

1 LAND USE COMMISSION

2 STATE OF HAWAI'I

3 HEARING

4 All-790 KULA RIDGE, LLC (Maui))

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8 TRANSCRIPT OF PROCEEDINGS

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12 The above-entitled matters came on for a Public
13 Hearing at Haleakala room, Makena Beach and Golf
14 Resort, 5400 Makena Alanui, Makena, Maui, Hawai'i,
15 Hawai'i, commencing at 9:00 a.m. on July 15, 2011,
16 pursuant to Notice.

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

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COMMISSIONERS:
RONALD HELLER
LISA M. JUDGE
NORMAND LEZY (Chairman)
JAYE NAPUA MAKUA
ERNEST MATSUMURA
NICHOLAS TEVES, JR.

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AUDIO TECHNICIAN: WALTER MENCHING

Docket No. A11-790 Kula Ridge, LLC

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CLAYTON NISHIKAWA

For the County: MICHAEL HOPPER
Deputy Corporation Counsel
JEFFREY DACK, Planning Dept.

For the State: BRYAN YEE, ESQ.
Deputy Attorney General
JESSE SOUKI
Director Office of Planning

I N D E X

1	DOCKET WITNESSES	PAGE
2	HAROLD NAGATO	
3	Direct Examination by Mr. Luna	6
	Cross-Examination by Mr. Hopper	7
4	Cross-Examination by Mr. Yee	11
	Redirect Examination by Mr. Luna	14
5		
6	BRUCE PLASCH	
7	Direct Examination by Mr. Luna	19
8	STACY OTOMO	
9	Direct Examination by Mr. Luna	24
	Cross-Examination by Mr. Hopper	29
10	Cross-Examination by Mr. Yee	33
	Redirect Examination by Mr. Luna	52
11		
12	MICHAEL MUNEKIYO	
13	Direct Examination by Mr. Luna	63
	Cross-Examination by Mr. Hopper	70
14	Cross-Examination by Mr. Yee	71
15	CLAYTON NISHIKAWA	
16	Direct Examination by Mr. Luna	86
17	WILLIAM SPENCE	
18	Direct Examination by Mr. Hopper	100
	Cross-Examination by Mr. Luna	112
19	Cross-Examination by Mr. Yee	115
20	JO-ANN RIDAO	
21	Direct Examination by Mr. Hopper	123
	Cross-Examination by Mr. Luna	132
22	Cross-Examination by Mr. Yee	133
	Redirect Examination by Mr. Hopper	137
23	Recross Examination by Mr. Luna	138
24		
25	I N D E X cont'd.	

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25 CHAIRMAN LEZY: (gavel) Good morning. This

1 is a further meeting of the state of Hawai'i Land Use
2 Commission hearing on Docket A11-790 Kula Ridge, LLC
3 Maui. Before we resume presentation of the parties'
4 cases, is there anybody in the audience who would like
5 to give public testimony today? Hearing none, then I
6 understand we'll be moving into the County's case, is
7 that correct?

8 MR. LUNA: We have four more witness.

9 CHAIRMAN LEZY: Okay. I'm sorry. Who's
10 your first witness, Mr. Luna?

11 MR. LUNA: Mr. Harold Nagato, Exhibit 39.
12 Mr. Nagato is the consultant on the individual
13 wastewater systems for the Project. His testimony is
14 Exhibit 39. His Department of Health had a letter
15 that we submitted for the Department of Health. We
16 asked Mr. Nagato to come because he's since then had a
17 meeting with the Department of Health.

18 CHAIRMAN LEZY: Allow me to swear you in,
19 sir.

20 HAROLD K. NAGATO
21 being first duly sworn to tell the truth, was examined
22 and testified as follows:

23 THE WITNESS: Yes, I do.

24 CHAIRMAN LEZY: Please state your full name
25 and address for the record.

1 THE WITNESS: My name is Harold K. Nagato.
2 My address is 851 Nanahonua Street, Honolulu, Hawai'i
3 96825.

4 CHAIRMAN LEZY: Thank you.

5 DIRECT EXAMINATION

6 BY MR. LUNA:

7 Q Mr. Nagato, the Commission has already
8 reviewed your resumé and your testimony. They're all
9 in evidence now. So I just have a few questions for
10 you. The department of Health had a question
11 regarding the variance that was granted for the
12 individual wastewater systems for the Project.

13 A Yes.

14 Q And has that been clarified between you and
15 the Department of Health?

16 A As far as the variance? When you say
17 the...?

18 Q Let's start from the Project. They had a
19 misunderstanding on the Project?

20 A Oh, no. I think the misunderstanding was
21 the terminology. The Project has senior citizen
22 living. And, you know, they used the word "duplex".
23 Their understanding of "duplex" is a building with two
24 units where actually we meant 34 duplex living areas.
25 So it should have said 17 duplex buildings because

1 each building has two units. So that was the
2 misunderstanding. We met with Sina at the Department
3 of Health.

4 Q Could you give her full name?

5 A Sina S-i-n-a. Purder P-u-r-d-e-r. And so,
6 you know, she -- we met with her as of Thursday. And
7 she did concur that we did -- she understood now that
8 it was not 34 duplex buildings but 17 duplex buildings
9 with 34 units. So she sent us an e-mail, but I think
10 you should be receiving a more, ah...

11 Q Formal letter?

12 A Formal letter, yes, from the Department of
13 Health saying that they concur and they have no
14 objections.

15 Q So as far as the variance which they still
16 continue the variance for the Project?

17 A Yes. Because it did not increase any
18 density. It still comes out to 116 living areas.

19 MR. LUNA: Thank you. I have no other
20 questions.

21 CHAIRMAN LEZY: County?

22 CROSS-EXAMINATION

23 BY MR. HOPPER:

24 Q Thank you, Mr. Chair. With these individual
25 wastewater systems are there ongoing costs that would

1 be present that would not be present in a standard
2 system?

3 A When you say a "standard system" I presume
4 you're talking about central sewer system?

5 Q Yes.

6 A There is -- a central sewer system there is
7 a fee that's added in to the water bill. Honolulu has
8 one. And I know Maui has one. Just off the top of my
9 head I think on Maui it's running about 30 some odd
10 dollars a month.

11 Ours has a maintenance program contract.
12 This is stipulated by the Department of Health. Okay.
13 Because their experience and the EP's experience has
14 been that a lot of these aerobic systems which ours is
15 a, if you can imagine it's a mini treatment plant.
16 It's gravity flow but it treats the quality of the
17 wastewater at the site, meaning property, to a quality
18 that's at a central treatment plant.

19 So their, and the stipulated in their thing
20 is they want a continuous maintenance program which we
21 have given them, and we have continue to give. We've
22 been doing this for the last 15 years in business.
23 That's what we have do. We develop the system. We
24 also install it and we maintain it. So we do have
25 that ongoing. And the cost for the maintenance of

1 this is less than -- it's running about \$20 a month or
2 about \$250 a year.

3 Q And this is a maintenance program contract
4 with someone to basically maintain the system?

5 A That's correct.

6 Q You said it's about \$20 a month you said?

7 A Yes, \$250 a year.

8 Q \$250 a year?

9 A Yes.

10 Q And that's measured, that's the fee. what,
11 per unit?

12 A Yes.

13 Q Okay. Do these systems need to be pumped
14 any more frequently than the regular county sewer
15 system would be?

16 A Well, as you know the county sewer system is
17 a direct line, miles away to a central treatment plant
18 so there's no retention of any solid. But what the
19 comparison would be would be a cesspool or septic,
20 septic tank. And if you did have that -- and this is
21 what we call off the grid --they're not centrally
22 serviced by a central treatment plant -- well, if you
23 have a septic or a cesspool the pumping is probably
24 recommended once a year.

25 Our type of system because there's a

1 biological treatment going on, our pumping is probably
2 every three to four years. And that's what our
3 maintenance does is just to make sure everything is
4 running properly. And so what happens is a lot of the
5 solids that are retained in the system is being
6 reduced biologically.

7 Q In this maintenance program contract that
8 will cover all costs, even if they run higher than the
9 amount that's paid into the contract? I mean if
10 there's a -- if pumps need to be replaced or something
11 like that that would cover all that.

12 A Exactly.

13 Q How would that cost be paid? Is that going
14 to be basically a charge for each unit as part of an
15 association fee or something like that?

16 A Our experience has been with other projects
17 that the association would collect it as a fee.

18 Q Okay. So that would be about \$20 per month
19 per unit.

20 A Yes.

21 Q That's going to be equal the affordables,
22 the market units across the Project.

23 A That's correct.

24 MR. HOPPER: Okay. Thank you. I have no
25 further questions.

1 CHAIRMAN LEZY: OP?

2 MR. YEE: First, just to confirm for the
3 Land Use Commission I believe the testimony regarding
4 the Department of Health discussion is correct. And
5 we'll be submitting a letter confirming that for your
6 information.

7 CHAIRMAN LEZY: Thank you.

8 CROSS-EXAMINATION

9 BY MR. YEE:

10 Q Mr. Nagato, I have a couple of I'm hoping
11 just clarifying questions. I noticed that in
12 Mr. Munekiyo's testimony he said that the Best
13 Industries USA, Inc. would be maintaining the
14 individual wastewater systems.

15 A Yes.

16 Q And in your testimony you said they would be
17 maintained by EWMS. Could you clarify that?

18 A We own both companies. It's just that EWMS
19 is a manufacturing company. We have a manufacturing
20 plant at Waialua Sugar Mill on O'ahu. And Best
21 Industries is a licensed contractor to maintain the
22 maintain the system. They're the same. It's two
23 companies but will own both of them.

24 Q Okay. Just for the record which is the
25 company that's going to actually get the contract to

1 maintain the system?

2 A Best Industries.

3 Q Okay. And I take it that there's going to
4 be a single contract to maintain all of the units in
5 this Kula Ridge Project, correct?

6 A Correct.

7 Q So there's not going to be 116 separate
8 contracts by each individual homeowners. There's
9 going to be one contract by the association to
10 maintain.

11 A That's correct. That was stipulated by the
12 Department of Health because in previous projects they
13 have had, you know, they had -- they don't have one
14 responsible party, service provider. And Department
15 of Health being such they have a lot to do.

16 Q So similarly the variance that was issued by
17 the Department of Health, when it's renewed in five
18 years would also, they'd be receiving a single
19 variance request, not 116 variance requests.

20 A Exactly.

21 Q Will that be included in the CC&R's?

22 A Yes, definitely.

23 Q Just to highlight a couple of matters in
24 your testimony. This is an aerobic individual
25 wastewater system, correct?

1 A That's correct.

2 Q And the quality of water is equivalent to
3 what level of treatment?

4 A Secondary.

5 Q So because it is a higher quality of
6 treatment or high quality of water that results, as
7 long as the system is operated and maintained --
8 operated and maintained correctly it should provide a
9 higher level of service than the average cesspool.

10 A Definitely.

11 Q And as I think you testified it's correct
12 that the maintenance costs would be less -- the
13 maintenance costs for the aerobic individual
14 wastewater system would be less than the average cost
15 you would pay to the county sewer system.

16 A That's correct.

17 Q So it would be -- there's an economic
18 incentive to continue to operate the system this way.

19 A Definitely.

20 MR. YEE: Nothing further, thank you.

21 CHAIRMAN LEZY: Redirect?

22 MR. LUNA: Just one question.

23 xx

24 xx

25 REDIRECT EXAMINATION

1 BY MR. LUNA:

2 Q You have other projects already using your
3 system here on Maui, do you not?

4 A Yes, we do. We have 21 units up at Waihuli
5 which is near Kula Ridge. This is a Hawaiian Homes
6 project. We have quite a few here on Makena, La
7 Pérouse Bay, we have two systems at that dwelling.

8 And because of the quality and the need for
9 discharge especially near a river, ocean you don't
10 want sewer water going out there. So, you know,
11 Department of Health is very strict about that. So we
12 do have it here.

13 We have it at the Consolidated baseyard.
14 Tri-Island. We have couple of our systems there. I
15 have some systems up at Pukalani, McDonald's. So we
16 do a lot of the Hawaiian Homes projects on the various
17 islands, Big Island, Kaua'i and here.

18 MR. LUNA: Thank you.

19 CHAIRMAN LEZY: Commissioners, any
20 questions? Commissioner McDonald.

21 COMMISSIONER McDONALD: Morning, Mr. Nagato.

22 THE WITNESS: Morning.

23 COMMISSIONER McDONALD: Can you give us an
24 idea -- we're looking at 116-unit -- 116 lot
25 subdivision.

1 THE WITNESS: Correct.

2 COMMISSIONER McDONALD: Other than the four
3 proposed rural lots could you give us an idea as far
4 as the size, space requirements for these type of
5 systems? Because we're looking at between 5 to
6 6,000 square foot lots.

7 THE WITNESS: Right now the system itself
8 takes up about 72 square feet. And what we call the
9 seepage bed where the water is discharged, if you were
10 to have a maximum flow of a thousand gallons -- now,
11 you gotta remember this system is designed to take up
12 to a thousand gallons a day.

13 And, of course, with conservation everyone
14 wants to save water. If you're reusing a lot of this
15 kinda stuff it's less than a thousand. But even if
16 you use a thousand the required area for a leach field
17 for a thousand gallons discharged per day is about
18 597, about 97 square feet.

19 COMMISSIONER McDONALD: 597 square feet.

20 THE WITNESS: Yeah.

21 COMMISSIONER McDONALD: So close to 600
22 square feet.

23 THE WITNESS: Exactly. So with the system
24 you're a little under 700 square feet. We have put
25 'em in areas, you know, outside islands, nothing

1 against outside islands, but, you know, over here the
2 lots are big, yeah? But on O'ahu we deal with
3 5,000 -- 4,000 square feet lots. It fits.

4 COMMISSIONER McDONALD: Is there a concern
5 with the topography?

6 THE WITNESS: No. In fact this is why I
7 think an off-the-grid system like ours has that
8 ability to work with the grade because the system
9 itself is not -- it can be located, if this is the
10 building and this is the system and the slope is here
11 we've run leach fields as we say on a slope.

12 That is probably why a system like this does
13 well, much better on that type of terrain.

14 COMMISSIONER McDONALD: So your filter
15 trenches aren't running parallel or at the same
16 elevation?

17 THE WITNESS: It's gonna run parallel with
18 each other.

19 COMMISSIONER McDONALD: Correct.

20 THE WITNESS: But, again, the tank -- gravity
21 flows, so if the tank is here your leach field is here
22 if the slope was here it would be below.

23 COMMISSIONER McDONALD: Okay. Thank you.

24 CHAIRMAN LEZY: Commissioners, any
25 questions? Commissioner Heller.

1 COMMISSIONER HELLER: Following up on that
2 for a minute. Is the leach field area useable for
3 other things?

4 THE WITNESS: Yes. You actually put the
5 tank and the leach field under your driveway. You
6 can't put it under your house but you can put it under
7 the driveway.

8 COMMISSIONER HELLER: Okay. So typically it
9 would be underneath the driveway --

10 THE WITNESS: No. I'm just saying that
11 would be the -- you can do it but normally we have it
12 in the yard. We can run it so that, you know, if we
13 know there's going to be a future add-on to the house
14 and there are setbacks required. So we're not gonna
15 put it, like, 5 feet from the house.

16 We normally will position it working with
17 the architects to allow if you want to add a patio,
18 another bedroom later on you can do so and you're not
19 going to interfere with the location.

20 COMMISSIONER HELLER: What if somebody wants
21 to plant a garden or plant trees or something? Would
22 the leach field interfere with that?

23 THE WITNESS: You can do ground cover. And
24 depending what type of trees because I wouldn't
25 recommend a coconut tree. They have a very vigorous

1 root. And you gotta remember now the water is
2 treated. It's clean but it has a lot of nutrition.
3 So it's like water (indicating) they go to it because
4 it's like fertilized water, yeah? So that area would
5 be very green.

6 COMMISSIONER HELLER: Okay. But there are
7 certain things you would not recommend planting.

8 THE WITNESS: Definitely. And we do work --
9 and part of our maintenance we're not just maintaining
10 we work with the association like we do with Hawaiian
11 Homes. And we meet with them annually if possible to
12 bring up -- because, you know, people change and
13 sometimes they don't hear the first meeting, second
14 meeting and we find their questions are exactly what
15 you're saying like, "Can I do this? Can I do that?"
16 and we recommend not to put trees. But if you are
17 we'll put it outside of the area of the leach field,
18 not on top of it. But you can have ground cover or
19 you can have regular plants.

20 COMMISSIONER HELLER: Okay. Just one
21 clarification on the number of units. Going back to
22 the issue about the number of buildings versus the
23 number of units. Is this 116 individual systems or is
24 it one system for each of the two-unit duplex
25 buildings?

1 THE WITNESS: This would be 116 units --
2 systems. And the duplex would have one on each side.

3 COMMISSIONER HELLER: Okay. Thank you.

4 CHAIRMAN LEZY: Any other questions? Thank
5 you for your testimony.

6 THE WITNESS: You're welcome.

7 MR. LUNA: Thank you Mr. Nagato. Our next
8 witness is Dr. Plasch. His testimony is on
9 Exhibit 40. Dr. Plasch.

10 BRUCE PLASCH
11 being first duly sworn to tell the truth, was examined
12 and testified as follows:

13 THE WITNESS: Yes, I do.

14 CHAIRMAN LEZY: Please state your name and
15 your address.

16 THE WITNESS: My name is Bruce Steven
17 Plasch. My office is located at 1655 Kamo'i Street.
18 That's in Honolulu, Hawai'i 96821.

19 CHAIRMAN LEZY: Thank you. Please proceed.

20 DIRECT EXAMINATION

21 BY MR. LUNA:

22 Q Dr. Plasch, you already signed the written
23 testimony that you had helped prepare?

24 A That's correct.

25 Q And that's already in evidence along with

1 your resumé. So I'm just going to ask you a few
2 questions.

3 A Okay.

4 Q The Petition Area, how would you classify
5 the farming for that particular area?

6 A A portion of the land is suitable for
7 farming but for the most part it has poor soils. The
8 Natural Resources Conservation Service rating is a
9 Poor rating which means it has severe limitations. So
10 it would require more conservation practices than
11 normal. The ALISH rating --

12 CHAIRMAN LEZY: Excuse me, Dr. Plash. I'm
13 sorry, I don't mean to interrupt you. Could you
14 please bring the microphone a little closer to
15 yourself.

16 THE WITNESS: Sure. Is this better?

17 CHAIRMAN LEZY: Thank you.

18 THE WITNESS: The ALISH rating is Other
19 which means it's not the best lands. And the Land
20 Study Bureau rating there's a little bit of C rated
21 land at the upper elevation. Most of it has D rating
22 and there's a little bit of E rating. So overall it
23 has very poor soils and the slopes are pretty high,
24 around 20 percent. So it has erosion problems. So
25 overall there are about 16 acres of good agriculture

1 land right around there. When I say "good", let me
2 rephrase that. Suitable but not good. It's not the
3 best. It's not the highest quality agriculture land.

4 Q (Mr. Luna) Any of that, would that be
5 included classified as Important Agricultural Lands?

6 A It would not be. I don't think it would
7 rated as Important Agricultural Lands. It would not
8 meet the definition and would not meet the criteria.

9 Q You're talking about the statutory
10 definition?

11 A Yes.

12 Q And you're referring to section 205-44 of
13 the Hawaii Revised Statutes?

14 A Yes.

15 Q Well, do you recall about when the -- I
16 noticed in your testimony you said there had been
17 somebody farming there on the property?

18 A That's correct.

19 Q And that that person was able to employ one
20 person besides and had some success at least in
21 keeping that farming in operation for a while?

22 A The person described it as a marginal
23 operation.

24 Q What was he farming at that time?

25 A When?

1 Q No, what. What was the produce if you
2 recall?

3 A Yeah, I have to look it up.

4 Q 'Cause there's been testimony that there was
5 corn and sweet potato that had been farmed there
6 before a long time ago.

7 A It could be. He was farming a cabbage,
8 round onions, Chinese parsley and Italian parsley.

9 Q So the loss of this land for farming would
10 that create any adverse impact on farming in general?

11 A No. He actually farmed about 10 acres of
12 the upper elevation land, which is higher quality
13 land. And that's a fairly small farm.

14 Q He wasn't farming down where the house is.

15 A No. That land where he farmed would be part
16 of the 4-acre lot.

17 Q That's the mauka area.

18 A Except for the house lots on those 4-acre
19 lots the land would still be available for farming if
20 somebody wanted to do that.

21 Q So what would your opinion be as far as the
22 overall capability of that, of being able to farm most
23 of the land except for the area that you said could be
24 farmed?

25 A Most of the land is really not suitable for

1 farming. Just the upper portion which would be the
2 rural lots. That would remain available for farming.

3 MR. LUNA: Thank you.

4 CHAIRMAN LEZY: County?

5 MR. HOPPER: I have no questions.

6 CHAIRMAN LEZY: OP?

7 MR. YEE: No questions.

8 CHAIRMAN LEZY: Commissioners, any
9 questions? Thank you very much.

10 THE WITNESS: Okay. Thank you.

11 MR. LUNA: Thank you, Dr. Plasch. Our next
12 witness is Stacy Otomo.

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

16 THE WITNESS: Yes.

17 CHAIRMAN LEZY: Thank you. Please state
18 your name and address.

19 THE WITNESS: Stacy A. Otomo. My business
20 address is 305 South High Street, Suite 102, Wailuku,
21 Hawai'i, 96793.

22 CHAIRMAN LEZY: Thanks.

23 xx

24 xx

25 DIRECT EXAMINATION

1 BY MR. LUNA:

2 Q As with the other witnesses, Mr. Otomo, your
3 testimony, written testimony and resumé have been
4 entered into evidence. So we will only have a few
5 questions, although maybe a little more than the
6 either witnesses because you did cover a number of
7 areas in your testimony.

8 A Okay.

9 Q Specifically on the drainage could you
10 describe how the drainage will be for this project?

11 A Sure. If you recall the site visit
12 yesterday as we approached the, got out of the tennis
13 court area and we walked up the so-called future
14 roadway going up to Kula Ridge, the land sloped
15 generally in the mauka-to-makai direction. And it
16 also sloped back from the road toward Keahuaiwi Gulch.

17 The drainage plan would be to collect
18 runoff along the roadway, the access roadway which
19 would be a rural roadway. It will contain swales and
20 graded catch basin and drain lines in the road
21 shoulders. And it will be conveyed to onsite
22 detention basins which would be sized in accordance
23 with at the minimum county standards.

24 Regarding the subdivision itself the
25 affordable lots would have curved gutters and

1 sidewalks so the drainage system would be a little
2 more elaborate in there in that it would have curved
3 inlet type of catch basin which would effectively take
4 runoff from the lots as well as the roadways. And
5 those would be conveyed also to the onsite detention
6 basins.

7 In general the detention basins are going
8 to be sized to accommodate more than just the increase
9 in runoff that's generated from the development. And
10 the end product is that you would have less runoff
11 exiting a site that you do under the current
12 conditions.

13 Q When you say "less runoff" would that also
14 include in the area of the driveway leading up into
15 the Project? Because we have had testimony, public
16 testimony yesterday they're concerned water coming
17 down that road is going to flood the church and the
18 residences right below the church.

19 A Yes, it will. The road that's there now was
20 built as part of the so-called tennis court project.
21 It has its own stand-alone drainage system. The
22 system we're going to be putting in for Kula Ridge
23 would definitely reduce the amount of runoff that's
24 going down there as an existing condition.

25 Q So less than what's happening now?

1 A Yes.

2 Q On the water system, you described the
3 existing water system. And you mentioned briefly as
4 to what may, what the future water system could be.
5 So as far as you know has there been any change in
6 what has taken place in the county on increasing the
7 supply of water for the Kula area?

8 A I know the county has been looking at
9 getting additional sources online. And that is one
10 option for this particular project to get onto the
11 county system at all possible.

12 Q You're not privy as to what various options
13 there are for the county?

14 A I know one of 'em is they're trying to
15 upgrade the existing system to minimize the amount of
16 loss that they have. And also the Pi'iholo South well
17 is also an option, I believe.

18 Q You mentioned that non-potable water would
19 not be -- the Petitioner will utilize private water
20 source for non-potable water needs. Could you explain
21 that?

22 A If there's non-potable water available from
23 sources such as Maui Land & Pine and individual
24 landowners that might be an option for non-potable
25 use.

1 Q Has there been any communication, let's say,
2 like Maui Land & Pine or anyone else for this
3 non-potable water?

4 A There has been some early conversations but
5 there was nothing set in stone whether it is readily
6 available at this time.

7 Q That's continuing.

8 A Yes.

9 Q You heard Mr. Nagato's testimony on
10 wastewater. Were you here when Mr. Nagato testified?

11 A Yes, I was.

12 Q Do you have anything else to add besides
13 what Mr. Nagato stated from the wastewater?

14 A I don't have anything to add but I'm a
15 little familiar with his systems. I know as far as
16 I'm aware there was no problems with any of the
17 systems he's installed on the island.

18 Q Another comment made by the public was on
19 Maui Electric's statement that the electrical supply
20 in that area may be deficient. Have you had any
21 projects that you've worked on -- I see from your
22 resumé that you've been working on projects since 1991
23 or earlier?

24 A Yes.

25 Q Have you had any other projects after

1 working with Maui Electric that Maui Electric did not
2 supply electricity?

3 A No, we did not.

4 Q Never?

5 A Never.

6 Q Usually what is their practice?

7 A Normally at the start of the projects the
8 consultants would go in and discuss availability with
9 them. And they would generally look at their overall
10 system, and make recommendations. However, their real
11 design starts when you have something more concrete to
12 show them.

13 Q And are we at that point yet in this
14 project?

15 A We've had general conversations with them.
16 And the indications we got was that there may be some
17 need for infrastructure improvements, but they
18 indicated that at that time they were able to provide
19 power for the Project.

20 Q But not that they won't be able to provide
21 power.

22 A No.

23 MR. LUNA: I have no other questions.

24 CHAIRMAN LEZY: County?

25 CROSS-EXAMINATION

1 BY MR. HOPPER:

2 Q Thank you. Mr. Otomo, I know that you
3 submitted written testimony. Could you also describe
4 the system that you discuss in your written testimony
5 that would be on the, sited on the Kula Ridge Mauka
6 property?

7 A The drainage system?

8 Q I'm sorry. The water system.

9 A The water system.

10 Q The proposed water system that you discuss
11 in your written testimony.

12 A There were two systems that we're looking
13 at. One under the scenario of the private water
14 system as well as if we were to hook up to the county
15 water system. The description you're looking for is
16 the private system or the public system?

17 Q Well, my understanding was that there was a
18 system that would be constructed and then potentially
19 dedicated to the county.

20 A Okay.

21 Q And you know what? Maybe for the record it
22 would just be best if you describe both of them in
23 this case.

24 A Okay. Under the private scenario where the
25 developer would drill his own well, we're looking

1 across the Keahuaiwi Gulch at the approximately
2 2900 feet elevation where there would be a well dug
3 there. The infrastructure would be a pumping system
4 that would take it up to a tank on the upper reaches
5 of the Kula Ridge Mauka property.

6 Initially we had estimated the tank size of
7 about 500,000 gallons. There would be two
8 distribution lines coming down on each side of the
9 gulch to serve Kula Ridge and Kula Ridge Mauka. That
10 would have been the concept for the private system.

11 In terms of the public water system we had
12 conversations with the Water Supply and there were
13 water lines that would be coming into the site from
14 Kekaulike Highway and potentially a tank site
15 somewhere up in that area to supplement their system.
16 And, again, two lines coming down on each side of the
17 gulch to service both sides of the Project.

18 Q Could you also describe the Pi'iholo South
19 scenario that you discussed?

20 A The Pi'iholo South negotiations was such
21 that I believe that Mr. Nishikawa had entered into an
22 agreement with them to get a certain percentage of
23 water from them that would have been put into the
24 county system and brought to the Project site.

25 Q "Them" meaning the owners of the Pi'iholo

1 South well?

2 A Yes.

3 Q And basically Mr. Nishikawa was planning on
4 paying a fee for the right to reserve credits on that
5 well in the event it's dedicated to the county?

6 A Yes.

7 Q Could you identify among these options if
8 there's one particular option you think is the most
9 feasible at this point that you would represent that
10 you're most comfortable with or it's your ideal
11 option. And then if, you know, rank them in order
12 which you think would be your top choice in your
13 opinion.

14 A I'm a big fan of the public water system.
15 So if he could, Mr. Nishikawa could get water from the
16 county I think that would be my first choice.
17 Obviously the drilling of the well would be the second
18 choice.

19 Q First choice meaning that you would
20 construct transmission lines in exchange for -- in
21 exchange for source credits?

22 A Ah, there would have to be a source first
23 from the county system and he would construct the
24 necessary infrastructure to support this project.

25 Q Right. And that's how we would avoid the

1 water meter waiting list or that would not apply in
2 that situation if he did the infrastructure upgrades
3 himself, meaning the developer of the Project?

4 A That is assuming that he would have the
5 ongoing negotiations for his share in the Pi'iholo
6 South well.

7 Q So your first option is essentially any of
8 the options that involve source credits for a public
9 system, for the Project's use of a public system which
10 would include Pi'iholo South --

11 A Any of the other sources --

12 Q -- or any of the other options?

13 A -- that's available.

14 Q And then your second choice would be the
15 private well?

16 A Yes.

17 Q Now, you reference in your testimony your
18 Exhibit 30, which is a letter from Dave Taylor, the
19 director of the Department of Water Supply dated
20 June 13, 2011. Does that letter essentially summarize
21 the current status of our of your discussions with the
22 county?

23 A I believe the letter stated that the Project
24 may be able to have a water source fund account.

25 Q Basically, though, you're continuing to

1 collaborate and there's no firm agreement at this
2 point with the county on its agreement to provide any
3 particular water to the Project?

4 A That's correct.

5 Q And is it your understanding of the
6 council's 201H approval and the Maui County Code that
7 such approval must be obtained prior to final
8 subdivision approval of the Project?

9 A Yes.

10 MR. HOPPER: Thank you. I have no further
11 questions.

12 CHAIRMAN LEZY: OP?

13 CROSS-EXAMINATION

14 BY MR. YEE:

15 Q Mr. Otomo, I noticed that in the application
16 for the 201H certification it indicated that the cost
17 for the Kula Ridge Project improvements including
18 water source development, but excluding house
19 construction on the affordable lots was approximately
20 \$9 million. Did you participate in that calculation?

21 A I did not. We -- Mr. Nishikawa derived that
22 number. And what we were asked was if we could assist
23 in breaking it down in a so called itemized basis like
24 grading, roadways, drainage, so forth.

25 Q I noticed in that calculation when it says

1 "including the water source," at the time the water
2 source was going to be an offsite well at elevation of
3 2,900 feet on the Kula Ridge Mauka subdivision,
4 correct?

5 A Yes.

6 Q Did you participate in the calculation of
7 that cost?

8 A I believe Mr. Nishikawa dealt with the well
9 driller from Wailani Drilling.

10 Q Do you know what the amount was on that
11 option?

12 A I believe it was in the neighborhood of
13 \$2 million.

14 Q Separate from the development of the well on
15 the Kula Ridge Mauka subdivision site there's the
16 Pi'iholo South well credit that was discussed,
17 correct?

18 A Yes.

19 Q That was also a proposed \$2 million amount
20 that the developer would pay, correct?

21 A I'm not familiar with the exact amount but
22 that was my understanding.

23 Q And then were you here when we heard
24 Mr. Nance testify that the private water system would
25 cost approximately \$10 million for the construction?

1 A I was not here.

2 Q Are you aware that it's \$10 million?

3 A No, I was not. I'm not aware.

4 Q Okay. I take it since you didn't
5 participate in that calculation of the infrastructure
6 improvements -- well, let me backtrack. Would you
7 have an opinion as to the feasibility of increasing
8 the cost of water development from 2 million to
9 \$10 million with respect to the Kula Ridge Project?

10 A I think that would be out of reach in terms
11 of just for the water source.

12 Q The \$10 million is too expensive to develop
13 a water source?

14 A Yes.

15 Q Now, I heard the questions from the county
16 regarding which are your preferable or most desirable
17 options. My criteria is going to be a little
18 different. What I want to know is what's the most
19 likely option. You may not want to do it but what's
20 the most likely way this project is going to get
21 water. Can you tell me that?

22 A I would like to put faith in the Department
23 of Water Supply. However, the well option may be the
24 one that comes to fruition.

25 Q The well option would be the one located on

1 the Kula Ridge Mauka subdivision at 2,900 feet or the
2 well option is the Pi'iholo South well?

3 A Ranked in order I think it would be on the
4 Kula Ridge Project and second the Pi'iholo South well.

5 Q You said the Kula Ridge Project. Do you
6 mean Kula Ridge Mauka?

7 A Mauka. I'm sorry, yes.

8 Q And why is that?

9 A In terms of I think it's more of a timing
10 issue. I'm not sure how long it'll take for the
11 county to negotiate the Pi'iholo South well.

12 Q So the describe for me -- I asked Mr. Nance
13 this question with respect to the private well system.
14 I'm asking you the same question regarding the other
15 two options. Starting with the well on the Kula Ridge
16 Mauka subdivision site, what has to happen? What do
17 you have to do in order to get that water into the
18 Kula Ridge Project?

19 A The well drilling permit has been issued.
20 The next step would be to actually drill the well, get
21 it tested. And they would need to work with the state
22 in terms of establish a reasonable yield from the
23 well. And once that's determined they can go ahead
24 and work towards putting in the permanent pumping
25 system for the well. Then the infrastructure on Kula

1 Ridge and Kula Ridge Mauka has to be built.

2 Q Would that infrastructure include the tank?

3 A Yes.

4 Q Is the 500,000-gallon tank just for Kula
5 Ridge or does it also service other areas?

6 A It was -- let me back up a little bit. The
7 500,000 gallons was a conservative estimate based on
8 serving Kula Ridge and Kula Ridge Mauka. The reason
9 we say 'estimate', is because we did not know what
10 pumping rate, the final pumping rate would have been
11 from the well. So it's likely that the tank size
12 might be smaller.

13 Q Is the development of this infrastructure
14 contingent upon the development of the Kula Ridge
15 Mauka site?

16 A No.

17 Q So is it your understanding that you'll be
18 moving forward with the infrastructure for the needs
19 of both Kula Ridge and Kula Ridge Mauka even if Kula
20 Ridge Mauka is not ready to proceed?

21 A Yes. The only common element would be the
22 water system if we go through the private system.
23 It's on Kula Ridge Mauka's land.

24 Q But you're going to size the water for both
25 projects.

1 A That's correct.

2 Q Okay. At least on this I mean to be clear I
3 was only speaking of the well drilling on Kula Ridge
4 Mauka.

5 A Right.

6 Q And would that provide more water than
7 needed for the two projects?

8 A The preliminary indication from the well
9 dealer he seems optimistic there's quite a bit of
10 water under the ground in Kula Ridge Mauka. The
11 anticipation was that more water could be derived from
12 the well than needed for both projects.

13 Q So would that then allow for additional
14 other than the Petitioner and the Kula Ridge Mauka
15 site that would then allow other people to get water
16 meters because additional water is available?

17 A Assuming that they could connect to the
18 private water system.

19 Q Maybe I'm being unclear. In this option
20 that I'm referring to I assumed you're building the
21 Kula Ridge Mauka well for dedication to the county.
22 Is that incorrect?

23 A That was an option. It could also be
24 operated as a private water system.

25 Q Thank you for the clarification. Maybe I've

1 been unclear in my questions. You said that you
2 thought a \$10 million private water system would
3 probably be too expensive for the Project. Remember
4 that?

5 A Yes.

6 Q Okay. So then I was -- and I'm sorry if I
7 was unclear. In my mind I had moved on to the second
8 option of a dedication of that same water well to the
9 county.

10 A Okay.

11 Q And I though you had said that was the most
12 likely single scenario. Which scenario were you
13 referring to when you said that's the most likely
14 scenario?

15 A That the well would have been drilled for
16 the Project. And I didn't make a differentiation
17 between if it was going to be dedicated or operated as
18 a private system. I'm sorry.

19 Q What's the likelihood -- if you separate
20 those out so one is a private water system, the other
21 is one that's dedicated to the county, what's the most
22 likely option?

23 A I'm hoping it's dedicated to the county.

24 Q You're also hoping to have a lot of faith in
25 the county. But what do you think is the most likely

1 you know, just as a realistic review of the system as
2 the system works what do you think is the most likely
3 occurrence that's going to happen in order to get
4 water to the Project, if you know?

5 A A 50/50 guess is that it's going to be
6 operated as a private water system to begin with.

7 Q What do you mean by "to begin with"?

8 A At some point in time after the well is
9 drilled and in operation there may be opportunities at
10 that point to open negotiations with the county for
11 dedication. Again, it becomes an issue of timing.

12 Q Why is it more likely that the county would
13 accept dedication after well construction rather than
14 before?

15 A Again, it's an issue of timing. My
16 understanding is any time you want to do dedication to
17 the county takes sometime to negotiate the agreements
18 and actually get it in place. And it may be such that
19 the developer wants to proceed, you know, with actual
20 construction of the homes on Kula Ridge.

21 Q So would it have anything to do with how
22 deep the well eventually had to be and how expensive
23 it turned out to operate?

24 A That will come into the picture definitely
25 for dedication.

1 Q In your testimony I think you said that the
2 2900 feet elevation well was a matter of concern to
3 the Department of Water Supply because of the cost
4 associated with pumping. Is that correct? Did I
5 misread your testimony?

6 A I don't think I referenced anything
7 regarding cost.

8 Q Do you have a copy of your testimony?

9 A If you don't mind let me get it from my
10 copy.

11 Q I'm going to turn you to Page 6 of your
12 written testimony. You may want to review the third
13 full paragraph on Page 6 of your written testimony.

14 A Okay.

15 Q Okay. What's your understanding -- well,
16 can you explain what you meant, then, in your written
17 testimony when you said, "DWS," the County Department
18 of Water Supply, "decided not to pursue the dedication
19 scenario based on production well and operational
20 considerations, in particular the well depth of
21 2,900 feet was greater than other DWS wells which held
22 implications for electricity costs associated with
23 pumping."

24 A Yes. I think the depth is deeper than any
25 of the existing county wells. So there was some

1 discussion regarding the potential pumping costs of
2 the water.

3 Q It seems to me the sentence: In the case of
4 DWS was not willing to accept a well at a depth of
5 2,900 feet because of the cost." Is that a
6 misunderstanding of your testimony ?

7 A I don't think they outright denied the
8 dedication of the well. But, you know, again the
9 question was raised about regarding the pumping costs.

10 Q When you said, a "DWS decided not to pursue
11 the dedication scenario," what did you mean?

12 A There was ongoing conversations with the
13 Department of Water Supply. But to my understanding
14 there was no definite yes or no whether they would or
15 would not accept dedication of such a well.

16 Q Are there still ongoing discussions about
17 dedication of that well to the Department of Water
18 Supply?

19 A My understanding is that it is still open
20 and on the table.

21 Q Is that dedication scenario, though, your
22 most likely result of how the Project's going to get a
23 water supply?

24 A That's assuming that there is surplus water
25 from the well beyond, you know, what the needs of Kula

1 Ridge and Kula Ridge Mauka.

2 Q This is just a clarification question. But
3 if you build the well with the intention of dedicating
4 it to the county, do you deliver the water directly to
5 Kula Ridge or does it go into a system and Kula Ridge
6 just gets access to the system?

7 A In general it has to be connected to the
8 county system. So the county would not accept the
9 well specifically that services Kula Ridge and Kula
10 Ridge Mauka.

11 Q Does that make a change in the
12 infrastructure proposed?

13 A The system is fairly close by on Kekaulike
14 Highway. And that's fairly close to where we're
15 proposing the 500,000 gallon tank.
16 Infrastructure-wise it may be a little bit more in
17 cost.

18 Q But you think it would be comparable.

19 A Yes.

20 Q So if it was 2 million for the well and --
21 to dig the well and to build the tank, to connect it
22 up to the water supply would be within 10 percent, in
23 that range?

24 A Yes.

25 Q Okay. To be clear 10 percent more?

1 A More.

2 Q Okay. What has to happen for the Pi'iholo
3 South well to be used as a method -- I'm sorry. Let
4 me backtrack one more question on the well on the Kula
5 Ridge Mauka. Assuming you're fill pursuing dedication
6 to the county, what are the approvals, if any other
7 approvals you need for that to occur?

8 A Well, the well has to be constructed in
9 accordance with the Department of Water Supply
10 standards. And approvals still need to go through the
11 Department of Health Safe Drinking Water Branch.

12 Q And DWS has to agree to accept the well.

13 A Yes.

14 Q In concept not just as a checklist for a
15 building code type of review, right?

16 A Yes.

17 Q That's the discussions on whether or not DWS
18 is willing to accept that well, that's the discussion
19 that's ongoing?

20 A Yes.

21 Q Or at least one of the discussions?

22 A Yes.

23 Q Is there ongoing discussions regarding the
24 use of Pi'iholo South well?

25 A As far as I'm aware that agreement is still

1 active between Mr. Nishikawa and the Pi'iholo South
2 partners I believe they're called.

3 Q Maybe I was unclear. I'm sorry if I'm being
4 unclear. When I'm talking about ongoing discussions I
5 meant between the Petitioner and DWS. Are there
6 ongoing discussions between them about the use of
7 water being given to the city (sic) from Pi'iholo
8 South well?

9 A Yes. as far as I understand it's still
10 ongoing.

11 Q But that's the less likely scenario you
12 think.

13 A Again it's because of the timing.

14 Q What is the status of the discussions
15 between Petitioner and DWS? I know you haven't
16 reached an agreement. I know you're engaged in
17 discussions. Do you have any other information on the
18 status of those discussions?

19 A This is regarding?

20 Q Between Petitioner and DWS.

21 A I know the -- I wasn't in on these meetings
22 but until recently the conversations have still been
23 ongoing.

24 Q Nothing further than -- you're not doing
25 something in particular or getting information for

1 them for some particular reason?

2 A Not that I'm aware of. But there is still
3 ongoing discussions with the Department of Water
4 Supply.

5 Q Okay. And I don't want to get into the
6 substance of the discussions because I know it's still
7 a discussion. But I just want you to understand for
8 me it's somewhat of a black box. You're talking. I
9 don't know what you're talking about and I don't know
10 how close you are to reaching an agreement.

11 Do you have any information you can provide
12 light to us without revealing anything inappropriate
13 about where you are on the status of those
14 discussions?

15 A I'd like to make a request. I haven't been
16 in on all the meetings with the Department of Water
17 Supply. And if I may I'd like to see if we can defer
18 this question to Mr. Nishikawa when he comes up.

19 Q Okay. Fair enough. Changing topics. Were
20 you aware the public's concern regarding drainage?

21 A We've been to a number of public meetings.
22 We've heard several concerns raised by the public.

23 Q I'm just going to direct you to a couple of
24 the issues. As I read your report, without mitigation
25 and with mitigation you would have to -- in a 50-year

1 storm event the runoff would change from -- I
2 misspoke. Let me state this one more time. Without
3 mitigation in a 50 year storm the runoff would change
4 from 56 CFS so 165 CFS, correct?

5 A That's correct.

6 Q So the mitigation is to divert that
7 additional water that would have run off into the
8 detention basin.

9 A That's correct. That's in the accordance
10 with the county's drainage standards.

11 Q And as I understand your plan you're not
12 only going to take it to exactly the amount but you're
13 going to provide a 10 percent buffer in addition to
14 that amount to reduce the runoff.

15 A It's -- I don't have the exact amount but
16 it's definitely going to be greater than 10 percent.

17 Q Oh, it's going to be greater than
18 10 percent?

19 A Yes.

20 Q Okay. So then it gets diverted into the
21 detention basins and the overflow will go into the
22 gulch, correct?

23 A That's correct.

24 Q So in a greater than 50 year -- in a 100
25 year storm the excess water then goes into the gulch

1 rather than somebody's house.

2 A That's correct.

3 Q Because what happens is because you're
4 diverting it into one particular spot the overflow
5 becomes greater in a particular spot, is that right?

6 A I'd like to clarify also the detention basin
7 you're referring to as the so-called main detention
8 basin in the property. However, when the roadway is
9 being build there'll be smaller detention basins put
10 in as well.

11 Q Because you're not using a storm drain
12 system.

13 A There'll be a drainage system strictly to
14 get the water from the surface underground and into
15 the detention basins.

16 Q Okay. Thanks for the clarification. So but
17 with respect to the main detention basin, how big is
18 the main detention basin?

19 A Right now we have it sized at approximately
20 100,000 cubic feet.

21 Q And is there any design function or
22 treatment to reduce the amount of pollutants or
23 anything that runs off into the gulch?

24 A The detention basin serves as sort of like a
25 settling pond. And under the low flow or smaller

1 rainfall events normally what would have run into the
2 gulch would not even get into the gulch because of the
3 detention basin.

4 It's only when you exceed the design storm
5 you would have runoff getting into there. But the
6 detention basin as well as the smaller ones would help
7 filter out solids and any debris to some extent.

8 Q Then getting back to the overflow. I guess
9 because such a significant amount of water is being
10 diverted to the detention basin would you agree it's
11 important, then, to maintain that detention basin
12 moving forward?

13 A Yes. Part of the requirements as we proceed
14 on with the construction plans is we're going to have
15 to submit a maintenance plan to the Natural Resources
16 Conservation Service to maintain the detention basins.

17 Q And that's going to be part of the
18 requirements for the association?

19 A Yes.

20 Q Is that going to be in the CC&R's?

21 A I believe they are.

22 Q Are you aware -- I'm not sure if it's part
23 of your review -- are there agricultural lands
24 adjacent to the Petition Area?

25 A I believe there are 2-acre lots which would

1 be classified as agriculture. I'm not familiar if
2 they're actually doing farming or not on the land.

3 Q Okay. The Office of Planning sent a letter
4 to the Petitioner asking for some information. And a
5 reply was given back to us also which is included in
6 the in the exhibits as Office of Planning Exhibit 10.
7 One of the questions we asked was the timetable for
8 construction. Were you involved at all with that
9 analysis?

10 A We Oearly on we estimated a construction
11 timeframe from the period that the construction -- I
12 mean the site were actually begun. But I was not
13 involved in the Office of Planning response.

14 Q So if their response was that they would
15 have all the housing constructed by June of 2015, does
16 that sound a correct date to you?

17 A Again I'd like to ask -- I defer this
18 question to Mr. Nishikawa. As far as the site work a
19 fair estimate for the site work I think would be
20 between 12 and 18 months.

21 Q And during construction I will assume or
22 would it be correct to assume that Best Management
23 Practices will be done during construction to prevent
24 pollution from occurring?

25 A Yes. In addition to the county's grading

1 permit we would also be required to get an NPDS permit
2 from the state.

3 Q And what would you be required to do then?

4 A The state -- the county also requires Best
5 Management Practices as far as -- as part of the
6 grading permit application. The state NPDS permit is
7 a little more stringent. Definitely more information
8 has to be provided.

9 Q I guess could you describe the Best
10 Management Practices that will be used for this site?

11 A In general the detention basins or the storm
12 drain mitigation areas would have to be constructed
13 first and stabilized meaning ground cover or grassing
14 has to be established in those areas.

15 And we would probably phase the
16 construction so that no more than 15 acres is open at
17 a time. And for the contractor to be able to move
18 over to the next 15 acres again the ground has to be
19 stabilized.

20 Q Anything else?

21 A That would be the major.

22 Q All right. Thank you.

23 MR. YEE: Nothing further.

24 CHAIRMAN LEZY: Redirect?

25 MR. LUNA: Yes.

1 REDIRECT EXAMINATION

2 BY MR. LUNA:

3 Q Mr. Otomo, have you seen this letter before
4 from Mink & Yuen, Mr. Ibara's letter on the amount of
5 water that's available on the aquifer?

6 A Yes.

7 Q If I may this is already in evidence but it
8 states that the Makawao aquifer system -- is that
9 where this well would be connected to, drilled into?

10 A That's my understanding.

11 Q That it's 7 million gallons per day and that
12 currently there's only 0.3 million gallons per day
13 being drawn from that aquifer. Is that your
14 understanding?

15 A Yes.

16 Q So that's about 4 percent of the sustainable
17 yield?

18 A Yes.

19 Q Okay. That mean there's a lot of water
20 there available?

21 A According to the letter, yes.

22 Q Okay. just the last thing is I failed to
23 mention earlier, or ask you earlier is that you were
24 involved in that Lower Kula Road design for the
25 sidewalk to the Waldorf School?

1 A Yes. We were asked to prepare a schematic
2 plan for that.

3 Q Could you explain that?

4 A We were asked to design a sidewalk basically
5 from the entrance to the Kula Community Center where
6 we met yesterday to the Haleakala Waldorf School. Our
7 initial design called for the sidewalk to be on the
8 makai side of lower Kula Road. However, the landowner
9 with the majority of the frontage along that section
10 did not want the road there -- excuse me the sidewalk.

11 So we proceeded with an alternate layout to
12 put the sidewalk on the mauka side of lower Kula Road
13 which basically exists right now. That's what's on
14 the table.

15 Q So the initial plan was the makai side but
16 for the landowner not willing to provide an easement
17 for the sidewalk?

18 A Yes.

19 Q And that's when you had to move to the mauka
20 side.

21 A We looked for an alternative solution which
22 led us to the mauka side of the road.

23 Q One of the questions that came up is that
24 location the students have to cross three
25 intersections. Is that being taken -- safety was a

1 concern -- is that being taken care of? Did you folks
2 address that?

3 A What we were looking at is the possibility
4 of traffic calming things like raised sidewalks
5 potentially, speed humps or speed tables in that area.
6 But that's what was initially discussed.

7 Q Discussed with the county?

8 A Public Works.

9 Q Is that a state road?

10 A It's a county road.

11 Q County road. The state road is the lower
12 Kula Highway.

13 A Kula Highway.

14 Q Kula Highway. Was the county inclined to
15 consider the request that you folks proposed?

16 A They were in somewhat of an agreement that
17 it would definitely help in term of traffic calming.

18 Q If the landowner had a change of heart and
19 would be willing to, on the makai side, would be
20 willing to provide an easement, are you able to just
21 redesign the sidewalk down to the makai side?

22 A We could. However, there's some existing
23 physical constraints that I would have some concern
24 over. Namely there's an existing what I called an
25 un-engineered wall. It's a stacked rock wall that's

1 not grouted. It's an un-engineered wall that
2 basically holds up lower Kula Road. In some areas I
3 believe the drop from the pavement to the adjacent
4 property is between 8 and 9 feet.

5 Q Without a wall?

6 A With that un-engineered wall that's there.

7 Q When you say the "un-engineered wall", is
8 that a retaining wall you're talking about?

9 A It's retaining about roughly 8 to 9 feet and
10 it's just rocks stacked on each other, not grouted.

11 Q There's no fence above that retaining wall.

12 A The wall does extend, I believe, a few
13 inches above the pavement so that acts like a curb.

14 Q But no fence?

15 A No fence.

16 Q That's a concern.

17 A Yes.

18 Q But right now the landowner on the makai
19 side has not, as far as you know, has not changed his
20 mind?

21 A I'm not aware that he is willing to have the
22 sidewalk on his property.

23 MR. LUNA: No other questions.

24 CHAIRMAN LEZY: Commissioners, questions?

25 Commissioner McDonald.

1 COMMISSIONER McDONALD: Morning, Mr. Otomo.

2 THE WITNESS: Morning.

3 COMMISSIONER McDONALD: Is the Project
4 considering reuse of the secondary treated wastewater
5 maybe for irrigation type purposes and whatnot?

6 THE WITNESS: There was some discussion
7 about that. However, I think the problem comes from
8 trying to get the water from below grade back to the
9 surface.

10 COMMISSIONER McDONALD: You have to pump it.

11 THE WITNESS: Pump it back up.

12 COMMISSIONER McDONALD: Right. So is it
13 still on the table or is it becoming a cost issue?

14 THE WITNESS: We haven't taken it much
15 further, but there was some discussion about the reuse
16 of that water.

17 COMMISSIONER McDONALD: You mentioned as far
18 as your drainage detention requirements of a hundred
19 thousand cubic feet. Is that just specific for your
20 main basin within, I guess that's the northwest corner
21 of the property? Or is that cumulative requirement
22 for the Project?

23 THE WITNESS: That was sized basically for
24 Kula Ridge only, not Kula Ridge Mauka. And, again,
25 that's the main detention basin. And there's three

1 more linear type of basins that we're proposing along
2 the roadway which adds approximately 30,000 more cubic
3 feet of storage in addition to the main basin.

4 COMMISSIONER McDONALD: Running parallel
5 with the state roadway?

6 THE WITNESS: It comes off of the roadway,
7 and it basically runs perpendicular to the roadway.

8 COMMISSIONER McDONALD: So those series of
9 detention basins will service certain portions of the
10 property and eventually get discharged into the main
11 basin.

12 THE WITNESS: That's correct.

13 COMMISSIONER McDONALD: As far as the water
14 system, there was mention of 7 million gallons per day
15 available within the Makawao aquifer?

16 THE WITNESS: Yes.

17 COMMISSIONER McDONALD: Right. Any idea
18 what the well yield would be that's being proposed?

19 THE WITNESS: There was no test done. Keep
20 that in mind. But in discussions with the well
21 driller he anticipated a yield of about a million
22 gallons a day that he was fairly confident that the
23 well could supply.

24 COMMISSIONER McDONALD: When would that be
25 confirmed?

1 THE WITNESS: The well would obviously have
2 to be drilled and tested.

3

4 COMMISSIONER McDONALD: Right. Right,
5 right. Any timetable?

6 THE WITNESS: I'll defer the question to
7 Mr. Nishikawa.

8 COMMISSIONER McDONALD: The water system
9 demand for the Project I believe was about
10 83,000 gallons per day, is that correct, 83,200?

11 THE WITNESS: That's for the affordable
12 portion of the Project, 116 units.

13 COMMISSIONER McDONALD: It's not affordable,
14 the 116 units. It's, I think 70 -- 59 units
15 affordable and the remaining --

16 THE WITNESS: It's for the whole --

17 COMMISSIONER McDONALD: Anyway, yeah, it
18 doesn't --

19 THE WITNESS: -- it's for the whole 116
20 units.

21 COMMISSIONER McDONALD: Yeah, that really
22 doesn't matter with the rest of the water supply. But
23 the rural lots, what is the county's requirement as
24 far as demand?

25 THE WITNESS: When we size -- well, when we

1 had discussions with the county we had allotted
2 4,000 gallons a day for each of the four rural lots.

3 COMMISSIONER McDONALD: 4,000 gallons per
4 day not 4,000 gallons per acre.

5 THE WITNESS: No. Per day.

6 COMMISSIONER McDONALD: And that was
7 acceptable with the county.

8 THE WITNESS: That's the number that they've
9 accepted from us.

10 COMMISSIONER McDONALD: Thank you.

11 CHAIRMAN LEZY: Additional questions? I
12 have one question for you. The attorney for Office of
13 Planning asked you actually very thorough questions
14 about the water system. I want to see if I can maybe
15 reduce it just a little bit more because I'm not as
16 smart as Mr. Yee.

17 (Audience chuckling)

18 If you had to commit today to what water
19 system the Petition Area will end up with and what the
20 expense of construction of that water system will be,
21 what will it be and what will it cost?

22 THE WITNESS: Again, it's the timing issue.
23 If we were ready -- we had your approval and the
24 necessary county approvals for the subdivision, I
25 would say drilling his own well. Again, it's a timing

1 issue. I'm hoping that the Water Supply could help in
2 some way. But strictly based on a timing issue I
3 would say drilling his own well.

4 And, again, the number that we had for the
5 well itself I believe was \$2 million and associated
6 infrastructure on the property for the water system.
7 I think that would be the bet at this time.

8 CHAIRMAN LEZY: I'm sorry. The \$2 million
9 figure covers both drilling and infrastructure?

10 THE WITNESS: No. Just the well itself.

11 CHAIRMAN LEZY: Okay. And infrastructure
12 would and additional?

13 THE WITNESS: Yeah. I don't know what the
14 number is but the 2 million was for the well itself.

15 CHAIRMAN LEZY: Best estimate on the
16 infrastructure?

17 THE WITNESS: My guess it's probably a
18 million and-a-half to \$2 million more for the
19 infrastructure.

20 CHAIRMAN LEZY: So maybe upwards of
21 \$4 million total?

22 THE WITNESS: Yes.

23 CHAIRMAN LEZY: Thank you.

24 COMMISSIONER McDONALD: Mr. Chair? Real
25 quick. I'm sorry, Mr. Otomo. You know, I believe the

1 preference for the water system is to dedicate it to
2 the county. Right? Although at this time there's not
3 a firm commitment from the county to take over and
4 have that system dedicated.

5 Durning the planning and engineering of the
6 subdivision or development, based on, you know, what
7 you had previously laid out and proposed I would
8 assume that there will need to be revisions to that
9 water system plan to be applicable with the current
10 water system network. Is that correct? Or is what
11 you have laid out kind of tied into all their service
12 zones?

13 THE WITNESS: Let me clarify. The private
14 system layout we had was strictly for a non-dedicated
15 system. Basically it was going to be a stand-alone
16 system with a well. And the water system just
17 servicing Kula Ridge and Kula Ridge Mauka. There was
18 no provisions in there to tie that system into the
19 county system.

20 And we had a second alternative where the
21 Project actually connected to the county system.

22 COMMISSIONER McDONALD: Was it submitted? I
23 mean was it submitted to the Commission?

24 THE WITNESS: I'm not sure if it was
25 submitted to the Commission, but it was an exhibit

1 that we prepared for discussion among the team members
2 quite a while ago.

3 COMMISSIONER McDONALD: I see. And that
4 concept is in line with Water Supply's network.

5 THE WITNESS: Yes.

6 COMMISSIONER McDONALD: Any significant
7 changes as far as costs is concerned?

8 THE WITNESS: Like I said we were proposing
9 the tank for the private water system is fairly close
10 to the connection point to the county system. In
11 terms of infrastructure there will be a slightly more
12 cost to that. There still needs to be negotiation
13 with the county in terms of how many -- how much
14 additional storage that would be required to support
15 these two projects.

16 COMMISSIONER McDONALD: Great. Thank you.

17 CHAIRMAN LEZY: Any other questions?

18 MR. YEE: Commissioner, could I ask a
19 follow-up to a question you asked?

20 CHAIRMAN LEZY: Sure.

21 MR. YEE: Just hopefully very briefly. The
22 2 million -- you answered Chair Lezy with the question
23 of how much it would cost. You said 2 million for the
24 well and 2 million for the infrastructure. Does that
25 include a second backup well?

1 THE WITNESS: There was no provision for a
2 backup well.

3 MR. YEE: Okay. Thank you.

4 CHAIRMAN LEZY: Thank you. We'll take a 10
5 minute recess.

6 (Recess was held. 10:15)

7 CHAIRMAN LEZY: (10:38) We're back on the
8 record. Petitioner, your next witness.

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

12 THE WITNESS: Yes.

13 CHAIRMAN LEZY: Once more for the record
14 please state your name and address.

15 THE WITNESS: My name is Michael Munekiyo.
16 My address is 305 High Street, suite 104, Wailuku.

17 CHAIRMAN LEZY: Thank you. Please proceed.

18 DIRECT EXAMINATION

19 BY MR. LUNA:

20 Q Mr. Munekiyo, just to make things very
21 clear, this District Boundary Amendment Petition is
22 for what size area of property?

23 A The Petition Area is approximately 51 acres.

24 Q Is it the some 200 acres mentioned in the
25 newspaper today?

1 A It is not.

2 Q The Project itself, Mr. Munekiyo, is mostly
3 affordable housing, is that correct?

4 A That's correct.

5 Q So 70 out of 116 units?

6 A Yes.

7 Q Can you describe what those houses are for?

8 A The affordable units are broken down into
9 two product types: Single-family affordable and
10 duplex affordable which will be made for sale to
11 seniors. The affordability categories for these units
12 for these units are those intended for families
13 earning between 80 to 100 percent of the county median
14 income, families earning between 120 percent of the
15 county median income, and 120 to 140 percent of the
16 county median income.

17 So it is designed to target at least a
18 range including what is categorized as below moderate
19 income families.

20 Q That would include both the single-family
21 dwellings and the duplexes?

22 A Yes.

23 Q Now, there have already been -- there's been
24 some representation made in the record as to what
25 these homes and the duplexes will be, what they'll

1 look like?

2 A That's correct.

3 Q Are the homes all 3-bedroom units or a
4 variety of them?

5 A 3-bedroom units for the single family ones.

6 Q And for the senior housing?

7 A 2-bedroom duplex units.

8 Q Initially it was all single-family dwellings
9 when the Project was first presented, is that correct?
10 A Yes.

11 Q And why was it changed to senior housing?

12 A During the course of reviewing the Project,
13 and I think Mr. Nishikawa can verify this, there were,
14 I think, requests that additional -- or units be
15 provide in the Upcountry areas for seniors. I think
16 as a response to those requests, and I think these
17 requests came from members of the senior community in
18 Kula, Mr. Nishikawa decided to convert 34
19 single-family units to the 34 duplex units in 17
20 buildings.

21 Q Now, Mr. Munekiyo, is this the only
22 affordable housing project in Kula at the present time
23 that's being proposed?

24 A As far as I know, yes. Aside from the
25 Department of Hawaiian Home Lands' projects.

1 Q I'm sorry. I should have said that's
2 available for the general public.

3 A Yes.

4 Q So on the studies that were done by the
5 various consultants pertaining to this project, which
6 you've clarified as only like 50 acres or so?

7 A Yes.

8 Q We're dealing only with Kula Ridge except
9 for the issue regarding the possibility of drilling a
10 well for Kula Ridge and Kula Ridge Mauka.

11 A That's correct.

12 Q The District Boundary Amendment, however, is
13 only for Kula Ridge, is that correct?

14 A Yes.

15 Q And we've talked about the Rural and the
16 Urban District as being requested for this District
17 Boundary Amendment.

18 A Yes.

19 Q The consultants have all come back and
20 provided the reports. And you've provided the Final
21 Environmental Assessment for this project, is that
22 correct?

23 A That's correct.

24 Q And in preparing for this final
25 environmental assessment what did you do?

1 A We, of course, followed the protocols of
2 Chapter 343 Hawaii Revised Statutes, which is the
3 state law governing the EIS and EA processes. That
4 process included identifying the approving agency. In
5 this case the approving agency was agreed to be the
6 Department of Housing and Human Concerns at the county
7 of Maui.

8 We, of course, worked with the various
9 consultants to compile the Draft Environmental
10 Assessment. That Draft Environmental Assessment
11 through the Department of Housing and Human Concerns
12 was circulated to a number of agencies for review and
13 comment. We responded to those comments. With that
14 we prepared the Final Environmental Assessment.

15 In September 2008 the Department of Housing
16 and Human Concerns issued a finding of "no significant
17 impact."

18 Q What does that mean, a finding of no
19 significant impact?

20 A The Chapter 343 -- and it's Hawaii
21 Administrative Rules Chapter 200, outlines the
22 criteria for determining whether or not a proposed
23 action can be deemed one of two scenarios: Either a
24 finding of no significant impact or that an
25 environmental impact statement would need to be

1 prepared.

2 In evaluating the significance criteria --
3 and the significance criteria addresses items such as
4 impacts to the physical setting, cumulative impacts,
5 impacts to air, water quality, so forth in going
6 through those evaluations of those criteria the
7 determination was that this document, environmental
8 document, could be issued as a finding of no
9 significant impact as opposed to having a full
10 environmental impact statement prepared.

11 Q What would cause the reviewing agency or the
12 approving agency to determine that an EIS is required
13 instead of just a FONSI?

14 A Generally in going through the draft
15 environmental assessment process, if there are
16 issues which are identified as being of significant
17 concern to either an agency or any commenting party,
18 the approving agency, in this case, Housing and Human
19 Concerns, has the discretion to render judgment as to
20 whether or not those issues are of significant, I
21 guess, concern that an EIS will be required. And so,
22 again, it is based on a number of criteria that's
23 layed out in Chapter 343.

24 Q Would it be correct to say, Mr. Munekiyo,
25 that if the studies that had been done by the

1 consultants had created more or required more studies
2 that an EIS would have been required?

3 CHAIRMAN LEZY: Mr. Luna, I'm sorry, I don't
4 mean to interrupt you. But the Commission is very
5 familiar, I think, with the EA and EIS process.

6 MR. LUNA: I'm sorry. I understood that you
7 had three new Commissioners so....

8 CHAIRMAN LEZY: Okay. I might suggest to
9 you that the process stands for itself and the
10 conclusions stands for itself. So you may wish to
11 move on to a different line of questions with the
12 witness. I don't think that we need chapter and verse
13 on this.

14 Q (Mr. Luna) : Mr. Munekiyo, the final
15 question was the results of the studies that showed no
16 significant impact on the Project adverse impacts
17 caused by this project.

18 A There were no significant impacts deemed to
19 be caused by this project.

20 Q Adverse impacts?

21 A Adverse impacts.

22 MR. LUNA: No other questions.

23 CHAIRMAN LEZY: County?

24 xx

25 CROSS-EXAMINATION

1 BY MR. HOPPER:

2 Q Mr. Munekiyo, you went over the income
3 ranges for the affordable units. Can you estimate
4 what the sales price would be for the different types
5 of unit? I think you had that in your Exhibit.

6 A Yes, I do. I might just mention that the
7 sales prices are based on HUD guidelines which is
8 maintained by the Department of Housing and Human
9 Concerns.

10 The information that we have was based on
11 income guidelines in 2009. However, I don't believe
12 that the income criteria has changed that much since
13 that time, given the recessionary environment we were
14 in. But at that time as an example, the 80 to
15 100 percent of median income category sales price, and
16 these would be for the senior duplex units, roughly
17 240,000 to \$300,000 per unit.

18 And as we go up the scale, again, if we're
19 looking at the above-moderate income category
20 120 percent to 140 percent, roughly 420,000 to
21 490,000. Again, these are based on the 2009 income
22 criteria that HUD issued. And it's probably at the
23 same level or near the same level or slightly more.

24 Q And the senior duplexes, what is the age
25 requirement for the duplexes?

1 A Fifty-five years and older.

2 Q I'll have Jo-Ann Ridao speak to some of
3 these issues but are these terms required to be
4 spelled out in an affordable housing agreement?

5 A They are.

6 Q And that was one of the county council's
7 project modifications when it gave you 201H approval?

8 A Yes.

9 MR. HOPPER: Thank you. I have no further
10 questions.

11 CHAIRMAN LEZY: OP?

12 CROSS-EXAMINATION

13 BY MR. YEE:

14 Q Mr. Munekiyo, to confirm and highlight some
15 of the issues in the record and in your testimony. Is
16 it true the Petitioner has agreed to put in a warning
17 siren as requested by the Office of Civil Defense,
18 state of Hawai'i?

19 A That's correct.

20 Q And you testified regarding the FONSI and
21 that is the finding of no significant impact. That
22 determination, I assume, is based upon the mitigation
23 measures set forth in the EA, correct?

24 A That's correct.

25 Q So then the Petitioner should be

1 implementing those mitigation measures in order to
2 assure that there was no significant impact from this
3 project.

4 A Yes.

5 Q Is it your understanding that there are
6 agricultural lands which are adjacent to this Petition
7 Area?

8 A There are.

9 Q Did you participate at all in the timetable
10 given to the Office of Planning in OP Exhibit 10?

11 A We did, yes.

12 Q Is it true that in that timetable in OP
13 Exhibit 10 you believe the affordable housing units
14 would be completed by June 2015?

15 A That was the estimate we believed to be
16 reasonable. Again, there are certain assumptions that
17 we need to recognize. No. 1. that the Chapter 14.12,
18 the County's water availability ordinance would be
19 addressed within a certain timeframe. And that would
20 basically trigger the subsequent subdivision
21 design/construction process.

22 Q What the assumption on the timeframe for
23 getting that water? Show me the water.

24 A We had assumed the water source
25 identification issue could be concluded by March of

1 2012.

2 Q Given your estimate of 2015 as a time period
3 by which the affordable housing units would actually
4 be constructed, would you then say that a 10-year
5 deadline to complete the infrastructure would then be
6 reasonable?

7 A That would be reasonable.

8 Q The rural lots that are to be sold of
9 approximately 4 acres, the anticipated price at the
10 moment is about 1.2 million, is that right?

11 A That's my understanding. That's probably
12 something better answered by Clayton, however.

13 Q And you referred to an agreement with the
14 county regarding the affordable and senior housing,
15 correct?

16 A Yes.

17 Q What's the status of that agreement?

18 A That affordable housing agreement has been
19 prepared, has been submitted to the Housing and Human
20 Concerns. And I believe Ms. Ridao has then
21 transmitted that to the Maui County Council for review
22 and consideration.

23 Q Members of the public have expressed
24 opinions as to what they think should be included in
25 that agreement or at least what they think the

1 conditions should be imposed with respect to the
2 length of time it should be kept affordable or the
3 length of time seniors should be residing.

4 Is that an issue that would be dealt with in
5 that agreement?

6 A That is an issue that will be dealt with
7 through that agreement.

8 Q So the members of the public can bring their
9 concerns to the County Council to address as well,
10 correct?

11 A Yes.

12 Q Mr. Plasch testified about the land, that
13 it's not particularly good land but some of it's all
14 right. A homeowner, however, would be allowed --
15 there's no CC&R's or other reasons why a homeowner
16 couldn't be putting in a home garden for themselves
17 though, correct?

18 A There would be no restriction.

19 Q And you heard my discussion with Mr. Otomo
20 asking him about any talks between Petitioner and the
21 Department of Water Supply. And he deferred to
22 Mr. Nishikawa. Do you have any additional information
23 you could shed on the status of those discussions or
24 -- well, do you have any information you could shed?

25 A I think it's probably best to have

1 Mr. Nishikawa respond.

2 Q Okay. In your written testimony you discuss
3 your opinion that this project will comply with the
4 Hawai'i State Plan. Do you remember that?

5 A Yes.

6 Q And I assume you conclude that it is in
7 compliance with the Hawai'i State Plan.

8 A Yes.

9 Q Are you aware that the Hawai'i State Plan
10 was recently amended to include, among the major areas
11 of statewide concern, principles of sustainability?

12 A Yes.

13 Q And in the Office of Planning Exhibit 10
14 that is the response from Petitioner to the Office of
15 Planning, you go through some of the sustainable
16 measures for this project, correct?

17 A That's correct.

18 Q So based on that letter will the Petitioner
19 be ensuring that the homes are PV ready, the
20 affordable homes are PV ready?

21 A "PV ready" referring to photovoltaic as
22 opposed to solar water heating. And I believe that's
23 an option that Mr. Nishikawa will be providing to each
24 of the perspective buyers.

25 Q Let me make a distinction between a home

1 which has photovoltaics on it and a home which is
2 simply designed so you could put on a photovoltaic
3 system so that you have space available for the
4 conduits, et cetera.

5 So if I understand this correctly the
6 Petitioner will be providing PV as an option to those
7 homeowners willing to pay for the PV option, correct?

8 A Yes.

9 Q For those who do not wish to purchase PV,
10 will the home be PV ready so that at a later date they
11 could put in PV?

12 A I believe so.

13 Q You talk in the letter about R30 insulation
14 in the attic and R13 insulation in the exterior wall.
15 Are you aware of that?

16 A Yes.

17 Q Is your understanding is that simply meeting
18 county code or is that in excess of county code?

19 A That information was provided to us by the
20 architect. So perhaps I might refer that to
21 Mr. Nishikawa.

22 Q You always will be putting in an Energy Star
23 advanced lighting package?

24 A Yes.

25 Q And also providing EPA Water Sense plumbing

1 fixtures?

2 A Yes.

3 Q You also discuss in that letter that the
4 treated effluent from the individual wastewater
5 systems would reduce the amount of water somehow
6 needed to water the lawn or to irrigate.

7 Can you explain how that happens and why
8 this is a sustainability feature?

9 A My understanding is that if it is that the
10 leaching areas are placed within lawn areas then
11 perhaps that could reduce demand for irrigation in
12 those areas.

13 Q Is this something you actually sort of did a
14 review on? I don't know how deep these leach fields
15 are. I don't know how far a grass root will grow. Do
16 you have any additional information or feeling about
17 this issue?

18 A I did not do any study of that issue. I
19 think it's more based on very informal discussions
20 I've with Mr. Nishikawa, so nothing very technically
21 based.

22 Q In addition to the matters listed in the
23 letter, I also went through the application and the
24 environmental assessment. So I'm going to go over
25 some of the matters in there if you can call, as well

1 as your testimony.

2 Is it also true that Energy Star appliances
3 will be provided in the affordable housing to the
4 extent obviously that for Energy Star appliances
5 exist?

6 A Yes.

7 Q And will Petitioner be working with the
8 county to ensure that the Project is consistent with
9 the Greenway Master Plan?

10 A Yes.

11 Q Can you briefly describe what is the
12 Greenway Master Plan?

13 A The Upcountry Greenway Master Plan was a
14 Master Planning effort undertaken by the county a
15 number of years ago. And in that -- the scope of that
16 project the county identified certain areas within
17 which or along which routes for various types of
18 greenways, whether it be bicycle paths, pedestrian
19 paths, equestrian trails, those types of facilities
20 could be identified and recently implemented.

21 So throughout had the Upcountry area that
22 Greenway Master Plan identifies a number of routes
23 along which greenway paths and trails could be
24 located. Within the Project Area there is an
25 identified Waiakoa Loop which borders the Project. So

1 that's one element of the Upcountry Greenway Master
2 Plan that's in proximity to the Project site itself.

3 Q Will the Project be doing something to
4 accommodate that path?

5 A We've identified at least within the Kula
6 Ridge property boundaries an accommodation for a
7 greenway trail or path that will be advancing that
8 Greenway Master Plan.

9 Q Will this be dedicated to the county or is
10 it going to be maintained by the association?

11 A I don't believe it will be dedicated to the
12 county so. My assumption that's something that the
13 association will be responsible for.

14 Q But will it be something for which the
15 public has access?

16 A I'm not sure whether or not it will be a
17 publicly open trail.

18 Q Is that consistent with a Greenway Master
19 Plan to have a private trail?

20 A I believe the Greenway Master Plan was for
21 public trails, public use trails. But the specific
22 indication of the greenway location through the
23 Project I believe it's between the rural lots and the
24 market affordable lots that runs through the Project
25 Area.

1 Now, if it is that the alignment of the
2 greenway path can be adjusted to some other areas say
3 along public roadways, for example, perhaps that could
4 be maintained as public.

5 But I believe, just going back to the
6 question, Mr. Yee, it is intended to be for public
7 use. I'm not sure we've advanced or Mr. Nishikawa has
8 thought about how it is that the specific greenway
9 component that might be associated with his project
10 would be implemented.

11 Q You will also be siting the buildings to
12 maximize natural cooling and to minimize heat gain, is
13 that correct?

14 A Yes.

15 Q Can you explain what that means?

16 A I think that speaks to the orientation of
17 the building in terms of accommodating predominant
18 wind patterns, window openings, so forth so as to
19 minimize the need for any air conditioning type of
20 systems.

21 Q You'll also be providing space for recycling
22 and material diversion, is that correct?

23 A Yes.

24 Q To the extent practicable, will you be
25 providing low impact measures such as grass swales to

1 be included in the design?

2 A To the extent practicable. I think the
3 consideration is how those types of sustainability
4 features fit with the overall green master plan as an
5 example. Again to the extent practicable that they
6 can be made to work certainly they would be part of
7 the plan.

8 Q So in the design process you will be
9 applying these low impact concepts to whether or not
10 who a low impact design would be appropriate and
11 practicable for this project.

12 A Right. I think that's going to be part of
13 design study process.

14 Q In light of the sustainability measures that
15 we've gone through do you believe that this project
16 will then be consistent with the Hawai'i State Plan's
17 principles of sustainability?

18 A Yes.

19 MR. YEE: I have no further questions.

20 CHAIRMAN LEZY: Redirect? Okay.

21 Commissioners, any questions? Commissioner Heller.

22 COMMISSIONER HELLER: Yes. I have a
23 question in the exhibits. Petitioner's Exhibit 14
24 part B of that I believe is a report prepared by your
25 firm dealing with economic impacts.

1 THE WITNESS: Yes.

2 COMMISSIONER HELLER: Do you have that in
3 front of you?

4 THE WITNESS: Yes.

5 COMMISSIONER HELLER: I'd like to look
6 particularly at tables 4 and 5 in that report where
7 you're analyzing the economic impact to the county.

8 THE WITNESS: Right.

9 COMMISSIONER HELLER: Table 4, as I
10 understand it, goes through the additional property
11 tax revenue that the county would be receiving?

12 THE WITNESS: Yes.

13 COMMISSIONER HELLER: And that's based on
14 116 new households in the county that would become
15 property taxpayers, right?

16 THE WITNESS: That's correct.

17 COMMISSIONER HELLER: Then in table 5 you go
18 through estimated costs to the county of providing
19 various county services, public safety and so forth.

20 THE WITNESS: Yes.

21 COMMISSIONER HELLER: Table 5 is not based
22 on 116 new households. Table 5 is based on 12 new
23 households.

24 THE WITNESS: Table 5 is based on, yes, 12.

25 COMMISSIONER HELLER: Because for purposes

1 of the cost side you assumed that the people moving
2 into the affordable housing are pretty much going to
3 be people who are already residents of Maui County.
4 So you said, well, that's not new cost because the
5 county is already providing services to them. Is that
6 a fair summary?

7 THE WITNESS: That's correct.

8 COMMISSIONER HELLER: But isn't the county
9 going to have a new neighborhood of 116 homes to
10 provide services to?

11 THE WITNESS: Yes.

12 COMMISSIONER HELLER: And on the revenue
13 side you're counting all 116 homes as a new source of
14 revenue, right?

15 THE WITNESS: That's correct.

16 COMMISSIONER HELLER: So isn't this kind of
17 apples to oranges when you compare the costs to
18 service 12 new households versus the revenues from 116
19 new households?

20 THE WITNESS: It is in a sense apples and
21 oranges, Commissioner. What we sought to do, however,
22 was to bring recognition that the Project itself will
23 have impacts from a fiscal standpoint but that it is
24 from a -- the basis of those impacts are associated
25 with what might be considered new residents to Maui,

1 so-called in-migrants. And the \$27,000 or so that we
2 cite are those costs associated with those so-called
3 in-migrants.

4 I suppose we could determine real property
5 tax values to be more comparable perhaps by looking at
6 what the per lot income could be. And that I think
7 would bring the number down quite a bit. You're
8 correct.

9 COMMISSIONER HELLER: Because even if
10 somebody is already a Maui resident, when they move
11 into the new situation the county is not going to stop
12 providing police services and road maintenance and
13 everything else at whatever place they used to be
14 living in, right?

15 THE WITNESS: Right.

16 COMMISSIONER HELLER: So really the cost
17 increase to the county is going to be based on 116 new
18 units or new households?

19 THE WITNESS: I think that's an assumption
20 that could be made. Again, we looked in conducting
21 the impact to the county we looked at in very general
22 terms what the effects to the county would be versus
23 what the additional revenue to the county would be.

24 When we think about the 116 units and all of
25 those units being occupied with the exception of 11 by

1 existing Maui residents, then understanding that the
2 units that they may have vacated, some of those could
3 be then reoccupied by other Maui residents.

4 And as the process filters down some of them
5 would be families, as an example, which may have
6 doubled up with other family members. So you still
7 would have income being generated through the vacant
8 units -- vacated units.

9 And, you know, if we look at it in that way
10 again it's just kind of a lot of broad assumptions
11 being made that the county still would be receiving
12 revenues from 116 new lots.

13 Again, a lot of these analyses are based on
14 brought assumptions. Again, I think your question
15 goes back to the fact there are going to be lots or
16 units vacated and what happens to those. Again, those
17 could be occupied by new residents or they could be
18 occupied by residents who may have been living with
19 other family members. And I think once we get to that
20 level of analysis it becomes fairly ambiguous as to
21 what methodologies we use. I can't -- I wouldn't want
22 to get to that level of analysis at this point.

23 COMMISSIONER HELLER: Okay. But as far as
24 the bottom line conclusion that the county is going to
25 be receiving a lot more in new revenue than it's going

1 to be paying in new costs, that's premised on the
2 assumption that we're only talking about 12 new
3 households of cost.

4 THE WITNESS: That's correct.

5 COMMISSIONER HELLER: As opposed to 116 new
6 households of cost.

7 THE WITNESS: That's correct.

8 COMMISSIONER HELLER: Okay. Thank you.

9 CHAIRMAN LEZY: Any other questions? Thank
10 you.

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

14 THE WITNESS: I do.

15 CHAIRMAN LEZY: Please state your name and
16 your address.

17 THE WITNESS: Clayton Nishikawa, address is
18 2145 Wells Street, suite 301, Wailuku, Hawai'i.

19 CHAIRMAN LEZY: Thank please proceed.

20 DIRECT EXAMINATION

21 BY MR. LUNA:

22 Q Mr. Nishikawa, would you explain what your
23 position is with Kula Ridge, LLC.

24 A I Am the managing member of the Kula Ridge,
25 LLC.

1 Q So in your capacity as managing member
2 you're responsible for the overall development of the
3 Kula Ridge property?

4 A Yes, I am.

5 Q You're an architect by profession, is that
6 correct?

7 A That's correct.

8 Q So are responsible for or will be
9 responsible for designing the homes for the affordable
10 housing as well as the duplex housing?

11 A Yes.

12 Q What is your plans for the design for these
13 homes?

14 A We designed the homes to be expandable for
15 the small senior units so as younger families grow the
16 homes can grow with them. We've also designed the
17 age-in-place homes for the senior affordable units so
18 that seniors can stay on Maui and age in place
19 independently.

20 Q So when you say so they can expand the home
21 what do you mean by that?

22 A We've designed the smaller homes to fit
23 within the cost of the County's median income
24 requirements. We've also designed these homes to be
25 expandable so that you can add on to the home on the

1 rear portion of the lot in a land plan situation to
2 add another bedroom and another bathroom so as the
3 family goes and their income grows their home can
4 actually grow with them.

5 Q As the managing partner for this LLC and as
6 the information regarding this affordable project
7 spread, have you received any inquiries as to people
8 interested in the affordable housing as well as the
9 senior housing?

10 A Yes, we have. Since its inception Maui
11 County families, there's been about 500 applicants for
12 the 70 affordable units.

13 Q Is the 500 total or 500 just for the young
14 family -- or, I'm sorry, just for the seniors or the
15 other affordables?

16 A It's for the affordable units and the senior
17 affordable units.

18 Q So total?

19 A Total.

20 Q Are you maintaining a list of these requests
21 or inquiries?

22 A Yes. We are maintaining a database with all
23 the applicants and their information.

24 Q What is your timetable for proceeding with
25 the project, assuming that the Land Use Commission

1 grants the District Boundary Amendment?

2 A If we were to receive the State Land Use
3 Commission District Boundary Amendment we would
4 proceed to continue our discussions and negotiations
5 with the Department of Water Supply to address the
6 water availability ordinance and hopefully resolve
7 that so we can move forward with our final subdivision
8 requirements.

9 Q Are you still discussing this issue with the
10 Department of Water Supply and any other agency in the
11 county?

12 A Yes, we have. We've been working with the
13 Department of Water Supply for, since the inception of
14 the Project. And we have continuing discussions. I
15 believe the Commissioners have a letter submitted from
16 the Department of Water Supply responding to that
17 effect.

18 Q You have a -- since you mentioned water,
19 water supply -- you have an agreement with Mr. -- with
20 Pi'iholo South?

21 A Yes. We have an agreement with Pi'iholo
22 South. They have successfully drilled a well. And
23 the county is currently in discussion with Pi'iholo
24 South. And so from a perspective of the water
25 availability ordinance we do have an agreement with

1 the Pi'iholo South's entity.

2 MR. LUNA: Commissioners, for your record
3 it's Exhibit 6 -- I'm sorry it's section 6 of Exhibit
4 8. It's in back of Exhibit 8.

5 Q Now, with respect to that agreement,
6 Mr. Nishikawa, has there been any further discussion
7 with Mr. Frank as to when or what progress he's making
8 with the county?

9 A In our discussions with the Department of
10 Water Supply they're in the process of concluding
11 Upcountry water infrastructure analysis, a fairly
12 comprehensive analysis that will encompass essentially
13 resolving this Upcountry water meter issue.

14 Once the Department of Water Supply
15 concludes that analysis their next step would be to
16 address which water sources that the department will
17 pursue in terms of improvements, increasing filtration
18 capacity and also securing existing wells such as
19 Pi'iholo South and other well sites there are
20 existing. There's a Pi'iholo North well. There's also
21 a Po'okela well that's also existing that the county
22 has in a backup reserve capacity that's currently not
23 being used as a service pump.

24 And with all of those water sources the
25 county is also discussing the possibility of exploring

1 the possibility of working with Kula Ridge Mauka in
2 its well permit to acquire additional water sources
3 Upcountry.

4 Q With respect to your timetable for this
5 project and what is happening with negotiations with
6 the Department of Water Supply, do you expect that the
7 possibility of getting water through one of the
8 options that the Department of Water Supply is
9 considering at this time would occur before you would
10 want to start building pursuant to your timetable?

11 A The way that the water availability
12 ordinance is written is that we're required to show a
13 sustainable water source at final subdivision
14 approval. In the tentative schedule that we submitted
15 as a response to the Office of Planning we have
16 allowed until, I believe Mr. Munekiyo stated that
17 we've allotted until March 2012 to resolve that issue.

18 So we're hopeful that -- and we've been
19 continuing discussions with the Department of Water
20 Supply. And with their conclusion of their
21 infrastructure analysis I'm hopeful and cautiously
22 optimistic that the Department of Water Supply will be
23 addressing the water source issues and defining which
24 sources that they'd be developing, acquiring and
25 pursuing.

1 Q If that does not happen when would you have
2 to start considering drilling the well?

3 A That would be one of the last options that
4 we would be looking at. Or what we would like to
5 do -- let me put it in perspective, what we'd like to
6 do is work with the county and come up with a solution
7 that would not only provide a water source for our
8 Kula Ridge Project but also to be part of the solution
9 for the Upcountry water meter list.

10 And with that there's four possibilities
11 that we have available to us. One would be to honor
12 the agreement with the Pi'iholo South, LLC and work
13 out an agreement based on their purchase or
14 acquisition of the Pi'iholo South well.

15 Q Let me interrupt you there. So what is
16 the -- what help would you have -- what help would you
17 provide in the agreement with Pi'iholo South?

18 A The agreement calls for Kula Ridge to be
19 contributing a financial amount to help defer the
20 acquisition of the Pi'iholo South well or to defray
21 the cost of dedication for Pi'iholo South's
22 improvements of the infrastructure to the -- to get
23 the Pi'iholo South well to the county system.

24 Q And at what amount is the contribution?

25 A It's \$2 million.

1 Q Go ahead on your other, what are the other
2 options?

3 A The other option would be if the agreements
4 with Pi'iholo South do not come into fruition on a
5 timely basis, we would be also considering working
6 with the county in terms of the Kula Ridge Mauka well
7 permit which they have expressed interest in.

8 The third possibility is to passively wait
9 until Kula Ridge's application number on the
10 Upcountry water meter list is addressed.

11 The fourth and the last resort would be to
12 develop a private water system should any of the other
13 three options not be possible.

14 Q So as far as proceeding with the Department
15 of Water Supply, what has the attitude been with
16 respect to negotiations on being able for the
17 department to provide the -- to increase the water
18 supply in Kula?

19 A With the change in administration at the
20 county we've seen momentum in addressing those
21 specific issues with Mayor Arakawa leading the current
22 administration. And movement to solve the Upcountry
23 water meter list has been moving forward at a fairly
24 fast clip.

25 So if the Department of Water Supply, I

1 guess, addresses their infrastructure needs and
2 financial assessments addressing the needs of the
3 water source issue will come shortly, I'm probably not
4 the person to be answering that question. I would
5 probably want to defer to the Department of Water
6 Supply director.

7 Q Are there any other issues facing you
8 besides the issue with water on infrastructure? Has
9 infrastructure planning been done with all your
10 consultants in the planning for the Project?

11 A Yeah. I think in terms of defining the
12 County's infrastructure requirements in terms of water
13 and fire line improvements, once the county decides
14 what their infrastructure improvements needs are and
15 address the concerns of water source those issues once
16 resolved will kind of allow us to move forward in
17 addressing our water availability issues.

18 Q So you've heard about the cost of the
19 possibility of if you drilled your own well. Were
20 other costs involving the infrastructure for the
21 Project, what is your projection on that?

22 A In terms of drilling a well?

23 Q No. Just the other costs like grading or
24 putting in the lines for electrical or water and so
25 forth?

1 A We've estimated that the site development
2 cost for infrastructure for Kula Ridge is
3 approximately \$7 million.

4 Q Well, are you -- is Kula Ridge capable of
5 proceeding with undertaking that kind of cost to do
6 the, to do the site work?

7 A We currently are in discussion with several
8 financial institutions. And we do have a
9 preliminarily discussions with First Hawaiian Bank.
10 And we have had preliminary discussions of having a
11 \$7 million line of credit, revolving line of credit
12 for financing the Project development costs if we were
13 to obtain approvals.

14 We also have secondary financing from
15 private investors, private institutions and also other
16 private sources interested in a second position on the
17 financing. So, yes, we do have capabilities to move
18 forward.

19 Q So as far as your timetable you think you
20 can maintain that timetable or is that too optimistic?

21 A No we. Believe that it's reasonable and
22 achievable.

23 Q Mr. Nishikawa, the Office of Planning has,
24 in it's testimony, it's citing several or proposing
25 conditions for, for the development. Are you prepared

1 to -- I'm anticipating Mr. Yee's questions. Are you
2 prepared to make a commitment on these conditions? Or
3 would you have like, prefer to have more time? Or
4 what would your preference be to reviewing some of
5 these conditions?

6 A I've a chance to review the Office of
7 Planning's recommendations and they seem to be
8 reasonable. And we would like to comply with their
9 recommendations.

10 MR. LUNA: I have no other questions.

11 CHAIRMAN LEZY: County?

12 MR. YEE: I'm sorry. Could I ask for some
13 clarification? During the recess we were informed
14 that Mr. Nishikawa may want to come back to testify on
15 August 25th after further discussions with the Office
16 of Planning. I just want to confirm whether that's
17 true or not. Because if so then I think the Office of
18 Planning, it may be more helpful and efficient if we
19 had that discussion and then came back for
20 cross-examination for ourselves. If he's not going to
21 come back again, obviously we'll conduct the
22 cross-examination now. But --

23 CHAIRMAN LEZY: So the question is not may
24 he come back. Your question is is Petitioner
25 representing that he will be represented.

1 MR. YEE: Yes.

2 MR. LUNA: Yes.

3 CHAIRMAN LEZY: Okay.

4 MR. YEE: Okay. And so then with your
5 permission we'd like to --I'm jumping ahead of the
6 county but the Office of Planning would like to
7 withhold our cross-examination until the next hearing.

8 CHAIRMAN LEZY: Okay. You can jump in.

9 MR. HOPPER: Yes, we'd like to do the same
10 and still bring up cross-examination-related matters
11 discussed today, just when the testimony's continued.

12 CHAIRMAN LEZY: That's fine. Commissioners,
13 do you also want to wait until the next time or do you
14 have questions?

15 COMMISSIONER TEVES: I have a question.

16 CHAIRMAN LEZY: Commissioner Teves.

17 COMMISSIONER TEVES: Hi, Mr. Nishikawa. You
18 mentioned \$7 million. I just want to clarify that's
19 for th site work.

20 THE WITNESS: Yes.

21 COMMISSIONER TEVES: Including the mass
22 grading.

23 THE WITNESS: Yes.

24 COMMISSIONER TEVES: Does it include the \$2
25 million dollars for water?

1 THE WITNESS: No. That's where we --

2 COMMISSIONER TEVES: It's separate.

3 THE WITNESS: -- that's where we came up
4 with the 9 million.

5 COMMISSIONER TEVES: I have another
6 question. On the roads do you plan on dedicating
7 those roads to the county?

8 THE WITNESS: Yes. The ones that aren't
9 would be considered private and affordable those would
10 be maintained as association roads. But the main
11 roads our intent is to dedicate.

12 COMMISSIONER TEVES: And will the water
13 system be build according to DWS standards?

14 THE WITNESS: Yes. Our intent is to
15 coordinate the water improvements with Department of
16 Water Supply up to their standards.

17 COMMISSIONER TEVES: And if DWS doesn't
18 accept the water system, will there be individual
19 meters for each lot?

20 THE WITNESS: Yes.

21 COMMISSIONER TEVES: That's what -- you
22 would provide that, right?

23 THE WITNESS: Yes.

24 COMMISSIONER TEVES: Okay. That's all I
25 have. Thank you.

1 CHAIRMAN LEZY: Any other questions? With
2 that, Petitioner, then are you going to defer until
3 the August meeting?

4 MR. LUNA: Yes, Mr. Chair. So we'll just
5 have two witnesses on the 25th would be Mr. Nishikawa
6 and our traffic Pete Pasqua.

7 CHAIRMAN LEZY: County, are you prepared to
8 proceed now?

9 MR. HOPPER: Yes.

10 CHAIRMAN LEZY: Why don't we just take a 5-
11 minute recess in place then and you can get organized.

12 (Recess was held.)

13 CHAIRMAN LEZY: Okay. On the record.

14 MR. HOPPER: Thank you, Mr. Chair. As with
15 the Petitioner's witnesses, we'd like to stipulate to
16 the expertise based on the resumés submitted of the
17 three witnesses that the County has in the areas they
18 were qualified in.

19 CHAIRMAN LEZY: Petitioner, any objection?

20 MR. LUNA: No objection.

21 MR. YEE: No objection.

22 CHAIRMAN LEZY: Commissioners? You may
23 proceed.

24 MR. HOPPER: We'll call Will Spence,
25 planning director.

1 WILLIAM SPENCE

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

4 THE WITNESS: I do.

5 CHAIRMAN LEZY: State your name and your
6 address, please.

7 THE WITNESS: My name is William Spence. My
8 place of business is the Maui Planning Department at
9 250 South High Street in Wailuku -- closer to the mic?
10 I've been told that numerous times, I should learn by
11 now.

12 CHAIRMAN LEZY: Thank you. Please proceed.

13 DIRECT EXAMINATION

14 BY MR. HOPPER:

15 Q Thank you. Mr. Spence what is your county
16 position with the county?

17 A I'm the planning director.

18 Q How long have you been in this position?

19 A Since January of this year.

20 Q And did you previously work for the
21 department prior to that?

22 A Yes, I did. I worked for the Maui Planning
23 Department from September 1992 to September 2002. At
24 the time I was a staff planner and I worked on any
25 number of things within the Planning Department

1 including the Community Plans, one of which was the
2 area where this Petition is in.

3 Did a number of major rezoning projects
4 like mass rezoning projects. Did any number of
5 individual applications for rezoning or SMA permits in
6 the scale of things.

7 Q So you, in fact, were the staff planner
8 assigned to the Kula Community Plan?

9 A That's correct.

10 Q Makawao-Pukalani-Kula Community Plan?

11 A That's correct. I did that from the first
12 day following the county procedures where you have a
13 Citizens Advisory Committee, then it goes to the
14 planning director for review. Then it goes to
15 Planning Commission. Then it goes to County Council
16 for adoption. I forget how many year process that
17 was. I'm thinking about a three-year process. I
18 staffed it from the beginning to the end.

19 Q And you're familiar with the Kula Ridge
20 Project?

21 A Yes, I am.

22 Q Could you please summarize the testimony of
23 the Maui Planning Department that was submitted in
24 this case.

25 A The Planning Department is in support of

1 this project. Particularly for the Upcountry area
2 there have been very few opportunities for new housing
3 up there. Partially water is one of the issues. But
4 it's a difficult place to develop, particularly
5 affordable housing and we see this as an opportunity
6 to provide for those residents who want to live up
7 there or want to return to live up there that perhaps
8 have moved Downcountry or offisland.

9 The County Council supported this project
10 with a number of modifications and conditions. And
11 we're supporting the council's decision.

12 Q Are you familiar with the Hawaii Revised
13 Statutes 201H process for County Council approval of
14 affordable housing projects?

15 A Yes, I am. It is a process by state law
16 to -- the idea is to cut short the entitlement
17 process. It's going through the Land Use Commission
18 of course, it takes time. Going through the change in
19 zoning process or Community Plan Amendment process
20 takes a number of years just by county law. So the
21 201H requires that the County Council approve, approve
22 with conditions, or deny certain affordable housing
23 projects within 45 days of submittal.

24 Q And were you familiar at all with this
25 process, the process that approved this project under

1 the 201H law?

2 A I was not the planning director at that
3 time. So I was not directly involved. I did read
4 about it in the paper, however, and I'm familiar with
5 the reso that the County Council passed.

6 Q And Ms. Ridao was there so I will ask her
7 more questions about that process. But you have read
8 the resolution approving the 201 project?

9 A Yes, I have.

10 Q Now, in that resolution did the county
11 council -- first of all, does the County Council have
12 authority to grant exemptions from various county laws
13 if it chooses?

14 A Yes, they do. Again that's in an effort to
15 shorten the entitlement, the time it takes to gain
16 entitlements.

17 Q Could you explain what exemptions, if any,
18 the county council granted the Petitioner in granting
19 the 201H approval?

20 A Okay. I'm reading from the reso. The
21 exemptions, there's a General Plan, Community Plan
22 exemption. The Petition Area does not completely
23 match the Community Plan designations but it's fairly
24 close. And I can provide more detail on that later.
25 They've got an exemption since they're exempt from the

1 workforce housing policy, since they're already
2 providing affordable housing it would just be natural
3 to exempt from certain of those requirements,
4 exemption from impact fees -- excuse me, traffic
5 impact fees.

6 Q Do you know if those impact fees have
7 actually not been implemented, that exemption, that is
8 for in case the fees are adopted prior to building
9 permit ordinance they could be exempt from paying the
10 impact fees?

11 A Yes, sir. That's correct. We have had an
12 enabling ordinance -- the county has had an enabling
13 ordinance for a number of years that can impose impact
14 fees but we never passed an ordinance that actually
15 says what the dollar amount per unit, each one what
16 those fees would be.

17 So in this case we don't know when exactly
18 those dollar amounts are going to be adopted. So we
19 didn't want to hold up the Project waiting for that
20 number. So we just got an exemption in case the
21 actual fees were identified.

22 Q Thank you. Yes, please continue.

23 A Okay. They got an exemption for fire,
24 electrical, plumbing, building permit fees, demolition
25 fees as well as inspection fees. So as they're going

1 through instead of paying however much for the
2 individual building permits and plumbing, fire, et
3 cetera, those -- being exempt from those would bring
4 down the cost of the individual units.

5 Land use consistency requirements from
6 subdivision. And what that is is it's similar to
7 state law where, you know, you can only do certain
8 things within the urban area. The county law, you
9 know, you have your county ag, you have your Community
10 Plan, you have, those -- all those things they're all
11 supposed to be consistent with each other. So there's
12 a part of the 201H process to cut the time needed to
13 obtain that consistency just cut that short.

14 Q So for the building permits, again, that is
15 only for the fees --

16 A Yes.

17 Q -- the Project will be built up to building
18 code and fire code and those ordinances are not
19 actually exempted from, just from paying the fees,
20 correct?

21 A That's correct. It's just the fees.
22 Everything will be built to code. And everything will
23 be inspected. They're also getting an exemption from
24 parks dedication fees for providing lands. There's an
25 exception for the minimum rights-of-way and pavement

1 width. They're going to be granted to allow 24-foot
2 right-of-way with 20 feet of pavement for the private
3 streets within the subdivision.

4 Q Just to clarify the parks. It's not an
5 absolute exemption. It's just an exemption saying
6 that the 3-acre park with a comfort station will
7 satisfy any park dedication requirements; is that
8 correct?

9 A Yes, that's correct. They're also getting
10 an exemption from certain standards within the zoning
11 code for single-family duplex in rural residential
12 purposes. And the exemptions lay out different
13 setbacks, different lot sizes. And then, finally,
14 those -- again the idea is you can build homes more
15 efficiently on smaller lots so they're allowing those
16 lot sizes to be smaller. Perhaps some changes in the
17 setbacks.

18 And then finally the last exemption is from
19 Title 20 which is the permits for grading. I mean --
20 excuse me. The fees for the permits for grading. So
21 there's a lot of reduction in the fees but
22 everything's still required to be built to code and
23 inspected, et cetera.

24 Q Was there any exemption granted for section
25 14.12 of the Maui County Code related to water

1 availability?

2 A No, there wasn't. The requirement for the
3 Petitioner was he will comply with water availability.

4 Q Thank you. In addition, under the 201H
5 process the county council may determine that there
6 should be some project modifications or conditions
7 that it wishes to impost on the Project. Is that
8 correct?

9 A That's correct.

10 Q And I'd like to -- those conditions or
11 modifications are attached to Exhibit 1 of the
12 resolution. I believe these are important because
13 they will dictate how the Project is built. And I
14 believe the Office of Planning has recommended that
15 that be placed as a condition that the Project will be
16 consistent with the resolution as adopted.

17 So I just wanted to briefly go over a few of
18 the conditions. First of all, Condition No. 7. Could
19 you please explain what that condition entails?

20 A Normally -- and Condition 7 is in regards to
21 accessory dwellings. Normally within county code if
22 you have a certain sized lot, a minimum of 7500 square
23 feet you're allowed an accessory dwelling. They're
24 saying in this case there will be no accessory
25 dwellings on any of the parcels within the urban area.

1 The mauka part of the rural accessory dwellings would
2 be fine.

3 Q Okay. So they will be allowed accessory
4 dwellings.

5 A The rural ones, yes.

6 Q Correct. Thank you. The Condition No. 9
7 regarding archaeological monitoring, could you briefly
8 describe that condition?

9 A Kula Ridge is required to do archaeological
10 monitoring any time there's equipment doing
11 ground-altering activities. Certainly when they're
12 doing their mass grading an archaeologist has to be
13 there at all times. They have to provide a monitoring
14 plan to SHPD. And SHPD has to approve that.

15 Q Could you describe the Kula Community Plan's
16 land use designation for this project? And in your
17 opinion is this project consistent with the land use
18 designation in the plan?

19 A As stated the Petition Area is in the
20 Makawao Pukalani Kula Community Plan area. The
21 Project roughly follows the land use designations for
22 this plan, the lower part where the -- well, let me
23 back up.

24 When we approved the Community Plan the
25 County Council and all the way through from the

1 Citizens Advisory Committee to the County Council
2 recommended that this area be designated for
3 development both in single-family and rural. Okay.

4 The actual acreages were 15 acres for
5 single family. That would be your urban area. And
6 54 acres to rural. So and the estimated number of
7 units for the whole designation was 195.

8 So here we are with a Petition for, what,
9 120 units including the mauka rural area. And so I
10 find this Petition consistent with the intent of that
11 plan.

12 What really the modification is the density
13 on the lower part but that's an effort to provide
14 affordable housing. There's certainly enough language
15 within the planning to be providing for affordable
16 housing. So I believe it's consistent with the plan.

17 Q And as you testified earlier did the County
18 Council grant an exemption for this project to allow
19 it to proceed as represented without the necessity of
20 a general or community plan amendment?

21 A That's correct.

22 Q In addition could you explain briefly what
23 the Maui Island Plan is.

24 A The Maui Island Plan, since the adoption of
25 this particular Community Plan, our processes for

1 General Plan and Community Plan adoptions have been
2 changed significantly.

3 So what we're in the middle of right now
4 the County Council is adopting a Maui Island Plan, a
5 rough General Plan for the entire island. Within
6 that -- within that new law there's a requirement to
7 designate Urban and Rural Growth Boundaries.

8 The idea, then, of course, is to
9 concentrate county -- well, there's a lot of reasons
10 for it but the idea is to concentrate county efforts
11 in supplying infrastructure to areas within these
12 growth boundaries thus making things more efficient
13 and more affordable, but also to preserve the open
14 space country side, et cetera and preserve
15 agriculture.

16 This particular project has gone -- well,
17 the Maui Island Plan that's currently before the
18 County Council the maps that are designating the Urban
19 and Rural Growth Boundaries were last recommended, I
20 believe by the Planning Commission. And this project
21 is within the designated Rural Growth Boundary.

22 Q The draft boundaries?

23 A Yes.

24 Q Yes. Does the county or the department have
25 any plans, any draft plans or otherwise to designate

1 this property as Important Agricultural Lands?

2 A No, we do not. Even being a relatively new
3 planning director and having gone over a lot of the
4 long-range projects or special plans for the county,
5 we don't -- I have never heard of this property being
6 designated IAL.

7 Q Would it be a fair characterization to say
8 the primary or a primary reason the department
9 supports this project is because the County Council
10 granted a 201H approval?

11 A Yes, that's a fair statement.

12 Q So in this case the county legislators voted
13 to approve this process. With the conditions as
14 stated as well as the Project modifications, as well
15 as the -- as well as the exemptions granted, are you
16 satisfied with those as the conditions on the Project
17 for this District Boundary Amendment?

18 In other words, these conditions and this
19 resolution would be adopted by the Land Use Commission
20 if it accepts the Office of Planning's recommendations
21 to have this resolution be made into the conditions
22 for the Land Use Commission. Would that be
23 satisfactory to you as far as mitigation for this
24 project?

25 A I think it would be.

1 MR. HOPPER: Thank you. I have no further
2 questions. Oh, just one more issue. I understand
3 that Petitioner will be calling its traffic witness
4 later on.

5 I'd like to reserve the right to call Will
6 Spence to have direct examination following the
7 traffic testimony as Office of Planning will have that
8 opportunity as well.

9 CHAIRMAN LEZY: That's fine.

10 MR. HOPPER: Thank you. I have no further
11 questions at this time.

12 CHAIRMAN LEZY: Petitioner?

13 CROSS-EXAMINATION

14 BY MR. LUNA:

15 Q Mr. Spence, as I understand your testimony
16 the urban area designated in Kula Ridge is consistent
17 with the Island Plan, the Maui Island Plan?

18 A Yes, that is correct. Well, at least for
19 the draft plan that's before the County Council right
20 now. And I should probably clarify a little bit. In
21 that Island Plan is designated for the Rural Growth
22 Boundaries.

23 That is not the same as saying Urban
24 District or Rural District. That's just identifying
25 the area as being rural in character. There's a lot

1 of already urbanized area within those proposed rural
2 boundaries.

3 Q Thank you for anticipating that.

4 A Yes.

5 Q So as far as the land use portion of rural
6 and urban it's consistent with -- it's pending before
7 the County Council right now, the Maui Island Plan.

8 A Yes. As it is before the County Council it
9 is consistent.

10 Q It's anticipated to be acted upon by the
11 council. They set their own deadline of October of
12 this year?

13 A Yes, that's the deadline that they have set.

14 Q You smile because it's been one extension
15 already.

16 A Yes. It's a new process and it's a very
17 complex plan so...

18 Q As far as you know has there been any effort
19 to -- and I'm going to ask this of Ms. Ridao as
20 well -- as planning director and having been in the
21 Planning Department for 10 years prior -- I think it's
22 '92 to '02, besides the Hawaiian Home Lands have there
23 been any affordable housing projects presented in the
24 Kula Community Plan?

25 A Well, that area is a fairly large Community

1 Plan area. I'm aware of one multi-family project that
2 is, was rather affordable at Kulamalu. But those have
3 been pretty much sold out. Other than that there's
4 been no projects as such.

5 Q Kulamalu is just right between Pukalani in
6 the Kula area?

7 A Yes.

8 Q So I was kinda thinking more -- I should
9 have been more precise in my question. But, yeah,
10 you're right. There is at Kulamalu. But Kulamalu is
11 closer to Pukalani, is that correct?

12 A That's correct. And in Kula proper once you
13 get past Pukalani going south towards Kula and
14 Ulupalakua and the Petition Area is right about in
15 between there's basically housing has been on a
16 case-by-case basis. If somebody can get a meter other
17 than that or drill their own well there's really been
18 no projects like this.

19 Q And the department is supporting this
20 project as being a needed type of -- different type of
21 project for the Kula area as well?

22 A Yes. And I think one of the primary
23 differences that unless you're an old kama'aina family
24 and you have no associated land costs and you are
25 fortunate enough to have a meter, the only people that

1 have -- Kula gradually has become more and more of an
2 upscale kind of community. I think a project like
3 this bringing affordability into the area is a good
4 thing, bringing a mix of housing types.

5 MR. LUNA: I have no other questions.

6 CHAIRMAN LEZY: OP?

7 MR. YEE: Thank you.

8 CROSS-EXAMINATION

9 BY MR. YEE:

10 Q Mr. Spence, you testified that the traffic
11 impact fees -- if impact fees were ever imposed would
12 be waived. Are you prepared to testify now or are you
13 waiting to hear from Mr. Pascua as to whether there
14 are any county concerns regarding county roads?

15 A Any county what regarding --

16 Q Concerns?

17 A Uhm, maybe we should -- we can hold that
18 till August.

19 Q Okay.

20 A Okay, continue.

21 Q No. I mean Kula Highway is a state road,
22 right?

23 A Correct.

24 Q Lower Kula Road's a county road, correct?

25 A Correct.

1 Q You're waiting to hear from Mr. Pascua
2 before you testify as to whether you're satisfied with
3 the proposed, any proposed county road changes?

4 A Well, other than the -- my understanding is
5 that the state wants to see a dedicated turn lane on
6 Kula Highway but also -- one of the conditions for the
7 approval of the Project is an improvement with a
8 sidewalk along Lower Kula Road. Okay. That -- I am
9 familiar with that one. I think the condition that
10 the County Council put on the Project is sufficient in
11 order to address that particular issue. Is that where
12 you were reaching?

13 Q I was -- well, the state and Petitioner
14 position will discuss what the State's concerns are
15 going to be. I just wanted to know whether there are
16 county concerns that you -- either you're satisfied
17 with it now or you're holding off to testify about
18 or...

19 A Other than that one sidewalk thing I'd
20 rather hold off.

21 Q Okay. By the "sidewalk" you're not
22 referring to the sidewalk on the mauka versus the
23 makai side, right? That's a different issue?

24 A I'm referring to the sidewalk that the
25 County Council is talking about from Haleakala Waldorf

1 School up towards the Project site.

2 Q Okay. Just briefly the 3-acre park within
3 the site will be dedicated to the county, correct?
4 That's the intent?

5 A That's my understanding.

6 Q What is -- if you could just fill out the
7 record, other than the fact that it's 3 acres and the
8 comfort station will be on there, do you have any
9 other ideas what's going to be on that park?

10 A I don't know. I would think, I mean because
11 the Kula Community Center is right there, I would
12 think -- I mean we're kind of combining those uses
13 together. So it's more of a complete county facility.
14 There's -- not much is -- well, I should say that the
15 community center is a very popular area with gateball
16 and everything. So this will provide an opportunity
17 to expand for that local population.

18 Q So at this point we don't know whether it's
19 going to be soccer fields or I'm not sure what else
20 goes on at a park.

21 A I'm not familiar with what all is involved.

22 Q Will that be the subject of further
23 discussions with the County and the Petitioner?

24 A I believe so.

25 Q There are standards the county has for what

1 they have to see in a park before dedication, correct?

2 A Yes, that's true.

3 Q And those will be met?

4 A I hate to speak for the Parks Department.

5 Q Okay. Fair enough. You talked about the
6 Rural Growth Boundaries and Urban Growth Boundaries.

7 Can you just explain what the difference is?

8 A Urban growth -- okay, so this was from '84,
9 I forget the year it was adopted. And, please, I
10 think it's important for the record to recognize that
11 this is a draft plan that's in front of the County
12 Council right now. This plan has not been adopted
13 into law. So a lot of things can and will change
14 between now and October.

15 The county recognizes that we have certain
16 rural -- we have areas within this island that are
17 considered rural. Waiakoa, the place where this
18 Petition is located, is pretty rural in character.
19 You have a lot of pastureland. You have a lot of
20 small homes.

21 You have -- your businesses tend to be old
22 family stores or at least carrying the old names.
23 People like the small town feel. That's pretty much
24 what the rural areas are identified as. You have
25 Keokeo, Waiakoa, those kinds of places, and Hana

1 perhaps.

2 When you get into more rural -- the urban
3 areas, Urban Growth Boundaries, we're now talking
4 about Pukalani, Kahului, Kihei, Lahaina, that are
5 really a lot like more standardized city with much
6 higher concentrations of people.

7 It's just basically -- those two things are
8 basically identifying the characteristics of those
9 different areas.

10 Q In state law rural classified lands has a
11 density of one house per half acre.

12 A Yes.

13 Q Is that the same density you're using or is
14 it is different terminology you're using on the county
15 level?

16 A This is -- this is -- I tried to distinguish
17 between the two. It is a different concept. We're
18 talking about the characteristics of an area versus
19 the state district which, you know, has a density
20 factor in it.

21 Within the County's -- within the plan
22 that's going to be adopted, within those Rural Growth
23 Boundaries there will be quite a number of properties
24 that will be in the urban area, within the state Urban
25 District.

1 So right there where we went on the site
2 visit, a little bit further down you saw Holy Ghost
3 Church. You saw Morihara Store, Café 808, some of
4 those. Those are -- when you get into Waiakoa Town
5 there you are in the Urban District but yet it's
6 identified as more of a rural area.

7 Q So there's not a density distinction in the
8 county level when it describes a Rural Growth Boundary
9 versus an Urban Growth Boundary?

10 A No. There's not a density, not a density
11 like as far as a standard like you would have in state
12 law or in a county zoning ordinance.

13 Q I'm going to try this just one more time.

14 A And I hope I'm being clear.

15 Q I think you're being correct. Maybe I'm
16 just being unclear. Would the difference between
17 rural and urban be based upon just a qualitative
18 description versus a quantitative standard?

19 A Yes.

20 Q Okay. Then I'm not going to ask you what
21 they are. Finally, if I understand you correctly, I
22 just wants to confirm, would it be your opinion the
23 Project generally conforms to the Upcountry Plan
24 notwithstanding the 201H exemption?

25 A Yes, it does.

1 MR. YEE: Thank you. I have nothing further.

2 CHAIRMAN LEZY: Redirect?

3 MR. HOPPER: I can get more detailed
4 information about the parks dedication issue. I know
5 the answer myself. But I'm not sure the witness does,
6 so if it's the Commission's pleasure I could find that
7 answer and give it to you.

8 CHAIRMAN LEZY: Thank you. Commissioners,
9 any questions? Commissioner McDonald -- let's go with
10 Commissioner McDonald first, then Commissioner
11 Matsumura.

12 COMMISSIONER McDONALD: Quick question.
13 Regarding the 201H exemption, is there a concern with
14 the 24-foot right-of-way that's being allowed?
15 Meaning that's 2, 10-foot lanes. Any consideration
16 for pedestrian access, circulation?

17 THE WITNESS: I'm not aware of any concern
18 for that. I know that's -- again, that goes to
19 affordability that you have less infrastructure to be
20 installed and the savings on the individual units.

21 I'm not aware that there was any testimony
22 or, you know, during that process particular to that
23 exemption. That actually would probably be a better
24 question for the Applicant or Petitioner.

25 COMMISSIONER McDONALD: Okay. Thank you.

1 CHAIRMAN LEZY: Commissioner Matsumura?

2 COMMISSIONER MATSUMURA: Yes. The
3 Petitioner's asked us, the LUC, to rezone this
4 agricultural land to urban. Does the county have any
5 kind of controls once the property, if it becomes
6 rezoned, that affordable houses will indeed be in
7 effect?

8 THE WITNESS: That's actually a better --
9 that's a better question for the housing director.
10 But in brief the Petitioner will have to come up with
11 an affordable housing agreement with the county. That
12 agreement -- by the terms of the 201H approval, that
13 agreement has to be approved by the County Council.

14 So that's a whole other process that's going
15 to be undertaken. There will be guarantees in place
16 that there will be affordable homes as a part of this.

17 COMMISSIONER MATSUMURA: Thank you.

18 CHAIRMAN LEZY: Any other questions? Thank
19 you for your testimony.

20 THE WITNESS: Thank you.

21 MR. HOPPER: I'd like to call Jo-Ann Ridao.

22 JO-ANN RIDAO

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

25 THE WITNESS: Yes.

1 CHAIRMAN LEZY: State your name, please, and
2 address your address.

3 THE WITNESS: My name is Jo-Ann and that is
4 spelled J-o dash capital A-n-n. My last name is
5 Ridao, R-i-d-a-o. My address is 200 South High Street
6 in Wailuku.

7 CHAIRMAN LEZY: Please proceed.

8 MR. HOPPER: Thank you, Mr. Chair.

9 DIRECT EXAMINATION

10 BY MR. HOPPER:

11 Q Ms. Ridao, what is your current position
12 with the county of Maui?

13 A My current position with the County of Maui
14 is Director of Housing and Human Concerns.

15 Q How long have you been in this position?

16 A I have been in this position since January.

17 Q What was your position with the county prior
18 to that?

19 A My position prior to that was I was the
20 deputy director at the Department of Housing and Human
21 Concerns for about three years. And prior to that I
22 was an executive assistant to the mayor.

23 Q And have you had an opportunity to review
24 the Kula Ridge Project?

25 A Yes, I have.

1 Q And what's your opinion of the Project?

2 A Speaking from a -- as Director of Housing
3 and Human Concerns my opinion is that this project is
4 a dire need in Kula because there are no affordable
5 housing units in Kula currently.

6 I personally feel that if you look at Kula
7 as a whole this is a good location for this project
8 because it's close to schools, it's close to the
9 stores, it's close to restaurants and it's also close
10 to other single-family homes in that particular area.

11 Q Are you familiar with the 201H approval
12 process?

13 A Yes I am.

14 Q I did ask Mr. Spence generally, but since
15 you went through this process or witnessed this
16 process before the County Council and are very
17 familiar with it, could you briefly describe what goes
18 on in the 201H approval process?

19 A Primarily the Applicant will submit the
20 application for 201H process through the Department of
21 Housing and Human Concerns.

22 Once we have reviewed the application,
23 which is pretty much the EA, as soon as we determine
24 that that is complete, that the Applicant will provide
25 at least 51 percent of affordable units we will

1 proceed to file that with the Maui County Council.

2 Just as a note, the state also has this authority to
3 review the 201H process.

4 Once that is filed -- and this is why
5 people call it, I guess, the fast track to affordable
6 housing, is the council has 45 days to review the
7 application and make a decision as to if they're gonna
8 approve it, they're gonna approve it with
9 modifications or they're going to deny it.

10 Q Did the County Council review this project
11 more than once?

12 A The Maui County Council reviewed this
13 project twice. In the fall of 2008 they denied the
14 Project. They turned it down. And in the fall of
15 2010 they reviewed the Project with modifications.

16 Q Did you participate in that process with the
17 Department of Housing and Human Concerns?

18 A I participated in both processes.

19 Q How did the application that was submitted
20 in 2010 differ from the application that was submitted
21 in 2008 in your opinion?

22 A In my opinion the 2010 application was able
23 to address some of the initial concerns of the County
24 Council and, of course, the biggest was the water
25 issue.

1 However, in 2010 the policy committee of
2 the Maui County Council took seven meetings to make a
3 decision on this project. So my feeling is that they
4 were very thorough the second time around.

5 They took a lot of public testimony. They
6 questioned all of the departments of the county that
7 would be involved in the decision-making for this
8 project. So I feel that they did a very thorough
9 review the second time versus the first time.

10 Q I understand you were participating on
11 behalf of your department. But in your opinion based
12 on your observations what was the basis of the County
13 Council in approving this project under the 201H
14 process?

15 A I think the council when they expressed
16 their concerns during the first 2008 application, they
17 were satisfied that the Applicant addressed those
18 issues, which I believe was the water issue, the
19 comfort station, the sidewalk, and there may be
20 another one I'm missing.

21 But I believe the second time around when
22 the council heard from the community they heard from
23 people like that young gentleman that testified
24 yesterday. That did not come up, I think, in the
25 first go 'round. That was that -- you know: "I was

1 born and raised in Kula but I cannot afford to buy in
2 Kula."

3 "I'm living in Kula now but I'm living with
4 my grandparents.

5 Or "I'm living with my parents. And I
6 really would like to be able to come back to Kula to
7 raise my children like I was raised in Kula."

8 So I think that had played a part of the
9 decision of the Maui County Council.

10 Q So ultimately the council voted to approve
11 this project on October 19, 2010, is that correct?

12 A Yes.

13 Q Now, as we've discussed earlier with other
14 witnesses, the 201H approval came with certain Project
15 modifications. Are you familiar with those?

16 A Yes.

17 Q Now, as has been discussed Project
18 Modification 5 requires an affordable housing
19 agreement to be entered into between the Department of
20 Housing and Human Concerns and the Petitioner. Could
21 you briefly describe -- well, do you have a draft
22 agreement to satisfy this requirement?

23 A Yes.

24 Q Can you briefly describe what that agreement
25 covers?

1 A Pretty much the agreement covers the
2 affordable housing component and what I would describe
3 as there are certain income categories that they have
4 to fall within: The 2.96 law which the developer has
5 agreed to follow as far as affordable housing
6 requirements are concerned, as well as the sales
7 requirements and how he has to advertise and how he
8 needs to verify the income of those people that are
9 applying for housing, at which time the County
10 Department of Housing and Human Concerns will verify
11 the information that he provides us.

12 Q So to clarify. Though the Project has a
13 modification exempting it from 2.96, there's an
14 agreement that the affordable housing agreement
15 required by the council will conform to 2.96 as far as
16 its terms, correct?

17 A Correct.

18 Q Could you go into a little more detail about
19 what percentage for the overall units for the Kula
20 Ridge Project are required to be affordable?

21 A In this situation the Kula Ridge Project --
22 this is based on 2 point -- I'm sorry, on 201H
23 requires 51 percent of the units to be affordable.
24 And in this situation the Applicant has to provide 59
25 units of affordable housing.

1 Q And though it's providing 70 those extra, 11
2 units can be used for a separate project but are not a
3 requirement of this project; is that correct?

4 A Yes, correct.

5 Q In addition what's the current status of
6 this agreement? Where is it?

7 A I believe I received the agreement on
8 June 30. It was transmitted to the Maui County
9 Council on July 6th. I received a request for further
10 information that went back to the council.

11 So I'm just awaiting at this time a
12 scheduling of the review by the policy committee of
13 the council.

14 Q In the agreement will the agreement
15 specify -- I know this is subject to council
16 approval -- but does the agreement specify the term
17 that the units must be kept affordable?

18 A Yes. There's a section in the agreement
19 where the Applicant has agreed to comply with 2.96060.
20 And that in particular requires that the affordable
21 units must be kept affordable for 25 years.

22 Q Does that also apply to the senior duplexes,
23 that those duplexes must be sold to persons over the
24 age of 55?

25 A Yes.

1 Q For 25 years?

2 A For 25 years.

3 Q And, again, the County Council has
4 discretion in accepting this agreement but that's the
5 current proposed agreement that's being made before
6 the council.

7 A That is correct.

8 Q Okay. Can you explain what the proposed
9 sale prices are for the affordable units? Do you have
10 that information?

11 A Yes. Based on 2.96, 30 percent of the units
12 must be sold to below moderate income residents. That
13 is 80 percent to 100 percent of the Maui County median
14 income. So those are -- the sales price guidelines
15 for those would be between \$210,000 to \$260,000.

16 The moderate income criteria is 101 percent
17 to 120 percent of the Maui County median income. The
18 Applicant must provide 30 percent of the 59 units.
19 This is where the senior duplexes will probably fall
20 into. Those units will range from \$260,000 to
21 approximately \$400,000.

22 Q How does the county assure the units will be
23 kept affordable for those 25 years?

24 A There is a clause that is put into the deed
25 when someone purchases the unit. So what will happen

1 is the clause will say that, "These units cannot be
2 sold without prior county approval."

3 And that is how the county makes sure that
4 when units are sold we are notified, the housing
5 division is notified and the appropriate staff works
6 with the seller on how this is to transpire.

7 Q Again this is a draft agreement that's
8 subject to council approval. But that's what the
9 council is looking at now?

10 A Yes.

11 Q So the actual approval may be a bit
12 different than what's being proposed?

13 A Correct.

14 Q Thank you. Another project modification No.
15 12, are you familiar with that? It describes the rate
16 at which the Project must be built out as far as the
17 ratio of affordable homes to market homes.

18 Could you describe that project
19 modification?

20 A Yes. I think the easiest way to understand
21 that is that for every market unit that is built two
22 affordables will be built at the same time.

23 Q Thank you.

24 I have no further questions.

25 CHAIRMAN LEZY: Petitioner?

1 CROSS-EXAMINATION

2 BY MR. LUNA:

3 Q (off mic) Ms. Ridao, you heard my question
4 to Mr. Spence.

5 THE REPORTER: Mr. Luna, could you use the
6 microphone, please.

7 MR. LUNA: I'm sorry.

8 Q You've been deputy director for three years
9 then, now director since January?

10 A Yes.

11 Q And before that you were with the county
12 mayor's office as well.

13 A Yes.

14 Q So in all the period that you've been
15 involved with this housing has there been any
16 affordable housing project aside from the Hawaiian
17 Homes project in the Kula area, not counting Pukalani?

18 A No.

19 Q Is there any pending on your desk besides
20 this one that's for affordable housing?

21 A No.

22 Q And your support for or the department's
23 support for this is for what reason?

24 A Well, first of all, because there are no
25 affordable housing units available in the Kula proper

1 area. And as a Human Concerns concern, you know, we
2 need to have mixed income people living together.

3 What has happened -- I think you've heard
4 this earlier -- Kula is becoming discussed as kind of
5 only the rich people can live there. It's an elitist
6 place. And I think it's very important from a Human
7 Concerns point of view that we have other income
8 category people living there.

9 MR. LUNA: Thank you. No other questions.

10 CHAIRMAN LEZY: OP?

11 CROSS-EXAMINATION

12 BY MR. YEE:

13 Q Just to clarify. You may have said this and
14 I just missed it. But the draft agreement, draft
15 housing agreement that was sent to County Council
16 you're recommending approval by the County Council,
17 correct?

18 A Yes, we are. Part of my process is that it
19 goes to the Corp. Counsel. They review it for
20 legality and we send it on.

21 Q So it's gotten that Corp. Counsel review as
22 well.

23 A Yes, it has.

24 Q Then in discussions of that development
25 agreement I know you discussed the duration in which

1 it has to be kept affordable and the method which
2 requires county approval.

3 Is there any schedule of equity sharing in
4 that? Or is it just simply an up or down, yes or no
5 by the county?

6 A There is no specific equity sharing
7 addressed in the agreement. However, our standard
8 practice has been to provide equity sharing.

9 So, for instance, in a prior affordable
10 housing project that was done it's similar. And when
11 the county is notified there is -- I don't have the
12 way it's done but there's a percentage that goes back
13 to the original owner or the seller. But it's not
14 the -- it's not a standard market rate return that you
15 would get from a market rate sale.

16 Q But the particular development agreement
17 would simply have the mechanism of approval or
18 non-approval. And then if someone comes to you and
19 they're not willing to do an equity sharing you're
20 just going to say, "No."

21 A Correct.

22 Q Okay. I noticed in the approval, 201H
23 approval there was a provision requiring construction
24 initiation within one year of either the bonded final
25 subdivision approval or the Project subdivision

1 construction plans.

2 My question is does the development
3 agreement have any kind of timetable for construction
4 or is it an open ended provision?

5 A You know I could not answer that question
6 offhand.

7 Q Does it typically have some requirement to
8 begin or complete the affordable housing component?

9 A I think the normal standard that we follow
10 is that within three years construction will occur.

11 Q There normally is not a deadline to complete
12 construction, though?

13 A No.

14 Q In your testimony you had said that the
15 Petitioner would be exempt from the workforce housing
16 policy. How does that work with the development
17 agreement for affordable housing?

18 A In this situation the developer has chosen
19 to use the 2.96 as a guide for his agreement. If it
20 were a straight off, straight over 201H process he
21 would not have to. We would just come to a separate
22 agreement that would maybe have different guidelines.
23 But in this case he's chosen to use 2.96.

24 Q So if I understand you correctly the
25 Petitioner is exempt from workforce housing policy but

1 is actually complying with it?

2 A Yes.

3 Q And then in your testimony you also
4 explained that in the second application in 2010 the
5 Applicant was able to address the water concerns of
6 the County Council. Did I understand you correctly?

7 A Maybe I should rephrase that and say that
8 the County Council was comfortable with the fact that
9 Maui County Code 14-14.12 would be the guiding factor
10 in the subdivision approval.

11 Q Is it your understanding that requirement
12 for compliance itself was the satisfactory resolution
13 to the concern versus a particular plan for water
14 development?

15 A I don't think the council at that time went
16 into the particulars of where the water would come
17 from.

18 Q So in essence the County Council says: You
19 don't have to tell me how you're going to comply
20 because I know you're going to comply. That's enough
21 for the 201H approval.

22 A Yes.

23 Q Thank you.

24 MR. YEE: I have no further questions.

25 CHAIRMAN LEZY: Redirect?

1 MR. HOPPER: Just on the water issue.

2 REDIRECT EXAMINATION

3 BY MR. HOPPER:

4 Q The requirement for compliance is prior to
5 final subdivision approval. So if there's no final
6 subdivision approval then, or if there's no agreement
7 reached on water then there cannot be subdivision
8 approval, correct?

9 A That is correct, yes.

10 Q The County Council imposed that as a
11 project-specific condition?

12 A Yes.

13 Q And in fact could have exempted the
14 developer from that but attached it as a specific
15 condition?

16 A That is correct.

17 MR. HOPPER: Thank you. Commission, I
18 believe, if the Commission wants a copy of the draft
19 affordable housing agreement we could get the
20 Commission a copy of that?

21 THE WITNESS: Yes. I have this here and I
22 can leave it if you would like.

23 MR. HOPPER: Thank you.

24 CHAIRMAN LEZY: Commissioners, any
25 questions?

1 MR. LUNA: May I have one recross, please?

2 CHAIRMAN LEZY: Sure.

3 MS. RIDAO: Use the mic.

4 (Laughter)

5 RECROSS-EXAMINATION

6 BY MR. LUNA:

7 Q Thank you. So, Ms. Ridao, you were at that
8 long council meeting that gave approval for this
9 project, is that correct?

10 A Yes.

11 Q So your impression on this water issue is
12 that the County Council felt that the protection given
13 in or the requirement in the ordinance Chapter 14.12,
14 would be sufficient to require the developer to come
15 up with the water supply before he can even get final
16 subdivision approval?

17 A Yes.

18 Q And that's part of the reason that they had
19 approved this project in October of 2010 and not in
20 2008.

21 A Correct.

22 MR. LUNA: No other questions.

23 CHAIRMAN LEZY: (off mic) Commissioners, any
24 questions? I have a question for you, Ms. Ridao. Do
25 I understand correctly that your department was deemed

1 the accepting -- I should use the mic. Happens to us
2 all, Mr. Luna --

3 Do I understand correctly that your
4 department was deemed the accepting agency for the EA?

5 THE WITNESS: Yes.

6 CHAIRMAN LEZY: Can you just very briefly
7 give me an idea who within your department was tasked
8 with review of the EA for sufficiency purposes?

9 THE WITNESS: We have in my department a
10 housing division. And the housing division staff does
11 the primary review of the EA, and I also review the
12 EAs.

13 CHAIRMAN LEZY: And as part of the housing
14 division's review and your review were you satisfied
15 with the cultural assessment component of the EA?

16 THE WITNESS: Yes, we were satisfied. I
17 think the issues that have been brought forward were
18 clear to us, anyway, that the Kula Ridge portion of
19 this proposal was not an issue as the mauka project
20 was with the archaeological survey.

21 CHAIRMAN LEZY: And as part of the process
22 was there any input from the public on that cultural
23 assessment?

24 THE WITNESS: Oh, there was a lot. You mean
25 in the initial?

1 CHAIRMAN LEZY: Yes, ma'am.

2 THE WITNESS: I'm not sure what the
3 archaeologist does with the public. I do know that
4 there was a lot of discussion during those seven
5 meetings of the public testifying before the policy
6 committee, yes.

7 CHAIRMAN LEZY: Okay. Thank you very much.

8 MR. HOPPER: Mr. Chair, we're scheduled to
9 adjourn at 1:30? Is that the schedule?

10 CHAIRMAN LEZY: Well, why don't you tell me.

11 MR. HOPPER: I think I can definitely get
12 through my direct. I'm not sure what questions you
13 may have. But again, Mr. Taylor I can get through the
14 direct at least definitely by that time.

15 CHAIRMAN LEZY: OP, I'm guessing if anyone's
16 going to ask any questions it's going to be you folks.
17 Can you give us an idea?

18 MR. YEE: We will have some questions. I
19 don't think it's going to be as extensive as perhaps
20 Mr. Otomo. But we can anticipate 10 or 15 minutes I
21 would think.

22 CHAIRMAN LEZY: Okay. Why don't we take a
23 5-minute recess in place.

24 (Recess was held. 12:50)

25 CHAIRMAN LEZY: We're back on the record.

1 Are you prepared to proceed?

2 MR. HOPPER: Yes, Mr. Chair. I'd like to
3 call David Taylor.

4 CHAIRMAN LEZY: If I can swear you, sir.

5 DAVID TAYLOR

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

8 THE WITNESS: Yes, I do.

9 CHAIRMAN LEZY: Please state your name and
10 address.

11 THE WITNESS: David Taylor. I work at 200
12 South High Street in Wailuku.

13 DIRECT EXAMINATION

14 BY MR. HOPPER:

15 Q Mr. Taylor, what's your current position
16 with the county of Maui?

17 A I'm the Director of the Department of Water
18 Supply.

19 Q How long have you been in that position?

20 A About six months.

21 Q And what was your position prior to that and
22 how long were you in that position?

23 A I was the chief of the County's Wastewater
24 Division managing the wastewater utility. I was in
25 the job about five years.

1 Q Starting off, is the Project demand estimate
2 for water, which is 600 gallons per day per unit, an
3 adequate estimate of the demand for the Project do you
4 think?

5 A Yes, that's a fairly standard engineering
6 estimate for residential homes.

7 Q You heard Mr. Otomo's testimony earlier,
8 correct?

9 A I heard most of his testimony.

10 Q Yes. And could you describe your
11 discussions with Petitioner regarding supplying water
12 for this project? Could you give a basic summary of
13 what those discussions have been to date?

14 A Yes. There are three basic categories where
15 all the options fit in.

16 Option 1 is the county supplying water off
17 a source we develop. There's a number of options
18 we're looking at from surface water and groundwater
19 that may or may not come to fruition. And if the
20 county had water we would offer meters as per the
21 County's water meter list.

22 And that water, if we got to the point
23 where the Applicant is on the list, we would offer
24 them water. That's option 1, county developing water.

25 Option 2 is the developer or a partner of

1 him, something like the Pi'iholo South well developing
2 a well, giving it to the county in exchange for water
3 source development credits.

4 So essentially they'd have credits they
5 could turn in for water meters. And whether that was
6 Pi'iholo South or another source they developed,
7 giving something to the county in exchange for water
8 credits. That's option 2.

9 Option 3 is what was discussed earlier.
10 The Applicant developing their own source and owning
11 and operating it as a private water system. We've
12 discussed all three of those.

13 Q And could you explain the current status of
14 those three, if you have at this stage specific
15 agreements, and if not where you are in the
16 negotiations for each of those options?

17 A Any option having to do with the county, to
18 be clear, the department is not the final authority.
19 Any option that we talked about accepting improvements
20 has to be approved by the County Council as a
21 legislative act.

22 So our role as the department is to look
23 into it from a technological standpoint and make a
24 recommendation to the council. So until the council
25 accepts something, then it's just something under,

1 through that process.

2 So at this point we have yet to present
3 anything to the council for their approval or not. So
4 the discussions are in that preliminary phase of the
5 department looking at the technological, the
6 technology issues and the implementation issues.

7 Q And the County Council approval requirement,
8 is that for -- you're talking about a situation
9 involving the dedication of other -- dedication of a
10 well or reservation of source credits?

11 A That is correct.

12 Q And that is not -- the department makes a
13 recommendation on those issues but does not issue
14 final approval for those issues.

15 A That's correct.

16 Q Okay. As far as developing your own water
17 sources for the Upcountry area could you briefly go
18 over the current -- I know you don't want to give too
19 much detail in this situation as you have ongoing
20 negotiations and discussions. But what -- at this
21 stage what is the outlook for providing that for this
22 project in your opinion?

23 A There are a number of options we are
24 exploring: Improving our intakes at the Waikamoi
25 preserve to get more water from Upcountry. We could

1 perhaps get more surface water down lower and pump
2 that uphill. There are a number of wells that could
3 be acquired or purchased or new wells that could be
4 dug.

5 There are a number of options we're looking
6 at. We are trying to look at the costs and risks kind
7 of associated with each and sort through what's in the
8 best interest of the department.

9 So there are a number of technological
10 solutions. We are trying to get to the point where as
11 we recommend some of these to the County Council -- I
12 should note any one of them require some sort of
13 County Council approval whether it's for agreements or
14 funds, et cetera.

15 So we're trying to put together essentially
16 a clear list of options with costs and pluses and
17 minuses so we can make some recommendations to the
18 County Council about how we think we should proceed,
19 you know, for their ultimate approval in some manner.

20 Q You're familiar with the June 13, 2011
21 letter that was sent by you to the Petitioner? That's
22 Petitioner's Exhibit 30.

23 A Yes, I am.

24 Q And does that adequately summarize the
25 current status of your discussions? And since that

1 letter have you had any further discussion with the
2 Petitioner?

3 A Yes. Since this letter -- and this letter
4 does summarize our discussions with Applicant -- since
5 this letter we have met with them once or twice more
6 where there was some discussion about the possibility
7 of a private water system.

8 And I think we also talked about perhaps
9 some more details of how something dedicated to the
10 county might work and what some of the technical
11 details of that would be. But it generally fits into
12 the summary provided in this letter.

13 Q Have you reviewed the document entitled
14 "Agreement providing water source for the projects"
15 attached to Petitioner's revised application? That's
16 the agreement involving the Pi'iholo South well.

17 A Yes, I have.

18 Q Could you describe that agreement?

19 A In general it's an agreement between the
20 Applicant and the owners of the Pi'iholo South well
21 that if the Pi'iholo South well is accepted by the
22 county in exchange for water credits, then Pi'iholo
23 South would allocate 120,000 gallons worth of those
24 credits to the Applicant for his project.

25 Q Is the county of Maui a party to that

1 agreement?

2 A We are not.

3 Q At this stage would that agreement satisfy
4 the requirements -- and I'll go into more detail about
5 them -- but of the county's water availability policy
6 chapter 14.12 of the county code?

7 A No, it would not.

8 Q Subsequent to this agreement what would be
9 the necessary next steps in order for this agreement
10 to satisfy the County's water availability ordinance?

11 A If the county through the County Council
12 accepted the Pi'iholo South well in exchange for more
13 than 120,000 gallons per day of credits, then that
14 series of events would, would enable us to, to say
15 that there was a water source for the Project.

16 Q Now, to discuss an agreement like this and
17 some of the other options, dedication options
18 presented, what type of agreement typically is entered
19 into between the county of Maui and the developer in
20 those situations?

21 A It would basically be an agreement similar
22 to a purchase agreement, but perhaps instead of money
23 we're granting development credits. So the agreement
24 would say: The county accepts this well with whatever
25 improvements there are or not in exchange for either

1 money or for water credits that could be used to get
2 water meters.

3 Q So it could be a case theoretically where a
4 developer constructs a well, dedicates it to the
5 county and in exchange for that reserves a certain
6 amount of water credits for it that it could use on
7 projects?

8 A That's the standard template.

9 Q And if a project does have those water
10 credits, are they subject to the Upcountry water meter
11 waiting list?

12 A They are not. The Upcountry water meter
13 waiting list is when people are waiting for county
14 water. But if you have credits, those credits are for
15 the water because you essentially helped develop it.
16 So you get to use those credits.

17 Q So you testified about the Pi'iholo South
18 well agreement that at this time it doesn't include
19 the county and would not satisfy 14.12. The other
20 options discussed regarding dedication I know you said
21 you did have some discussions with the Petitioner.
22 Has anything gotten to the stage where there's an
23 agreement that could be presented to the County
24 Council?

25 A We are not -- we are not at that stage yet.

1 Q And what details would you expect would be
2 sort of ironed out in an agreement between the
3 department and a developer in a situation like that?

4 A The details would have to be ironed out.
5 Would say what exactly are we being -- what exactly is
6 being dedicated to the county, what exactly does the
7 county have to do relative to testing, completing
8 connection to the county system, electrical
9 connections, the kind of engineering operational
10 details that have to be finished before it's ready to
11 operate, in exchange for listing that very
12 specifically. And listing specifically whether water
13 credits or money or what the exchange is. So the
14 details of what exactly would be exchanged and what
15 would be given up for that.

16 Q So County Council would have to evaluate
17 what it would be getting as far as its allocation from
18 the well versus source credits reserve, and would have
19 to make a decision based on that and a variety of
20 other factors to determine whether or not it wants to
21 accept the dedication, correct?

22 A That's correct.

23 Q At this stage have you had discussions that
24 have ironed out those specifics?

25 A We have not.

1 Q Okay. I want to move a bit into 14.12 and
2 what the county laws are regarding water availability.
3 Are you familiar with chapter 14.12 of the Maui County
4 Code?

5 A Yes, I am.

6 Q What does this provision require?

7 A 14.12 requires that the -- I'm lost for a
8 second -- that's the show-me-the-water bill. Is that
9 right?

10 Q Yes. That's also known as the
11 show-me-the-water ordinance.

12 A 14.12 -- excuse my -- I got confused on the
13 numbers under pressure there for a second -- the water
14 availability ordinance basically says before
15 subdivision is approved a project must show it has a
16 long-term reliable source of water before subdivision
17 can be approved.

18 Q This applies to both private and public
19 water systems?

20 A That is correct.

21 Q So the determination on that is made by you
22 as director of the Department of Water Supply?

23 A That is correct.

24 Q And the ordinance goes into, you know, what
25 the requirements are of such a system that would be

1 adequate?

2 A It talks about what the basis for that
3 decision is.

4 Q Again, this ordinance requires compliance as
5 a condition of final subdivision approval you said?

6 A That's correct.

7 Q Does this ordinance require that standard be
8 met a showing of a long-term reliable source of water
9 at the stage of County Council approval for a 201H
10 process?

11 A No, it does not.

12 Q Does that ordinance require that such a
13 showing be made before a District Boundary Amendment
14 be approved?

15 A No, it does not. It only says it has to be
16 done before subdivision.

17 Q The County Council in granting the 201H
18 approval could it have exempted the Project from
19 14.12?

20 A I believe it could have. The county passed
21 the law 14.12. And I believe it's in the council's
22 authority to waive it for that project.

23 Q In this case did they waive that
24 requirement?

25 A No, they did not.

1 Q Can you think of any legal reason based on
2 county ordinances that you know of that would be a bar
3 to the Commission in granting this District Boundary
4 Amendment based on the water issues?

5 A I'm not aware of any, no.

6 MR. HOPPER: One moment please. I believe
7 that concludes my questions.

8 CHAIRMAN LEZY: Petitioner?

9 CROSS-EXAMINATION

10 BY MR. LUNA:

11 Q (off mic) Mr. Taylor --

12 CHAIRMAN LEZY: Mr. Luna...

13 MR. LUNA: (on mic) -- in that last question
14 by Mr. Hopper you say there's no bar to having the
15 Land Use Commission approve this District Boundary
16 Amendment without complying with the Chapter 14.12 or
17 any other ordinance, county ordinance, is that
18 correct?

19 A I'm not aware of any others.

20 Q And the same with the County Council when
21 they had already had Chapter 14.12 already in effect
22 when they approved this project in October of 2010, is
23 that correct?

24 A That's correct. 14.12 had been adopted long
25 before that.

1 Q Okay. They decided to approve it on the
2 basis that the protection in Chapter 14.12 was
3 sufficient so that the developer will have to come up
4 with the water supply for the Project in order to
5 proceed, is that correct?

6 A What their motivations were I can't speak
7 to. But as far as the fact of what you're saying,
8 yes, this project cannot proceed beyond subdivision
9 phase unless there is water at that time.

10 Q In going over your three different options
11 that you've mentioned: The county supplying the
12 water, the developer developing the well and conveying
13 to the county in exchange for credits, and then
14 developer developing its own source for a private
15 system.

16 On No. 1 right now one of the things the
17 county is considering is, your department is
18 considering, is possibly being able to repair some of
19 these drainage flumes that may be leaking. I guess
20 this would be surface water, is that correct?

21 A Yes. There's a major surface water intake
22 called the Waikamoi flume. It's about a mile long
23 sort of a long wooden box. It's in Upper Kula. We
24 are in the process of repairing that. We know it
25 leaks. We don't know how much.

1 There is a possibility that after those
2 repairs are finished and it isn't leaking anymore,
3 that could be -- that could generate substantially
4 more water than is generated now. We have no way to
5 estimate how much that will be, whether it's a lot or
6 a little. But that is under -- the design and
7 permitting for that is underway right now.

8 Q And when do you think you'll be able to come
9 to that determination as to how much water will be
10 able to increase in water for Kula?

11 A We probably won't know the answer to that
12 for a number of years because we need a stream
13 crossing permit from the Army Corps of Engineers,
14 which may be a lengthy process.

15 And until we actually finish the -- it's
16 probably going to be a replacement not repairs --
17 until that's finished we won't really be able to know
18 how successful it was. There's really just no way to
19 gauge how much water is leaking out of an old wooden
20 box, if you want to call it that. So basically we
21 won't be able to commit to that volume for a number of
22 years.

23 Q Do you have any other -- I'm sorry. You're
24 also looking at some existing wells that could
25 possibly be put into operation?

1 A That's correct.

2 Q What are those?

3 A There are a number of privately-owned wells
4 that are, that exist in the area. There's also some
5 opportunity for the county to build wells or to enter
6 into partnerships with other developers who want to
7 give the, give the county wells in exchange for source
8 credits. Any of these would generate water for the
9 Upcountry area.

10 Q The ones that the county has right now are
11 they -- are you close to looking at it to see if they
12 can be made operational?

13 A Anything can be made operational. What
14 we're getting close to --

15 Q Yeah.

16 A -- is we're getting close to discussing with
17 the County Council the range of options and the range
18 of costs and advantages and disadvantages to try to
19 get some determination of what we should be pursuing
20 and what we shouldn't; how we may pay for some of
21 these things.

22 At the end of the day everything costs
23 money. And everything has some pluses and minuses.
24 And, again, because the County Council has final
25 authority either through accepting dedication or to

1 approving funds, ultimately we need them to buy off
2 on; here are all the options and here's what they want
3 us to focus on. And here's what they're going to
4 support financially.

5 So we're getting within months, not years,
6 of having that discussion with county.

7 Q That was my next question. When will you
8 expect to go before the council to do that? When you
9 say "months" before the end of the year? Or sooner
10 than that?

11 A I certainly hope to do it well before the
12 end of the year. But, again, we do not control the
13 agendas of the County Council. So I think we'll be
14 ready to discuss this with the County Council
15 certainly before the end of the year. But when that
16 will be discussed isn't really up to me.

17 MR. LUNA: Thank you.

18 CHAIRMAN LEZY: OP?

19 CROSS-EXAMINATION

20 BY MR. YEE:

21 Q You listed in the beginning of your
22 testimony three potential ways in which water could be
23 provided to this project. The first was they could
24 simply wait until the county's developed enough water
25 and then their number on the water meter list gets

1 pulled, correct?

2 A That's correct.

3 Q Do you have an idea of how long that would
4 take?

5 A The Applicant currently has three -- they're
6 currently listed in the Upcountry water list in
7 positions 1,106; 1,178 and 1,179. So there's roughly
8 1100 people on the list before them. Depending on how
9 much volume was -- let's say the county developed 2
10 million gallons a day of capacity very quickly.

11 That amount may be enough right away to
12 offer water to the first 1100 applicants. So it could
13 be very, very -- it could be pretty fast if we were
14 able to acquire a very large volume source.

15 But, again, if every couple years we only
16 acquire enough source for 200 people and 200 people
17 and 200 people it could be many years. So it really
18 depends, again -- I hate to go back to the County
19 Council all the time.

20 With enough money we could do it very,
21 very, very quickly. And without that money it's
22 obviously going to take a lot longer.

23 Q What's the likelihood you're going to be
24 getting enough money to get to 1100 very quickly?

25 A You're really asking -- and I heard earlier

1 questions to Mr. Otomo about likelihood of this and
2 likelihood of that.

3 The likelihoods you're really talking about
4 are the likelihoods of five of the nine members of
5 County Council voting yes on certain funding and
6 acquisition options. I have no idea how to quantify
7 that likelihood.

8 Q In their plan to the Office of Planning they
9 had estimated that a reasonable time period to develop
10 a well would be March 2012. Fair to say that if they
11 were to wait to be pulled on the list their name is
12 not going to get pulled before March 2012.

13 A That's correct. There's really almost no
14 option that would allow the county to have this water
15 before March 2012.

16 Q The second option was for the development of
17 a well or dedication of a well to the county with
18 water reservation credits to be given to the
19 Petitioner, right?

20 A That's correct.

21 Q One of the sources was Pi'iholo South. But
22 another source that was discussed at one time was the
23 Kula Ridge Mauka site, correct?

24 A That is correct.

25 Q The Kula Ridge Mauka site is the well at an

1 elevation of 2,900 feet, is that right?

2 A That is my understanding from reading some
3 hydrogeologist letters. But I'm not personally
4 familiar with the site.

5 Q Were you here when I was cross-examining
6 Mr. Otomo?

7 A I was here for most of Mr. Otomo's testimony
8 but I did have to step out for parts of it.

9 Q Did you hear my questioning of Mr. Otomo
10 regarding his written testimony representing that DWS
11 decided not to pursue the dedication scenario based on
12 production well and operational considerations? That
13 was referencing a well at 2,900 feet.

14 A I don't recall hearing that.

15 Q Has DWS given some indication or made any
16 determination that the Kula Ridge Mauka site would not
17 be acceptable to DWS for dedication?

18 A Any of those discussions would have been
19 during the previous administration under the previous
20 director. I can tell you that since I've been
21 director we have not made any statements like that.

22 Q From your perspective is the Kula Ridge
23 Mauka site still a viable alternative for dedication
24 to the county?

25 A It is viable. It will -- it could work.

1 Q The Pi'iholo South is also a potential
2 source for dedication to the city and county as well.

3 A That's correct.

4 Q How close are you to reaching an agreement
5 on a dedication of a well -- on agreement at least or
6 agreement in principle on a dedication of a well or
7 well source to the county?

8 A Something like that could happen certainly
9 within six months, if the County Council were to
10 approve it. So I don't think it could happen in less
11 than, say, three or four months.

12 But it could certainly, if there was
13 willingness on the part of the County Council we could
14 certainly work out the technical details and propose
15 it to them and there'd be enough time within six
16 months for them to approve it and decide to fund it or
17 not. So potentially it could be done in that
18 timeframe.

19 Q Would a proposal submitted to the County
20 Council come with a recommendation from DWS?

21 A Yes, it would. Well, let me back up.
22 Anyone could propose anything directly to the council,
23 not go through our department. The council is
24 certainly going to listen to our recommendation before
25 they act on it.

1 So at some point we will -- we will comment
2 on our recommendation to the council. Exactly what --
3 I don't know that there's any firm methodology that it
4 has to come to our department first. I think somebody
5 could just go right to the County Council and ask for
6 that. But they would certainly ask us.

7 Q How close are you, do you think, to reaching
8 an agreement to obtain your recommendation, DWS's
9 recommendation to the County Council for dedication?

10 A Of...?

11 Q Of a well. You can name the well you want.
12 I'm trying to get an idea. And if this is going to
13 help your answer, I'm trying to get an idea of whether
14 we're simply going to try to accept this Petition
15 without knowing that there is a likely water source,
16 or whether you can provide any type of information not
17 just on the generic process but on the specifics as
18 applied to this particular process.

19 Is there something that's likely to come on
20 relatively soon? If not come online, at least is
21 there an agreement that's likely to be reached
22 relatively soon?

23 A I would say if you're going to say the next
24 six months it is possible that the County Council in
25 the next six months approves an agreement for a well

1 in exchange in our water credits.

2 It's also possible that that doesn't
3 happen. But it's certainly possible. I think they
4 would have enough information that they could make a
5 decision in that time. Whether or not they feel
6 that's enough information, or whether they feel they
7 want to go ahead without before the next budget year
8 again, I really can't speculate about how the County
9 Council will see this water source development in
10 conjunction with the water issues, especially
11 financial that are on their plate.

12 Q If I was asking for something more than
13 something possible, but asking for something likely,
14 do you have an estimate of time that you think in
15 which it would be likely that a dedicated water source
16 would be at least recommended by DWS to the County
17 Council?

18 A I think certainly we'll be recommending some
19 things to the County Council in the timeframe you're
20 talking, about within six months. I find if very,
21 very likely within six months we'll be telling the
22 council, "Here's the options for Upcountry water.
23 Here's the strong leaders. Here's what they're going
24 to cost. If we're going to go ahead here's what we
25 recommend."

1 I think, I feel that's very, very likely
2 that we'll be saying that within six months.

3 Q And would that include the particular water
4 source or water credits to be given to the Kula Ridge
5 Project?

6 A That may or may not. That's a little less
7 likely to be happening in that time. First of all, we
8 would have to identify -- only -- to my knowledge only
9 the Pi'iholo South well has an agreement where those
10 credits would go to this project.

11 So assuming that that was the chosen
12 alternative, that would be also be very likely. But
13 if the chosen alternative that we wanted to pursue
14 wasn't that and this other alternative didn't have an
15 agreement with Kula Ridge, obviously that might take
16 longer because we would be in no position to force any
17 other party to give water credits to any particular
18 developer/applicant.

19 Q You said it's a little less likely. Does
20 that mean it's still probable that within six
21 months -- I mean if you can't answer you can certainly
22 tell me. But I'm pushing you obviously because I'm
23 trying to find out.

24 A Because the Maui County Council as a
25 legislative body has such subjective decision-making

1 about what to pursue and what not to pursue and has a
2 lot of things beyond just water on their plate, I
3 don't feel I'm really in any position to kind of split
4 hairs on likely, a little less likely about actions
5 that they may or may not take.

6 Q But you would have the ability to know
7 whether or not DWS is likely to recommend something,
8 wouldn't you? Or would that give you some greater
9 certainty?

10 A I have greater certainty in what DWS would
11 recommend, absolutely.

12 Q Within the next six months do you think DWS
13 is going to recommend some plan by which the Kula
14 Ridge Project will receive water credits to allow them
15 to move forward?

16 A I think within six months we'll be
17 recommending some plan for Upcountry water. Now, the
18 only plan that would absolutely have water for Kula
19 Ridge would be the Pi'iholo South well. So I really
20 am not in a position to say whether that's the leading
21 contender. So I don't know the answer to your
22 question.

23 It's not that I'm not sharing. I really
24 don't know. The engineering analysis is ongoing as we
25 speak. I don't know how these different options are

1 going to sort out through the sorting criteria.

2 Q Is it fair to say there's still technical
3 information that you need to make your recommendation?

4 A Yes.

5 Q And that's -- whether it's -- you're
6 closest, I assume, on Pi'iholo South and you'd be
7 further away if you're going to look at Kula Ridge
8 Mauka site.

9 A That's correct.

10 Q The Kula Ridge Mauka site is more
11 complicated 'cause it doesn't exist at this moment.

12 A And it's a little bit more nebulous. As far
13 as the Pi'iholo South, Pi'iholo South has given us a
14 written proposal about what their first proposal was,
15 what they would like in exchange for dedicating the
16 well. So we're pretty clear about their stance.

17 And Pi'iholo South has already gone to the
18 County Council and talked about this proposal or
19 previous proposal. So it's mature from the sense it's
20 been talked about, there's things in writing, we're
21 clear about what that side wants.

22 We're not at that level of clarity with
23 some of the other choices yet. So we can't really
24 compare all apples to apples yet.

25 Q I take it a part of that discussion would be

1 how much money would you be asking from Kula Ridge to
2 help you acquire the Pi'iholo South well if
3 technically that was a good alternative for you.

4 A It doesn't necessarily need to be money.
5 There's water, water credits and money. And, for
6 example, if they were going to dedicate the well in
7 the shape it's in now, whatever shape it's in, where I
8 know it still needs to be connected, it still needs
9 testing, it still needs electrical improvements, et
10 cetera, and they were going to say, "Look. Take this
11 well. We only want a little bit of credits but we'll
12 give you all the extra water."

13 Or they say, "Look. We'll give you this
14 well but we want a lot of money."

15 There's two completely different ways to
16 structure the deal but depending on the numbers are
17 either acceptable or unacceptable.

18 Q And I was assuming based on, I guess, some
19 of the information that it was going to cost the
20 county money to acquire the Pi'iholo South well?

21 A Not necessarily.

22 Q But if it did take money that would also be
23 a consideration you have to analyze?

24 A That's correct. And if it didn't take
25 money, if it was just purely water credits we would

1 still have to bring money in to do the connections and
2 hook it up to the system.

3 Q And you just haven't reached that level of
4 discussion yet.

5 A We're at the level -- we're at the internal
6 engineering analysis level of trying to lay out how
7 much water, how much money and doing that for a number
8 of different options so we can compare them apples to
9 apples. That's where we are.

10 So that's why I just don't know where this,
11 where any individual scenario compares against the
12 others, which is something we have to do before we
13 make a recommendation.

14 Q If you don't know this answer you can tell
15 me, but I just feel compelled to ask. The
16 development agreement I'm told normally says that you
17 have to begin construction within three years of the
18 affordable housing. That's at least my understanding.

19 What do you think -- do you think that this
20 project will be able to meet that given this stage at
21 which you are on water?

22 A It could. The likelihood, again, I don't
23 know the developer's finances. Certainly their onsite
24 well if they had enough money they could certainly do
25 that in less than three years.

1 If the County Council decides to, for
2 example -- if the County Council decides they want to
3 acquire Pi'iholo South well that could happen within
4 six months or so and subdivision could be approved
5 immediately thereafter and that would also be done.
6 So there are a couple, at least a couple of options
7 available to meet that timeframe. How likely they are
8 I don't know.

9 Q One just clarifying question. You'd
10 indicated you were going to submit a variety of a plan
11 or propose a series of potential sources to County
12 Council, look to help you determine what's in the best
13 interest of DWS to figure which option you should go
14 with. Did I hear you correctly?

15 A That's correct.

16 Q When you talk about the best interests what
17 are you referring to? What are the best -- what are
18 the factors, the criteria you're applying?

19 A Ultimately we are looking for high volume of
20 water at low initial costs with low operating costs
21 with high reliability. And usually you don't find all
22 of that in any one.

23 So you have to find some apples to apples
24 way to compare different options that are strong and
25 weak in those different categories.

1 Q If a well had to be -- that was fairly deep,
2 generally it cost more to pump it up then?

3 A That's correct.

4 Q And that because it will cost more that's a
5 factor operationally for you in whether or not that's
6 a good well to produce or to accept or not?

7 A That's correct.

8 Q So if Mr. Otomo was referring to operational
9 costs related to electricity, would you think that's
10 what he's referring to?

11 A I listened to his testimony about that and I
12 think from an engineering standpoint I think that's
13 exactly what he was saying.

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

15 CHAIRMAN LEZY: Redirect?

16 REDIRECT EXAMINATION

17 BY MR. HOPPER:

18 Q Just to clarify. Other than Pi'iholo South
19 have you been given any agreements that have specifics
20 such as the amount of source credits, the amount of
21 money involved, things like that for any of the other
22 alternatives aside from the Pi'iholo South well that
23 would provide water for this project?

24 A Not for this project specifically, but there
25 are things like that for other sources in the

1 Upcountry area. Whether or not, whether there'd be
2 enough for it to get down to 1,000 on the list I don't
3 know.

4 But this sort of negotiation about what
5 people want for their water sources, yes, there are
6 other parallel negotiations or parallel discussions
7 happening with other entities.

8 Q And those could be involved in your
9 recommendations to the County Council that you would
10 be making, as you said, in the next six months?

11 A That's correct.

12 MR. HOPPER: Thank you.

13 CHAIRMAN LEZY: Commissioners, questions?

14 MR. LUNA: May I have some recross, please.

15 CHAIRMAN LEZY: Sure.

16 RECROSS EXAMINATION

17 BY MR. LUNA:

18 Q Mr. Taylor, you mentioned that Kula Ridge
19 Mauka's well may be expensive to operate. But if
20 that's the only source that you have available, that
21 would be one of the options you'd present to the
22 County Council, would you not?

23 A That's correct. It's very likely that the
24 Pi'iholo South well or the Kula Ridge well, wells at
25 that level are probably going to be somewhere in this

1 analysis. They are in the analysis. And there will
2 probably be options that have to be looked at more
3 closely.

4 Q And even if those other wells that you may
5 purchase didn't have an agreement with Kula Ridge,
6 that that individual, if they obtained water credits,
7 that company could sell those water credits to Kula
8 Ridge, could it not?

9 A They could sell those water credits to
10 anyone they'd like.

11 Q So that's also the other possibility that
12 even if there's no agreement with those other
13 developers of wells, that the Kula Ridge could still
14 be able to proceed if they were able to purchase those
15 credits?

16 A That's correct.

17 Q And then going into the water meter list.
18 It's not a first come/first serve basis entirely, is
19 that correct? In other words, they have to meet
20 certain requirements even if they're No. 1, No. 2, No.
21 3 that they may not get, they may not qualify for that
22 water being No. 1. And they may lose their chance of
23 getting that water meter.

24 A I wouldn't really call it "qualify". If we
25 have water available and we go first to No. 1 and they

1 are responsible for the financial costs of system
2 improvements.

3 Usually these are, for example, if the
4 pipelines between where we have adequate water supply
5 and their particular property is inadequate, they're
6 responsible for those improvements.

7 If they can't afford those, then it goes to
8 the next guy. So it's not about qualifying. It's
9 about them being able to do their part of what it
10 takes to get a meter.

11 So you're correct in the sense that just
12 because somebody's No. 1 doesn't mean they'll be able
13 to actually get that water. Then we go to No. 2, 3
14 and 4 so that is correct.

15 Q And there's some in line with subdivision,
16 is that correct?

17 A That's correct.

18 Q And those in line with subdivision may not
19 be, have their infrastructure in that would qualify or
20 be able to obtain the supply of water if the water
21 became available?

22 A They're given a certain amount of time to do
23 certain things. So they may or may not be able to
24 comply to be ready at the time they have to be ready
25 to accept that meter and pay for it.

1 Q I'm just trying to make a point. It's not
2 like you're being 1100 that you gotta wait 1100.
3 People in front of you may not qualify or may not be
4 able to obtain the water because they can't put in the
5 infrastructure.

6 A Yes. From that sense for all I know the
7 first thousand people may deny it. Or the first
8 thousand people may be able to take it. We don't know
9 the answer to that.

10 Q It's a little more complicated than just
11 waiting in line.

12 A Yes, it is.

13 MR. LUNA: Thank you.

14 CHAIRMAN LEZY: Commissioners, questions?
15 Seeing none, thank you. Is there anything else that
16 we need to discuss before we adjourn?

17 MR. LUNA: No.

18 MR. YEE: No.

19 CHAIRMAN LEZY: Okay. We stand adjourned.

20 MR. LUNA: Thank you very much.

21 (The proceedings were adjourned at 1:35 p.m.)

22 --oo00oo--

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25 C E R T I F I C A T E

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2 I, HOLLY HACKETT, CSR, RPR, in and for the State
3 of Hawai'i, do hereby certify;

4 That I was acting as court reporter in the
5 foregoing LUC matter on the 15th day of July 2011;

6 That the proceedings were taken down in
7 computerized machine shorthand by me and were
8 thereafter reduced to print by me;

9 That the foregoing represents, to the best
10 of my ability, a true and correct transcript of the
11 proceedings had in the foregoing matter.

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13 DATED: This _____ day of _____ 2011

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18 HOLLY M. HACKETT, HI CSR #130, RPR
19 Certified Shorthand Reporter

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