petitioners and the county." In Condition No. 1.

20 CHAIRMAN DEVENS: I'm sorry, so what are you
21 proposing?

22 COMMISSIONER JUDGE: I don't know. That was
23 such -- the topic and that issue of the
24 representations of the information that's contained in
25 page No. 2 of the development agreement regarding the

1 breakdown of the affordable units and also the time
2 production schedule that was presented to the
3 Commission. Do we need to link that all in the
4 affordable housing condition?

5 Or are we comfortable just leaving it as
6 being "mutually agreeable between the Petitioner and
7 the county"? Or I forget. I guess Commission Heller
8 was tying it to No. 22 I guess. Is that sufficient?
9 I was just a bit confused by that. So your intent was
10 not to -- it was just to have them verbally commit to
11 that and not link it to anywhere specific in the
12 conditions.

13 COMMISSIONER HELLER: Right. Condition No.
14 22 says they shall develop in substantial compliance
15 with the representations made. And I just wanted to
16 confirm that that was one of the representations they
17 had made. And they agreed. So I think it's covered.

18 COMMISSIONER JUDGE: Okay. Okay.

19 CHAIRMAN DEVENS: One I'd like to propose
20 relating to the transportation condition. Talks about
21 the TIAR being prepared for the Project, "has been
22 reviewed and accepted." I'd like to add "slash
23 approved." There's some ambiguity as to whether or
24 not the DOT actually accepts, approves or does
25 something else.

1 The other one I'd like to see if the
2 Commission would like to consider as it relates to the
3 automatic Order to Show Cause provision. As it's
4 proposed now it talks about the "Commission may issue
5 and serve upon..." Whether or not that should be
6 changed to, "The Commission shall issue and serve upon
7 Petitioner an Order to Show Cause as required by law
8 or as provided by law." It would not be adding
9 anything more than what the law already requires us to
10 do. Commissioner Kanuha.

11 COMMISSIONER KANUHA: Thank you,
12 Mr. Chairman. I too was about to raise that for the
13 Commission's consideration. Given the fact that this
14 is an expedited proceeding, and the purpose of the
15 exemption is for the creation of affordable housing,
16 and we've just had experiences where even over the
17 course of a normal petition and representations for
18 similar type products that have never come to fore, I
19 would be inclined to support something like that for
20 those particular reasons.

21 You know, it's not to say that I feel that
22 it should be a standard condition, as you know, that's
23 always been advanced by OP. But for this particular
24 application I would be inclined to support that.

25 CHAIRMAN DEVENS: That's all I have. Thank

1 you, Commissioner Kanuha. Are there any other
2 discussion? Hearing none, Commissioner Contrades.

3 COMMISSIONER CONTRADES: Yes. I know I'm
4 going to be all alone on this, but I still have to say
5 it anyway. I'm going to vote no. And I want to state
6 my reasons. We just had an election a few days ago.
7 And obviously the people were upset. They were upset
8 because our government doesn't listen to us. They're
9 upset because they say things and nobody cares.

10 This is a -- we talk about affordable
11 housing. I've spent most of my adult life
12 representing workers. That's what I did for a living.
13 The average weekly wage of a worker in the state of
14 Hawai'i today is around \$15 an hour which means the
15 average worker earns \$30,000 a year. If mom and dad
16 both work that will be \$60,000.

17 If you have two kids at home, mom and dad
18 working, you are going to have two cars. You're going
19 to have electricity. You're going to have food,
20 you're going to have education, you're going to have
21 after school. Nobody's going to be able to afford to
22 live in this place at what they presently are talking
23 about.

24 In the state of Hawai'i there truly is no
25 such thing as affordable housing if we're talking

1 about doing it the way it's being done. I've been
2 involve in planning for many, many years both on
3 county now state and also with the Department of
4 Hawaiian Home Lands. And I've seen how hard it is to
5 produce any kind of affordable housing under the terms
6 that we're presently doing them at.

7 I don't care what anybody thinks or says.
8 I've worked with people and I know people don't want
9 to live in small, little houses especially if you're
10 from Hawai'i. You want the open space. You want to
11 have more than that.

12 The type of development that we are
13 presently talking about in this application is so
14 intense it would not be a good place to live.

15 I have a son who is a police officer who
16 makes really good money, who lives at home with me
17 because he cannot buy a home.

18 I have a daughter, who makes really good
19 money, who lives at home with me because she cannot
20 afford a home. My wife and I are going to take our
21 home and add onto it so our children can live with us
22 because even though they all have really good-paying
23 jobs they simply can't make it.

24 One of my dreams when I retired is I would
25 have a good life, go fishing. I babysit my

1 grandchildren because they can't afford to take them
2 to a sitter. And I accept that. I think what we need
3 to do is we need to truly look at what we are doing.
4 We need to truly look at how we can help our people.

5 This Project has just too many questions
6 that have not been answered. What exactly is the mix
7 going to be? How many 80 percent? How many a hundred
8 percent? How many 120, 140, 180? How many of those
9 homes are going to be produced?

10 What happens, you know, if you read
11 carefully, what happens if they can't hook up to the
12 wastewater treatment after the first two or three
13 phases are done? And we all know that those things
14 don't happen over night. And they're gonna be at
15 capacity very quickly. Do they simply walk away
16 'cause they can't build anymore?

17 What happens if the units don't sell? On
18 Kaua'i the Department of Hawaiian Home Lands built an
19 affordable housing area for their people up in
20 Hanapepe using rental credits, tax credits and
21 everything else. They're small. Nobody would buy
22 'em. For years they sat there doing nothing costing
23 us tons of money. It didn't work.

24 What happens if those units don't sell?
25 What happens to these things? What happens if Forest

1 City exercises their right that they have in their
2 development agreement that says: This ain't gonna
3 work, I'm walking away from it? And if they're going
4 to walk away who's going to take over? How is HHFDC
5 going to find somebody else to take over where Forest
6 City is gonna walk away?

7 Now, the thing I found really interesting is
8 Forest City said, you know, they're in for a million
9 dollars so far. Well, HHFDC provided them with the
10 land, with \$25 million, with tax exemptions, other
11 exemptions that we don't even know about. And we
12 still don't know how affordable this property is going
13 to be for those that we are supposed to be helping.

14 For myself I look upon this as a terrible
15 deal. In fact, I think it's the worst kind of deal
16 that we can make. And I cannot support it. Why
17 should we support a project that has not been told --
18 we have not been told how it has been costed out. We
19 don't know what the values are. We don't know what
20 they're gonna charge. "But trust us."

21 You know, I trusted many people over the
22 years and nothing has ever happened. I can no longer
23 trust. I cannot simply say to those people, "trust
24 them they're going to do it."

25 What happens if they don't? QLT is going to

1 end up with a neighbor with empty lots, unfinished
2 roadways, stuff like that. I wouldn't want to be in
3 their place or anybody else's place. And I've seen it
4 happen over and over on Kauai. This is not something
5 that doesn't happen. It happens.

6 And I just think that doing this in this
7 expedited way without getting all the questions
8 answered is a very bad idea. That's just my personal
9 opinion. Thank you.

10 CHAIRMAN DEVENS: Thank you, Commissioner.
11 Any other discussion? Hearing none, Dan?

12 MR. DAVIDSON: Thank you, Chair.

13 CHAIRMAN DEVENS: I'm sorry. I didn't ask
14 you -- sorry for interrupting, Dan. Commissioner
15 Kanuha, are you willing to amend the motion with the
16 amendments that the Commissioners proposed by Jencks,
17 Judge, Heller and myself?

18 COMMISSIONER KANUHA: Yes.

19 CHAIRMAN DEVENS: Is there a second to that
20 amendment?

21 COMMISSIONER JENCKS: Second.

22 CHAIRMAN DEVENS: Any further discussion?
23 There being done, Dan.

24 MR. DAVIDSON: Thank you. The motion is to
25 approve the petition with the amendments that have

1 just been offered by the Commissioners.

2 Commissioner Kanuha?

3 COMMISSIONER KANUHA: Yes.

4 MR. DAVIDSON: Commissioner Jencks?

5 COMMISSIONER JENCKS: Yes.

6 MR. DAVIDSON: Commissioner Chock?

7 COMMISSIONER CHOCK: Yes.

8 MR. DAVIDSON: Commissioner Contrades?

9 COMMISSIONER CONTRADES: No.

10 MR. DAVIDSON: Commissioner Heller?

11 COMMISSIONER HELLER: Yes.

12 MR. DAVIDSON: Commissioner Judge?

13 COMMISSIONER JUDGE: Yes.

14 MR. DAVIDSON: Commissioner Lezy?

15 COMMISSIONER LEZY: Yes.

16 MR. DAVIDSON: Commissioner Teves?

17 COMMISSIONER TEVES: No.

18 MR. DAVIDSON: Chair Devens?

19 CHAIRMAN DEVENS: Yes.

20 MR. DAVIDSON: Motion passes 7-2, Chair.

21 CHAIRMAN DEVENS: We'll instruct the staff
22 to provide us with the drafts as we've discussed and
23 also to update the proposals with the appropriate
24 procedural happenings that have taken up to this point
25 in time.

1 Unless there's any further questions we'll
2 stand adjourned. Thank you very much.

3 MR. LIM: Thank you.

4 (The proceedings were adjourned at 6:40 p.m.)

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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 4th day of November 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