

LAND USE COMMISSION

STATE OF HAWAI'I

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TRANSCRIPT OF PROCEEDINGS

The above-entitled matters came on for a Public Hearing at Conference Room 405, Fourth Floor, Leiopapa A Kamehameha, 235 S. Beretania Street, Honolulu, Hawai'i, commencing at 9:45 a.m. on Friday, December 3, 2010 pursuant to Notice.

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

A P P E A R A N C E S

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KYLE CHOCK
THOMAS CONTRADES (Presiding Officer)
VLADIMIR DEVENS (Chair)
DUANE KANUHA
NORMAND LEZY
CHARLES JENCKS
NICHOLAS TEVES, JR.
RONALD HELLER

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For the State: BRYAN YEE, ESQ.
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Office of Planning

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Docket No. A09-782 TROPIC LAND LLC

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For the County: DAWN TAKAHASHI-APUNA, ESQ.
Deputy Corporation Counsel
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For the State: BRYAN YEE, ESQ.
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ALICE GREENWOOD

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1 CHAIRMAN DEVENS: Morning. The first item
2 on the agenda is the continuation of the 'O'oma
3 matter. To recap, yesterday we had a meeting on this
4 matter, December 2nd.

5 After deliberation by the Commissioners, a
6 motion was made and seconded to grant in part and deny
7 in part the Motion for Reconsideration admitted to
8 supplementing the findings of fact, and conclusions of
9 law and deny the Motion to Extend time, and to deny
10 the Motion to Reopen the Hearing. There was then a
11 vote.

12 The motion carried, having received the
13 affirmative votes required by our rules. And that is
14 where we left off.

15 Today, we are taking up the Motion to
16 Approve as to Form the Supplemental Findings of Fact
17 Conclusions of Law, and Decision and Order that will
18 supercede the prior Findings, Conclusions and Decision
19 and Order and therefore will be considered as a Final
20 Decision and Order in this matter that will start the
21 clock as far as any appeal that may be considered by
22 the parties.

23 I guess as a procedural matter we have to
24 amend the agenda to take this matter up so that we can
25 approve as to form the Supplemental Findings,

1 Conclusions and Decision and Order. I will make the
2 motion. Is there a second?

3 COMMISSIONER JENCKS: Second.

4 CHAIRMAN DEVENS: Any discussion? Hearing
5 none, all those in favor say aye.

6 COMMISSIONERS VOTING: Aye.

7 CHAIRMAN DEVENS: It's unanimous. The
8 agenda is amended as stated. For the record why don't
9 we have the parties make their appearances before we
10 proceed further.

11 MS. BENCK: Good morning, Commissioners.
12 This is Jennifer Benck representing Petitioner O'oma
13 Beachside Village.

14 MR. BRILHANTE: Good morning. William
15 Brilhante, the county of Hawai'i deputy corporation
16 counsel.

17 MR. YEE: Good morning. Deputy Attorney
18 General Bryan Yee on behalf of the Office of Planning.
19 With me is Ruby Edwards and behind me is Abe Mitsuda
20 from the Office of Planning.

21 MS. LANE-KAMAHELE: Good morning. Melia
22 Lane-Kamahale from the National Park Service.

23 CHAIRMAN DEVENS: Good morning to you all.
24 At this point, Commissioner Heller, I believe you made
25 the motion yesterday. Are you prepared to make a

1 motion at this point?

2 COMMISSIONER HELLER: Yes. We have a draft
3 Supplemental Findings of Fact, Conclusions of Law and
4 Decision and Order from the staff. My motion is to
5 approve that draft as to form.

6 CHAIRMAN DEVENS: Is there a second?

7 COMMISSIONER TEVES: Second.

8 CHAIRMAN DEVENS: Any discussion? There
9 being none...

10 MR. DAVIDSON: Motion to approve
11 Supplemental Findings of Fact, Conclusions of Law and
12 Decision and Order in A07-774.

13 Commissioner Heller?

14 COMMISSIONER HELLER: Yes.

15 MR. DAVIDSON: Commissioner Teves?

16 COMMISSIONER TEVES: Yes.

17 MR. DAVIDSON: Commissioner Lezy?

18 COMMISSIONER LEZY: As to form, yes.

19 MR. DAVIDSON: Commissioner Kanuha?

20 COMMISSIONER KANUHA: As to form, yes.

21 MR. DAVIDSON: Commissioner Jencks?

22 COMMISSIONER JENCKS: As to form, yes.

23 MR. DAVIDSON: Commissioner Contrades?

24 COMMISSIONER CONTRADES: Yes.

25 MR. DAVIDSON: Chair Devens?

1 CHAIRMAN DEVENS: Yes.

2 MR. DAVIDSON: The motion passes, Chair,
3 7/0.

4 CHAIRMAN DEVENS: What we will do, so
5 Petitioner's aware, we will get this finalized and
6 hopefully signed today so that we can get it to you
7 right away. I want to make clear on the record this
8 is going to be considered our Final Decision and Order
9 so the clock had not started earlier on any prior
10 appeal time. Does any party have any objections or
11 concerns about that?

12 MR. YEE: No objection.

13 CHAIRMAN DEVENS: So I take it everybody
14 agrees to that so that's what we will rule.

15 MS. BENCK: Thank you.

16 CHAIRMAN DEVENS: Thank you very much.
17 Unless anyone has anything else they want to add to
18 the record at this point? Hearing none we will be
19 adjourned on that item. Thank you. We'll take a
20 recess. Can we, for the next item, for the Tropic
21 matter can we talk to the attorneys. We just want to
22 have a short pre-hearing conference. And we can do
23 that in our office.

24 (Recess was held. Chairman Devens is no
25 longer in attendance.)

1 xx

2
3 PRESIDING OFFICER CONTRADES: Let's call our
4 meeting back to order, please. This is our continued
5 hearing on A09-782 Tropic Land, LLC to amend the
6 agricultural land use district boundaries into the
7 urban land use for approximately 96 acres in
8 Lualualei, Wai'anae District, O'ahu, Hawai'i, Tax Map
9 Key No. (1)8-7-09:02 portions. Before we begin with
10 Mr. Yuen, I would like to call on Commissioner Jencks.

11 COMMISSIONER JENCKS: Thank you, Mr. Chair.
12 Reflecting on the meetings we've had to date on this
13 Project and the discussion on issues relative to
14 access and agreements that need to be made between the
15 Petitioner and the community and improvement of
16 infrastructure, and listening to Commissioner Lezy and
17 Commissioner Kanuha yesterday, I was thinking about
18 the statements that were made yesterday by the
19 Commissioners.

20 And I would like to propose a motion that
21 would perhaps help us as Commissioners make a decision
22 on this matter that would be beneficial for everybody.
23 So I'm going to make the following motion. And I'm
24 hoping to get some support from my fellow
25 Commissioners.

1 No. 1. I move that a letter from the
2 Department of the Navy certifying its willingness to
3 provide an access easement to the subject property for
4 a minimum term of 50 years, subject to any conditions
5 the Department feels necessary, be provided to the
6 Commission prior to the posting of the next meeting on
7 this Project.

8 No. 2. A letter from the Petitioner
9 attesting to his willingness to accept the conditions
10 put forth by the Department of the Navy in its
11 easement agreement also be provided to the Commission
12 prior to the next meeting.

13 No. 3. A letter from the Petitioner that he
14 agrees to fund and improve the access easement for the
15 terms and conditions provided by the Department of the
16 Navy and as required by the State Department of
17 Transportation also be provided to the Commission
18 prior to the next meeting.

19 No. 4. A letter from the Petitioner that he
20 will not allow or permit the use of Hakimo Road by
21 users within the Petition Area. Nor will he allow for
22 the construction or establishment of any access
23 between Lualualei Road or Hakimo Road, and is willing
24 to record a covenant providing for this restriction
25 against all land owned by the Petitioner to be

1 provided to the Commission prior to the next meeting.

2 And, lastly: The Petitioner provides to the
3 Commission a written summary of all representations he
4 agrees to implement and abide by during and after the
5 development of the Project also be provided to the
6 Commission prior to the next meeting. That's my
7 motion.

8 COMMISSIONER LEZY: I'll second for
9 discussion purposes.

10 PRESIDING OFFICER CONTRADES: Okay. The
11 motion has been made and seconded for discussion
12 purposes. Who wants to start first?

13 COMMISSIONER TEVES: Mr. Contrades, I just
14 want to know if it's procedurally correct if the
15 Petitioner has a chance to respond to this before we
16 vote.

17 PRESIDING OFFICER CONTRADES: Oh, yeah. We
18 are going to discuss first.

19 COMMISSIONER TEVES: That's all I was
20 concerned about.

21 COMMISSIONER LEZY: Chair, if I may. I
22 think from my standpoint the discussions -- testimony
23 yesterday and the discussion between Mr. Yanagihara
24 and Commissioner Kanuha about, in particular, the
25 access to the Petition Area provided by Lualualei

1 Naval Road to me was brought into sharp focus.

2 I can't personally see how it is possible
3 for the Commission to consider reclassifying this land
4 absent a rock solid agreement with the Navy for access
5 to that road.

6 Absent that, there is no way that the
7 Project can go -- in my mind -- there is no way that
8 the Project can go forward. And therefore
9 redistricting would have really only one benefit to
10 it. And that would be for potential sale of the
11 property and then pushing the access issue off onto a
12 new owner.

13 So I join in Commissioner Kanuha's comments
14 yesterday that this seems to be a petition that is
15 premature. And until what I see as a condition
16 precedent, the obtaining access to the road -- and
17 when I say that, I think in all reality you have to
18 have certainly more than the 10-year agreement.

19 I think, as Commissioner Jencks has
20 proposed, the minimum timeframe that would be
21 acceptable is going to have to be something in the
22 magnitude of 50 years or so in order for this to make
23 sense. And absent that, again, I have difficulty
24 seeing how it's possible for this to proceed.

25 So again I think the petition -- and the

1 owners may have their reasons for deciding to proceed
2 notwithstanding this -- but from my standpoint absent
3 having that agreement in place this petition does seem
4 to be premature. So I think Commissioner Jencks'
5 motion is well taken.

6 And I don't know if the Petitioner can
7 prevail on the Navy, explain the situation and perhaps
8 use that as leverage to exact some sort of action out
9 of the Navy. And I certainly empathize with the
10 Petitioner.

11 It can be difficult dealing with federal
12 agencies, much less Department of Defense agencies.
13 But I do think that the motion that Commissioner
14 Jencks has put up makes perfect sense in this
15 situation.

16 COMMISSIONER HELLER: I think perhaps before
17 we continue with any discussion or deliberation it
18 might be helpful to give the parties a chance to
19 comment, get their positions. But also I do have some
20 questions about just the procedural rules that govern
21 this situation in terms of putting preconditions on an
22 item going on our agenda.

23 So I'd like to move to go into executive
24 session to get some guidance about that. And then
25 either before or after that get the parties' reactions

1 to the motion before we proceed with further
2 discussion.

3 PRESIDING OFFICER CONTRADES: Is there a
4 second to the motion to go into executive session?

5 COMMISSIONER TEVES: Second.

6 PRESIDING OFFICER CONTRADES: All those in
7 favor signify by saying aye.

8 COMMISSIONERS VOTING: Aye.

9 PRESIDING OFFICER CONTRADES: We'll go into
10 executive session. We'll be right back.

11 (Executive session was held. 10:10-10:20)

12 PRESIDING OFFICER CONTRADES: Call the
13 meeting back to order. Just for the record, welcome
14 to Commissioner Chock who has joined us this morning.
15 Do the parties have anything they would like to say
16 about what was just presented to us? Petitioner.

17 MR. YUEN: Thank you, Mr. Chairman. I guess
18 I would object to the procedural -- well, first let me
19 say we acknowledge the Commission's concern.
20 Obviously obtaining a long-term access from the U.S.
21 Navy for Lualualei Naval Road is of vital concern to
22 Tropic Land, and we recognize that the Project cannot
23 proceed without long-term access to Lualualei Naval
24 Road.

25 My objection would be to the procedural

1 nature of the request. I don't think the Land Use
2 Commission rules impose a requirement of this kind as
3 a condition to proceeding further with the hearing.
4 Certainly, the Commission is free to impose whatever
5 conditions it chooses on reclassification, should the
6 Commission deem it appropriate to reclassify this
7 land. And we certainly appreciate the signals that
8 are coming from the Commission regarding this issue.

9 But in any development there are many moving
10 parts. And as Mr. Yanagihara explained yesterday,
11 because of the many governmental approvals that the
12 Petitioner, as any developer, has to obtain in order
13 to move his project forward, you try to move your
14 project forward on all fronts simultaneously. And
15 some areas you're able to make more progress than
16 others.

17 So we object to delaying the next hearing
18 any further, particularly since we've been told the
19 Commission would take this matter up again in January.
20 And there's not very much working time between now and
21 early January, due to the holidays, in order to obtain
22 an agreement from the Navy that would require
23 concurrence by people in the Pentagon.

24 But we certainly do appreciate the concern.
25 And we take the Commissioners' concerns very seriously

1 and intend to obtain the necessary access from the
2 Navy. We are not sure -- while we would like to
3 obtain a 50-year access from the Navy, we may well
4 receive only a 25 or 30-year access. And we would
5 obviously proceed on the basis that we could get one
6 long-term access and renew it near the end of the term
7 of the succeeding access.

8 But there are a number of concerns that the
9 Navy has expressed to us and a number of different
10 moving parts to securing an agreement with the Navy
11 that would make it very difficult for us to, in the
12 next three weeks or four weeks, to obtain the
13 necessary agreements that Commissioner Jencks has
14 required.

15 PRESIDING OFFICER CONTRADES: Thank you.
16 Does the county have anything?

17 MS. TAKEUCHI-APUNA: The City supports
18 Commissioner Jencks' proposal that the Petitioner gets
19 further assurances for a 50-year commitment. However,
20 the City doesn't take any position on any of the other
21 issues that Commissioner Jencks has that stated.

22 PRESIDING OFFICER CONTRADES: Thank you.
23 Bryan?

24 MR. YEE: The Office of Planning supports
25 Commissioner Jencks' proposal. We would note that

1 under section 15-15-63(1) it states, "At the hearing
2 the presiding officer may require the production of
3 further evidence upon any issue." So there is a
4 provision in your rules to require the submission of
5 additional documents or evidence in the case.

6 I think what perhaps Mr. Yuen may be
7 expressing concern about might be to the extent the
8 motion is considered in the nature of a summary
9 judgment or dismissal, that is the failure to provide
10 the information would then result in the automatic
11 denial or the intention at that time. That's a
12 procedural question that may be more problematic.

13 Nevertheless, why the Petitioner would want
14 to proceed if they're unable to obtain that
15 information would be, frankly, mystifying to the
16 Office of Planning.

17 I will note on a couple of sort of technical
18 issues: It is true, I think, that approval from the
19 Navy by January is highly unlikely. I do note,
20 however, that the scheduling of your hearings may go
21 through, I believe the last decision date is May. And
22 it may be continued for additional time.

23 So although you may have planned a hearing
24 for January there's no requirement on your part to
25 hold the hearing in January. So you could give them

1 additional time by simply scheduling this hearing for
2 another date.

3 Second, we noted that you did not include a
4 letter from the various parties along the road which
5 are a necessary element to the Navy's agreement. That
6 is to say the Navy requires the formation of this
7 organization which would be composed of the users of
8 the road which would include PVT and Pine Ridge, would
9 also have to agree to the provisions.

10 You may remember that I asked that question
11 of where they were and basically we got: They're
12 talking about it.

13 And then the final issue, and it's somewhat
14 of a minor issue, but it involves the access between
15 Lualualei Naval Access Road and Hakimo Road. The
16 Office of Planning, just to let you know, is not
17 necessarily opposed to the use of that as an emergency
18 access.

19 So if there's a locked gate which stays
20 locked unless there's an emergency, then the existence
21 of a second route out of the area is not necessarily a
22 bad thing.

23 We do think that they could prevent tenants
24 through a CC&R from using Hakimo Road -- I'm sorry.
25 The other issue is there's apparently another road, at

1 least raised by Intervenor, in addition to that which
2 perhaps Petitioner doesn't have the ability to
3 control.

4 Nevertheless, they would have the ability to
5 control tenants through a CC&R from using that road.
6 We don't think they'd be able to prevent the public.
7 I mean there's just no mechanism by which Petitioners
8 can prevent the public from using it. But they would
9 have the mechanism for tenants.

10 I think those are our comments. But
11 otherwise we do support the motion. It's an important
12 issue to the Office of Planning and we are happy it
13 was made. Thank you.

14 MS. TOWNSEND: Thank you. Intervenor also
15 support the motion. There are a couple of issues.
16 First, we think that the deadline is reasonable.
17 Petitioners have been in negotiations with the Navy
18 for three years.

19 If there is this kind of back and forth and
20 it's just a matter of working out of the details kind
21 of relationship, it should be possible for them to get
22 a letter out from whoever they are negotiating with in
23 D.C.

24 We also support the suggestion made by the
25 State to include the other entities using the road,

1 that's Pacific Mall, Pine Ridge, also known as West
2 O'ahu Aggregate, and PVT, only because we would need
3 some indication about their willingness to participate
4 in this road group that the Navy wants to see
5 established.

6 In addition, I would actually encourage the
7 Commission to consider a longer timeframe than 50
8 years. The boundary amendment is forever. And the
9 access, once you change the use of this land it's
10 unlikely to ever go back.

11 And what's going to happen in 25 years or 50
12 years, whatever the term of the lease is, when we no
13 longer have access? We need some indication from the
14 Navy that they are intending to move. They had made
15 those plans. Now they have stopped. We have no
16 indication from that.

17 So in a hundred years what's going to happen
18 as far as access to this industrial park? So I don't
19 know how to word the motion, but I would urge the
20 Commissioners to think more long term as far as what's
21 going to happen in the next generation with access to
22 this industrial area. Thank you.

23 PRESIDING OFFICER CONTRADES: Commissioners,
24 any further discussion? Commissioner Jencks.

25 COMMISSIONER JENCKS: Mr. Chairman, I'm

1 going to propose that I rescind my motion in its
2 entirety.

3 PRESIDING OFFICER CONTRADES: Okay. Chip,
4 you withdraw your second?

5 COMMISSIONER LEZY: Yes.

6 PRESIDING OFFICER CONTRADES: As the
7 presiding officer this morning, Mr. Yuen, I think that
8 you recognize the signals being sent out to you. But
9 I would also like to advise you that this Commission
10 is requesting that you provide for us a letter stating
11 that you have come to some kind of agreement with the
12 Navy, the terms of the agreement, whether or not you
13 have the agreement with all the other users of
14 Lualualei as required, and that it be submitted to us,
15 that it must be submitted to us before the end of your
16 case.

17 MR. YUEN: That's a fair request.

18 PRESIDING OFFICER CONTRADES: So we can
19 continue on with your case. I would like to note for
20 the record that most of us from the neighbor islands
21 have flights to catch this afternoon. So we will
22 adjourn this afternoon at 2:00.

23 MR. YUEN: Before I call my next witness,
24 Mr. Glenn Kimura, I'd like the Commission's indulgence
25 on one thing. My cultural witness Hanalei Aipoalani,

1 who was here yesterday, had informed me late yesterday
2 afternoon that he could not be here. I have two more
3 witnesses, Mr. Kimura and Mr. Aipoalani. I'd like to
4 rest my case with Mr. Kimura but bring Mr. Aipoalani
5 back at the next meeting, and assuming we finish
6 Mr. Kimura in time, to have the City and the State
7 proceed in the interest of time. I'd ask that the
8 Commission give me the ability to bring Mr. Aipoalani
9 back in January, assuming that the Commission takes
10 this is up in January, even though I've finished the
11 rest of my case today.

12 PRESIDING OFFICER CONTRADES: Okay.

13 MR. YUEN: Thank you. My next witness is --

14 PRESIDING OFFICER CONTRADES: One second.
15 Do you folks have any objections to that?

16 MR. YEE: The Office of Planning has no
17 objection, is prepared to bring forward its case with
18 the exception we would like the opportunity to bring
19 our representative from the Office of Planning back
20 after the testimony.

21 PRESIDING OFFICER CONTRADES: Intervenor?

22 MS. TOWNSEND: Yeah, we have no objection.

23 PRESIDING OFFICER CONTRADES: Very good.

24 MR. YUEN: Thank you. Good morning,
25 Mr. Chair and Commissioners. My next witness is

1 Glenn Kimura.

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

5 THE WITNESS: Yes.

6 PRESIDING OFFICER CONTRADES: Thank you.
7 Mr. Yuen.

8 DIRECT EXAMINATION

9 BY MR. YUEN:

10 Q Please state your name and address for the
11 record.

12 A My name is Glenn Kimura. My address is 1600
13 Kapiolani Boulevard, Suite 1610, Honolulu, Hawai'i.

14 Q Mr. Kimura, what is your business
15 affiliation?

16 A I'm the planning consultant for this
17 project.

18 MR. YUEN: Mr. Kimura's resumé has been
19 presented as Exhibit No. 47. And his PowerPoint I
20 believe is Exhibit No. 65. Based on Mr. Kimura's
21 resumé I request that the Commission qualify
22 Mr. Kimura as an expert in land use planning.

23 PRESIDING OFFICER CONTRADES: Any
24 objections?

25 MR. YEE: No objection.

1 MS. TAKEUCHI-APUNA: None.

2 MR. YEE: No objection.

3 MS. TOWNSEND: No objections.

4 PRESIDING OFFICER CONTRADES: Commissioners?
5 Fine. Thank you.

6 Q (By Mr. Yuen) Thank you. Before I get into
7 your formal presentation, Mr. Kimura, I'd like to ask
8 you about the Office of Planning's recommendation that
9 new construction on this Project satisfied the
10 Leadership in Environmental Design or LEED-Silver
11 standard for new construction or for core and shell
12 projects. Could you give us, give the Commission some
13 of the reasons why Tropic Land objects to this
14 requirement?

15 A Yes. As Mr. Yanagihara indicated, whenever
16 you have to do a project according to LEED standard
17 there is an upfront cost of about 10 to 15 percent
18 more. As we understand the whole LEED system various
19 points are attributed to a project if it meets certain
20 kinds of sustainability ideas.

21 We reviewed how many projects have achieved
22 LEED certified ratings or higher. And since up to
23 August of 2010 there have only been 16 non-residential
24 buildings that have LEED certification.

25 And we are building an affordable warehouse

1 project. As we understand there's only one warehouse
2 project now with LEED core and shell rating and that's
3 a gold rating.

4 The LEED system applies points to a project.
5 And you have to get a LEED Certified professional
6 rater to come in and rate your project and there are
7 no raters here in Hawai'i. So we have to go and hire
8 somebody to come here just to do that. We also have a
9 site that's intended to be a warehouse project and
10 baseyard. And under the point system there's ways to
11 get very easy, quote "easy" points in the LEED system.

12 In our case we can't even get the easy
13 points because we're not, for example, not on a brown
14 field, we're not near public transportation,
15 rainwater's not available in usable quantities.
16 Basically we're going to have warehouse buildings,
17 open air, no air conditioning, no buildings with huge
18 air conditioning requirements and so forth.

19 So basically I think it's a system that is
20 good to promote sustainability and green buildings.
21 But it has to be applied judiciously to the right
22 projects.

23 Q Thank you. Mr. Kimura, did your firm
24 prepare the final environmental impact statement for
25 the Nanakuli Community Baseyard?

1 A Yes.

2 Q Taking you through some of the areas in your
3 report. First, are government services readily
4 available to the Nanakuli Community Baseyard?

5 A Yes, I'll refer to my PowerPoint here.
6 Police, fire and EMS services can be made available to
7 the baseyard as well as the baseyard will have no
8 direct impact on the public school system or create a
9 need for parks and open space.

10 As this map shows the Project Area is here,
11 and that the nearest fire station is right here in
12 Nanakuli Valley. Police services can be provided by
13 the Wai'anae Police Station which is up the road past
14 Maili. And there's also a substation at the Kapolei
15 community.

16 EMS services would be provided by the
17 Wai'anae Comprehensive Health Service which is in
18 Maili, right up here. There's also a clinic of the
19 Wai'anae Community Health Center which is right in
20 here, but that's not for emergency services.

21 MR. YUEN: Let the record reflect Mr. Kimura
22 has been referring to figure 2 in Exhibit 13, which is
23 the final environmental impact statement for the
24 Project.

25 Next, Mr. Kimura, please describe how the

1 Nanakuli Community Baseyard complies with the
2 objectives, policies and priority guidelines of the
3 Hawai'i State Plan, Functional Plans.

4 A With respect to the Hawai'i State Plan the
5 baseyard will comply with the economic priority
6 guidelines and the employment functional plans. The
7 baseyard will increase opportunities for new small
8 business along the Wai'anae Coast, an area that has
9 historically had a higher unemployment rate.

10 The baseyard will also afford the Wai'anae
11 Coast entrepreneurs an opportunity to purchase land or
12 lease land for trucking, construction and other light
13 industrial businesses. The baseyard will also enhance
14 economic self-sufficiency of the Waianae Coast
15 community.

16 And the Project proposes a business
17 incubator which will provide a facility for startup
18 businesses that is presently lacking in West O'ahu.

19 Q What about compliance with other objectives,
20 policies and priority guidelines of the Hawai'i State
21 Plan?

22 A With respect to population growth the
23 baseyard will comply with the population growth and
24 land resources priority guidelines of the Hawai'i
25 State Plan. The petition Area is in close proximity

1 to Pine Ridge Farms' recycling center and the PVT
2 construction and debris landfill in the Urban
3 District.

4 It's also adjacent to the Navy's joint base
5 Pearl Harbor/Hickam/Lualualei Annex which has urban
6 characteristics but require open space. The Petition
7 Area is in the Agricultural District but it's not on
8 productive agricultural land. The nearest agriculture
9 uses are raising fighting chickens and pasture.

10 Q The Project, does it comply with other state
11 functional plans?

12 A Yes. It will comply with the employment
13 functional plan by establishing a setting for the
14 development of small local businesses. It will also
15 comply with the agricultural functional plan because
16 the Petition Area is in the Agricultural District, but
17 it is not on productive agricultural land.

18 The more appropriate prime and -- prime but
19 usable agricultural land would not be affected as
20 much. The Nanakuli Community Baseyard also will
21 comply with the transportation and energy Functional
22 Plans by providing business and employment
23 opportunities to Wai'anae residents that are closer to
24 where they reside, thereby reducing commuting on
25 Farrington Highway.

1 Q Does the Project comply with the coastal
2 zone management objectives and policies?

3 A Yes. Our Petition Area is two miles from
4 the shoreline. And it will not impact any coastal
5 recreation opportunities or public access to the
6 beaches. The baseyard will not adversely impact the
7 mauka views including the view of Maui's silhouette.

8 Q How does the Nanakuli Community Baseyard
9 comply with the goals and objectives of the City and
10 County of Honolulu's General Plan?

11 A The baseyard complies with the policies of
12 the General Plan's economic activity objectives by
13 encouraging growth and diversification of O'ahu's
14 economic base and development in appropriate locations
15 of non-polluting industries.

16 The baseyard will also permit the moderate
17 growth of business centers in the urban fringe areas.
18 The baseyard complies with policies to achieve the
19 General Plan's physical development and urban design
20 objectives by locating new industries in relation to
21 their markets and suppliers and to residential areas
22 and transportation facilities.

23 In addition, the baseyard is compatible with
24 other rural industrial areas along Lualualei Naval
25 Road, the PVT C and D landfill and Pine Ridge's

1 recycling center.

2 Q How does the Nanakuli Baseyard comply with
3 the Wai'anae Sustainable Communities Plan?

4 A The baseyard complies with many of the
5 goals, objectives and policies as set forth in the
6 Honolulu General Plan and the Wai'anae SCP. The
7 baseyard fulfills the vision statement in the
8 Waimanalo SCP which states that we value economic
9 choices in Waianae.

10 And this would be by promoting a business
11 and employment venue in Waianae. The SCP also
12 recognizes that the highly expansive clay soils on the
13 north slopes of the ridges are not good for
14 agriculture.

15 The baseyard is also consistent with the
16 Waianae SCP's objective to encourage the establishment
17 of light industrial businesses that provide jobs for
18 local people and that are generally compatible with
19 the predominantly residential use of the rural
20 community areas but are not in Makaha Valley.

21 The baseyard conforms to the land use map in
22 a final revised draft Wai'anae SCP that was published
23 by DPP in October 2010. DPP's final revised SCP
24 includes a recommendation to extend the rural
25 community boundary and that's going to be reviewed in

1 December. However, that has been moved on to January
2 as we understand.

3 This is a map that's contained in the final
4 revised draft of the Wai'anae SCP. This is the land
5 use map. As you can see in purple here that is a
6 designation for industrial use. It's surrounded by
7 what's now called the community growth boundary. So
8 it's part of the revised Wai'anae SCP.

9 MR. YUEN: Let the record reflect that
10 Mr. Kimura has referred to Exhibit A10 in the Wai'anae
11 SCP which I've submitted as Exhibit 66.

12 Q What is the status of this amendment to the
13 Wai'anae SCP?

14 A Tropic Land had applied for independent
15 processing of an amendment to the Waianae SCP in the
16 course of preparing this Project. The City had asked
17 Tropic Land to wait for the 5-year review period,
18 5-year review. The 5-year review actually has been
19 conducted on a 10+ year basis. The draft -- the final
20 revised draft for the Waianae SCP was released in
21 October 2010 completing their work on the amendment.

22 But as you can see on this chart here all of
23 the SCP's on the left were adopted either in 1999 or
24 2000. And most of them -- that's over 10 years ago,
25 and most of them are still being updated. So although

1 the amendment process is supposed to occur in five
2 years, it's in reality taking more than 10 years.

3 Q This chart is part of Exhibit 55.
4 Mr. Kimura, the Concerned Elders of Wai'anae have
5 expressed a fear that reclassifying the property into
6 the Urban District and changing the Wai'anae SCP
7 designation from golf course to industrial would
8 facilitate the development of a landfill.

9 Can you explain what permits are required to
10 develop a landfill and why this fear is mistaken?

11 A In order to develop a landfill one can go to
12 HRS 205-6 which permits certain usual and reasonable
13 uses within the state Agricultural District by the
14 county Conditional Use Permit and an LUC Special
15 Permit. In fact all the landfills on all of the
16 islands including Waimanalo Gulch have been permitted
17 under this process.

18 The LUO master use table lists waste
19 disposal and recycling as a conditional use in the
20 City's P-2 preservation zone, Ag-2 agricultural zone
21 and I-2 and I-3 industrial zone.

22 Currently the Petition Area's designations
23 include state Agricultural District and city P-2
24 Preservation District which would actually qualify the
25 site for a landfill. By reclassifying our Petition

1 Area to urban and rezoning it to I-1 light industrial
2 this would centrally preclude the issuance of any
3 permits for landfill on the Petition Area.

4 Q Mr. Kimura, can you summarize the Nanakuli
5 Community Baseyard's compliance with the Land Use
6 Commission's reclassification criteria?

7 A The baseyard project generally conforms to
8 applicable goals, objectives and policies of the
9 Hawai'i State Plan for the Economy, General and the
10 State Employment, Agriculture, Transportation and
11 Energy Functional Plans.

12 There are no threatened or endangered
13 species or critical habitats within the Petition Area.
14 And development of the baseyard will not adversely
15 affect any significant historic or archaeological
16 resources. Development of the baseyard will not
17 require a commitment of state funds or resources.

18 In addition, the baseyard will support local
19 startup businesses providing employment opportunities
20 and stimulating economic development on the Waianae
21 Coast. The Project is consistent with the objectives
22 and policies within the City and County of Honolulu
23 General Plan in the areas of economic activity,
24 natural environment, and physical and urban design.

25 Development of the Petition Area will not

1 substantially impact actual or potential agriculture
2 production. In addition to the poor soil conditions
3 and lack of affordable irrigation water, the Petition
4 Area has not been in cultivation for more than 20
5 years. Tropic Land, LLC has demonstrated the
6 financial ability to implement the Project.

7 Q Please summarize the Nanakuli Community
8 Baseyard's compliance with the Land Use Commission's
9 Urban District reclassification standards.

10 A The areas in close proximity to the Petition
11 Area are characterized by a built environment.
12 There's industrial uses and urban concentrations of
13 people, structures, streets and services and other
14 related uses. The baseyard will be a new center of
15 trading and employment.

16 Basic services such as wastewater systems,
17 drainage, water, transportation, public utilities and
18 police and fire protection are available to the
19 Petition Area.

20 Based on the demand for employment and
21 business activity on the Leeward Coast,
22 reclassification of the Petition Area is reasonably
23 necessary for urban growth.

24 In addition, the baseyard will not
25 contribute towards scattered spot urban development

1 thereby necessitating unreasonable investment in
2 public infrastructure or support services.

3 The topography is satisfactory and
4 reasonably free from flood, tsunami and adverse
5 environmental effects.

6 Reclassification of the Petition Area will
7 not contribute to spot urban development. The
8 Petition Area is within 3,000 feet of land in the
9 Urban District that is occupied by the Pine Ridge
10 Farms recycling center. In actuality when we went
11 back and measured it it's more like a thousand feet
12 from border to border.

13 The City's DPP's Final Revised Draft
14 Wai'anae SCP designates the Petition Area for
15 industrial use within the rural community boundary.

16 The Honolulu city Planning Commission will
17 consider the Waianae SCP in December of 2010 but we
18 understand that's been moved to January.

19 This map shows you the State Land Use map
20 under currently. And as you can see our Project Area
21 is right here, which is very close to the Pine Ridge
22 recycling center.

23 MR. YUEN: The witness has just referred to
24 figure 25 in Exhibit 13. I have no further questions
25 for the witness.

1 xx

2 CROSS-EXAMINATION

3 BY MS. TAKEUCHI-APUNA:

4 Q Hello, Mr. Kimura. The City has a few
5 questions regarding the last two slides referencing
6 the LUC Urban District criteria. Can we go back to
7 that slide.

8 The first it says areas in close proximity
9 to the Petition Area are characterized by built
10 environment, industrial use and urban concentrations
11 of people, structures, streets, and services and
12 related land uses.

13 Can you describe what urban concentrations,
14 what you consider urban concentrations of people,
15 structures and streets in that area? Or what you're
16 referring to? Is it the proximity of concentrations
17 that are further closer to the main road?

18 A Well, if we can go back to the last slide.
19 This is basically where the urban concentration of
20 people, structures and development has occurred. But
21 this is an urban-designated land area as well as this
22 is an industrial-zoned area. So we are very close to
23 them. So it's close proximity is what we're saying.

24 Q Okay. Then on the third bullet you referred
25 to basic services such as wastewater systems, drainage

1 and water that are available to the Petition Area.
2 However, in your Final EIS you state that the City has
3 no plans to extend its sewer system all the way up
4 mauka to the project site. Can you reconcile those
5 two statements?

6 A I believe we're going to be developing our
7 own wastewater treatment plant on site to deal with
8 the wastewater issue.

9 Q All right. And then for the fourth bullet,
10 what are you basing the demand for employment and
11 business activity on? Is that based on your own
12 projections or your own reports?

13 A That's based on our economic consultant's
14 report.

15 Q Based on your consultant?

16 A Yes.

17 Q And so based on that report you are
18 concluding that that demand will be satisfied through
19 this Project; that urban growth will be satisfied by
20 providing this industrial park? Or can you explain
21 the fourth bullet, provide more context to it?

22 A Ah...

23 Q I'm sorry. We would like to know whether
24 you're referring to the Waianae Coast or the Leeward
25 Coast, because we understand the Leeward Coast to

1 include 'Ewa as well as Waianae. So could you
2 clarify?

3 A I think we're only talking about Wai'anae
4 because all of our -- the economic analysis indicated
5 that the whole area has been depressed in terms of
6 employment. So this Project is meant to be affordable
7 and it's meant to provide jobs. So that's why we have
8 been working with the community on that as well.

9 Q Then on the next slide the first bullet
10 "Nanakuli Community Baseyard will not contribute to
11 scattered spot urban development necessitating
12 unreasonable investment and public infrastructure or
13 support services."

14 Does this mean that this Project will not
15 create a domino effect where surrounding properties
16 would require more public infrastructure and support
17 services?

18 A I don't believe so because we're adjacent to
19 the Navy, directly adjacent to the Navy on the mauka
20 side. And as you look at this in reality even though
21 the City's SCP map doesn't indicate what's happening
22 here, you have a large area that's in the PVT Landfill
23 area as well as the Pine Ridge Recycling Center.

24 So, you know, the extent of urbanization
25 would probably just go up to that point and it

1 couldn't go beyond that because you've got the Navy
2 there. As far as we know the Navy's not gonna vacate
3 that area.

4 Q What about into the ag areas? Do you think
5 that public infrastructure wouldn't be required in
6 those areas should property values increase due to
7 this Project?

8 A Could you restate the question.

9 Q On the opposite side of the Naval Road, the
10 ag area?

11 A Do I think our Project would impact the
12 agricultural land values?

13 Q Yes, and the development possibilities?

14 A Oh, I can't answer that one. If I look at
15 it as a planner it's basically all small pieces of
16 property. It's not one large property that can be
17 developed. There'd have to be some kind of assemblage
18 of all of the properties to do something that would be
19 viable.

20 COMMISSIONER KANUHA: Okay. All right. We
21 have no further questions. Thank you.

22 PRESIDING OFFICER CONTRADES: Office of
23 Planning?

24 MR. YEE: Thank you.

25 CROSS-EXAMINATION

1 BY MR. YEE:

2 Q As I understand your testimony this Project
3 will be offering an affordable industrial area for
4 small businesses, particularly in the Wai'anae
5 Nanakuli region, is that right?

6 A Yes, that's correct.

7 Q And so one of your concerns about the Office
8 of Planning's LEED condition is that it may make the
9 costs too expensive for an affordable industrial area;
10 is that right?

11 A Yes.

12 Q And the other concern was that there are no
13 raters, no LEED raters in the state of Hawai'i. Is
14 that your testimony?

15 A That's our understanding.

16 Q So if the LEED condition required
17 construction to LEED standards but did not require
18 LEED certification from raters, and if the standards
19 were required to be built to the extent practicable,
20 wouldn't that resolve your concerns?

21 A I think it's a question that goes out of my
22 authority to answer because it's probably the
23 Petitioner, the owners of the property how they can
24 make the Project affordable.

25 Q So you can't answer that question, but you

1 can answer -- you could answer Mr. Yuen's question as
2 to whether or not the OP's condition for LEED was or
3 wasn't a good idea?

4 A That's my opinion, correct.

5 Q In order to ensure that this is an
6 affordable industrial area, I take it you're going to
7 be targeting businesses that need low-rent industrial,
8 low-rent industrial activities such as the baseyard
9 for trucking, et cetera; is that right?

10 A It's part of the owner's program, correct.

11 Q And an essential part, then, of this program
12 is to ensure that the rents remain low.

13 A I can't answer that one. It's not my call
14 because it's the, it's the Petitioner's call.

15 Q Well, I'm not -- I think this is a more
16 general planning question, though, of if you design a
17 project for an affordable industrial area, isn't it
18 just a necessary element that then you need to target
19 the industries that require low rent, that have low
20 rent industrial activities? Isn't that just a
21 planning question?

22 A I don't necessarily agree with that.

23 Q Why not?

24 A Because I've been a planner for many years.
25 I've worked on many different kinds of plans. And as

1 a planner, a land use planner, you're just asked to
2 come up with a plan, a layout. You do it according to
3 specifications of what the developer or the government
4 wants to do. And, you know, it's up to the developer
5 to determine what kind of rates they want to impose on
6 the project and so forth. They're taking all the
7 risk. We don't get into the financials of the
8 project.

9 Q Let me take the question away from this
10 Project, then, and ask you just a planning question.
11 Just as a basic question, generally people who have
12 land tend to rent it out at the highest rent that they
13 can get, right?

14 A I believe so, yes.

15 Q So if you want to -- if the Commission or if
16 the public wants an affordable industrial area they
17 would want to know that there are ways to ensure that
18 the types of activities or the types of rents charged
19 are appropriate for low, or for an affordable
20 industrial area.

21 A Yes.

22 Q Are there any restrictions or mitigation
23 measures to ensure that this Project stays as an
24 affordable industrial area?

25 A As a planner I can't answer that question.

1 Q As a planner you know that you could place
2 restrictions on the use of property, yes?

3 A That's the -- that's the developer's call.

4 Q I'm not asking what's the answer. I'm just
5 saying as a planner you can put restrictions on
6 property, right?

7 A Correct.

8 Q And one of the restrictions this developer
9 has put on is regarding hostess bars and pornography
10 shops like that, right?

11 A I believe so.

12 Q You're aware the Office of Planning has
13 asked for additional restrictions to prevent higher
14 rent commercial activities to be placed on this area.
15 You're aware of that request from the Office of
16 Planning?

17 A I, I was not aware of that one, no.

18 Q So you haven't read the Office of Planning's
19 testimony.

20 A No.

21 Q Okay. As a planner are you aware of the
22 concern of commercial creep into industrial areas?

23 A It all depends on the situation. In this
24 case I would agree with that, yes.

25 Q Is that --

1 A Because a lot of industrial areas -- if you
2 go around the state to the neighbor islands, a lot of
3 industrial areas have very viable commercial
4 activities such as restaurants. They have to feed the
5 people who work there.

6 Q So as you start out in one industrial area
7 there tends to be an increased amount of activity such
8 as restaurants or other commercial activities than
9 maybe what you might have started with, is that right?

10 A If it's a permitted use there's no --

11 Q Right.

12 A -- it's all legal, yes.

13 Q Okay. So if you don't want these higher
14 rent activities to occur, you then have to put some
15 other restriction on it. As a planner that's true,
16 isn't it?

17 A As a planner, no, I can't do that.

18 Q Well, you know as a planner that if you want
19 to stop these other activities, this commercial creep,
20 then you need some other restriction.

21 A I don't know if I have a tool to do that as
22 a planner.

23 Q Okay. Are you familiar with the authority
24 of the Land Use Commission to impose restrictions on
25 lands?

1 A Yes.

2 Q Let me move on to your discussion regarding
3 the Coastal Zone Management. You determined that
4 there will be no impact on the coastal waters, I
5 think, is that right?

6 A Yes.

7 Q I assume -- well, Ulehawa Stream does lead
8 to the ocean, is that right?

9 A Correct.

10 Q So your conclusion is dependent upon
11 admission measures that ensure that this Petition Area
12 does not put pollution into the Ulehawa Stream.

13 A That conclusion was based on the engineer's
14 analysis.

15 Q Okay. So it's not your analysis.

16 A No.

17 Q So you're just repeating what the engineer
18 is saying. You're not saying it's true or not.
19 You're just letting us know that's what the engineer
20 said.

21 A Correct.

22 Q Would you believe that that conclusion would
23 have to be dependent upon mitigation measures to
24 ensure that pollution does not go into Ulehawa Stream?

25 A Would you repeat the question?

1 Q Do you believe that the conclusion regarding
2 the impact to the coastal zone is dependent upon
3 mitigation measures to ensure that this Petition Area
4 does not pollute Ulehawa Stream?

5 A I think the engineering analysis is designed
6 to prevent that. But we have a situation where we
7 are, we're mauka of other users that have the
8 potential to impact the coastline. And you got, you
9 know, you got a landfill and you've got a recycling
10 center right there.

11 Q There are undoubtedly other potential
12 sources of pollution. But at the moment I'm only
13 focusing on the Petition Area as a potential source.

14 A Okay.

15 Q So much of the water moving on from Ulehawa
16 Stream the storm drains naturally do lead out
17 eventually to either Ulehawa Stream or the ocean,
18 correct?

19 A I believe so.

20 Q Do you know whether there are oil and water
21 separators in the stormwater systems to catch the oil
22 that may be running off from the industrial area?

23 A Currently?

24 Q Yes.

25 A I don't know that.

1 Q Do you know if any will be installed?

2 A For our Project or for other projects? Are
3 there users?

4 Q Either for your Project or downstream of
5 your Project.

6 A I don't know that.

7 Q Do you know whether there are catch basins
8 in the stormwater systems?

9 A I don't know that.

10 Q So without knowing this are you still able
11 to conclude that there will be no impact to the
12 coastal zone?

13 A Yes. Because I'm depending on the
14 engineer's report.

15 Q You talked about how this area is compatible
16 with the other urban uses such as PVT or Pine Ridge.
17 Do you remember that?

18 A Yes.

19 Q The Petition Area is also adjacent to
20 agricultural lands, correct?

21 A Correct.

22 Q Would you agree that there's required to be
23 conditions to ensure notification to the owners --
24 notification to the Petition Area owners or future
25 owners about those agricultural activities?

1 A From our, our use being an industrial use to
2 the agricultural users? Yes, there's a notification
3 requirement.

4 Q That's a requirement actually for land use
5 conditions, right?

6 A Right. When you go for zoning it's a
7 permitted use with conditions and the condition, you
8 have to go to Article 5 and there's some conditions
9 and requirements there, yes.

10 Q Then, finally, you were referring to the
11 Wai'anae Sustainable Communities Plan which I think
12 you said there's going to be a hearing in January?

13 A That's what we currently understand.

14 Q I take it nobody -- you can't actually tell
15 me when the Sustainable Communities Plan is going to
16 be adopted, right?

17 A Right.

18 Q But it would be fair to say that they're
19 fairly far along in the process.

20 A Correct.

21 Q So whenever they finish it's gonna be some
22 period, let's say, before five years, right?

23 A Right.

24 Q So if there's a requirement to make sure
25 that the Petition Area is included within the rural

1 community boundaries, five years would certainly be a
2 reasonable period of time to do that.

3 A Well, I don't know what your question -- can
4 you restate your question, please.

5 Q The Office of Planning -- let me tell you
6 since you haven't read our testimony -- the Office of
7 Planning has a condition saying that the Sustainable
8 Community's Plan must include the Petition Area within
9 the rural community boundary within five years. So
10 I'm just trying to ask you five years is a more than
11 reasonable time period to get this done given how far
12 along you are in the process?

13 A Yes, I would agree.

14 MR. YEE: Okay. Nothing further, thank you.

15 PRESIDING OFFICER CONTRADES: Intervenor.

16 CROSS-EXAMINATION

17 BY MS. TOWNSEND:

18 Q Hi, Mr. Kimura. Thank you very much for
19 coming. So I'd like to start by going over your
20 PowerPoint, just a few quick questions.

21 PRESIDING OFFICER CONTRADES: Excuse me,
22 could we just stop for a second. We need to give
23 our... (laughter)

24 (Reporter nodding)

25 MS. TOWNSEND: Oh, take a break.

1 PRESIDING OFFICER CONTRADES: Let's take a
2 five-minute break before we start your questions.
3 Okay.

4 MS. TOWNSEND: Okay. Thank you.

5 (Recess was held. Mr. Menching no longer
6 present.)

7 PRESIDING OFFICER CONTRADES: Call the
8 meeting back to order.

9 CONTINUED CROSS-EXAMINATION

10 BY MS. TOWNSEND:

11 Q Thank you. Hi, Mr. Kimura. I have a few
12 questions based on the PowerPoint presentation first.
13 They're just clarifiers. First, are you aware -- in
14 the current Waianae Sustainable Communities Plan are
15 you aware of the current urban growth boundary limit?

16 A Ah --

17 Q Let me ask the question slightly different
18 so it's more clear. In the current Waianae
19 Sustainable Communities Plan is the proposed
20 industrial park within the current Urban Growth
21 Boundary?

22 A If you're referring to the revised final
23 draft.

24 Q No. The 2001 that's in effect right now.

25 A Yeah, it's not in there.

1 Q Okay. And in the current one, the 2001
2 that's in effect right now, how long is the Urban
3 Growth Boundary supposed to be in effect? What's the
4 date horizon? Okay. Let me ask it more directly.
5 In the current Urban Growth Boundary is it supposed to
6 be in effect till 2020? Are you aware of that 2020
7 effect date?

8 A For the Sustainable Communities Plan
9 program?

10 Q Yeah, the Urban Growth Boundary that's
11 identified in the current plan, does it, is it in
12 effect till 2020?

13 A I believe it's a 5-year, 5-year requirement.

14 Q Okay. I'll move on. Thanks. Are you
15 familiar with the language in the current plan that
16 says, that states that "Urban uses shall not intrude
17 into the Agricultural District and instead should be
18 focused along Farrington Highway"?

19 A I'm not aware of that one.

20 Q Okay. Now to the revised plan that's
21 currently before the Planning Commission. Is it true
22 that the plan could be amended before final adoption
23 by the City council?

24 A I believe so.

25 Q Thank you. Okay. Moving on to your slide

1 about the LUC reclassification criteria. You had made
2 the statement that development of the baseyard will
3 not require commitment of state funds or resources.
4 I'm confused because it's my understanding that it's
5 the Petitioner's position that they will not pay for
6 the, for all of the road improvements required for
7 Farrington Highway; that they're only willing to pay
8 their fair-share.

9 So can you reconcile those two situations?
10 Because it's my understanding, then, that the
11 remaining percentage would be paid by the state. Is
12 that not true?

13 A I don't know who the other fair share
14 participants need to be on that. All I know is that
15 the Petitioner needs to pay their fair-share.

16 Q Okay. So how can you say that the state
17 will not have to commit funds if there's going to be a
18 fair-share agreement for improving Farrington Highway?

19 A It depends on who the other parties will be
20 to that improvement. If it's the state then, you
21 know...

22 Q If it were the state it would be a
23 commitment of state funds.

24 A Ye. But the state has gone ahead and done
25 all the other improvements along Farrington Highway

1 anyway. And they constantly make improvements.

2 Q Thank you. Several times in your
3 presentation you made a reference to Pine Ridge and
4 PVT Landfill. So I was wondering if you were familiar
5 with the history of those parcels and how they came to
6 be.

7 A I'm not really familiar, no.

8 Q I'm just going to ask you a series of
9 clarifying questions. If you don't know just say you
10 don't know and I'll move on. Are you aware that PVT
11 was originally owned by Kaiser as a cement quarry in
12 the 1950's?

13 MR. YUEN: Mr. Chairman, I'm going to
14 object. The witness is -- by asking a leading
15 question like that the witness (sic) is trying to
16 testify and introduce a fact into the proceedings. If
17 the witness wants to try to establish the history of
18 these land uses she ought to do it through her own
19 witness.

20 MS. TOWNSEND: I guess I'm just trying to
21 figure out the extent to which he is familiar with the
22 history.

23 MR. YUEN: I think it would be appropriate
24 to ask if he's familiar with the history. If he says
25 no, then the answer's no.

1 Q (By Ms. Townsend): Okay. Is it possible,
2 Mr. Kimura, for you to describe what you do, what you
3 are familiar about the history of PVT and Pine Ridge?

4 A I don't know anything about the history.

5 Q Okay. Thank you very much. Now then, let's
6 move on to some general concepts of planning. To
7 prevent -- okay -- so spot zoning it is given is a bad
8 thing, correct?

9 A Not necessarily.

10 Q Oh, okay. All right. Having inconsistent
11 zonings is something that should be prevented? Or is
12 that something -- is that a fair general principle of
13 planning you want to try to keep inconsistent things
14 not next to each other?

15 A Can you state that as a question?

16 Q Okay. Fair, fair request. How about this:
17 In order to ensure that inconsistent land uses are not
18 next to each other, would you take into consider (sic)
19 the following, question mark? Surrounding uses, yes?

20 A Yes.

21 Q Traffic conditions and challenges?

22 A That's not an inconsistent land use per se.

23 Q No, no. I was asking about factors you take
24 into consideration to determine whether land uses
25 might be inconsistent. Are these factors. So

1 surrounding land use, would traffic conditions be a
2 factor that you would consider, whether a proposed
3 land use --

4 MR. YUEN: I'm going to object because I
5 think the Intervenor is assuming that there are
6 inconsistencies of land use; and making the statement
7 and asking the witness to support her statement rather
8 than asking the witness a question, a true question as
9 to a planning principle.

10 MS. TOWNSEND: Okay.

11 Q Well, let's move on from principles then and
12 just talk about this parcel. Okay. So Tropic Land's
13 proposing the industrial park in Lualualei. Is
14 Lualualei Valley or the parcel, is it located near
15 airports or harbors or other major transportation
16 services?

17 A No.

18 Q Is it located on flat land?

19 A It's predominantly flat but in the mauka
20 side it rises a little, yes.

21 Q Is it uphill?

22 A Yes.

23 Q Is it currently within -- is it currently
24 contiguous with urban areas?

25 A No, but it's very close.

1 Q Is it located next to a high-value national
2 security facility?

3 MR. YUEN: If you know.

4 THE WITNESS: I don't know that. I don't
5 know the secrets of the Navy.

6 Q (By Ms. Townsend) Sorry. That's a term I
7 pulled out of their letter. Thought it was
8 interesting. Okay. So I'm curious that in your
9 presentation you said that the Project will not
10 increase traffic on Farrington, when both the TIAR and
11 the economic analysis say basically that more people
12 would be coming to Waianae as a result of the -- as a
13 result related to the industrial park. Can you
14 reconcile those two?

15 MR. YUEN: I'm going to object because I
16 think the Intervenor's trying to characterize a
17 statement the Petitioner made -- that the witness made
18 that I don't recall the witness making such a
19 statement.

20 Q (By Ms. Townsend): Okay. On September 10th
21 the traffic engineer testified that 3/4 of the traffic
22 to the industrial park would be from Honolulu to
23 Waianae in the morning, and from Waianae to Honolulu
24 bound in the evening.

25 Is that consistent with your statement that

1 the industrial park will not increase traffic burden
2 in Wai'anae?

3 A Um, I guess I need to defer to whatever the
4 expert on traffic said. However, as we understand --
5 we've been doing EIS's and EA's for many years. And
6 traffic engineers use their -- develop their analysis
7 through modeling. So, you know, it may not reflect
8 what could happen in the future. So in this case, you
9 know, there might be some reduction in traffic.

10 Q Understood. Thank you. Okay. I'd like to
11 move on to some of the proposed -- some of the
12 possible uses, permitted uses -- sorry, like to move
13 on to some of the permitted uses in the land zoned
14 I-1. I went over the LUO and found that -- and if you
15 could just confirm for me wind farms would be
16 permitted in an I-1?

17 A If you found it in the table that's good.

18 Q Okay. Are you familiar whether amusement
19 parks are permitted?

20 A I have the table right here. I don't see
21 amusement parks there.

22 Q Okay. In your -- in your expert opinion
23 would -- ah, let's move on.

24 In your EIS did you study the effects of the
25 Project on downwind and downhill communities?

1 A We... we...we referred, ah, to -- what we
2 did was we couldn't get an air quality expert to do
3 the study. So we had to go get a similar kind of
4 study for the industrial park.

5 Q Okay. Can you describe the similar study
6 that you relied on?

7 A It was from another industrial park, the EIS
8 or EA.

9 Q Okay. Was it the Kapolei Harborside Center
10 Industrial Park?

11 A If it's in the EIS I believe so.

12 Q Okay. I can refer people to Page 5-45 in
13 the EIS which references the Kapolei Harborside Center
14 EIS.

15 So I'd like to ask you about the conditions
16 in Kapolei for that industrial park versus the
17 conditions in Tropic Land's to see whether they're
18 actually similar. The industrial park in Kapolei, is
19 it located close to harbors and other major
20 transportation services, if you know?

21 A Well, Kapolei is closer to the ocean than we
22 are, correct?

23 Q Are there homes or parks or farms around the
24 industrial park in Kapolei?

25 A I, I don't know that.

1 Q Okay. Are there other active military sites
2 close to the industrial park in Kapolei?

3 A No.

4 Q Okay. And is the Kapolei Industrial Park
5 zoned I1?

6 A I don't know that.

7 Q Okay. All right. Is the wind pattern that
8 affects Kapolei similar to the wind pattern that
9 affects Lualualei Valley?

10 A I don't know that precisely. Could be
11 different. We're in a valley. Kapolei is more like
12 an open plain.

13 Q Thank you. And similarly do you know if the
14 Kapolei EIS assessed runoff like stormwater runoff,
15 for example, from the industrial park?

16 A I don't know that. They must have. Yeah?

17 Q Okay. So upon what did you base the
18 conclusion that the Kapolei EIS in its assessment of
19 air quality and runoff issues was similar to the
20 Tropic Land's?

21 A Well, if you look at air quality in general
22 the state of Hawai'i usually meets the standard for
23 ambient air quality. And in this case the kinds of
24 uses that we're proposing to develop we're not a
25 polluting type of industry. So our conclusion is that

1 Kapolei may be more severe than ours.

2 Q Okay. Just to clarify your answer. So the
3 kinds of industries that you're looking at are
4 nonpolluting. Can you give us some examples of what
5 industries you're considering?

6 A Whatever's permitted in the LUO. Baseyards.

7 Q Car repair?

8 A Car repair.

9 Q Car storage?

10 A Yep.

11 Q Dry cleaning, manufacturing? There's a
12 potential there for...

13 A Mm-hmm.

14 Q Are you familiar with the community's -- are
15 you familiar with the concerns related to dust in the
16 Lualualei Valley? In your -- in conducting the EIS
17 did you come across community concerns related to
18 dust?

19 A No.

20 Q Okay. Thank you. Okay. All right. So in
21 your expert opinion in general changing the
22 designation of land from ag to urban, does that
23 increase the value or decrease the value of land?

24 MR. YUEN: If you know.

25 THE WITNESS: I don't know that one.

1 Q (By Ms. Townsend): Okay. All right.
2 That's fine. In your opinion does Tropic Land have
3 the expertise and capacity to fulfill this industrial
4 park proposal?

5 MR. YUEN: Again, if you know.

6 THE WITNESS: That's not my call. I don't
7 know that.

8 Q (By Ms. Townsend) I'm guess I'm looking
9 for -- okay, let me back up a little bit. As a
10 planner you've conducted many EIS's, yes?

11 A Mm-hmm.

12 Q Have you conducted any EIS's on industrial
13 parks?

14 A Um, let's see. Yeah.

15 Q Based on that experience, in your opinion as
16 a planner do you feel that Tropic Land has the
17 expertise and capacity to actually fulfill this
18 proposal and establish a functioning industrial park?

19 A I can't answer that question. I'll leave it
20 at that.

21 Q Thanks. Okay. That's fine. Okay. Is in
22 terms of planning, and this is part of my question
23 about inconsistent uses, I'm not sure if you're
24 familiar -- currently the Petitioner is proposing to
25 put, to change the zoning on their property across the

1 street, the 23 acres, and change it to ag and possibly
2 encourage ag uses there.

3 My question to you is if there's an
4 industrial park across the street, from a planning
5 position does that make it more or less likely that
6 the farms on that 23 acres would be -- any ag activity
7 on those 23 acres would be successful?

8 A What -- would the ag parcels on the opposite
9 side of street be successful?

10 Q Yeah. In particular I'm thinking about how
11 when you want to sell your vegetables to Safeway, for
12 example, they have require food certification. Right?
13 I'm wondering if do you know as a planner whether
14 there are considerations made about whether to grant a
15 farm that certification if they're located across the
16 street from an industrial park.

17 MR. YUEN: If you know.

18 THE WITNESS: I don't know that one.

19 Q (By Ms. Townsend): Okay. That's fine. I'm
20 wondering in the other consideration that's on the
21 table to mitigate the loss of ag land in Waianae is to
22 set aside an ag easement in parcels in other places
23 like Ewa in Honolulu.

24 And I'm wondering if you have any statements
25 as to how that benefits Waianae, its need to preserve

1 the rural character.

2 A I don't have any opinion on that one.

3 Q Okay. Did you study in your EIS the
4 farm-to-urban migration that would result from the
5 Project?

6 A What -- could you -- I don't understand that
7 question. I'm sorry.

8 Q Okay. So in researching the land use
9 ordinances one of the considerations that I found was
10 that analyzing the conversion -- the migration of
11 uses.

12 MR. YUEN: I'm going to object. I think the
13 Intervenor is trying to testify.

14 MS. TOWNSEND: Sorry, sorry.

15 Q Okay. So let me just establish are you
16 familiar with farm-to-urban migration studies?

17 A No.

18 Q Okay. That's fine. Thanks. To your
19 knowledge is husbandry and pasture considered
20 agricultural uses?

21 A I'm not an ag expert, I'm sorry.

22 Q From the -- from a planner's perspective if
23 this parcel were rezoned as industrial, do you think
24 it would make it more or less -- would it make it
25 easier or harder to have the parcel immediately makai

1 zoned for urban use?

2 A Which is makai? Which parcel are you
3 talking about?

4 Q Can I refer to the map?

5 A Sure.

6 Q So I'm referring to Petitioner's Exhibit 50.
7 It's Page A-1. It's the map. My question is: Do you
8 see the purple spot here?

9 A Yes.

10 Q Okay. This is the Petitioner's spot --
11 parcel, sorry. This portion here immediately makai of
12 it is currently zoned agriculture. And it's owned by
13 a different landowner.

14 In your expert opinion do you feel that by
15 zoning this area here as industrial would it make it
16 easier or harder to zone this neighboring parcel in
17 some future date as urban?

18 A Right now it is urban.

19 Q What do you mean "right now it is urban"?

20 A According to the Land Use Commission map.

21 Q No, actually that's -- so it's actually
22 inaccurate. If you look at the map -- sir, can you
23 look at that map -- the part that's red in urban is on
24 the Wai'anae side of the street. And the part I'm
25 concerned about is that white parcel on the other side

1 of the street.

2 A Oh, okay.

3 Q So my concern is: In your expert opinion do
4 you feel that if this mauka portion, the Petitioner's
5 parcel, is zoned industrial, do you feel that in your
6 expert opinion it would be more or less likely that
7 that makai portion that's currently white on that map
8 be zoned urban?

9 A I can't answer that question. It's a matter
10 of conjecture here. Because one has to prove that it
11 can be used for some kind of viable urban use and
12 that's the process that we go through here.

13 Q Thank you. In your testimony you made many
14 references to PVT and Pine Ridge. So is it your
15 testimony that because PVT and Pine Ridge exist and
16 are used for urban purposes -- for industrial
17 purposes, excuse me -- that, therefore, it's
18 reasonable for the Land Use Commission to allow Tropic
19 Land to use their parcel across the street for urban
20 industrial purposes?

21 A Our Project has -- we're not dependent on
22 the uses that are there. Just part of the criteria is
23 that you're contiguous to urban boundaries. That's
24 what we are trying to prove here.

25 Q Okay. I have two questions to clarify that.

1 So, one, you're actually not contiguous. You're just
2 near.

3 A Mm-hmm.

4 Q Okay. And two, that I just want to make
5 sure I understand your testimony. Are you saying, and
6 correct me if I'm wrong, that because PVT and Pine
7 Ridge are urban and industrial, therefore it is
8 reasonable for the Land Use Commission to make the
9 Tropic Land parcel industrial?

10 A Yes.

11 MS. TOWNSEND: Thank you very much. No
12 further questions.

13 PRESIDING OFFICER CONTRADES: Commissioners,
14 do you have any questions? Commissioner Jencks.

15 COMMISSIONER JENCKS: Thank you very much.
16 In the light industrial district is there a height
17 limit? And what is that limit?

18 THE WITNESS: There is a height lime. I
19 believe it's 40 feet.

20 COMMISSIONER JENCKS: 40 feet.

21 THE WITNESS: Yeah. I'm not positive but I
22 believe so.

23 COMMISSIONER JENCKS: In your studies on the
24 parcel for planning purposes, did you do any FAR
25 studies for total site coverage?

1 THE WITNESS: No not at this time.

2 COMMISSIONER JENCKS: You did not.

3 THE WITNESS: No.

4 COMMISSIONER JENCKS: In your practice here
5 on O'ahu -- Mr. Yee mentioned the term "commercial
6 creep."

7 THE WITNESS: Yes.

8 COMMISSIONER JENCKS: Have you ever
9 experienced any discussions within the City and county
10 on restrictions on light industrial land as a
11 percentage of total site coverage as a way to limit
12 commercial creep, if you will, on light industrial
13 property?

14 THE WITNESS: Personally I've not been
15 involved in --

16 COMMISSIONER JENCKS: Are you aware of any
17 discussions in that area?

18 THE WITNESS: No, I'm not.

19 COMMISSIONER JENCKS: Okay. So you don't
20 have any idea what the FAR coverage would be. Is
21 there an FAR restriction on light industrial
22 districts?

23 THE WITNESS: Yes.

24 COMMISSIONER JENCKS: There is.

25 THE WITNESS: It's in the LUO.

1 COMMISSIONER JENCKS: Would you happen to
2 know what number is offhand?

3 THE WITNESS: Not right now.

4 COMMISSIONER JENCKS: It's okay. Thank you.
5 That's it.

6 COMMISSIONER LEZY: Thank you, Chair. Thank
7 you for your testimony, Mr. Kimura. Just one
8 question. On direct examination by Mr. Yuen you
9 testified regarding the LUC's criteria for
10 redistricting that you were of the opinion that the
11 Petitioner has the financial capacity in order to
12 proceed with this Project.

13 What do you base that opinion on?

14 THE WITNESS: Well, basically they're my
15 client. They have to demonstrate that they can do it.
16 As Mr. Yanagihara testified, they would have to go get
17 a loan to start up the Project and so forth. But I
18 gotta believe they have the financial capability to do
19 so.

20 COMMISSIONER LEZY: So you based your
21 opinion on the representations made to you by the
22 Petitioner that they have the capacity.

23 THE WITNESS: Yes.

24 COMMISSIONER LEZY: Anything else other than
25 that?

1 THE WITNESS: No.

2 COMMISSIONER LEZY: Thank you.

3 MR. YUEN: Just for the record,
4 Mr. Chairman, the Petitioner's' financial statements
5 for the year ended December 31st, 2008 have been
6 introduced as Exhibit 10 into evidence.

7 PRESIDING OFFICER CONTRADES: Thank you.
8 Any other questions? If not, thank you, Mr. Kimura.

9 MR. YUEN: No redirect.

10 PRESIDING OFFICER CONTRADES: You don't have
11 your other person. Holly, you okay? All right. You
12 can proceed.

13 MS. TAKEUCHI-APUNA: The City calls its
14 first and only witness, Michael Watkins.

15 MICHAEL WATKINS,
16 being first duly sworn to tell the truth, was examined
17 and testified as follows:

18 THE WITNESS: Yes, I do.

19 PRESIDING OFFICER CONTRADES: Could you
20 please state your name and address for the record.

21 THE WITNESS: Yes. My name is Michael L.
22 Watkins, and my business address is 650 South King
23 Street, seventh floor, Honolulu, Hawai'i.

24 DIRECT EXAMINATION

25 BY MS. TAKEUCHI-APUNA:

1 Q Mr. Watkins, what is your current position
2 and work background?

3 A I'm a staff planner with the City Department
4 of Planning and Permitting. I have 23 years of
5 experience all as a long-range planner and -- a
6 long-range land use planner, let me clarify, and all
7 of it with the City.

8 I've done everything from processing zone
9 changes and development plan amendments to my current
10 job of supervising the City's General Plan update
11 contract. Also this is the second petition to the
12 Land Use Commission that I have handled.

13 Q And how familiar are you with this Project?

14 A I'm the Department's project manager for
15 this Tropic Land petition, and I was responsible not
16 only for our EIS comment letters but also our
17 Statement of Position and our written testimony. I
18 have also sat through meetings, gone to the site visit
19 and looked at the materials submitted.

20 Q What is the Department's position on this
21 petition?

22 A We take no position on this petition.

23 Q Is the petition consistent with the General
24 Plan?

25 A Yes. The proposed light industrial park is

1 generally consistent with the General Plan. It meets
2 all the plan's key statements on the desired
3 island-wide development pattern.

4 However, on one topic on maintaining of the
5 character of rural areas it is not clear if the
6 Project is consistent. This is what I said in my
7 written testimony also.

8 One reason for this is because the current
9 official version of the Waianae Sustainable
10 Communities Plan restricts industrial uses to those
11 mostly developed areas down near the highway.
12 Whereas, this proposed petition covers a site way up
13 in the middle of Lualualei Valley, which is a
14 significant agricultural area.

15 On the other hand, as the last witness
16 testified, the Department of Planning and Permitting
17 in October did issue its official package of
18 recommended revisions to this plan, the Waianae
19 Sustainable Communities Plan. And it is our
20 Department's recommendation that the Wai'anae
21 Sustainable Communities Plan be revised to recognize
22 this Project.

23 And with regard to the possible
24 inconsistency with the General Plan on maintaining the
25 character of rural areas, it is up to you the

1 Commission to decide if you think this Project will
2 not cause a problem with the adjacent areas. And it's
3 also up to the Honolulu City Council when they take
4 action on our recommendation after it goes to the
5 Planning Commission.

6 Q Why isn't the proposed Project consistent
7 with the Waianae Sustainable Communities Plan?

8 A All parties agree that the Project is not
9 consistent with the Waianae Sustainable Communities
10 Plan. This is stated in the official submissions.

11 And it is not consistent because, as I just
12 said, the Waianae Sustainable Communities Plan --
13 excuse me. The Waianae Sustainable Communities Plan
14 add some more reasons what I just said about the
15 General Plan.

16 The Wai'anae Sustainable Communities Plan,
17 as the Petitioner said, encourages the introduction of
18 more industrial activity generally into the region.
19 However, the Waianae Sustainable Communities Plan
20 specifically limits the location of these activities
21 to the areas within the urban community or rural
22 community boundary, and all of these are down near the
23 highway.

24 Thus, the proposed Project location is
25 contrary to the intent of the plan which is to

1 concentrate urban-style development down near the
2 highway and to protect the large expanses of
3 agricultural lands from urbanization.

4 And I'll give you a couple of quotes from
5 the existing plan. The SCP specifically says that
6 "large-scale commercial or industrial development
7 should generally not be permitted in the agricultural
8 area." And it also says that "light industrial uses
9 should be allowed only in the rural community areas."
10 And all of those are down near the highway.

11 Q What's the status of the City's proposed
12 revisions to the Waianae SCP?

13 A We issued our recommendation on October 13,
14 2010. And we held a special community meeting out in
15 Maili on November 10, 2010. The planning commission
16 is tentatively scheduled to hold a hearing on this
17 matter in January.

18 And to forestall questions, we don't know
19 when this January because we have to wait for the City
20 Council schedule for 2011 to come out first, because
21 City Council meetings are on Wednesdays and Planning
22 Commission meetings are on Wednesday afternoons, so
23 there's a potential conflict.

24 Q Lastly, does DPP have any other comments on
25 this petition?

1 A As stated in our written testimony we have
2 the same concern over vehicular access that all
3 parties share, and we strongly recommend that
4 Lualualei Naval Access Road be the only access.

5 We also suggest that the Commission consider
6 imposing a condition that requires a separate
7 emergency access.

8 Also as stated in our written testimony we
9 have no significant infrastructure concerns except for
10 this access problem. The only utility service that
11 the City will be providing is potable water. And it's
12 the state's problem with regard to the roads and the
13 private wastewater system.

14 MS. TAKEUCHI-APUNA: The City has no more
15 questions for Mr. Watkins. He's available for
16 cross-examination.

17 MR. YUEN: Thank you.

18 CROSS-EXAMINATION

19 BY MR. YUEN:

20 Q Mr. Watkins, what factors did the Department
21 of Planning and Permitting consider in making its
22 recommendation to amend the Waianae Sustainable
23 Communities Plan to include this parcel for industrial
24 use and within the community growth boundary?

25 A There are three factors that were

1 considered. First, the existing Waianae Sustainable
2 Communities Plan supports more industrial development
3 in Waianae and especially supports more jobs for local
4 residents.

5 Second, the Petitioner submitted an
6 amendment request to add their Project to the Waianae
7 Sustainable Communities Plan. And we considered this
8 as a factor in our decision.

9 And third, the Nanakuli community has
10 strongly supported this Project at least through their
11 Neighborhood Board and their Hawaiian Home Lands
12 Association. So these factors are major reasons why
13 our department added this Project to our land use map.

14 Q And you're recommending that the Planning
15 Commission and Council approve amending the Waianae
16 Sustainable Communities Plan land use map to include
17 this Project, correct?

18 A That is our Department's recommendation.

19 MR. YUEN: Thank you. No further questions.

20 MR. YEE: No questions.

21 CROSS-EXAMINATION

22 BY MS. TOWNSEND:

23 Q I have a few questions. Hi, Mr. Watkins.
24 Thank you for testifying. As a planner, I have some
25 similar questions for you as I did for Mr. Kimura in

1 the hopes of comparing some of your expert opinions.

2 First, let's start where you left off. So
3 the revised Waianae Plan, have you received any
4 feedback since releasing the proposed changes to the
5 community?

6 A I have not personally received any feedback.
7 I have the minutes to the November 10th community
8 meeting. The minutes to that meeting made clear that
9 the opponents to the Project showed up in force. So
10 that is certainly something that our department is
11 willing to admit. Those are in our minutes of the
12 meeting.

13 Q Could you describe any further from the
14 minutes? Did they give you examples of comments made
15 by people who testified or number of people who
16 testified, number of people who attended the meeting,
17 things of that nature?

18 A I have the minutes with me, but I don't have
19 them memorized. So unless you want me to, like, quote
20 from the minutes then I simply don't know the answer
21 to that question.

22 Q Could you give a typical example of comments
23 made on the plan at that meeting?

24 A I'm glad I brought that up with me.

25 Q Me too.

1 MR. YEE: I'm sorry. If he's going to be
2 reading from the minutes, which I believe is not an
3 exhibit in the case, I have no objection to including
4 the exhibit, although I would also note the exhibit
5 would speak for itself.

6 MR. YUEN: I would have no objection to the
7 exhibit being introduced, but I would object to him
8 reading from the minutes.

9 MS. TOWNSEND: Just to clarify. Does that
10 mean I introduce the minutes into the --

11 PRESIDING OFFICER CONTRADES: Do you have
12 the minutes with you?

13 MS. TOWNSEND: No, I don't but I could just
14 submit them as part of the written record.

15 MR. YUEN: I think it's the City's minutes.
16 It would be appropriate if the City chooses to submit
17 them --

18 MS. TOWNSEND: Ah, understood.

19 MR. YUEN: -- or the Intervenor would have
20 to obtain them from the City and then submit them.

21 MS. TOWNSEND: Thank you for the
22 clarification.

23 MR. YUEN: But it's the Commission's
24 pleasure. I'm not speaking for the Commission.

25 PRESIDING OFFICER CONTRADES: Is the City

1 willing to introduce that?

2 MS. TAKEUCHI-APUNA: The City is willing to.
3 It's a public document. We're willing to submit it if
4 that's the Commission's requirement.

5 PRESIDING OFFICER CONTRADES: What's your
6 last exhibit number?

7 MS. TAKEUCHI-APUNA: Exhibit 6.

8 MR. DAVIDSON: 7.

9 MS. TOWNSEND: Exhibit 7.

10 MR. DAVIDSON: 7.

11 PRESIDING OFFICER CONTRADES: So this is
12 going to be Exhibit 7.

13 MR. DAVIDSON: Yes. So she'll submit
14 original and 15.

15 MS. TOWNSEND: Okay. So the minutes have
16 been -- sorry.

17 PRESIDING OFFICER CONTRADES: He can read
18 something but please make it limited.

19 MS. TOWNSEND: I just want one example.

20 PRESIDING OFFICER CONTRADES: Go ahead.

21 THE WITNESS: You want me to go ahead and
22 read something?

23 PRESIDING OFFICER CONTRADES: One example,
24 any one you want.

25 THE WITNESS: I believe this is a community

1 comment and is on Page 3 of the meeting minutes, and
2 it reads: "How can one business or one idea drive
3 this major change to our plan? What if I come up with
4 an idea that I want? Can I get it into this plan? Is
5 Tropic Land's proposal realistic? Are they really
6 going to create all these jobs and do all that they
7 claim and, if so, how?"

8 PRESIDING OFFICER CONTRADES: Thank you.

9 MS. TOWNSEND: Thank you very much. I
10 appreciate it. And I appreciate the Commission's
11 indulgence.

12 Q Okay. Same question I asked Mr. Kimura. In
13 your expert opinion if rezoning or amending the
14 boundary district for this industrial park, would it
15 make it easier or harder to rezone the immediately
16 makai portion for an urban use?

17 A Let me say three things. First, I have not
18 been recognized as an expert. Second -- I don't know
19 if I actually have three things here. I would prefer
20 to speak in general rather than on this specific
21 location.

22 Q Yes, please. Thank you.

23 A The general situation with regard to the
24 zone changes is that, yes, the change in zoning that
25 introduces a new zoning into an area can potentially

1 cause at least more requests for zoning in that same
2 area. And it's a planning and political decision as
3 to whether those requests are granted or not.

4 Q Thank you very much for your answer. Would
5 it be accurate to say that as a policy of the City to
6 avoid arbitrary zoning, arbitrary decisions related to
7 zoning?

8 A Yes. And the basic answer to that is we
9 rely on our long-range development plans to guide our
10 zoning recommendations. So if the Project is not
11 consistent with our long-range plans, that will be a
12 significant factor in what our zoning change
13 recommendation would be.

14 Q Okay. Thank you. In terms of this
15 particular parcel or this particular area are you
16 aware of the regional park symbol that has been placed
17 on the map for the intersection -- it's not really the
18 intersection -- on Lualualei Naval Access Road
19 immediately behind Pacific Mall?

20 A Yes. I was the project manager for that
21 public infrastructure map provision.

22 Q Thank you. Could you describe that park for
23 the Commission, the location and the what's
24 anticipated in the use of the regional park?

25 A The location of the Project is the bottom

1 part of the large parcel that goes on the east side of
2 Lualualei Naval Road all the way from the edge of
3 general development next to the highway, all the way
4 up to the Petition Area.

5 It's a 50-acre site that we are interested
6 in, but the public infrastructure map itself merely
7 says the project title is Nanakuli Regional Park. It
8 says nothing specifically about the nature of the
9 project or the size of the project.

10 Our representations to the Honolulu City
11 Council were that this would be an active park to
12 provide the same sort of recreational facilities that
13 a district park would, in other words ball fields and
14 play courts. It may also have passive recreational
15 uses.

16 It is intended to serve the Nanakuli and
17 Maili areas. And it is a long-range park plan. We
18 do not have active funding requests going on for this
19 project.

20 Q Thanks. In general what is the -- density's
21 the wrong word. I'm trying to figure out how many
22 people the City anticipates would be attracted to the
23 regional park. Is there a general idea how many
24 people use the regional park?

25 A No, I'm sorry. All I know is the other end

1 how many people you should have before you can have a
2 regional park.

3 Q Oh, what's that?

4 A I've actually forgotten it. (Laughter) I
5 would just guess that it's one regional park for every
6 25,000 people or something like that.

7 Q Something like that. Okay. Thank you.
8 Okay. So would you consider a regional park and an
9 industrial park to be incompatible uses?

10 A Let me put it this way. There's a fairly
11 long distance between the Petition Area and the
12 proposed regional park site. And public parks are not
13 necessarily incompatible with commercial and light
14 industrial uses. I would have a concern with having a
15 -- this is just my personal opinion, not necessarily
16 my professional opinion because I am not an expert on
17 this subject -- but I would have a concern with having
18 a major regional park right next to a truly heavy
19 industrial area. But we had considered placing a
20 smaller park right within Campbell Industrial Park --
21 or right next to Campbell Industrial Park. So there
22 is not necessarily a major incompatibility.

23 Q In considering both your position on the
24 industrial park and the location of the regional park,
25 did you consider the interaction of the two different

1 kinds of traffic that would be attracted to those
2 locations?

3 A I have a very good answer to that question.

4 Q Oh, good.

5 A Our plan for the regional park did not
6 include accessing Lualualei Naval Road.

7 Q Okay. What road are you going to use?

8 A We've managed -- or rather the City
9 Department of Design and Construction and the Parks
10 Department managed to find that there was a state
11 easement -- not a state easement, a state-owned
12 right-of-way in the midst of Pacific Shopping Mall
13 that goes right through to the park site.

14 Q And what would it take to make that
15 right-of-way functional for the regional park?

16 A We would have to get the permission of the
17 state to use it.

18 Q Just to sew this up. So it's the City's
19 intent that the majority of the traffic would go, the
20 majority of traffic to the regional park would go up
21 the small road that's between the Pacific Mall
22 Buildings and not up the Naval Road.

23 A That's right.

24 Q Okay. Thank you. In considering both
25 projects did you consider factors related to

1 attracting sports and children to a location where
2 there may be heavy trucks nearby? The example the
3 community members talk about is a child playing with a
4 ball, it rolls into the street on the Navy road. Did
5 you consider that?

6 MR. YUEN: I'm going to object. I believe
7 the witness testified the City does not intend to use
8 Navy Road as the access to the park.

9 MS. TOWNSEND: May I clarify? It's not
10 about use of the road. It's about the proximity of
11 the road and heavy trucks are going up that road, is
12 that the best place? Are those compatible uses?

13 PRESIDING OFFICER CONTRADES: Are you asking
14 him to make that determination?

15 MS. TOWNSEND: I'm wondering if he
16 considered it when they both considered the Tropic
17 Land parcel -- when they --

18 PRESIDING OFFICER CONTRADES: Can you answer
19 the question?

20 THE WITNESS: Yes. We did not specifically
21 consider that question. I might point out to the
22 Commission that there are homes quite near Lualualei
23 Naval Road right at the corner of where our park
24 project would be located. I might also add that the
25 50-acre site that we were thinking of would leave

1 plenty of room for buffer areas at the periphery.

2 Q (By Ms. Townsend) Actually that leads to my
3 next question. So the homes that are along Farrington
4 and the Navy road, is it reasonable to expect that
5 people from that residential neighborhood would cross
6 the Navy road in order to access the regional park?

7 A That is my personal opinion that there would
8 be people trying to walk to the park from that
9 residential area.

10 Q Okay. Thank you. In considering your
11 position on the industrial park, did you consider the
12 proximity to the Navy base and concerns about the
13 storage of munitions there?

14 A I'm sorry. You need to clarify whether
15 you're asking my position on this petition or whether
16 you're asking about the SCP.

17 Q I'm asking in considering the City's
18 position on the industrial park did you factor in the
19 storage of munitions on the Navy base and whether
20 there might be incompatible uses?

21 A I'm sorry. You still haven't clarified.
22 Are you talking about our position on the petition
23 itself? Or are you talking about our position on
24 recommending that the Wai'anae SCP be changed?

25 Q Can we do both? Can we take the Project

1 specific and then next the actual spot on the plan?

2 A Yes.

3 Q Thanks.

4 A With regard to the petition itself the City
5 takes no motion so we don't have a position.

6 Q Sorry.

7 A With regards to the Waianae Sustainable
8 Communities Plan I was not involved in the preparation
9 of their vision, so I don't personally know the answer
10 to that.

11 MS. TOWNSEND: Okay. Thank you. I'm done.
12 Thank you very much.

13 PRESIDING OFFICER CONTRADES: Commissioners?

14 COMMISSIONER KANUHA: Thank you,
15 Mr. Watkins. This Waianae Sustainable Communities
16 Plan, how is that adopted?

17 THE WITNESS: The Waianae Sustainable
18 Communities Plan is adopted by ordinance. It has to
19 go through the Honolulu Planning Commission and then
20 go through three readings at the Honolulu City
21 Council. It's a project that takes months.

22 COMMISSIONER KANUHA: Okay. Then the
23 Petitioner has submitted an amendment or an
24 application to change the rural community boundaries,
25 is that correct?

1 THE WITNESS: I believe that's correct.

2 COMMISSIONER KANUHA: In the process of
3 doing that, you know, whether you know the answer to
4 this or not, would that mean that the boundary would
5 just encompass the Petition Area? Or would it take
6 into account the existing boundaries and stretch all
7 of those up to include the Petition Area?

8 THE WITNESS: I would refer you to the
9 Petitioner's Exhibit 66 and to the map they showed on
10 the wall. It is a small boundary exclusively around
11 the Petition Area itself.

12 COMMISSIONER KANUHA: So that would mean
13 that properties, other properties would not be
14 included within that boundary amendment, is that
15 correct?

16 THE WITNESS: That is correct.

17 COMMISSIONER KANUHA: Okay. Thank you.

18 PRESIDING OFFICER CONTRADES: Commissioner
19 Heller.

20 COMMISSIONER HELLER: Mr. Watkins, when you
21 were describing the issues that you had some concern
22 about, you described the Lualualei Valley as a quote,
23 "significant agricultural area." I was just wondering
24 is the term, quote, "significant agricultural area" a
25 term that has significant meaning?

1 THE WITNESS: I was not quoting the plan
2 when I said that. The plan just recommends preserving
3 Lualualei Valley as an important agricultural area,
4 preserving the agricultural uses there. And it states
5 that it's the plan's policy that this area should be
6 preserved for agricultural use.

7 COMMISSIONER HELLER: Now, at the present
8 time there's no active agricultural use on the subject
9 property, right?

10 THE WITNESS: That's what the Petitioner
11 said, yes. And that's what it looked like when I went
12 out on the site visit.

13 COMMISSIONER HELLER: Do you have any
14 knowledge or opinion regarding the likelihood of
15 active agricultural use of that property at any
16 foreseeable time?

17 THE WITNESS: I'm not an expert on that, but
18 in my research on the park project I looked a little
19 bit at the history of the lands on the eastern side of
20 the Naval Road. And I couldn't find any agricultural
21 uses except for the ones the Petitioner reported.

22 So that leads me to believe that if you're
23 that close to the mountainside that the stoniness of
24 it might be a problem. But I must admit that this is
25 just my personal opinion. It's not the Department's

1 position.

2 COMMISSIONER HELLER: Okay. Thank you.

3 PRESIDING OFFICER CONTRADES: Any further
4 questions? Do you have any redirect?

5 MS. TAKEUCHI-APUNA: No redirect.

6 PRESIDING OFFICER CONTRADES: Thank you.
7 Let's take a 5-minute break and then we'll start with
8 OP.

9 MR. YUEN: Are we going to go straight
10 through till 2 o'clock?

11 PRESIDING OFFICER CONTRADES: Yes. Although
12 it is terribly against my beliefs and principles
13 (audience laughter) we're going to go straight
14 through.

15 (Recess was held. 12:30)

16 PRESIDING OFFICER CONTRADES: (12:45) Back
17 on the record.

18 MR. YEE: At this time the Office of
19 Planning would like to submit -- we tried to make sure
20 we gave as much notice to the parties as we could --
21 Exhibits 22, 23 which we previously submitted for
22 representing cultural impact guidelines and our latest
23 letter on the civil defense side.

24 Then Exhibits 24 and 25 we've had to
25 change -- because availability of witnesses we have

1 had to change some of our witnesses. Mr. Sniffen is
2 testifying on behalf of the Department of
3 Transportation now that Mr. Morioka has left. And
4 Mr. Yamamoto is testifying on behalf of Department of
5 Agriculture, Ms. Yamamoto was not available to
6 testify. We would request approval of the other
7 parties to submit those exhibits into evidence.

8 MR. YUEN: No objection.

9 MS. TAKEUCHI-APUNA: No objections.

10 MS. TOWNSEND: No objection.

11 PRESIDING OFFICER CONTRADES: Commissioners,
12 any objections? Okay. They're accepted.

13 MR. YEE: Thank you. Our first witness will
14 be Mr. Michael Vitousek. Just to let you know we do
15 have our other witness available. We plan on calling
16 Mr. Yamamoto next.

17 MICHAEL VITOUSEK
18 being first duly sworn to tell the truth, was examined
19 and testified as follows:

20 THE WITNESS: I do.

21 PRESIDING OFFICER CONTRADES: Would you
22 state your name and address for the record, please.

23 THE WITNESS: Michael Vitousek, 1548 Paula
24 Drive, Honolulu, Hawai'i, 96816.

25 DIRECT EXAMINATION

1 BY MR. YEE:

2 Q Mr. Vitousek, what's your current position?

3 A I'm the only archaeologist at SHPD on O'ahu.

4 Q Was the Office of Planning Exhibit 8A
5 prepared by the State Historic Preservation Division,
6 or SHPD?

7 A Yes.

8 Q Now, within Exhibit 8A is a reference to a
9 Cultural Impact Assessment. My understanding is,
10 correct me if I'm wrong, SHPD does not actually
11 approve or disapprove of Cultural Impact Assessments,
12 correct?

13 A That's correct.

14 Q Can you then explain why there is a
15 reference to the Cultural Impact Assessment in your
16 letter?

17 A Sometimes it's a courtesy. We'll look at
18 them and try to provide information to the authors on
19 any relevant sources that we may think would be
20 important to talk to. But, again, that's just as a
21 courtesy.

22 Q Now, SHPD as a general matter does approve
23 requests for modifications on architecture on the
24 National Registry of Historic Place as a general
25 responsibility, is that correct?

1 A That's correct.

2 Q But is that your responsibility?

3 A No, it's not. That would be the
4 responsibility of the architecture branch.

5 Q Let me represent to you that there's a
6 railroad track which we have been informed is a
7 historic landmark. Is impacts to that railroad track
8 something within your area of responsibility?

9 A No, it's not.

10 Q So I take it, then -- well, would you be
11 able to then answer questions about that railroad
12 track today?

13 A No, I can't.

14 Q Now, SHPD did accept the Archaeological
15 Inventory Survey in this case, is that right?

16 A That's correct.

17 Q What remains to be done?

18 A Seems like for the immediate future they'll
19 need to have an archaeological preservation plan for
20 the site 50-80-06-4366. And possibly we'd like the
21 opportunity to review any specific grading permits for
22 the area to determine if archaeological monitoring
23 were necessary.

24 Q Just to be clear the archaeological site is
25 not specifically within the Petition Area, is that

1 right?

2 A That's correct.

3 Q Nevertheless, you've asked for a
4 preservation plan. Why is that?

5 A It was identified as a site in the inventory
6 survey marked for preservation. And any time a site's
7 marked for preservation and there's possibility of
8 development in the area, we'll have a preservation
9 plan.

10 MR. YEE: I have no further questions.
11 Mr. Vitousek is available for cross-examination.

12 MR. YUEN: Thank you.

13 CROSS-EXAMINATION

14 BY MR. YUEN:

15 Q Mr. Vitousek, I'll show you a letter dated
16 June 2nd, 2010 addressed to me and a memorandum dated
17 May 20th, 2010 that I believe you wrote to file.
18 These documents were marked as Petitioner's Exhibit
19 19. Mr. Vitousek, are these letters of memorandum,
20 are they your work?

21 A Yes.

22 Q Okay. The memorandum of May 20, 2010 can
23 you describe to the Commission the circumstances under
24 which you came to write that memorandum?

25 A On May 17, 2010 two DOCARE officials came

1 into the SHPD office and had a meeting with my then
2 boss Nancy McMahon about allegations that stones had
3 been removed from the he'iau on the parcel. And so we
4 went out to assist DOCARE with their investigation and
5 determined that it was a natural rock formation and
6 not an architecturally modified he'iau.

7 Q As far as the Department's concerned there
8 is no he'iau on the property.

9 A That's correct.

10 Q And you're only recommending that the
11 habitation site that's about 1500 feet above the
12 Petition Area be marked with construction tape, is
13 that correct?

14 A That's correct.

15 Q And did you subsequently inspect the site to
16 verify that the site has been marked according to your
17 request?

18 A No, I haven't inspected it. But Cultural
19 Surveys Hawai'i, who's the archaeological consulting
20 company who was hired to perform the protection
21 measures, they sent in a document to our office
22 indicating that the interim protection measures have
23 been put up and they had photographs of the
24 construction fencing which suited our initial demands.

25 Q So as far as the Department is concerned

1 Tropic Land has satisfied all of your concerns,
2 correct?

3 A At this point, yes.

4 MR. YUEN: Thank you.

5 MS. TAKEUCHI-APUNA: The City has no
6 questions.

7 CROSS-EXAMINATION

8 BY MS. TOWNSEND:

9 Q Mr. Vitousek, thank you for testifying.
10 First, to clarify, Cultural Impact Assessments are a
11 requirement of chapter 343 Hawaii Revised Statutes,
12 are they?

13 A I'm not sure.

14 Q Okay. You're not sure if they're required
15 by law.

16 A I'm not sure of the requirements of 343.

17 Q Okay. Thank you. Also to clarify your
18 testimony. So do you know if the architecture
19 division has reviewed the impact of this Project on
20 the railway?

21 A I do not.

22 Q Okay. Just to make sure. So you don't know
23 if they reviewed it or they have not reviewed it.

24 A I don't know if they have reviewed it.

25 Q Thank you. Okay. So your analysis was

1 based on -- so let me back up. So your letter to the
2 Office of Planning, Exhibit 8A, the one that, the
3 July 6th letter, that was based on the 1993
4 archaeological survey that was done of the property,
5 correct?

6 A As well as our field visit to property on
7 May 17th.

8 Q Okay. But let's focus first on the 1993 one
9 and then we can talk about the field visit. So the
10 1993 archaeological survey, I guess can you describe
11 what steps were performed to conduct the archaeology
12 survey?

13 A I couldn't answer that. It was in 1993.

14 Q That's okay. Maybe more generally in
15 conducting an archaeological survey for a golf course
16 what is typically performed?

17 A Typically what's performed is an
18 archaeologist will get the contract. And they'll have
19 their field crew survey it. Generally surveys are
20 done where archaeologists are spaced out in transects
21 roughly 5 to 20 meters, depending on the thickness of
22 the brush.

23 Then in a hundred percent coverage survey,
24 which this was, every portion of the property will be
25 covered with transects. And these properties that

1 will be identified and recorded.

2 Q So for layman terms basically a bunch of
3 people come to the property who have expertise and
4 they walk the land.

5 A Correct.

6 Q Thank you. Where a project proposes to dig
7 down into the soil in any significant amount, are
8 there different procedures for conducting an
9 archaeological survey?

10 A There are if there is evidence that there
11 could be subsurface deposits within the landscape.

12 Q So to make sure I understand. Correct me if
13 I'm wrong, the survey's conducted. You do a visual
14 assessment. Then you decide whether there might be
15 things worth digging for. Is that accurate?

16 A I'm sorry. I don't understand the question.

17 Q I'm just making sure. So you first walk the
18 land, right? And then you decide whether it's
19 necessary to dig into the dirt in order to identify
20 archaeological sites.

21 A That's generally what archaeologists do.

22 Q Thank you. The standards or the
23 methodologies uses for archaeologists to conduct
24 surveys, are they dependent on the nature of the
25 project? For example, if a project is not proposing

1 to dig down deep, versus another project that would
2 excavate, do you have a different level of surveying?

3 A It shouldn't be, no. It shouldn't be.

4 Q In the 1993 survey were there -- okay.

5 That's fine. So okay. So in May, on May 17th, 2010
6 when you did the field visit did you walk the land in
7 that same sort of survey?

8 A No, I didn't walk the land in a
9 methodological transect pattern. I just simply saw
10 the site, took the map from the original survey, and
11 walked to the sites on it that were identified.

12 Q Okay. So just to make sure I'm clear. So
13 you didn't do a more -- a general survey again to be
14 able to see if there were sites. You just went to
15 check on the one identified site.

16 A That's correct.

17 Q Okay. Thank you. Okay. Good. Thank you.
18 Did you rely at all on any evidence gathered from
19 secondary sources such as neighbors to the property?

20 A For what?

21 Q To assess whether -- to assess the possible
22 archaeological significance of the area?

23 A I can't answer that because I didn't assess
24 the significance of the archaeology of the area.

25 Q Okay. All right. Thank you.

1 A That would have been assessed in the initial
2 review of the inventory survey in 1993.

3 Q So just for our education the, from your
4 read of that original survey was there any interviews
5 done, any reliance on secondary sources?

6 A Ah, can you restate? I don't understand.
7 'Cause secondary sources can be different from
8 interviews.

9 Q Yeah. I'm trying to be as broad as
10 possible. So secondary sources other than walking the
11 land?

12 A Yes, there is background research.

13 Q Okay. Are you -- do you feel comfortable
14 expounding on what secondary sources were relied on?

15 MR. YEE: Can I just get a clarification?

16 MR. YUEN: I'm going to object. The witness
17 did not --

18 MS. TOWNSEND: Ah --

19 PRESIDING OFFICER CONTRADES: Not all at
20 once now.

21 MS. TOWNSEND: Sorry.

22 PRESIDING OFFICER CONTRADES: You first.

23 MR. YEE: Let me just get clarification as
24 to whether she's asking about the archaeological
25 inventory survey that was done by the consultant

1 versus what efforts were made by the State Historic
2 Preservation Division in reviewing the archaeological
3 inventory survey. So certainly there may be things
4 done by the consultant which isn't necessarily the
5 same thing that is done by SHPD personnel.

6 PRESIDING OFFICER CONTRADES: Bill, you
7 wanted to say something?

8 MR. YUEN: I think Mr. Yee has covered my
9 objection.

10 MS. TOWNSEND: Okay. So let me clarify.
11 Thank you for bringing that up. So let me reask the
12 question.

13 Q In SHPD making its assessment in accepting
14 the report did SHPD staff do any additional research
15 of any kind? Secondary sources, interviews with other
16 people, things of that nature?

17 A I don't know what they did. In 1993?

18 Q And then today as well, the May 17th follow
19 up.

20 A The May 17th letter is based entirely on the
21 events of that field visit.

22 Q Did SHPD at all consult a geologist in
23 taking its position on this Project?

24 A No.

25 Q Did SHPD consult a botanist in developing

1 its position on this petition?

2 A No.

3 MS. TOWNSEND: I'm done. Thank you.

4 PRESIDING OFFICER CONTRADES: Commissioners?

5 Any questions? None. Redirect?

6 MR. YEE: No redirect.

7 PRESIDING OFFICER CONTRADES: Thank you.

8 THE WITNESS: Thanks.

9 MR. YEE: The next witness will be Earl
10 Yamamoto.

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

14 THE WITNESS: I do.

15 PRESIDING OFFICER CONTRADES: State your
16 name and address for the record.

17 THE WITNESS: Earl Yamamoto, 1428 South King
18 Street, Honolulu.

19 PRESIDING OFFICER CONTRADES: Go ahead,
20 Bryan.

21 DIRECT EXAMINATION

22 BY MR. YEE:

23 Q Thank you. Mr. Yamamoto, and let me just
24 inform you now to try to speak clearly at an even
25 space for the court reporter.

1 A Oh, sorry.

2 Q Could you please state your current
3 position.

4 A I'm a planner within the office of
5 Chairperson of the Hawai'i Department of Agriculture

6 Q Was the Office of Planning's Exhibit 4
7 prepared by you or on behalf of the Department of
8 Agriculture?

9 A Yes.

10 Q As the Land Use Commission has had an
11 opportunity to read the written testimony so it's
12 unnecessary for you to read the document, could you
13 please summarize your testimony today.

14 A Yes. The Department of Agriculture is very
15 concerned about the Petitioner's request to reclassify
16 the 96 acres from agriculture to urban.

17 (Addressing the reporter) I'm sorry, but if
18 I seem to be accelerating would you....

19 Of the 96 acres petition, 17 acres are rated
20 B by the Land Study Bureau. This rating indicates
21 that higher yields can be expected from the soils now,
22 a higher than average yields of crops can be expected
23 from these soils and with less effort and cost to the
24 farmer in terms of soil amendments and land
25 preparation.

1 The loss of these 17 acres, the 17 acres of
2 B rated soils, is significant as it adds to the
3 cumulative and permanent loss of A and B agricultural
4 lands in O'ahu.

5 In our testimony in the Ho'opili petition we
6 noted since 1991 approximately 3,300 acres of A and B
7 rated agricultural lands were lost on O'ahu alone.
8 Once this loss occurs it is irreversible, meaning that
9 the land is lost to agricultural use forever.

10 Approval of the Petitioner's request over
11 time could adversely affect existing and potential
12 agricultural operations within Nanakuli and Lualualei
13 Valleys.

14 This is commonly known as the impermanent
15 syndrome, the impermanent syndrome, where farmers in
16 the agricultural production areas facing encroachment
17 of nonagricultural uses are less likely to invest in
18 their operations to maintain the viability of their
19 farms.

20 Farmers who own their land and anticipate
21 the higher returns possible through reclassification,
22 rezoning and development of their property, may no
23 longer make investments necessary for the long-term
24 operation and maintenance of their farms.

25 Farmers who lease their lands may find the

1 landowners unwilling to offer leases long enough to
2 qualify the farmers for financing improvements
3 necessary to maintain or increase production.

4 The City Sustainable Communities Plans in
5 general provide stability to agricultural areas around
6 O'ahu such as Kunia, Waimanalo and the North Shore by
7 directing nonagricultural development elsewhere.

8 However, with regards to the petition before
9 you we understand that the latest draft of the City's
10 Wai'anae Sustainable Communities Plan proposes to
11 amend the land use map to include the Petitioner's
12 Project.

13 The proposed industrial designation is
14 surrounded by agricultural lands. It is not
15 contiguous to similar -- it's not contiguous to the
16 same or similar city land use designations and is
17 largely inconsistent with the adjacent agricultural
18 lands and their agricultural activities.

19 Both the City-proposed industrial
20 designation and the Petitioner's request for
21 reclassification to urban can add to the impermanent
22 syndromes facing agricultural operations in the
23 Lualualei and Nanakuli areas.

24 In conclusion, the Department of
25 Agricultural asks for the same condition as was asked

1 for in the Ho'opili and Koa Ridge petitions. That is
2 for the Commission to impose a condition for a
3 permanent agricultural easement protecting an amount
4 of A and/or B rated lands equal to that loss if the
5 Commission grants the petition, in this case will be
6 17 acres.

7 An agricultural easement removes any chance
8 of urbanization and promotes agricultural leases that
9 are both long term and affordable for farmers because
10 all speculative value is removed.

11 This then encourages farmers to invest for
12 the long term in their farm operations. That
13 concludes --

14 Q One follow up. The total number of acreage
15 is based upon -- that you're asking for or that the
16 Office of Planning is asking for easement -- is it
17 your understanding that's based on the amount of
18 acreage of B rated lands?

19 A Yes.

20 Q There's some discussion in some of the other
21 documents regarding was is I-61 lands? Do you
22 remember that?

23 A I-61?

24 Q Lands that could be in B except for the lack
25 of water.

1 A Okay. Well, what the Land Study Bureau
2 report, the actual map itself with this area that the
3 Land Study Bureau consists of a whole bunch of aerial
4 photos with polygons, lines describing areas with the
5 same soil characteristics.

6 In the case of the 17 acres of B rated land
7 the overall productivity rating is B, which is good.
8 And the land type is 62-I. Sixty-two has a specific
9 meaning in that it has a line of specific physical
10 characteristics. The I signifies irrigation at the
11 time this study was done which was back in the mid
12 '60s.

13 MR. YEE: Thank you for the clarification.
14 I have nothing further. He's available for
15 cross-examination.

16 PRESIDING OFFICER CONTRADES: Petitioner?

17 CROSS-EXAMINATION

18 BY MR. YUEN:

19 Q Mr. Yamamoto, did you assist the director in
20 preparing the director's written statement on this
21 matter?

22 A Yes.

23 Q And with respect to the July 28th, 2010
24 letter from the Department of Agriculture to Abbey
25 Mayer that's marked as Petitioner's Exhibit No. 5, did

1 you similarly assist the director in preparing that
2 letter?

3 A Yes.

4 Q And did you assemble the exhibits that were
5 appended to that letter?

6 A Yes.

7 Q Specifically you appended a letter that was
8 Exhibit L to the Petitioner's environmental impact
9 statement, a letter from Tadashi Araki describing his
10 experience farming on the property. Are you familiar
11 with that letter?

12 A I recall the name. And I remember reading
13 it. I don't know the details.

14 Q Okay. So you did -- you are familiar with
15 the details -- I'm sorry. You are aware of that
16 letter.

17 A Yes.

18 Q Did you also inspect the property?

19 A I did drive by it, yes.

20 Q I'm going to ask you to -- I've introduced
21 into evidence a pail of soil from the property that's
22 marked as Exhibits 67.

23 PRESIDING OFFICER CONTRADES: Don't spill it
24 now. (Laughter).

25 Q (By Mr. Yuen) Ask you to look at that pail

1 and take one of the rocks out of the pail and put it
2 in front of you. Now, this soil sample came from the
3 property. Soil that contains rocks of that size is
4 that good land for farming?

5 MR. YEE: I'm going to object on the grounds
6 he lacks foundation to answer this particular
7 question.

8 PRESIDING OFFICER CONTRADES: Mr. Yamamoto,
9 can you answer the question?

10 THE WITNESS: Well, I'm not a soil
11 scientist.

12 Q (By Mr. Yuen): Let me ask do you have any
13 experience as a farmer?

14 A Yes.

15 Q Where did you farm and what did you farm?

16 A Ka'a'awa and farming as truck crops, fruit
17 orchard and truck crops.

18 Q How long were you a farmer?

19 A Mmm, this is sometime ago.

20 Q In the course of your farming were there
21 rocks in the land that you farmed?

22 A Yes.

23 Q And was it time consuming to remove these
24 rocks?

25 A Yes.

1 Q Do you consider land that contains rocks of
2 this size to be good farmland?

3 A For the crops I was growing, yes.

4 Q The condition that you recommended to the
5 Commission that an agricultural easement be placed on
6 a quantity of land to replace the land that was taken
7 out of farming, has the Commission granted the
8 Petition to your knowledge?

9 A No.

10 Q You don't know or no.

11 A No.

12 Q The Commission has not granted the
13 condition.

14 A Not granted.

15 Q If the Commission were to grant this
16 condition how would you enforce it?

17 MR. YEE: I'm going to object. The
18 Department of Agriculture is not involved in the
19 enforcement.

20 PRESIDING OFFICER CONTRADES: I'll sustain
21 that.

22 Q (By Mr. Yuen): What was the Department of
23 Agriculture's intent in introducing this condition?

24 MR. YEE: I'm going to object again. That
25 comes from the Office of Planning's exhibit. And the

1 Office of Planning's condition's more appropriately
2 addressed to the Office of Planning.

3 Q (By Mr. Yuen): Let me ask another. Did the
4 Department of Agriculture have any input in the -- or
5 make any suggestions to the Department of Planning --
6 or Office of Planning in designing this condition?

7 A Yes.

8 Q What was the Department of Agriculture's
9 intent in designing this condition?

10 A To protect the remaining amount of A and B
11 lands here on the island of O'ahu.

12 Q Did the Department of Agriculture see a
13 continuing role for itself in the enforcement of this
14 condition?

15 A I do not know if we, we have that, if we
16 are, if the land as was -- if the land that is put
17 into agricultural use and the easement is given to us
18 for our, for our, um, holding, I guess we would hold
19 the easement in terms and conditions. Then that would
20 suggest that we have that authority to, ah, to make
21 sure that the conditions of that easement are upheld.

22 Q So you're not sure you have the authority to
23 take such an easement, is that correct?

24 A I'm not sure.

25 Q But yet you are suggesting that you want the

1 easement to run in favor of the Department of
2 Agriculture, is that correct?

3 A I believe that is correct.

4 Q So what are you intending to do by taking
5 this easement if you don't know that you have the
6 authority to exercise or enforce it?

7 A Well, the intent, as I said before, is to
8 protect the remaining amount of A and B lands.

9 MR. YUEN: No further questions. Thank you

10 MS. TAKEUCHI-APUNA: No questions.

11 MS. TOWNSEND: I have a few questions.

12 CROSS-EXAMINATION

13 BY MS. TOWNSEND:

14 Q Thank you very much for coming to testify,
15 Mr. Yamamoto. I have a few questions to follow up.
16 First, is removing stones from the ground a common
17 practice with preparing the land for farming in
18 general?

19 A Personally I've seen it. It has happened
20 historically here in the state.

21 Q Thank you.

22 A Yes.

23 Q In regards to the impact of the industrial
24 park on surrounding ag lands, ag uses, would having an
25 industrial park make it difficult for neighboring

1 farmers to have their produce certified for sale in
2 grocery stores? Is that a factor that's considered?

3 MR. YEE: Let me just express, or ask,
4 remind the witness to answer only if he knows. He's
5 been brought as a planner for the Department of Ag not
6 necessarily as an expert in all agricultural matters.
7 But if you know you can answer the question.

8 THE WITNESS: I don't know.

9 Q (By Ms. Townsend): Do you recall the letter
10 submitted during the public comment phase on the EIS
11 from the West County O'ahu Farm Bureau?

12 A Yes.

13 Q In your own words could you restate what you
14 recall from the basic sentiment of that public
15 comment?

16 A The general concern, if I recall correctly,
17 as expressed in that letter, was the impact of the
18 petition of the proposed Project on the agricultural
19 uses within the, that Nanakuli/Lualualei area which
20 included leafy vegetables and I believe laying chicken
21 egg operations and some other operations.

22 Q Thank you. Did the Department consider the
23 concerns raised by the Farm Bureau in forming its
24 testimony, in forming its position on the
25 Petitioner's request?

1 A Yes.

2 Q Thank you. The agricultural easement, would
3 the Department be willing to require that the
4 agricultural easement, should the petition be adopted,
5 that the agricultural easement be in Waianae?

6 A I don't believe we have considered a
7 geographic condition or restriction.

8 Q Okay. So just to make sure I recall
9 correctly. In answering the Petitioner's question
10 about the purpose of an ag easement, it is to preserve
11 A and B farmlands, is that accurate?

12 A That is correct.

13 Q And Lualualei is also the -- do you agree
14 that Lualualei is the largest valley on O'ahu?

15 A I'm sorry?

16 Q Do you know if Lualualei is the largest
17 valley on O'ahu?

18 A I don't know.

19 Q Do you know if Lualualei has a high
20 percentage of agricultural lands available?

21 A High percentage of agricultural lands...

22 Q Available.

23 A Available. I don't know.

24 Q All right. Would it be that part of the
25 purpose of establishing an agricultural easement could

1 include preserving the integrity of ongoing
2 agricultural activities in the community where the
3 harm of the development is most directly felt?

4 A Well, we hadn't considered again that
5 geographic specificity. We did not go in that
6 direction of limiting -- if you're speaking to
7 limiting the location of the capture of the ag
8 easement lands to be within an area in the community,
9 we did not consider that.

10 Q Would you consider that?

11 A Would we consider that? Well, we're looking
12 at is capturing A and B lands as a whole, the total
13 amount of acreage that is remaining on the island.

14 Q Would it be your opinion that ag activities
15 that are grouped together are more likely to be
16 successful than this ag activities that are intermixed
17 with nonagricultural activities?

18 A Areas that are significantly agricultural in
19 nature that don't have rural or don't have mixed
20 residential/agricultural blend, I guess you say, tend
21 to -- it's not a matter of success. It tends to be
22 more stable than if an agricultural area has spots of
23 low density, prior -- things that -- residential areas
24 that existed prior to zoning, these contiguous
25 agricultural areas tend to be more stable.

1 Q Do you have an opinion about the
2 possibility of taking land that's currently urban and
3 putting it into the ag easement if it were -- if it
4 met the requirements of being A and B farmland?

5 A I don't recall any -- again, the type of
6 study was done at the Land Study Bureau was done
7 regarding A and B lands or any of the other
8 designations. The urban lands were not rated at the
9 time. They were excluded. So there was no -- there
10 wouldn't be a way to determine that, if you understand
11 what I mean.

12 Q Yeah, yeah. Okay. Thank you very much.

13 A You're welcome.

14 PRESIDING OFFICER CONTRADES: Commissioners,
15 any questions? Commissioner Heller.

16 COMMISSIONER HELLER: The subject parcel is
17 not currently being used for active agriculture,
18 correct.

19 THE WITNESS: That is what I understand.

20 COMMISSIONER HELLER: Do you have knowledge
21 or opinion regarding the likelihood that if it
22 remained in the Agricultural District it would be used
23 actively?

24 THE WITNESS: Do I have an opinion --

25 COMMISSIONER HELLER: Yeah.

1 THE WITNESS: -- if it would. Well, it's
2 really up to the landowner more than anything else.
3 If the landowner's willing to have it available and
4 whether or not anybody comes onboard it would perhaps
5 reflect the history of the land. So...

6 COMMISSIONER HELLER: Do you have any
7 opinion regarding the likelihood of that happening?

8 THE WITNESS: Perhaps. Again, while looking
9 at the Land Study Bureau area of 17 acres, which is in
10 that northernmost corner of the Petition Area where
11 there was agricultural activity, that perhaps would be
12 the only place, as I understand it, from that study,
13 again, in the Land Study Bureau. That area was
14 irrigated back then. But the entire remaining area
15 was not, wasn't used. And there's, from the aerial
16 photo there was no evidence of organized agricultural
17 activity.

18 COMMISSIONER HELLER: Thank you.

19 COMMISSIONER KANUHA: Mr. Yamamoto, is there
20 a process to update the classifications in the Land
21 Study Bureau?

22 THE WITNESS: No.

23 COMMISSIONER KANUHA: So whatever the
24 designations were they still are.

25 THE WITNESS: Yes.

1 COMMISSIONER KANUHA: And that was when?

2 THE WITNESS: The study was completed and a
3 book was published in December 1972 for O'ahu.

4 COMMISSIONER KANUHA: For O'ahu.

5 THE WITNESS: Yeah.

6 COMMISSIONER KANUHA: Another question.
7 Does the Department of Agriculture have the ability to
8 impose agricultural easements?

9 THE WITNESS: No. When you say "impose"
10 unilaterally as if we had statutory capacity kind of
11 power?

12 COMMISSIONER KANUHA: Yes.

13 THE WITNESS: No. We do not have that
14 authority.

15 COMMISSIONER KANUHA: Thank you.

16 PRESIDING OFFICER CONTRADES: Any further
17 questions? Redirect?

18 MR. YEE: No redirect.

19 PRESIDING OFFICER CONTRADES: Thank you,
20 Mr. Yamamoto. Bryan, do you have anybody else?

21 MR. YEE: Yes. Actually we have Mr. Ed
22 Sniffen from the Department of Transportation.

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

1 THE WITNESS: Yes.

2 PRESIDING OFFICER CONTRADES: Could you
3 please state your name and address for the record.

4 THE WITNESS: Ed Sniffen, 869 Punchbowl
5 Street is the business address.

6 DIRECT EXAMINATION

7 BY MR. YEE:

8 Q Mr. Sniffen, what's your current position
9 with the Department of Transportation?

10 A I'm the highways administrator at DOT.

11 Q Was the Office of Planning Exhibit 12
12 prepared on behalf of the Department of
13 Transportation?

14 A Yes.

15 Q Since this testimony was prepared have there
16 been changes to the Department of Transportation's
17 analysis?

18 A Yes.

19 Q Would you please summarize the Department of
20 Transportation's testimony including a specific
21 description of what changes have been made to that
22 analysis.

23 A Thank you. As we stated in our opinion in
24 Brennon's letter, it's still our position that any
25 project-related impacts to the state highways must be

1 adequately assessed -- or accurately assessed and
2 adequately mitigated by the Petitioner. We would
3 coordinate everything with the Petitioner to get to an
4 acceptable TIAR. In our previous testimony --

5 Q I'm sorry. Just to remind you there is a
6 court reporter. So if you could speak at an even
7 pace?

8 A Okay.

9 Q You don't have to move the mic away.

10 PRESIDING OFFICER CONTRADES: Slow it down.

11 THE WITNESS: I'm sorry. Our previous
12 testimony submitted by Brennon when he was previously
13 here, indicated that we accepted the TIAR and the
14 mitigation measures.

15 Since then my staff and myself have gone
16 through the TIAR and have identified significant
17 concerns in our opinion. So at this time we can
18 accept that we accept the TIAR, the methodology by
19 which the TIAR approached the mitigation measures at
20 the Naval Access Road intersection with Farrington
21 Highway. But we cannot accept the TIAR as sufficient
22 or complete.

23 In our opinion some of the concerns that
24 were brought up when we were looking at it: First of
25 all, we cannot determine whether there are any more,

1 any regional impacts to the rest of Farrington
2 Highway, other intersections in that because there's
3 no information in the study that studies any other
4 intersection other than the Naval Access Road.

5 Second, we cannot determine if the
6 Petitioner will or will not use Hakimo Road whether
7 for another access or emergency access because it's
8 not included in the TIAR.

9 Another thing, we cannot determine whether
10 or not an additional departure lane is necessary going
11 up the Naval Access Road because we don't know what
12 kind of vehicle information the Petitioner's
13 consultant used in their study.

14 Fourth, we cannot verify whether the storage
15 lanes right now I think assume that 350 feet are
16 adequate because we don't have any vehicle information
17 assumptions in the report itself.

18 We cannot verify the Project, the
19 with-Project traffic distribution split of 75/25 on
20 Farrington Highway because there's no assumptions
21 listed in the report itself.

22 Like I said, because the only intersection
23 that was studied was the Naval Access Road
24 intersection, we are concerned that there is no
25 long-term agreement with the Navy for the new access

1 road.

2 Because for us if this is the only
3 intersection that's studied, it's the only
4 intersection that gets improved, if they have to use
5 another intersection we don't know what the impacts
6 will be on our road.

7 Last, I wanted to reconfirm our opinion or
8 our position that at the Naval Access Road and
9 Farrington Highway intersection the mitigation
10 measures that are proposed -- and we still gotta work
11 with the Petitioner to adequately access and come to
12 an agreement on those mitigation measures -- but the
13 mitigation measures for that intersection in our
14 opinion should be totally paid for by the Petitioner.

15 We see that as a direct impact. There are
16 no other alternate routes based on their TIAR. It's
17 not like the traffic can go anyplace else but to that
18 intersection. So we're seeing that as a direct impact
19 to our facilities.

20 Q Just to clarify. So you would like the TIAR
21 to include additional intersections within the scope
22 of its study?

23 A That's correct, east and west of the Naval
24 Access Road intersection.

25 Q You were also asking for additional

1 clarification and justifications for some of the
2 assumptions that are used in the TIAR.

3 A That's correct.

4 Q And we talked about this I think in another
5 case, but is it unusual to have concerns about
6 assumptions that are submitted in a TIAR?

7 A Not unusual. We can work with the
8 Petitioner's consultant to get those assumptions
9 documented so everybody is working off of the same
10 information.

11 Q Then the letter, the original letter from
12 Mr. Morioka referred to a fair-share at the Farrington
13 Highway and Lualualei Naval Access Road. To clarify
14 you're saying it's not a regional improvement. It's a
15 direct impact.

16 A That's correct.

17 Q And therefore direct impacts are considered
18 by the Department of Transportation in all cases to be
19 the responsibility of the developer.

20 A That's correct.

21 Q Now, I want to just touch briefly on the
22 railway track at the intersection of Lualualei Naval
23 Access Road and Farrington Highway. Are you aware
24 that there is a railroad track there?

25 A Yes.

1 Q In fact that railroad track extends near
2 other intersections on Farrington Highway, correct?

3 A That's correct.

4 Q The Department of Transportation has had
5 some experience with the State Historic Preservation
6 concerns regarding impacts to the railway track.

7 A That's correct.

8 Q What's been DOT's experience?

9 A At this time we're working on improvements
10 on Farrington Highway at the Nanakuli and Haleakala
11 intersections.

12 In order to mitigate safety concerns at that
13 area we are widening the roadway in that area to
14 include a left-turn pocket on Farrington Highway into
15 both Nanakuli and Haleakala intersections.

16 To do that we need to widen the travelway by
17 12 feet. And we're also doing other improvements:
18 Drainage and pedestrian access that unless the State's
19 widening into the railroad right-of-way. And also
20 infringes on the railroad itself physically in this
21 area.

22 At this time we're working with the State
23 Historic Preservation Division to get to an agreement
24 to allow us to relocate the railroad tracks further
25 makai but still within the railroad right-of-way.

1 Based on our consultation with the State Historic
2 Preservation Division, it's allowable as long as the
3 railroad tracks can remain on the historic register.
4 That's one of the biggest components. We also need to
5 get to a Memorandum of Agreement with the Railway
6 Society prior to getting to there.

7 Q Now, I take it this has been your experience
8 with the two other intersections. Have you analyzed
9 the particular intersection at Farrington Highway and
10 Lualualei Naval Access Road?

11 A I have not.

12 Q So you would not be able to testify today as
13 to the likelihood of getting SHPD approval.

14 A No, I cannot. But I can say because of its
15 proximity to the roadway it is likely that this
16 project would have to go through some kind of 6(e)
17 or -- yeah 6(3) consultation with Historic
18 Preservation.

19 Q 6(e) is referring to a particular section
20 requiring consultation and approval by SHPD?

21 A That's right, HRS 343 Chapter 6(e).

22 MR. YEE: I think that's all the questions I
23 have. He's available for cross-examination.

24 PRESIDING OFFICER CONTRADES: Thank you.
25 Petitioner.

CROSS-EXAMINATION

BY MR. YUEN:

Q Mr. Sniffen, I'd first like to ask you regarding what's been marked Petitioner's Exhibit 13, and that's the memorandum from Brennon Morioka to Abbey Mayer. Paragraph 1. Can you read that first sentence?

A In Exhibit No. 12?

Q 13. Do you have it?

A I do. I do. "Paragraph 1. Thank you for requesting the State Department of Transportation..."

Q The paragraph numbered 1.

MR. YEE: And if you could speak at a slower pace.

THE WITNESS: "DOT is satisfied with the recommendations and conclusions of the Project's Traffic Impact Analysis Report as updated January 29, 2010 and concurs with the recommended traffic impact mitigation measures at the LNAR and Farrington Highway intersection: Namely, a left-turn storage from Farrington into LNAR and double left turn to LNAR to Farrington, and exclusive right turn from LNAR and related improvements."

Q Now, in order for Mr. Morioka to write this memorandum to Abbey Mayer was the Highways Division

1 consulted?

2 A My understanding it was STP that was
3 consulted primarily for this memorandum.

4 Q What is STP?

5 A The department's Statewide Transportation
6 Planning.

7 Q But Mr. Morioka speaks for the Department,
8 doesn't he?

9 A Yes.

10 Q So once Mr. Morioka says a TIAR is -- or the
11 Department is satisfied with the recommendations and
12 conclusions of the Traffic Impact Analysis Report,
13 isn't Mr. Morioka the final word in the Department?

14 A He would be. Except if we have concerns
15 about that specific TIAR and bring it to his
16 attention, he could reverse that decision.

17 Q Did Mr. Morioka reverse his prior decision?

18 A No. But I consulted with Interim Director
19 Formby who supports this decision.

20 Q And when -- why wasn't -- why wasn't your
21 division consulted prior to Mr. Morioka making this
22 initial recommendation to Abbey Mayer?

23 A I can't speak to that. You'd have to ask
24 Mr. Morioka.

25 Q And Mr. Morioka is no longer with the

1 Department, correct?

2 A Correct.

3 Q Is it normal that the Department director's
4 conclusion of being satisfied with a TIAR, is it
5 normal for this kind of decision to subsequently be
6 reversed, if you will, with additional conditions
7 being imposed?

8 A I think if the additional information is
9 provided, yes. I cannot speak to the normality of it
10 but I think it's responsible.

11 Q In your experience with the Department have
12 you seen this occur more than once?

13 A No.

14 Q How long have you been with the Department?

15 A Two and-a-half, 3 years, about 3 years now.

16 Q What caused the Highways Division to
17 reexamine the TIAR?

18 A The preparation for this hearing.

19 Q Does the State Transportation Planning
20 Office have any responsibility for the preparation for
21 the hearing?

22 A No. We spoke with -- when I spoke with
23 Mr. Formby, we also let the State Office of
24 Planning -- State Transportation Planning Office know
25 what our concerns were and they had no objections to

1 it.

2 Q You indicated that the highways division is
3 presently doing work to improve the Nanakuli Avenue
4 and Haleakala Avenue intersection with Farrington
5 Highway, is that correct?

6 A Yes, that's correct.

7 Q What are those improvements that you're
8 working on?

9 A The primary improvements is to put a
10 left-turn pocket continuous through from Nanakuli
11 through Farrington Ave. Also improving the pedestrian
12 and bike access to that area and improving any other
13 improvements that are necessary: Lighting, drainage
14 of that nature.

15 Q What appears behind you is Petitioner's
16 Exhibit 70, which is a map of the signalized
17 intersections of Farrington Highway from Wai'anae
18 Mall -- Wai'anae Mall in Wai'anae to Piliokahi Avenue
19 in Nanakuli. Thank you, Ruby for putting it up on the
20 wall so I didn't have show it on a map.

21 But it appears that there are 19
22 intersections -- signalized intersections on that
23 stretch of Farrington Highway. The ones with
24 left-turn storage lanes have been marked in green.
25 And the ones without left-turn storage lanes are

1 marked with red. Now, why is the Department
2 undertaking the Haleakala and Nanakuli Avenue storage
3 lane improvements?

4 A Nanakuli and Haleakala intersections were
5 prioritized based on our Highways Safety Improvement
6 Plan. These improvements are specific to the safety
7 in that area.

8 Q And with respect to all of the other
9 signaled intersections along Farrington Highway with
10 left-turn storage lanes, did the Department perform
11 all of these improvements?

12 A That I cannot speak to. But if it's on
13 state highways I would assume so.

14 Q And was a traffic study performed with
15 respect to the Nanakuli Avenue/Haleakala Avenue
16 intersection?

17 A Was a traffic study performed?

18 Q Yes.

19 A No.

20 Q Are you familiar with the environmental
21 impact statement for the intersection improvements?

22 A For the Farrington Highway -- the Nanakuli
23 and Haleakala?

24 Q Yes.

25 A Yes.

1 Q I unfortunately did not bring my copy of the
2 those improvements but I'm going to have to introduce
3 them in evidence because I believe they contain a
4 traffic study.

5 A Okay.

6 Q Our traffic consultant has testified that
7 the traffic at Lualualei Naval Access Road, the AM
8 rush hour traffic conditions justify the construction
9 of a left-turn storage lane at this point in time.
10 Would you agree with that conclusion or disagree?

11 A I would have no opinion on that position.
12 In the TIAR itself there are no mitigation measures
13 that are requested or recommended for 2020 without
14 Project.

15 Q With respect to Nanakuli Avenue and
16 Haleakala Avenue intersections, I take it present
17 traffic conditions warrant the construction of a
18 left-turn storage lane.

19 A Its present safety conditions do.

20 Q Safety conditions?

21 A Yes.

22 Q And not traffic conditions.

23 A This has nothing to do with congestion.
24 That prioritized this Project. This Project was
25 prioritized because it was near the top of the list on

1 the Highway Safety Improvement Program.

2 Q What's the purpose of the highway safety
3 improvement program?

4 A That program measures the problem
5 intersections to the state. In order for an
6 intersection to get on the plan there needs to be
7 three --

8 THE REPORTER: Could you slow down, please.

9 THE WITNESS: Sorry. In order for an
10 intersection to get onto that plan there needs to be
11 three major accidents at the intersection or more per
12 year for three years consecutively. That's what
13 prioritized these intersections in our plans.

14 Q The Department is paying the entire cost of
15 the intersection improvements at these intersections,
16 correct?

17 A Yes.

18 Q And what is the approximate cost of the
19 highway improvements?

20 A For those two intersections?

21 Q Yes.

22 A I think it's about 9 million.

23 Q Are there -- I'm sorry. Let me rephrase
24 that. Would there be other possible solutions for the
25 intersection other than a left-turn storage lane if

1 the sole purpose would be to address safety concerns
2 such as constructing a ramp over the intersection?

3 MR. YEE: To be clear, are you talking about
4 which intersection?

5 MR. YUEN: Haleakala and Nanakuli.

6 THE WITNESS: Can you repeat that question?

7 Q Are there other possible highway safety
8 improvement measures that could be taken with respect
9 to the Haleakala and Nanakuli Avenue intersections
10 other than construction of a left-turn storage lane if
11 the sole purpose or the primary purpose is to improve
12 highway safety?

13 A Yes.

14 Q And what might some of those measures be?

15 A There's a whole bunch of things that could
16 be included going from the top of the range, like you
17 said, an overpass or a grade-separated intersection
18 down to doing nothing. Those are the variables.

19 Q What is it about a construction of a
20 left-turn storage lane that leads to enhanced safety
21 of an intersection?

22 A The primary problem at those two
23 intersections were the weaving motions that were
24 necessitated because the left turners were turning
25 into the subdivision and stalling the traffic in those

1 left lanes. Because of that people were weaving
2 around them those, getting into accidents with those
3 in the right -- that were already in the right lanes.
4 Those were the primary reasons for the safety
5 problems.

6 Q Is this a common occurrence on Farrington
7 Highway?

8 A I'm not sure.

9 Q So you only studied these three
10 intersections.

11 A No. We studied the Farrington Highway.
12 There was a safety study done in the late '90s and
13 these intersections with their safety plan was
14 generated out of that.

15 Q Was the Lualualei Naval Road intersection
16 studied at that time?

17 A Yes.

18 Q Was there any problem with people weaving
19 around left turners --

20 A No.

21 Q -- at that intersection?

22 A No. The Lualualei Naval Access Road
23 intersection showed up on the HSFP once in the late
24 '90s and never showed up again.

25 Q When you say "showed up" does that mean

1 there were more than three accidents?

2 A There were more than three accidents and
3 they were 40th on the list based on the accident rate.

4 Q So the sole criteria or the primary criteria
5 for improving Haleakala and Nanakuli Avenue
6 intersections is the accident rate.

7 A Yes.

8 MR. YUEN: Mr. Chairman, I have no further
9 questions at this time. But I unfortunately want
10 to -- I didn't bring with me the Haleakala Avenue EIS
11 traffic study. And I'd like to examine Mr. Sniffen
12 with regard to his statement that there was no traffic
13 study done. It's almost 2:00. Might it be
14 appropriate to recess now?

15 MR. YEE: I'm going to object. If he wants
16 to submit the traffic study that's fine. But
17 cross-examination should be completed today.
18 Mr. Sniffen's here. He's available for
19 cross-examination.

20 If he's not ready -- and I mean have his own
21 traffic engineer testifying about what he wants to
22 testify about -- if Mr. Sniffen's wrong and there
23 wasn't a traffic study, then he's wrong. But what
24 else is there to ask him?

25 PRESIDING OFFICER CONTRADES: Do you have a

1 response?

2 MR. YUEN: I believe that traffic study
3 would show that the traffic warrants the construction
4 of the storage lane and not just the safety
5 conditions. That's what I'm trying to get at.

6 THE WITNESS: If I can. Whether the traffic
7 study warrants it or not, the prioritization was based
8 on safety.

9 PRESIDING OFFICER CONTRADES: Are you done?

10 MR. YUEN: Other than asking him questions
11 about the traffic study.

12 PRESIDING OFFICER CONTRADES: I'm sorry,
13 Bill, but I agree with Bryan. He's here today. You
14 should have all your questions answered. Do you have
15 any questions?

16 MS. TOWNSEND: One question.

17 PRESIDING OFFICER CONTRADES: One question.
18 Okay. Are you done?

19 MR. YEE: Yes.

20 PRESIDING OFFICER CONTRADES: City?

21 MS. TAKEUCHI-APUNA: No questions.

22 CROSS-EXAMINATION

23 BY MS. TOWNSEND:

24 Q Aloha, Mr. Sniffen.

25 A Aloha.

1 Q Thank you for coming. Just to clarify the
2 testimony that you offered to Mr. Yee. You said
3 relative to the railway you'd have to consult with
4 State Historic Preservation understood 6(e). In
5 addition would you have to also consult with Federal
6 Historical Register? Correct me if I'm wrong.

7 A Let me clarify.

8 Q Thank you.

9 A I said based on the proximity to the roadway
10 it's likely that the roadway improvements would
11 infringe on the railroad right-of-way. And if so then
12 6E consultation with SHPD would be required.

13 During that process SHPD would be consulting
14 with the ACHP to determine whether or not the
15 railroad, any improvements that are required there or
16 any impacts to the railroad would be -- would or would
17 not remove that railroad from the historic register.

18 Q The acronym that you gave?

19 A ACHP?

20 Q Yeah, what is that?

21 A American Council of Historic Preservation.

22 Q And is that an element of the federal
23 government?

24 A I'm sorry. "Advisory Council" sorry.

25 Q It's advisory to the federal government?

1 A Yes.

2 MS. TOWNSEND: Okay. Thank you very much.

3 PRESIDING OFFICER CONTRADES: Questions,
4 Commissioners? Commissioner Lezy.

5 COMMISSIONER LEZY: Thank you, Chair. I
6 think this will be brief. Thank you for your
7 testimony, Mr. Sniffen.

8 THE WITNESS: Thank you.

9 COMMISSIONER LEZY: I'm curious. Does your
10 division have any dealings with the U.S. Navy
11 regarding Lualualei Naval Access Road?

12 THE WITNESS: No. You mean if we have any
13 control over that roadway itself?

14 COMMISSIONER LEZY: No. Does your division
15 ever communicate with the Navy?

16 THE WITNESS: Yes.

17 COMMISSIONER LEZY: And who do you
18 communicate with?

19 THE WITNESS: I'd have to get back to you on
20 that. Our staff levels communicate. If we do
21 anything on our roadway that may interrupt or affect
22 the Navy we would consultant with them. But they're
23 generally specific to projects that we are doing on
24 Farrington Highway.

25 COMMISSIONER LEZY: You're not sure who the

1 decision-maker is, though, on the Navy's part?

2 THE WITNESS: No.

3 COMMISSIONER LEZY: Thank you.

4 PRESIDING OFFICER CONTRADES: Any other
5 questions? If not, thank you.

6 THE WITNESS: Thank you.

7 PRESIDING OFFICER CONTRADES: So we shall
8 adjourn for the day. Happy Holidays to everybody.
9 Merry Christmas and Happy New Year. 'Til we see each
10 other next year.

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12 (The proceedings were adjourned at 2:00 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 3rd day of December 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