

1 LAND USE COMMISSION

2 STATE OF HAWAI'I

3

4 HEARING

5 A11-790 KULA RIDGE, LLC (Maui))

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10 TRANSCRIPT OF PROCEEDINGS

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13 The above-entitled matter came on for a Public Hearing

14 at 4300 N. Kula Road, Kula, Hawai'i, commencing at

15 9:20 a.m. on August 26, 2011, pursuant to Notice.

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

21 Certified Shorthand Reporter

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Docket No. A11-790

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For the County: MICHAEL HOPPER, ESQ.

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1 CHAIRMAN LEZY: Good morning. This is a
2 meeting of the state of Hawai'i Land Use Commission.
3 This is a continued hearing on docket All-790 Kula
4 Ridge, LLC, to consider the reclassification of
5 approximately 34.516 acres of land from the
6 Agricultural District to the Urban District and
7 approximately 16.509 acres of land from the
8 Agricultural District to the Rural District at Kula,
9 Maui, Hawai'i for a mix of residential, park, and open
10 space uses.

11 Will the parties please make their
12 appearances.

13 MR. LIM: Good morning, Mr. Chairman,
14 members of the Commission. Steven Lim for Petitioner
15 along with Jennifer Benck. And seated to my right is
16 Petitioner's representative Clayton Nishikawa. We
17 also have Michael Munekiyo, our Project Planner.

18 MR. HOPPER: Good morning, Mr. Chair.
19 Michael Hopper from the County of Maui Department of
20 Planning. With me is Will Spence, the planning
21 director.

22 CHAIRMAN LEZY: Thank you. Good morning.

23 MR. YEE: Good morning. Deputy Attorney
24 General Bryan Yee on behalf of the Office of Planning.
25 With me is Jesse Souki, director of the Office of

1 Planning.

2 CHAIRMAN LEZY: Good morning. I don't
3 believe anybody has signed up for public testimony.
4 If there's anybody in the audience who would like to
5 provide public testimony... Hearing none, there are
6 just a couple of housekeeping matters before we
7 continue with the presentation of the parties' cases.

8 Petitioner, I understand you have new
9 exhibits you wish to have admitted into the record.

10 MR. LIM: Yes. These have been talked about
11 previously: The Petitioner's Exhibit 34A, which is
12 the updated testimony for Mr. Pete Pascua for traffic.
13 Also the Petitioner's exhibits which are actually
14 submitted by Ms. Hall which are marked as Petitioner's
15 44A, B, C and 44D, E, F and G, 44A through G which are
16 those photos that we saw during the hearing yesterday.

17 CHAIRMAN LEZY: I'm sorry. That was 34A and
18 44A through 44G?

19 MR. LIM: It will be 34A and 44A through
20 44G.

21 CHAIRMAN LEZY: Did you have an Exhibit 23A
22 that you were also...

23 MR. LIM: Yes. Okay. That would be Tom
24 Nance's updated resumé. Tom Nance as you recall was
25 the hydrologist. Thank you.

1 CHAIRMAN LEZY: County, OP, any objections?

2 MR. YEE: No.

3 MR. HOPPER: No.

4 CHAIRMAN LEZY: Commissioners, any
5 objections, questions? Hearing none Petitioner's
6 Exhibits 23A, 34A and 44A through 44G are admitted to
7 the record.

8 Mr. Hopper, does the County have any
9 additional exhibits they wish to have admitted into
10 the record?

11 MR. HOPPER: Yes, Mr. Chair. You received
12 our Amended Exhibit List. We have Exhibits 9 and 10.
13 Exhibit 9 is a residential workforce housing
14 agreement. Exhibit 10 is a letter from Mayor Alan
15 Arakawa to the Land Use Commission. We apologize we
16 are just passing out right now what would be Exhibits
17 11 and 12 which are documents, a matter of public
18 record, relating to the Makawao-Pukalani-Kula
19 Community Plan, relevant sections of that as well as
20 the Draft Maui Island Plan. Those have been submitted
21 and we will follow through with an amended exhibit
22 list for those.

23 CHAIRMAN LEZY: Just so we're clear, County
24 is seeking admission of Exhibits 9, 10, 11 and 12
25 then.

1 MR. HOPPER: That's correct.

2 CHAIRMAN LEZY: Petitioner, any objections?

3 MR. LIM: No objection.

4 CHAIRMAN LEZY: OP?

5 MR. YEE: No objection.

6 CHAIRMAN LEZY: Commissioners, any
7 objections or questions?

8 COMMISSIONER HELLER: Which one was the
9 draft plan?

10 MR. HOPPER: The Maui Island Plan. That
11 will be 12.

12 COMMISSIONER HELLER: Thank you.

13 CHAIRMAN LEZY: Anything else? Hearing
14 none, County of Maui's Exhibits 9, 10, 11 and 12 are
15 admitted to the record. Mr. Yee, does OP have any
16 additional exhibits you wish to have the admitted to
17 the record?

18 THE WITNESS: We do. The Office of Planning
19 has Exhibit 14. Just to explain, there was an e-mail
20 that the Department of Health had sent to Petitioner.
21 And Petitioner then forwarded that e-mail to your
22 executive director.

23 Office of Planning Exhibit 14 is an
24 explanation that the e-mail that was sent to the
25 Petitioner was not correct because it had assumed --

1 there was an incorrect assumption about the number of
2 units in the senior affordable housing.

3 So we had never intended to send that e-mail
4 to the Land Use Commission. But because it had been
5 sent we need to submit Office of Planning's Exhibit 14
6 to correct the information in that e-mail.

7 CHAIRMAN LEZY: Okay. Thank you.
8 Petitioner, any objections?

9 MR. LIM: No objections.

10 CHAIRMAN LEZY: County?

11 MR. HOPPER: No.

12 CHAIRMAN LEZY: Commissioners, any
13 objections or questions? Hearing none, Office of
14 Planning's Exhibit 14 is admitted to the record.
15 Any other preliminary matters we need to take care of?
16 Mr. Lim, are you prepared to proceed?

17 MR. LIM: Yes, we are.

18 CHAIRMAN LEZY: Okay. Please do so.

19 MR. LIM: Thank you very much.

20 Mr. Chairman, members of the Commission we will be
21 continuing our direct testimony with Mr. Pete G.
22 Pascua who is the vice president and director of
23 traffic engineering and transportation planning for
24 Wilson Okamoto Corporation.

25 PETE PASCUA,

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

3 THE WITNESS: Yes, I do.

4 CHAIRMAN LEZY: Please state your name for
5 the record and provide your address.

6 THE WITNESS: My name is Pete Pascua.

7 CHAIRMAN LEZY: Your address?

8 THE WITNESS: 1907 South Beretania Street
9 Honolulu, Hawai'i 96826.

10 CHAIRMAN LEZY: Thank you. Mr. Lim.

11 MR. LIM: Mr. Chair, I'd like to beg your
12 indulgence. We would like to make sure that all of
13 our technical witnesses have been qualified as expert
14 witness before the Commission. We weren't here for
15 some of those proceedings so I'd like to make sure
16 that that is confirmed.

17 CHAIRMAN LEZY: County, OP, any questions
18 for voir dire?

19 MR. YEE: No objection.

20 CHAIRMAN LEZY: Okay. Mr. Pascua would be
21 recognized as an expert.

22 MR. LIM: Would that be for all of the
23 witnesses also?

24 CHAIRMAN LEZY: I believe that the parties
25 stipulated at the prior hearing.

1 MR. LIM: Thank you very much.

2 DIRECT EXAMINATION

3 BY MR. LIM:

4 Q Pete, can you relate to the Commission
5 overall what you've done with respect to the studies
6 for the Kula Ridge Project?

7 A In July of 2006 we completed a Traffic
8 Impact Analysis Report, or TIAR, which evaluated the
9 Project's trip generation and how it affects or
10 impacts the existing roadways in the vicinity.

11 The intersections under consideration were
12 Kula Highway at Lower Kula Road, the north terminus,
13 Ala Nui Place and Lower Kula Road; Copp Road and Lower
14 Kula Road as well as the southern terminus of Lower
15 Kula Road and Kula Highway.

16 The Project generation was based on
17 standard industry methods, namely the Institute of
18 Transportation Engineers' trip generation procedures.
19 It was determined based on the uses that approximately
20 90 vehicles would be generated by the Project during
21 the AM peak hour. That's 90 total in and out. During
22 the PM peak hour roughly 117, I believe, would be
23 generated by the Project.

24 Now, those numbers were then superimposed
25 over our baseline condition which is traffic counts we

1 collected at the intersections I just mentioned. And
2 on top of that the baseline numbers that we collected
3 for the intersections were projected even much higher
4 to accommodate ambient growth or regional growth in
5 the area.

6 The Maui Long Range Land Transportation
7 Plan calls for a half percent increase in traffic on
8 the regional roadways. We questioned that because it
9 seemed kinda low. So we looked at historical data of
10 traffic counts conducted by the DOT for the region.
11 And that historical data showed a 2.7 percent increase
12 per year.

13 So for a conservative point we used the 2.7
14 per year ambient growth to determine what the
15 projected traffic conditions would be along the
16 studied intersections I mentioned.

17 That report identified several
18 recommendations, some of which for safety reasons to
19 improve sight distance, to make sure that we have
20 appropriate corner radius for vehicles to turn into
21 and out of the Project access driveway; to ensure that
22 there's adequate onsite loading areas should loading
23 be handled on site.

24 To ensure also that adequate turnaround
25 space is provided on site to avoid vehicles or service

1 vehicles or any other type of vehicles, whether they
2 be refuge type vehicles, postal, do not impact the
3 public streets.

4 On top of that two primary intersection
5 improvements were also recommended. One is at the
6 north terminus of Lower Kula Road and the highway.
7 Currently there is one lane approach heading towards
8 the highway. We are recommending to separate the
9 left-turn and right-turn lanes to provide two lanes on
10 that approach.

11 That report, then, that's the
12 recommendation -- the report was then submitted to the
13 Department of Transportation as well as the County.
14 We have not received any comments from the County who
15 basically, as I understand it, deferred the review to
16 the Department of Transportation.

17 The Department of Transportation questioned
18 the way how we assigned traffic onto the roadways.
19 Traffic assigned to the roadways were based on the
20 existing traffic split on Lower Kula Road, meaning if
21 50 percent were traveling northbound, 50 percent
22 generated by the Project was assigned northbound.

23 There was really no governing method to
24 determine trip generation cause it's -- I mean traffic
25 assignments since it's a projection of where traffic

1 would go. So to look at the worst case scenario we
2 looked at all traffic heading northbound and what
3 would the impact be at the intersection of Lower Kula
4 Road and Kula Highway, the northern terminus. So we
5 prepared a supplemental report that assigned traffic
6 all heading northbound.

7 The Level of Service for that condition
8 remained the same as what we had assumed or calculated
9 earlier in our initial traffic report.

10 Q What was that Level of Service for the
11 intersection of Lower Kula Road and Kula Highway?

12 A The morning and afternoon Level of Service
13 is, I believe it's Level of Service B. But
14 nonetheless could be C. I just don't recall. But
15 it's all C or better, Level of Service C or better
16 which does not really -- does not really, does not
17 mitigate the need for -- does not require the need to
18 mitigate.

19 However, we recommended the separation of
20 the left-turn movement and right-turn movement on the
21 Lower Kula Road approach on the highway just so we
22 could facilitate traffic in the area at that
23 intersection.

24 Q How many traffic reports have you done for
25 the Kula Ridge Project and submitted to the State

1 Department of Transportation thus far?

2 A Two TIARs. One, as I first mentioned, our
3 study in July 2006. A revised July 2006 study was
4 also submitted to DOT in response to DOT's comments.
5 Two supplemental traffic studies were also, I should
6 say assessments, were done to address pedestrian
7 activity at the Waldorf School area.

8 The other one was to -- the other one was
9 to see what the impacts would be if we, the situation
10 I had mentioned earlier where all the traffic would be
11 heading northbound. So a total of four assessments
12 were done for the DOT.

13 Q What is the overall conclusion of your
14 Traffic Impact Analysis Report thus far?
15 Understanding that you are in the process of updating
16 the report.

17 A Yes. Currently our Traffic Impact Analysis
18 Reports all lead to two primary improvements at the
19 intersection of Lower Kula Road and Kula Highway, and
20 the one I had mentioned earlier, separating the
21 left-turn and right-turn lanes on the Lower Kula Road
22 approach.

23 The other primary recommendation is
24 providing a southbound left-turn pocket or lane on the
25 highway turning into Lower Kula Road. Currently we

1 are discussing these improvements and analysis,
2 methodology with the Department of Transportation.
3 And ultimately will be preparing an updated report
4 based on current traffic demand and current
5 assumptions for the Project. And we'll be seeking
6 DOT's approval -- review and approval.

7 Q When was the last time that you met with the
8 State Department of Transportation on this Project?

9 A Early August was an official meeting with
10 DOT to go over specific assumptions of the analysis.
11 We came to a conclusion on how the analysis should be
12 done, nothing different from what we have done
13 previously. But it would now be based on new counts,
14 new traffic counts or baseline data. So we're
15 scheduled to collect data mid-September again.

16 So because, like I mentioned earlier, the
17 previous studies were done, were based on counts that
18 were taken in 2006. So the DOT is looking for an
19 updated baseline, or in other words, traffic counts to
20 be incorporated in the updated traffic study.

21 Q One of the issues was the safety around the
22 Waldorf School. Would you be including the traffic
23 for the school hours when their parents are picking up
24 and dropping off?

25 A Yes, that's correct. Not only vehicular

1 traffic but as well as pedestrian activity as well.

2 Q What type of an annual ambient growth would
3 you be using per the DOT's requirements?

4 A DOT required that an annual growth of
5 1.2 percent year be used based on the Maui General
6 Plan, I believe. But that was provided by the DOT.

7 Q Will the updated TIAR take into account the
8 lesser traffic that might be generated by the senior
9 housing units in the Project?

10 A No. The DOT wanted the analysis to be based
11 on trips that would be generated by a single-family, a
12 regular or typical single-family dwelling unit as
13 opposed to a senior type housing.

14 As you may probably know a typical detached
15 single-family dwelling unit will generate more traffic
16 than a senior residential unit typically.

17 Q Will the updated TIAR also include trip
18 generations from the proposed park uses?

19 A Yes, that's correct.

20 Q So you mentioned the two primary roadway
21 improvements that you anticipate you'll be proposing
22 in your amended TIAR of the makai-bound improvements
23 to the Lower Kula Road of separating out a left-turn
24 and right-turn lane, and also the southbound
25 improvement on Kula Highway with the addition of the

1 left-turn pocket into Lower Kula Road.

2 Were those improvements discussed with the
3 State Department of Transportation?

4 A Yes, very much so in detail to even a point
5 where we are defining storage lengths, taper lengths,
6 conditions, fitting within the existing right-of-way
7 to minimize any impact to surrounding uses.

8 Q Do you feel comfortable that these proposed
9 improvements would be satisfactory to DOT in the end?

10 A Yes, very much so. And this updated report
11 that we are currently undertaking will be used to
12 validate that as well as confirm these
13 recommendations -- those recommendations.

14 Q Thank you.

15 MR. LIM: No further discussion.
16 questions.

17 CHAIRMAN LEZY: County?

18 MR. HOPPER: Thank you.

19 CROSS-EXAMINATION

20 BY MR. HOPPER:

21 Q Mr. Pascua, which roads in your study were
22 County roads?

23 A Lower Kula Road and all the intersections
24 along Kula Road with the exception of the highway
25 which is under state jurisdiction.

1 Q Okay. What was the anticipated impact of
2 this Project on Lower Kula Road?

3 A Lower Kula Road currently operates at Level
4 of Service A for all approaches of the County
5 intersections, and will continue to do so with the
6 Project under Level of Service A since Level of
7 Service A represents a range of operating conditions.

8 So even though if you add the Project's
9 trip generation onto the County intersections the
10 operating Level of Service will still remain at Level
11 of Service A which is ideal or free-flow condition.

12 Q You're saying the Level of Service is not
13 anticipated to change on Lower Kula Road --

14 A That's correct.

15 Q -- or the intersections?

16 A That's correct.

17 Q Thank you. Now, what, if any, traffic
18 mitigation measures is the developer planning on
19 Lower Kula Road that you know of?

20 A From a traffic operational standpoint at the
21 intersection I mentioned earlier, Lower Kula Road
22 separating the left-turn and right-turn movements into
23 two separate lanes. Currently there's one lane on
24 that approach at the highway. On the Kula Road side
25 we're -- on Kula Road between the state highway

1 intersections no improvements were identified.

2 Q Are you aware of the County Council's
3 project modification for this Project related to
4 providing a sidewalk on Lower Kula Road?

5 A Yes.

6 Q And did that condition allow you to, based
7 on coordination with the Department of Public Works
8 and neighbors, decide on placing that sidewalk on
9 either the mauka or makai side of the roadway?

10 A No. Those discussions on where a sidewalk
11 would be placed has never taken place from my
12 perspective.

13 Q Is it your understanding, though, of the
14 County Council's project modification that the
15 sidewalk may be placed on either the mauka or makai
16 side of Lower Kula Road?

17 A Yes.

18 Q And that sidewalk, just for the record, it's
19 your understanding that that sidewalk and crosswalk
20 would be in the area between the Kula Community Center
21 and the Haleakala Waldorf School?

22 A That's correct.

23 Q Okay. Do you have a preference on which
24 side the sidewalk would be on based on your expertise?

25 A Well, to minimize the crossing of Kula Road

1 seems like from an operational standpoint -- and I
2 haven't really studied it -- but it looks like on the
3 mauka side would be preferable from a pedestrian
4 standpoint because then you minimize the crossing
5 amount.

6 Q Do you know the status of the discussions
7 between the developer and any of the related parties
8 as to the alignment of the sidewalk at this time?

9 A No. I was not involved in any discussions.

10 Q So to your knowledge either side still
11 remains a possibility, the mauka or makai side of the
12 sidewalk placement?

13 A To my knowledge, yes.

14 Q Do you believe the mitigation measures
15 identified in the report and that would be done
16 through the supplemental report, do you believe
17 they're adequate for the impact of this Project?

18 A I'm sorry. Could you repeat that?

19 Q I'm sorry. Do you believe the traffic
20 mitigation measures proposed, and that will be
21 proposed through the additional discussions with the
22 State Department of Transportation, will be adequate
23 to mitigate the impact that this Project will have on
24 traffic on Lower Kula Road?

25 A Yes. I strongly believe that.

1 MR. HOPPER: Thank you. I have no further
2 questions.

3 CHAIRMAN LEZY: Office of Planning?

4 CROSS-EXAMINATION

5 BY MR. YEE:

6 Q A couple of factual clarifications. I read
7 in your written amended testimony that the updated
8 TIAR would include a 1.2 percent annual ambient growth
9 along the highway based on the Maui General Plan.
10 That's what I read.

11 Did you say something different today about
12 an assumption regarding assumed ambient growth?

13 A Yes, I did earlier when I was describing an
14 earlier study that we did back in July of 2006. We
15 used an ambient growth of 2.7 percent which is much
16 higher than the ambient growth that DOT is suggesting.

17 So, in fact, then our previous study that
18 we did in 2006 was more conservative in terms of
19 traffic demand on the roadways. The 1.2 percent as
20 suggested by DOT would reduce the demand on the
21 highways since the growth is much less.

22 Q So the revision will have a 1.2 percent
23 assumed annual ambient growth?

24 A That's correct.

25 Q Okay. Just to clarify regarding the left

1 and right-turn lane separation. Currently -- well,
2 you are adding an additional lane in order to allow
3 for a right-turn and left-turn lanes?

4 A Yes, on the approach of the intersection.

5 Q So you're not simply taking two lanes and
6 designating one for right turns and one for left
7 turns. You've got one lane. You're going to be
8 adding an additional lane, is that correct?

9 A That's correct.

10 Q Then you've, I think, already testified
11 you've met with the Department of Transportation. My
12 understanding you've reached an agreement that
13 Petitioner through you will be doing a revised TIAR,
14 correct?

15 A That's correct.

16 Q And I think you've laid out in your written
17 testimony what those revisions would be on Page 9 and
18 10 of your revised written testimony.

19 A That's correct.

20 Q And then is there an agreement, then, that
21 you'll be submitting this revised TIAR to the
22 Department of Transportation for their review and
23 approval?

24 A That's correct.

25 Q Will the Petitioner, then, be performing the

1 mitigation measures recommended in that approved TIAR?

2 A That's my understanding.

3 Q After all this is done, including the
4 construction of the Project as well as the mitigation
5 measures of the TIAR, and I think including the
6 sidewalk whether it's mauka or makai, do you have an
7 opinion whether with or without this Project -- put
8 aside the congestion question, but focusing on the
9 safety question -- do you have an opinion as to
10 whether traffic conditions will be safer, more safe,
11 less safe or about the same as it is without the
12 Project?

13 A About the same.

14 Q Okay. Just wanted to make sure. Thank you.
15 I have no further questions?

16 CHAIRMAN LEZY: Mr. Lim, redirect?

17 MR. LIM: Yes, following up a little bit on
18 the safety issue.

19 REDIRECT EXAMINATION

20 BY MR. LIM:

21 Q Mr. Pascua, there was some testimony by the
22 public yesterday about the fact that although the
23 traffic speed limit along Lower Kula Road fronting the
24 Project is about 20 miles per hour, that cars actually
25 do travel faster.

1 What type of traffic calming devices are
2 recommended for this kind of a situation where people
3 have to slow down, traffic going northbound on Lower
4 Kula Road down towards the Kula Highway?

5 A You said traffic calming measures?

6 Q Yes. What kind of traffic measures -- would
7 things like speed humps or things like that?

8 A Yeah. There's really two types of traffic
9 calming measures that can be implemented on a roadway
10 segment. I think that's what we're talking about
11 Lower Kula Road which is a roadway that connects
12 intersections. But within the intersections the
13 roadway segments can be controlled by two types of
14 devices that I am aware of.

15 One device would be inserting a vertical
16 deflection within the roadway. The second would be
17 installing a horizontal deflection in the roadway.
18 But given the width of the roadway --

19 Q Before you go on past that, explain what the
20 vertical and horizontal deflections are.

21 A I'm sorry. Vertical deflection is when a
22 motorist traveling along the roadway changes their
23 vertical position in the roadway. You had mentioned
24 speed humps as an example. That's a vertical
25 deflection of a traversing vehicle on a roadway. A

1 horizontal deflection would be what is commonly called
2 something like a chicane. A chicane is (audience
3 laughter) chicane is sort of like a bulb out where you
4 have to deflect, the motorist would have to deflect
5 horizontally on the roadway.

6 Q Like a round-about?

7 A A round-about would be one, but round-about
8 is at an intersection as opposed to a roadway segment
9 I had mentioned earlier between intersections.

10 Q I see. Okay. Now I understand. Excuse me.

11 A Sorry about that. Given the physical
12 constraints of the roadway segments along Kula Road,
13 my opinion is that the most appropriate type of
14 deflection is the vertical deflection such as a speed
15 hump.

16 Q So if you were to recommend speed humps in
17 this area along Lower Kula Road, how many would you
18 recommend and about where would you put them if you
19 were trying to slow traffic speeds going in a north
20 direction?

21 A They should be placed generally at
22 crosswalks. I would recommend two along the stretch
23 of within the Project vicinity on Lower Kula Road, one
24 south of the Project driveway, and the other near the
25 Haleakala Waldorf School. This is to prevent

1 vehicles -- oh, not prevent -- to control vehicles'
2 speeds at potentially, or at potential crossings,
3 pedestrian crossings on the roadway.

4 MR. LIM: No further questions.

5 CHAIRMAN LEZY: Commissioners, any
6 questions? Commissioner Judge.

7 COMMISSIONER JUDGE: Good morning,
8 Mr. Pascua.

9 THE WITNESS: Good morning.

10 COMMISSIONER JUDGE: I have a couple
11 questions. From your written testimony and your
12 testimony this morning I understand that you started
13 this back in 2005 and submitted your first TIAR to the
14 DOT in 2006, is that correct?

15 THE WITNESS: That is correct.

16 COMMISSIONER JUDGE: And then you
17 subsequently revised it and submitted another one.
18 When was that one submitted?

19 THE WITNESS: We redid the calculations,
20 believe it or not, in a couple days and submitted it
21 in the same month, July 2006. But that report is
22 dated July 2006 Revised.

23 COMMISSIONER JUDGE: Okay. Was there ever
24 an accepted TIAR from DOT?

25 THE WITNESS: No. They are still providing

1 comments. So to date there is no accepted TIAR, hence
2 the need to update the current study that was done
3 back in 2006.

4 COMMISSIONER JUDGE: Okay. So at this point
5 we don't know what the mitigation measures will be to
6 -- when you submitted your final one and it's accepted
7 by DOT there will be mitigation measures recommended,
8 correct?

9 THE WITNESS: Right.

10 COMMISSIONER JUDGE: And the Petitioner's
11 agreed to do those measures?

12 THE WITNESS: Right.

13 COMMISSIONER JUDGE: But we don't know what
14 those measures are yet, correct?

15 THE WITNESS: Well, DOT identified and
16 through our analysis and discussions with DOT in the
17 past couple weeks, early -- well, several weeks
18 earlier this month DOT agreed on the two primary
19 mitigating measures I had mentioned: Separating the
20 left-turn and right-turn lanes on Lower Kula Road at
21 the highway and also to provide a left-turn pocket on
22 southbound Kula Highway into Lower Kula Road.

23 So DOT had agreed to those mitigating
24 measures. This updated study is to confirm that those
25 mitigating measures were warranted and needed for this

1 Project.

2 COMMISSIONER JUDGE: Okay. I'm just
3 concerned because there was talk yesterday. It was
4 mentioned that there was a traffic light perhaps
5 needed at that intersection. And I think if there's a
6 traffic light that has to go there that would severely
7 change the working of Kula Highway and take away the
8 whole -- it would just change the character of it
9 because there are no -- from Pukalani all the way to
10 Keokea there are no traffic lights.

11 And if a traffic light were to be necessary
12 I think that would -- I mean that would be a big
13 change in the character of our community.

14 THE WITNESS: I agree. And as far as the
15 analysis that is done to determine whether a traffic
16 signal is warranted or not and it's based on standards
17 that both the DOT, County, and the City and County of
18 Honolulu follow and many states throughout the nation
19 to determine whether a traffic signal is warranted or
20 not, we did a quick check based on the numbers we have
21 now. And it's far from being warranted at all, the
22 signal, far from being warranted.

23 It's not to say -- we're going to have to
24 validate it with this study updated study but I don't
25 think the volumes in the vicinity have increased

1 drastically enough to trigger a signal at that
2 intersection.

3 COMMISSIONER JUDGE: Okay. But that's still
4 undetermined at this point.

5 THE WITNESS: It's still undetermined. But
6 I can with certainty say it's not going to be a
7 requirement.

8 COMMISSIONER JUDGE: Okay. Your traffic
9 study mostly looks at intersections, is that correct?

10 THE WITNESS: That is correct.

11 COMMISSIONER JUDGE: Okay. So we heard a
12 lot of testimony about the traffic on Lower Kula Road.
13 So Are there urban standards for roadways? Are there
14 standards like how wide a road should be?

15 THE WITNESS: Yes, there are standards.

16 COMMISSIONER JUDGE: What's the width of an
17 urban road?

18 THE WITNESS: Urban road, depends on the
19 setting. But generally include lanes of 11 feet wide
20 or greater.

21 COMMISSIONER JUDGE: The concern, I think,
22 is that this is an old roadway obviously. And it's
23 been in existence -- there were existing homes with
24 walls and everything. I'm speaking mostly I guess it
25 would be the southern boundary down there. And I'm

1 wondering did you look at that road? Is it an urban
2 standard road?

3 THE WITNESS: Our traffic study really did
4 not evaluate roadway conditions, but only traffic
5 operations. May have to defer that to the civil
6 engineer. But we looked at operations associated with
7 conflicts of pedestrians, conflicts of vehicles.
8 That's why it's just --

9 COMMISSIONER JUDGE: Just at intersections.

10 THE WITNESS: Intersections generally, yes.

11 COMMISSIONER JUDGE: Okay. So not at a
12 narrow roadway when you've got two cars parked on
13 either side. You talked about safety, that adding all
14 these people won't make it a safety issue, won't be
15 increased. But you simply looked at the
16 intersections. You didn't look at the operation along
17 the County road, is that correct?

18 THE WITNESS: Correct. That is correct.

19 COMMISSIONER JUDGE: Okay. So any
20 improvements if they're necessary to upgrade the
21 County road to widen the County road, that would not
22 fall to the Petitioner. That would fall to the
23 County, is that correct?

24 THE WITNESS: Only if we had identified it
25 from a capacity standpoint, operational capacity

1 standpoint meaning this Project would generate
2 thousands of vehicles. Therefore the two-lane roadway
3 cannot handle or would not be able to handle a
4 thousand vehicles and widening would be required,
5 should that be the case.

6 It looks at traffic demand, the operations,
7 and not -- or did not look at conditions where
8 perhaps, you mentioned where someone will park on the
9 side and block or impede traffic movement through the
10 segment of roadways.

11 COMMISSIONER JUDGE: So to your knowledge
12 right now the Petitioner is not required to make any
13 improvements to Lower Kula Road except to put in a
14 sidewalk where necessary.

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

16 COMMISSIONER JUDGE: Okay. Thank you.

17 CHAIRMAN LEZY: Commissioners? Commissioner
18 Heller.

19 COMMISSIONER HELLER: Like to follow up with
20 a few questions about the sidewalk issue. When the
21 TIAR is actually submitted to the Department of
22 Transportation and the mitigation measures are agreed
23 upon, does that normally include sidewalk
24 improvements?

25 THE WITNESS: Not normally. But we did look

1 at pedestrian activity near the Waldorf School as
2 requested or directed by the Petitioner to us.

3 COMMISSIONER HELLER: Okay. But in terms of
4 making sure that the sidewalk adequacy and safety
5 issues are addressed, is that something that the
6 Department of Transportation would normally do as part
7 of their review and acceptance of the TIAR?

8 THE WITNESS: Yes. Yes. They would review
9 if there were known issues associated with pedestrian
10 activity, yes. Typically that would be a comment that
11 we as consultants would receive when we submit our
12 traffic study for review by the department.

13 COMMISSIONER HELLER: Now, in terms of
14 placement of the sidewalk, the mauka-makai question,
15 as I understand it if you look at it from the
16 viewpoint point of the safety of the students going to
17 the Waldorf School, it's probably preferable to have a
18 sidewalk on the makai side. Do you agree with that?

19 THE WITNESS: If the sidewalk is intended
20 for Waldorf School, yes.

21 COMMISSIONER HELLER: Now, if you look at it
22 from the viewpoint of residents of this Project
23 perhaps going to the Morihara Store and particularly
24 thinking of senior citizens or elderly people, it
25 might be better to have the sidewalk on the mauka

1 side, correct?

2 THE WITNESS: Yes, that's correct.

3 COMMISSIONER HELLER: Who's going to make
4 that ultimate decision? Who would make that ultimate
5 decision?

6 THE WITNESS: I would think the County would
7 since it's a County road. I did not analyze or look
8 at where the sidewalk would be placed, sidewalk would
9 be placed.

10 COMMISSIONER HELLER: Did you make any
11 recommendations as to the number or placement of
12 crosswalks?

13 THE WITNESS: Not in the current studies --
14 not in the studies we have done in the past, but will
15 do so in this updated study.

16 COMMISSIONER HELLER: So you anticipate
17 that's an issue that the Department of Transportation
18 and the County will be looking at?

19 THE WITNESS: No. But as I understand it
20 it's an issue that has been brought up before, before
21 these proceedings. So that's why we want to be sure
22 that we account for or look at those conditions in
23 this updated study.

24 COMMISSIONER HELLER: Okay. What I'm trying
25 to get at is if the Project goes forward, who's going

1 to make the actual decision as to where the sidewalk
2 goes and how many crosswalks there are and where
3 they're placed?

4 THE WITNESS: I would think it would be the
5 County in the subdivision process.

6 COMMISSIONER HELLER: Thank you.

7 CHAIRMAN LEZY: Commissioners, any other
8 questions? Thank you, Mr. Pascua.

9 THE WITNESS: Thank you.

10 MS. BENCK: Good morning. Petitioner would
11 like to call next Clayton Nishikawa, who is the
12 representative of Kula Ridge.

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

16 THE WITNESS: I do.

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

19 THE WITNESS: My name is Clayton Nishikawa.
20 My business address is 2145 Wells Street, suite 301
21 Wailuku.

22 CHAIRMAN LEZY: Thank you.

23 DIRECT EXAMINATION

24 BY MS. BENCK:

25 Q Good morning, Clayton.

1 A 'Morning.

2 Q I know that at the last hearing where Steve
3 Lim and I weren't present you got to talk a little bit
4 about yourself and about the Project. But I think for
5 everyone's benefit it would be helpful to maybe pick
6 up where we left off there and tell the Commissioners
7 and everybody else who are you, what's your
8 background.

9 A I was born and raised in Hawai'i. My dream
10 was to become an architect so I graduated from the
11 University of Manoa with a degree in Architecture 28
12 years ago. Have since become a practicing architect
13 here on Maui, and eleven years ago became a general
14 contractor as well. We specialize in design and
15 building homes for Maui families.

16 Q What made you decide to do this Project? I
17 mean Kula is a beautiful place. And I would imagine
18 that you can develop a project that's not an
19 affordable housing project and sell those lots pretty
20 quickly. What motivated you to make an affordable
21 housing project?

22 A It was always my goal to design affordable
23 housing for Maui families. It just wasn't financially
24 feasible for me to become a developer until about six
25 years ago when opportunities arose with some of my

1 clients that I designed homes for on the high end,
2 some offshore residents.

3 With those relationships they offered the
4 opportunity to become a developer and requested that
5 if there was a need in any way to pursue a development
6 that I saw worthy of development that they would be
7 interested in financing it.

8 So we searched throughout Maui County at
9 the time when Mayor Arakawa was asking for help and a
10 plea for those in the private sector to deliver
11 affordable housing for Maui families. We were having
12 a big exodus of Maui families leaving the islands, our
13 children leaving the islands because they couldn't
14 afford homes.

15 And I've got three children of my own that
16 are in college. And at the time the median sales
17 price of a home was \$1.1 million on Maui. So with the
18 bleak prospect of that continuing in the same stream,
19 I decided that I would attempt to, with the help of
20 some investors, to become -- to try become part of the
21 solution as opposed to part of the problem.

22 So we searched and looked for pieces of
23 property that was appropriate for development for a
24 residential project. We found and located the Kula
25 Ridge Project. It had the Community Plan designation

1 of Single-family and Rural.

2 It was adjacent to a community center.

3 There were two schools nearby, a neighborhood grocery
4 store nearby and restaurants in the neighborhood, fire
5 stations.

6 So we evaluated whether or not it was
7 appropriate. The biggest challenge that we saw was
8 the water issue. And at the time the discussions were
9 that if affordable housing were provided to Maui
10 County that there would be a preference for resources
11 delivered to affordable housing projects.

12 Since then I think what had happened is
13 that the Upcountry water meter list has developed into
14 a very overwhelming situation for Maui County and the
15 Department of Water Supply. So what we've done is
16 we've tried to become part of the solution in terms of
17 water as well. So we are proposing to proactively
18 participate in delivering water source to Maui County
19 in exchange for water credits.

20 Q Clayton, can I ask you there, I want to pick
21 up on that. So as an affordable housing project you
22 are getting preference on the water meter list?

23 A No. If -- we were -- we're actually 1100 in
24 a list of about 1300 applicants on the water meter
25 list. If we were to wait for the County to deliver

1 water to everyone on the list, on the meter list, then
2 we would be in line for 1100 on the meter list.

3 Our intention is to help provide a new
4 water source, a new sustainable water source for Maui
5 County to use and to also apply to the Upcountry water
6 meter applicants.

7 And if we do that then we're assigned water
8 credits from the County of Maui. And in doing so
9 we're helping to deliver water to Upcountry water
10 meter list applicants at the same time obtaining water
11 credits for our own Project.

12 Q So, in fact, not only are you on the list,
13 not only do you not jump ahead as was suggested by
14 certain people yesterday, but, in fact, through this
15 Project you anticipate maybe shortening that list by
16 adding source?

17 A Yes. We're anticipating that our
18 participation in finding a water source -- the
19 Director of Water Supply did a presentation at the
20 Water Resource Committee meeting on August 16, about a
21 week and-a-half ago. And he had stated in his
22 presentation that they have -- the County's water
23 supply had identified 17 sources of water that they're
24 considering for either development or acquisition.

25 What we're hopeful for is continued

1 collaboration with the County of Maui and assisting in
2 providing a viable solution that would help with this
3 water meter list.

4 Q I want to move away from water and talk a
5 little bit more about your buyers. You've lived on
6 Maui for how long now?

7 A I've been on Maui for about 23 years.

8 Q So I'd imagine over these 23 years you've
9 gotten to know the County really well.

10 A Yes.

11 Q You're working and you know what it is in
12 the community, at least certain people in the
13 community need in terms of housing?

14 A Yes.

15 Q But we heard a few things yesterday about
16 there being a lot of foreclosures and that this
17 alleged housing shortage is really a farce because
18 there's a lot of foreclosures and local people can
19 just go snap those houses up. Is that accurate?
20 Does that ring true to you?

21 A No, that's not true. In the foreclose
22 process, for those of you that are familiar with the
23 process, it becomes into a bid situation at an
24 auction. Our local Maui families that are in the
25 workforce aren't able to compete in bidding in an

1 auction. The bidders that are successful are
2 typically investors or offshore residents. And
3 there's large cash requirements involved.

4 And our typical buyer profile wouldn't be
5 able to compete in that market. The net result is
6 that those homes that are in foreclosure are our local
7 families.

8 And they're actually losing a home and
9 going into a rental situation. Or what normally
10 happens is they'll go back into a multigenerational
11 use and live with their parents or live with their
12 friends in a garage. Or in most cases here on Maui is
13 leave the islands.

14 That's what I'm trying to alleviate, at
15 least slow the process down, is by giving some of
16 these families a chance and an opportunity to stay on
17 Maui.

18 Q So a lot of people don't have the choice?

19 A No.

20 Q Or the option to play in the foreclosure
21 game. But you said something else that's very
22 important there. You said that a lot of people that
23 are getting foreclosed on are local families. So
24 that's another concern. The pricing of the housing is
25 set by the County guidelines, their affordable

1 pricing.

2 How concerned are we that perhaps those
3 buyers, although they may qualify to purchase the
4 house won't be able to take care of other costs of
5 living that will come up?

6 A The way that the Department of Housing and
7 Human Concerns has structured it they're required to
8 prequalify themselves financially. And they go
9 through a financial process with financial
10 institutions to get prequalified. And there's
11 percentages and ratios that they need to adhere to.

12 The mortgage rates, including maintenance
13 fees, water and electricity, are all calculated into
14 that. So they should be able to manage living in one
15 of the units.

16 Q Okay. So like the common area charges for
17 the wastewater that was talked about during the July
18 hearings, and the water charges, basic utility charges
19 are all taken into consideration?

20 A They're all factored into the cost.

21 Q Yes. How many people have you got signed up
22 who are interested, who have expressed interest so
23 far?

24 A We have about 500 applicants.

25 Q Thank very much. I'd like to address some

1 of the questions that came up during the last
2 testimony and during Pete Pascua's this morning about
3 the sidewalks. Are you willing to build a sidewalk?

4 A Yes, we are.

5 Q And do you have control over which side of
6 the road a sidewalk goes on?

7 A What happened was back in 2008 when we were
8 denied by the County Council because of the need for a
9 sidewalk, what we did was we approached the makai
10 landowner and requested an easement to construct the
11 sidewalk on his property. And he replied that he
12 wasn't interested in providing a sidewalk easement to
13 us.

14 So not being able to control building a
15 sidewalk on the makai side, we did have control of the
16 property on the mauka side. So we pursued that
17 avenue. And we created a plan with our civil
18 engineer. We worked with two of the private
19 landowners adjacent to the property that heads towards
20 the Haleakala Waldorf School.

21 And they've preliminary agreed to allowing
22 us sidewalk easements on their property as well. So
23 we do have a solution at hand.

24 Recently I've been notified by the Kula
25 Community Association president that the landowner on

1 the makai side of the property is applying for a
2 conditional use permit for his property to change the
3 use to an office use for their property.

4 So they're in the process of going through
5 the Maui Planning Commission and the County Council
6 for approvals.

7 My communication with the president of the
8 Kula Community Association was that I was willing and
9 able to meet with all parties involved and try to work
10 out an amicable solution to this sidewalk issue.

11 So the Kula Community Association's
12 president said that he would try to facilitate a
13 meeting. I'm open to meeting with them and try to
14 find a solution that would be in the best interests of
15 the community.

16 Q Thank you. But at this point it's the mauka
17 landowners who basically have been willing to grant
18 free of charge an easement so that you can build a
19 sidewalk.

20 A Yes. The mauka properties have agreed to
21 grant the easements without charge to us. And we do
22 have that available to us. The landowner on the makai
23 side said he would offer the property for sale to us.
24 And he hasn't disclosed the price to us yet.

25 Q I can understand your hesitancy.

1 A Yes.

2 Q Committing to one said or the other. My
3 understanding is that ultimately it will be the
4 Department of Public Works that will weigh in and
5 figure out where the best place is?

6 A Yes. Normally it's worked out during the
7 subdivision phase.

8 Q Similarly during Pete's testimony about
9 traffic calming devises there was talk about speed
10 bumps. And maybe that would be something the
11 Department of Public Works would ultimately weigh in
12 on on this County road?

13 A (Nodding head.)

14 Q If the Department of Public Works said that
15 they thought that speed bumps were an appropriate and
16 an important means of maintaining the speed limit
17 here, would you be willing to pay to build the speed
18 bumps?

19 A Yes, certainly.

20 Q My last question for you is regarding the
21 senior elements of the housing. Just want to make
22 sure that we're all clear on what are we talking about
23 by senior housing.

24 Is this assisted living? Are these
25 necessarily people who are going to be needing

1 ambulance rides to the hospital every other day?

2 A That was somewhat of a misrepresentation
3 with some of the testifiers yesterday. Senior housing
4 would reflect age restrictions to those that are 55
5 and older. Me personally I'm 52 years old so I found
6 it offensive referring to wheelchairs rolling around,
7 not being able to walk up a hill.

8 But the homes that we're designing aren't
9 assisted living. They're independent age-in-place
10 housing that would be age restricted to 55 and over.
11 I believe that most of us would qualify for that at
12 this point.

13 And to the notion that most people at that
14 age aren't looking to buy a home, that's not true. We
15 have enough applicants on our list that we could sell
16 each one of those homes today if we needed to.

17 Q You've looked through the Office of
18 Planning's testimony and the conditions the Office of
19 Planning was requesting. And one of those conditions
20 states that you'll have the backbone infrastructure --
21 if this Commission grants your reclassification --
22 that you'll have the backbone infrastructure for this
23 Project done within 10 years. Is that feasible?

24 A Yes, that's feasible.

25 Q Do you think it will probably be done even

1 before the 10 years?

2 A Yes.

3 MS. BENCK: Thank you. That's all my
4 questions.

5 CHAIRMAN LEZY: County?

6 CROSS-EXAMINATION

7 BY MR. HOPPER:

8 Q Thank you, Mr. Nishikawa. Regarding the
9 sidewalk, you've given us an update on the status of
10 your discussions I think. And you went over the
11 additional costs associated with the makai alignment
12 in that you would need to purchase property. Are
13 there any other additional costs for a makai alignment
14 versus the mauka as far as engineering, design and
15 construction?

16 A Yeah, the consideration for building the
17 sidewalk on the makai side is such that there's a
18 gravity retaining wall that's old and built many years
19 ago. And it wouldn't meet today's standards in terms
20 of safety and structural stability.

21 So that would have to be considered. There
22 would have to be a significant amount of fill material
23 to be placed and large, expensive retaining walls.
24 There's a fairly large dropoff so there would also
25 have to be some guardrails for the children not to be

1 falling over into the property. So those are some of
2 the concerns.

3 Q I just wanted to briefly read you the
4 wording of the County Council's Project modification
5 regarding this because there was a question by the
6 Commissioner. It does state that: "The specific
7 alignment of the sidewalk mauka or makai shall be
8 defined by the Applicant in coordination with the
9 Department of Public Works and neighboring property
10 owners."

11 At this stage are you saying that the
12 alignment on either side is still a possibility?

13 A Yes. I think once we get further with the
14 meetings that would be coordinated by the KCA with the
15 adjacent property owner, I think we could try to come
16 to some sort of a result.

17 Q Thank you. You are planning to have a
18 homeowners association for this Project?

19 A Yes.

20 Q And there would be a monthly homeowners
21 association fee?

22 A Yes.

23 Q Do you have any idea at this point -- I mean
24 I know a lot of this would be depending on the water
25 system and things like that -- do you have any rough

1 estimate on what that fee may be?

2 A Yeah. We looked at projects on Maui of
3 similar size and scope and similar sizes of common
4 area maintenance, square footages. And we were
5 estimating that the maintenance fees for the
6 homeowners association would be about \$40 a month.

7 Q Are there going to be any fees for reserve
8 accounts for things like repaving private roads or
9 maintaining a private water system, things like that?
10 I guess to an extent it would depend, but is that
11 something planned?

12 A Yes. I think it would be a responsible
13 thing to do is to gradually create a reserve account
14 for the association fees.

15 Q And that would be incorporated with the \$40
16 a month fee estimate?

17 A Yes.

18 Q Now, are you -- you are aware of the Maui
19 County's ordinance, Maui County Code section 14.12
20 otherwise known as the "show me the water" ordinance?

21 A Yes. I'm very familiar with that ordinance.

22 Q And in this ordinance the Maui County
23 Council in granting the 201H approval it could have
24 exempted you from this ordinance, correct?

25 A It could have.

1 Q And it did not. So you plan on complying
2 with this ordinance?

3 A I do plan on complying.

4 Q In fact it's a requirement of the Project,
5 correct?

6 A It is a requirement by the County.

7 Q Does that ordinance require that prior to
8 your final subdivision approval you show access to a
9 long-term reliable source of water for the Project?

10 A That is a requirement for approval.

11 Q And you realize you will not be able to get
12 subdivision approval until those requirements are met.

13 A Yes, I do.

14 Q Okay. Have you read the letter dated --
15 from Mayor Alan Arakawa? It's dated August 17, 2011?

16 A Yes, I did.

17 Q And you believe it correctly describes the
18 water options that were discussed at the hearing to
19 date for this Project?

20 A Yes, it's accurate.

21 Q Now, regarding the jumping ahead testimony.
22 You said you didn't believe that was an accurate
23 characterization. Could you expand why you do not
24 believe that's an accurate statement?

25 A So there's the Upcountry water meter list.

1 And the way that it works is that water meter
2 applicants would be served based on their position on
3 the list.

4 If we were to be served by the County
5 without any participation or achieving water credits
6 based on the "show me the water" ordinance, then we
7 would patiently wait until our number was called,
8 which would be somewhere in the 1100 range. That way
9 we wouldn't be jumping the list, so to speak.

10 In other options based on the "show me the
11 water" ordinance, if we were to help the County in
12 ways of providing financial means or assisting in
13 development of a sustainable water source, then in
14 that case the Upcountry water meter list would not
15 apply.

16 So what we would be doing is obtaining our
17 water meter credits by helping to facilitate or
18 develop or finance an acquisition of a sustainable
19 water source the County of Maui would be purchasing or
20 developing.

21 Q So essentially if you contribute to the
22 construction of that infrastructure, you may have to
23 do so in exchange for credits provided by the County?

24 A Yes. And in doing so what would happen then
25 is then it would start to facilitate addressing those

1 people on the water meter list. So I believe that it
2 would be a win/win situation for everyone.

3 Q And in such a situation, though, you would
4 need approvals from the Maui County Council, again,
5 for such a proposal.

6 A It would have to be approved first by the
7 Department of Water Supply and then it would have to
8 be approved by the County Council.

9 Q In those discussions as we heard from
10 Mr. Taylor earlier in testimony, things such as the
11 amount contributed or dedicated and the amount of
12 source credits and the conditions of that, including
13 any sort of testing of the water or, you know, proof
14 of a sustainable yield would have to be ironed out in
15 some kind of agreement that the County Council would
16 need to adopt?

17 A That's correct.

18 Q And in a case such as that it's your
19 understanding that the Upcountry water meter list is
20 not applicable.

21 A I that case yes, it would not apply.

22 Q To date have you entered into such an
23 agreement that's been adopted -- that's been accepted
24 by the council?

25 A No, not to date.

1 Q Okay. But you do understand that you will
2 not be able to obtain final subdivision approval until
3 one of the options in this letter is fulfilled to the
4 satisfaction of the Department and potentially the
5 Maui County Council.

6 A Yes, I do understand.

7 Q Given all of that do you believe that you
8 will be able to satisfy the "show me the water"
9 ordinance for this Project?

10 A I do believe that we have options available.
11 In discussions with the County administration and
12 Department of Water Supply they have identified 17
13 Upcountry sources that they are pursuing or will be
14 pursuing in the near future. We would like to be
15 participating as part of the solution.

16 Q And to your knowledge there's nothing in the
17 Maui County Code or ordinance that would prohibit the
18 granting of this Petition before the Land Use
19 Commission based on the fact you haven't finalized the
20 water source.

21 A Yes.

22 MR. HOPPER: Thank you. I have no further
23 questions.

24 CHAIRMAN LEZY: Office of Planning?

25 xx

1 CROSS-EXAMINATION

2 BY MR. YEE:

3 Q Just a few quick questions on the water. My
4 understanding is you've offered to pay \$2 million for
5 the development of South Pi'iholo well?

6 A Pi'iholo South well.

7 Q I'm sorry. Pi'iholo South. From your
8 perspective, though, you don't really care what the
9 particular well location is. If the County wanted \$2
10 million to develop any other source you'd be amenable
11 to that as well?

12 A That's correct.

13 Q So while I understand the County hasn't yet
14 chosen what sources they want to develop, from your
15 perspective, at least, you've offered \$2 million to
16 develop some source for the County?

17 A Yes, I have.

18 Q Switching topics. Would you represent that
19 the mitigation measures recommended by your
20 consultants in the Final Environmental Assessment be
21 implemented?

22 A Yes.

23 Q And I believe you've testified that you have
24 read through the Office of Planning's proposed
25 conditions in this case?

1 A I have.

2 Q And I believe you testified, if you could
3 confirm, that you did not have any particular concerns
4 about those conditions?

5 A No.

6 Q And the last question: Do you have an
7 intention to hire local contractors for the
8 construction work on this Project?

9 A Yes, I will.

10 MR. YEE: I have no further discussion.
11 Thank you.

12 CHAIRMAN LEZY: Redirect?

13 MS. BENCK: No redirect.

14 CHAIRMAN LEZY: Commissioners, questions?
15 Commissioner Judge.

16 COMMISSIONER JUDGE: 'morning, Clayton.

17 THE WITNESS: 'Morning.

18 COMMISSIONER JUDGE: I have just a couple
19 questions. The density of the development, that
20 really concerns me. You're familiar with Upcountry.
21 You've driven Lower Kula Road and seen Copp Road and
22 what I consider the residential developments in our
23 area.

24 And I look at the density of the affordable
25 housing and it just, it just doesn't seem

1 complementary, if you will, or consistent with the
2 Upcountry area. I'm just wondering how you got to
3 that plan.

4 THE WITNESS: Yeah. If you look at the
5 Community Plan or any aerial of the neighborhood, what
6 you'll find is that some of the adjacent subdivisions
7 have small lots that are similar in size.

8 So the way that we have derived this is we
9 have taken a look at what the density allows in the
10 Community Plan designations would. And we tried to
11 keep in alignment with the Community Plan densities.

12 And if you factor in the total number of
13 units that we have, the land plan was primarily
14 community based. It was based on requirements set
15 forth by the seller. The seller wanted us to maintain
16 the upper portion of the property in Rural designation
17 with large lots because the adjacent property is going
18 to remain in agricultural use so we wanted it
19 compatible.

20 So we were basically left with less than
21 16 acres, the area that we're requesting Urban
22 designation which is the 30 odd acres or so.

23 So with that what we did was we calculated
24 what our 3-acre park dedication was. We had to
25 calculate what the open space requirement for the

1 retention basin and the drainage situation.

2 We had to create market lots with views so
3 that it would be feasible to sell. Then we had to
4 create enough affordable housing to meet the local
5 demand.

6 Now, if you take all of that and you roll it
7 all up into a five-year process, this is what we came
8 up with: If you take the acreage that we have, which
9 would be about 51 acres, and you divide it by the 116
10 units, we come out with a density of 2.4 -- or 2.2
11 units an acre, somewhere around there, which would
12 average out to about one home per 19,000 square feet.

13 So if we were to go any lower in density
14 what that would mean is we'd just be providing less
15 affordable housing for Maui families.

16 So there's kind of a dynamic tension, if you
17 will. We could do less units, and less affordable
18 housing. So we decided that what we wanted to do was
19 stick to a configuration that was used in Wailuku Town
20 successfully, the six pack configuration, so to speak.
21 Those units in Wailuku are situated on lots as small
22 as 3500 square feet. So we've got 6,000 square feet
23 for those lots.

24 So relatively speaking, yes, it's relatively
25 high density for a place like Kula. But to get more

1 families into homes, single family homes, that was
2 kind of the tradeoff. I really don't feel -- and I
3 have to respectfully disagree that 2.2 units to an
4 acre isn't really high density.

5 COMMISSIONER JUDGE: Well, that's spreading
6 it out over the 34. I mean you have to take off those
7 upper units to reach that 2.2. If you just take the
8 acreage that -- just simply the acreage, if you
9 separate out the drainage and the parks and all that
10 and you're just left with the, I forget how many acres
11 it is, 16, and you're putting those 116. I don't
12 believe that comes to 2.2.

13 THE WITNESS: Yeah. But when you do have to
14 deal with the entire community, adjacent neighbors
15 that's what a developer has to deal with. There's
16 park dedication, there's open space, there's drainage,
17 all of those being addressed. And that's what it
18 comes out to is 116 units on 15 acres.

19 COMMISSIONER JUDGE: What happens in the
20 affordable -- and I'm not sure, I know you've got a
21 long list -- but what happens when you have to offer
22 affordable housing? And just say for argument sake
23 there aren't buyers for the senior housing.

24 What happens to that? Do you have to just
25 leave it at the affordable housing for perpetuity or

1 is there a time, then, all of sudden you get to sell
2 it at market rates?

3 THE WITNESS: I believe that the Department
4 of Housing and Human Concerns has addressed those
5 requirements in their policy. So we will agree to
6 conform to their policy. But there's a time limit to
7 make it available.

8 And I'm hopeful that all the units will be
9 sold upon making them available because we do have 500
10 applicants. I'm hoping that going 5D (sic) we'll
11 qualify at least 34 seniors on Maui.

12 COMMISSIONER JUDGE: Oh, I just want to go
13 back. I remember the C. Brewer project. That's the
14 one down in Wailuku, right?

15 THE WITNESS: Right.

16 COMMISSIONER JUDGE: Off the road?

17 THE WITNESS: Mm-hmm.

18 COMMISSIONER JUDGE: I don't remember that
19 being really successful because I think they were
20 going to do the whole project in that and then it
21 didn't pan out. So they went to single-family homes.

22 THE WITNESS: Yeah. The lot sizes at 3500
23 square feet were a little small. What they did they
24 also did two-story homes on those units so they had
25 four bedroom homes.

1 What we're proposing is two and
2 three-bedroom homes with single story homes. We're
3 designing it to be age-in-place on 6,000 square foot
4 lots. So there's a little bit of a difference in
5 terms they're not exactly the same product type but
6 similar concept.

7 COMMISSIONER JUDGE: I know the water is a
8 really hot, is a really emotional issue for Upcountry
9 residents. And the County says that there's no reason
10 for us to look at that because it is covered in the
11 County ordinance.

12 But one of the requirements for
13 reclassification is the availability of basic services
14 and everything. So I mean I have to ask you at this
15 point in time right now is there water available for
16 this Project?

17 THE WITNESS: If you were to ask me and
18 based on the presentation made on August 6th by the
19 Water Director with 17 identified water sources that
20 they're evaluating, they calculated all the people, it
21 took them eight months to do an analysis on every
22 applicant on the water meter list.

23 Based on their analysis they're expecting
24 that to service everyone on the water meter list that
25 would be able to execute their infrastructure

1 waterline improvements and their fire flow
2 improvements, it would take about 1.5 million gallons
3 a day of water to service everyone on the list that
4 would be ready to accept water meters.

5 With the 17 potential water sources
6 available, the one source that we have an agreement
7 with Pi'iholo South, their well capacity is
8 1.7 million gallons per day.

9 So it could address potentially every one on
10 the water list that would accept a meter. So, yes,
11 I'm confident that water will become available.

12 COMMISSIONER JUDGE: Okay. You're confident
13 it will become available. But right now today you
14 don't have any firm agreement with the County.

15 THE WITNESS: No. We're are working on
16 that.

17 COMMISSIONER JUDGE: Can I ask the County a
18 question?

19 CHAIRMAN LEZY: I'm sorry?

20 COMMISSIONER JUDGE: Can I ask the County a
21 question about what he just testified to? Oh, he
22 didn't know. Okay. Never mind. Okay. That's all I
23 have.

24 CHAIRMAN LEZY: Commissioners? Commissioner
25 Contrades.

1 COMMISSIONER CONTRADES: Do you have any
2 idea of how much all of the requirements for
3 infrastructure is going to cost you?

4 THE WITNESS: Ah, yeah. Roughly about
5 \$8 million.

6 COMMISSIONER CONTRADES: So all of this has
7 been factored into how you're going to charge the
8 people for the fees?

9 THE WITNESS: Yes, that's in the cost
10 analysis.

11 COMMISSIONER CONTRADES: Just out of
12 curiosity, how many credits would \$2 million buy you?

13 THE WITNESS: Hopefully enough for the
14 Project.

15 COMMISSIONER CONTRADES: For the whole
16 Project?

17 THE WITNESS: Yeah.

18 COMMISSIONER CONTRADES: So in effect some
19 of the stuff we read about in all the information
20 provided to us is you're not actually going to look
21 for a source. You're going to have the County do that
22 and you're going to pay them \$2 million to do it.

23 THE WITNESS: Actually I was working with
24 the Department of Water Supply for about three years
25 now. We actually have a well permit for our property

1 adjacent to Kula Ridge. The property has a state
2 water resource well permit. We're ready to drill a
3 well if the County is interested. The mayor has
4 expressed some preliminary interest in it.

5 There's a -- it's placed in a strategic
6 location because the well location is located just
7 below the Upper Kula line. And it's located right
8 above the Lower Kula line.

9 So if the well were developed during summer
10 peak demand seasons, that well could supply
11 aquifer-based to the Lower Kula line by gravity flow.
12 Or it could also be booster pumped up to the Upper
13 Kula line and service the Upper Kula service line.

14 So it is opportunity for the County if they
15 are interested in pursuing that. As the developer of
16 that adjacent project I'm hopeful that we can be part
17 of the solution for that well as well.

18 COMMISSIONER CONTRADES: Thank you.

19 CHAIRMAN LEZY: Commissioners? Good
20 morning, Mr. Nishikawa. I have just one question for
21 you. It's more, I think, to satisfy my curiosity. As
22 you saw yesterday there's a fairly significant amount
23 of community opposition to your proposed Project.

24 And what I took away from the testimony that
25 was provided was there seems to be a pretty homogenous

1 list of concerns. Most of the testifiers talked about
2 the same concerns: the potential for runoff from the
3 Project, concerns about traffic, water problems.

4 And a lot of your testimony on direct had to
5 do with the fact that there was a lot of
6 misperceptions on the part of the community. I'm just
7 curious to know what sort of outreach you did with the
8 community. It's a fairly small community. Seems like
9 a pretty well-defined group of folks that have these
10 concerns.

11 I'm just wondering what you did to try to
12 help them understand if you believe there are
13 misperceptions about the concerns that were raised.

14 THE WITNESS: I've participated with the
15 Kula Community Association and did several
16 presentations within the community. We also held
17 evenings where we invited the public within the
18 neighborhood to share about the Project. We did
19 presentations with the Kula AARP, did presentations.

20 When Kula Hospital had a festival we went up
21 to the Kula Hospital and did a presentation or had
22 paid for a booth there to provide and share
23 information. So we were trying to get into the Kula
24 community and share our Project with them. We did
25 receive a lot of favorable feedback.

1 Unfortunately, there is a strong contingency
2 of anti-development in Kula which is why there hasn't
3 been any development in Kula for over 20 years. That
4 opposition is, well -- it's exactly like you saw it
5 yesterday. But a lot of the information they had what
6 you'll find would be construed as misrepresented.

7 And I'm hopeful that we would be able to
8 clarify some of those misrepresentations to you. If
9 there is any specific...

10 CHAIRMAN LEZY: Again, I was just curious to
11 know what you've done to try to help the community
12 understand what you believe are the misconceptions
13 regarding those concerns. Understand you've done the
14 things you've outlined. Have you addressed with,
15 again, the folks, it's a pretty identifiable group of
16 people. Have you spoken specifically with them about
17 what you call the misperceptions?

18 THE WITNESS: Yes. We've been interfacing
19 with those individuals for about five years now. I
20 don't think I'm going to change their feelings or
21 perception about wanting a development in Kula. I
22 don't think that's going to happen. I think we would
23 have to agree to disagree that whether it's
24 appropriate.

25 What I typically find is that they do

1 support affordable housing, just not in their
2 neighborhood. Just put it somewhere else. The
3 problem is if I choose somewhere else, then I'll have
4 the same issues there as well. So where do you locate
5 affordable housing?

6 When we saw the property -- and all of you
7 were there last month and saw the property -- how
8 wonderful would it be to have an affordable home that
9 has those types of views and climate and be able to
10 live, continue to live on Maui or have an opportunity
11 to live in a senior affordable home and be able to age
12 in place in those areas?

13 I continually receive letters from Maui
14 families saying, "What's the status of this? Why is
15 it taking so long?" I have a hard time answering
16 that. It's the process that we go through. But I
17 think for the most part it's a divisive line between
18 those that already have homes in Kula that want to
19 preserve what they own, and those that appreciate the
20 lifestyle in Kula that want to live here. There needs
21 to be a delicate balance to that.

22 And in my eyes after seeing that the
23 Community Plan was already designated single-family
24 and Rural, I thought that it would be an appropriate
25 venture to try and develop affordable housing there

1 specifically with the community center adjacent to the
2 property.

3 CHAIRMAN LEZY: Thank you. Anybody else?
4 Okay, thank you very much, sir. I think we'll take a
5 5 minute break.

6 (Recess was held. 10:45)

7 CHAIRMAN LEZY: (11:00 Gavel) We're back on
8 the record. Mr. Lim, do I understand that's the end
9 of your case in chief? You want to reserve time for
10 rebuttal?

11 MR. LIM: That's correct, Mr. Chairman.

12 CHAIRMAN LEZY: County, are you prepared to
13 proceed?

14 MR. HOPPER: Yes, Mr. Chair. The County
15 would like to recall Mr. Spence.

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

19 THE WITNESS: Yes.

20 CHAIRMAN LEZY: Please state your name and
21 address and your business address.

22 THE WITNESS: My name is William Spence.
23 I'm the Maui County Planning Director. My business
24 address is 250 South High Street in Wailuku.

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

1 Mr. Spence has already testified so I'm just going to
2 touch on a few matters and make him available to the
3 Commissioners for questions.

4 DIRECT EXAMINATION

5 BY MR. HOPPER:

6 Q Mr. Spence, you brought with you today a
7 couple of new exhibits. And I'd like you to go into
8 explaining what the Commissioners have in front of
9 them. You have this first document entitled,
10 Makawao-Pukalani-Kula Community Plan, correct?

11 A That's correct.

12 Q And could you explain is that document
13 certain excerpts from the adopted Community Plan?

14 A That's correct. This is an excerpt from the
15 existing Community Plan that Maui County is currently
16 operating under.

17 Q And the pages you have, is it correct that
18 on the first page, which is actually marked Page 11 as
19 it is part of a larger document, that that's a
20 statement from the Maui Planning Commission to the
21 Council explaining an amendment at that time for this
22 Petition Area and going over various details regarding
23 that amendment?

24 A That's correct. If I could explain a little
25 bit. The Commission heard a lot of testimony

1 yesterday about what is or is it not consistent with
2 the Community Plan and with the Draft Maui Island
3 Plan. So I thought this would help clarify, you know,
4 the County documents that are being referred to.

5 So this first one is the Community Plan for
6 this area covering Makawao, Pukalani and Kula. The
7 second page on this where I made a little highlight on
8 this table here, the process for this plan was pretty
9 extensive. It started out with the Citizens Advisory
10 Committee.

11 We had some meetings right across the
12 street at the community center as a matter of fact.
13 And I was one of the staff planners for this plan so
14 I'm very familiar with it.

15 In the process of doing this Community Plan
16 places, the Citizens Advisory Committee and the
17 Planning Commission the Council decided where growth
18 was going to take place.

19 In this particular -- and so this matrix or
20 this table is actually a number of pages long covering
21 from Makawao out to half way up Ulupalakua where
22 residential should go or businesses, or those kinds of
23 things. These designations are important because they
24 go to zoning, when zoning is obtained, certainly where
25 it's at least applicable here.

1 So this is just one of the things that was
2 considered. That Citizens Advisory Committee
3 considered this as a growth area. And with the page
4 on -- the map of the third page of this handout I've
5 outlined in black what was considered by the Citizens
6 Advisory Committee. There was a rural Citizens
7 Advisory Committee growth area and a single-family
8 growth area comprised of 72 acres. And at that time
9 they were considering 195 units.

10 And I honestly can't recall whether that
11 was -- there were -- when Maui County thinks of rural
12 they think of half acre lots. That's kind of a large
13 lot subdivision, the house and an 'ohana.

14 So we were -- at that time we were
15 considering the -- I can't say for sure it was a house
16 and 'ohana but I would imagine that would add up to
17 195. And then the single-family designation. So all
18 combined we were considering 195 units.

19 That went from the Citizens Advisory
20 Committee to the planning director at that time, the
21 Maui Planning Commission and then to the Maui County
22 Council. Each one of those bodies voted in favor of
23 this development mauka, roughly where the Petition
24 site is now.

25 I think in conjunction with this I think

1 the concept that an Urban area -- okay, so I'll back
2 up specifically to this Petition. This map has been
3 reconfigured, you know, for the purposes of the
4 Petition for this body has been reconfigured a little
5 bit, a larger urban area, smaller rural area.

6 But overall if you were going to talk about
7 the number of units that are going to be constructed
8 here, Petitioner's request is less than what was
9 envisioned, you know, when this plan was adopted.

10 So it's actually the units may be clustered
11 a little, you know, more densely but the number -- the
12 total number of units is actually less from what the
13 Petitioner is requesting.

14 One of the things that you heard a lot
15 yesterday was that this is out of character with this
16 area. I also wanted to include this plan because a
17 lot of these where you see the yellow for
18 single-family or the red for residential and even this
19 property here which is designated blue for a public
20 use, these are in the urban areas.

21 We're in the Urban District right now. So
22 while Maui County may consider this a rural kind of
23 country town, it definitely has some urban uses within
24 it. So...

25 Q Mr. Spence --

1 A Yes.

2 Q -- just to clarify for the record on the map
3 you see that the designation is rural and
4 single-family for this property in the Community Plan?

5 A That's correct.

6 Q It's not agriculture anymore. In '96 it was
7 changed from agriculture to what it is now rural and
8 single-family?

9 A That is correct.

10 Q And that was changed by the Maui County
11 Council?

12 A Yes it was. And it was supported all the
13 way through the process.

14 Q And in fact they're the body that adopts
15 these community plans into law, correct?

16 A That's correct.

17 Q Now, the Maui County Council also granted a
18 201H approval. In that approval it did give the
19 developer an exemption from the Community Plan or from
20 having to get a Community Plan Amendment, correct?

21 A That's correct.

22 Q Now, so that would satisfy the County
23 requirement. And at this stage we have, of course, a
24 requirement to look at the General Plan and Community
25 Plans that the Land Use Commission has. Now, while

1 this may not strictly meet the boundaries as far as
2 the urban density and rural and where they are, do you
3 believe that this development is consistent with the
4 Community Plan boundaries as they are adopted in the
5 plan?

6 A Yes. I believe this Project is consistent
7 with the Community Plan. I mentioned the number of
8 units that was envisioned when this plan was adopted.
9 The area was slated for development. And it was
10 intended to be in character with this area. And I
11 believe that is the case with this Petition.

12 Q Moving on to some of the statements
13 regarding the Maui Island Plan. I know you went over
14 this a bit before so I don't want to be too redundant,
15 but could you briefly explain what the Maui Island
16 Plan is and where it is in process right now?

17 A Okay. The Maui Island Plan -- okay. Since
18 the adoption of Community Plans in 1996 the council
19 changed the process by which the Maui County General
20 Plan and the community plans are done.

21 So what we are -- we're at the tail end of
22 the next revision of at least the General Plan. In
23 this case we have an islandwide plan. This is a draft
24 document that's currently in front of the Maui County
25 Council. It is not law as of yet. So without a doubt

1 there's going to be quite a number of changes between
2 now and the time it's finally adopted by the council.

3 I brought this -- I want to bring this to
4 the attention of the Commission also because the, you
5 know, there was a lot of testimony yesterday saying
6 that this Project isn't consistent with that draft
7 plan.

8 So what I did is -- and you heard testimony
9 saying this was a rural area. So what I did was I
10 looked at the draft plan that's before the council. I
11 looked at the map. You can see on Page 2 I
12 highlighted the Petition Area. And the Petition Area
13 is included in the Rural Service Center boundary and
14 in the Rural Residential Center boundary -- Rural
15 Residential boundary.

16 So then what I also took is this table on
17 top and let you see the definitions. The point of
18 doing this was also saying that, you know, there are
19 urban uses permitted within these proposed boundaries
20 for the Maui Island Plan.

21 Q So, Mr. Spence, just again these are
22 excerpts, this other exhibit here that begins with
23 "Directed growth plan," those are excerpts from the
24 Draft Plan that the County Council is reviewing at the
25 station?

1 A That's correct.

2 Q Okay. These are recommendations that you as
3 planning director made to the County Council?

4 A No. My predecessor made these to the County
5 Council. There's -- and I should say that -- again,
6 we're going back to a Citizens Advisory Committee, the
7 General Plan, the GPAC, it went to the Maui Planning
8 Commission and the previous planning director. And
9 all of this information was transmitted to the
10 council. So this is not set in stone as yet.

11 Q But you support this designation here.

12 A Yes, I do.

13 Q Could you explain what a rural growth
14 boundary is.

15 A The idea behind having growth boundaries is,
16 there's a number of reasons to have them. One is to
17 concentrate development in areas where you would like
18 it to take place.

19 It's more efficient to provide
20 infrastructure, County services, those kinds of things
21 rather than spreading them across the countryside.

22 By having the growth boundaries -- and this
23 is a 20-year plan -- you're supposed to be looking
24 down the road where are we going to be accommodating a
25 growing population. So we're looking at that and

1 saying: Well, these are the appropriate areas.

2 Within the context of this area, you know, you have a
3 small country town and, you know, it's going to grow a
4 little bit.

5 The idea about doing this plan is that it's
6 not going to grow outside the character that it's
7 already in. That's why it's in the rural area versus
8 an urban boundary which would be around Kahului or
9 Kihei or Lahaina.

10 Q So, Mr. Spence, in your opinion with this
11 area inside these rural growth boundaries is this
12 Project -- I should say -- strike that -- should these
13 boundaries be adopted as proposed would this Project
14 be consistent with the Maui Island Plan?

15 A Yes. This Project would be consistent with
16 the plan.

17 Q Okay. And moving on. You've heard the
18 testimony of Mr. Pascua today. What impact do you
19 believe this Project would have as far as traffic on
20 Lower Kula Road?

21 A My thoughts about Lower Kula Road it is
22 narrower than a lot of the roads in this area. I
23 can't speak directly to the rights-of-way or the lane
24 widths. But I know it is a rural kind of road, rural
25 in character.

1 Q What kind of traffic impacts do you believe
2 this Project will have on that road?

3 A I think a lot of those -- certainly at the
4 intersections, which I believe Mr. Pascua has
5 addressed, turning lanes with Kula Highway and Lower
6 Kula Road, I can't particularly say, you know.

7 I'll just say that I have not personally
8 been on this road during school peak or when school
9 lets out or the evening peak. So I can't really say
10 what the conditions of the roadway are like. I
11 believe that would also be covered by the TIAR.

12 Q Okay. You're familiar with the County
13 Council's requirement of the placement of a sidewalk
14 for this Project?

15 A Yes, I am familiar with that requirement.

16 Q Ideally, what would be the alignment of the
17 sidewalk in your opinion?

18 A In my opinion I believe the sidewalk should
19 be on the makai side. You have -- I can't say --
20 well, Haleakala Waldorf School is on the makai side of
21 the road.

22 At least the existing housing here along
23 this stretch of Lower Kula is also on the makai side.
24 I can't say how many students are going to be in the
25 Petition Area.

1 But you also have this sidewalk that's
2 starting up towards Morihara Store and Café 808 have
3 the sidewalk on this side of the road already on the
4 makai side. It would make more sense.

5 If you're trying to avoid people crossing
6 the roadways on their way home from school or
7 whatever, it would make more sense to have the
8 sidewalk on this side, on the makai side.

9 Plus if they do have to cross over to the
10 Petition Area I'm going to say that it's probably --
11 right in this area will probably be a better place to
12 cross than closer down at Haleakala Waldorf School.

13 Q Mr. Spence, you understand the Maui County
14 Council's condition allows for the possibility of a
15 sidewalk being on either the mauka or makai side.

16 A That's correct.

17 Q And do you believe that condition's
18 sufficient? You would be satisfied if it was on
19 either side, though, the preference would be the makai
20 side in your opinion?

21 A My preference would be on the makai side.

22 Q But you would be satisfied in either case?

23 A I -- I believe the condition says "in
24 conjunction with Public Works". So, yeah, I would be
25 satisfied with that.

1 Q So you're satisfied at this stage that the
2 parties are still discussing both sides as a
3 possibility.

4 A Yes, that's correct.

5 Q You do understand that there are also going
6 to be required other traffic calming measures per the
7 Council condition which should include raised
8 crosswalks, speed humps, warning light or other
9 measures as was discussed in the traffic testimony?

10 A Yes, that's correct.

11 Q You believe these are adequate mitigation
12 measures for this Project?

13 A I think for the purposes of this stretch of
14 the roadway it would be adequate.

15 MR. HOPPER: Thank you, Mr. Spence. I have
16 no further questions.

17 CHAIRMAN LEZY: Petitioner?

18 MR. LIM: Just a couple questions.

19 CROSS-EXAMINATION

20 BY MR. LIM:

21 Q Just a couple questions. Mr. Spence, the
22 sidewalk issue of what side it would be, mauka versus
23 makai, would the availability of an easement across
24 the properties fronting Lower Kula Road have any
25 bearing whether it was on the mauka or makai side?

1 A I think that that's -- I know the landowner
2 there on the makai side has expressed a willingness to
3 -- I think that has come to the Commission in the form
4 of public testimony in a letter -- that they're
5 willing to participate. I mean of course, it's going
6 to make a difference whether there's an easement or
7 not.

8 Q With regard to the makai property owner for
9 the sidewalk easement, is he willing to contribute
10 that free of charge or is he willing to do that as
11 part of his CUP application for the office uses?

12 A I don't know. I don't know. I have not
13 spoken to them specifically about that.

14 Q You heard Mr. Nishikawa say today that the
15 mauka property owners that he's dealt with have agreed
16 to contribute that easement free of charge?

17 A That's what I've heard. I think my personal
18 belief, and I'll admit I'm not a traffic expert, but
19 my personal knowledge of this area is that I believe
20 it would be better for the school if the sidewalk goes
21 on the makai side.

22 Q You were here yesterday for the testimony
23 from the, I think it's the president of the school or
24 chair of the school, that indicated that the Waldorf
25 School is at capacity?

1 A Yes. I believe that's the case. I believe
2 that's what I heard.

3 Q And I guess you also heard that she
4 anticipated that most of the affordable buyers'
5 children would not be able to afford without
6 scholarship attending the Waldorf School?

7 A Yes. I heard that testimony.

8 Q Well, with respect to the Lower Kula Road
9 improvements, is it your expectation that the
10 Department of Public Works during the subdivision
11 process will apply its standards for road improvements
12 and those types of things?

13 A Yes. I did -- that dawned on me yesterday.
14 I was looking through the list of exemptions for the
15 County Council and that was not one of them.

16 So in the subdivision process the
17 Department of Public Works will -- I don't deal with
18 the subdivision code an awful lot. I'll just say in
19 my conversation with Public Works Director David Good
20 he said they would probably be requiring roadway
21 improvements along the frontage of the Petitioner's
22 property.

23 Q And if the Petitioner committed to do that
24 would the County of Maui be satisfied with those road
25 improvements?

1 A The condition by the County Council is in
2 conjunction with Public Works. I'm not the one to
3 make that determination.

4 MR. LIM: Thank you. No further discussion.

5 CHAIRMAN LEZY: Office of Planning?

6 MR. YEE: No questions, thank you.

7 CHAIRMAN LEZY: Redirect, County?

8 MR. HOPPER: No questions, Mr. Chairman.

9 CHAIRMAN LEZY: Commissioners, questions?
10 Commissioner Judge.

11 COMMISSIONER JUDGE: 'Morning, Will.

12 THE WITNESS: Good morning, Commissioner
13 Judge.

14 COMMISSIONER JUDGE: Let me start with the
15 handout you gave us today on the Makawao-Pukalani-Kula
16 Community Plan.

17 THE WITNESS: Sure.

18 COMMISSIONER JUDGE: This is the existing
19 plan, correct, that was adopted in 1996?

20 THE WITNESS: That's correct.

21 COMMISSIONER JUDGE: So most of this
22 discussion took place in the early '90's, would that
23 be correct?

24 THE WITNESS: Yes. Adopted in '96.
25 Discussion probably took place in 1994 and 5.

1 COMMISSIONER JUDGE: And when I look at
2 this, if I follow you, if you can help me with the
3 math, the 195 possible units if you're saying that's
4 based on, you know, rural lots, half acre lots, plus
5 'ohanas and then you would take the 72 times 2, come
6 up with 144 and subtract that from 195 and end up with
7 51 single-family? Is that what you're trying to say?
8 I'm trying to figure out how you get to that 195 from
9 the 72.

10 THE WITNESS: I think it's simpler to say --
11 well, this is in the document available online.
12 That's where I pulled this from. I did not go back
13 and look in the record from, you know, '94, '95 as to
14 the actual intent of was it house and 'ohana or
15 whatever. So I can't say that definitively.

16 The discussion -- all I can say definitively
17 is the discussion at that time was for 195 total
18 units. I know that's not answering your question
19 exactly.

20 COMMISSIONER JUDGE: So it's hard to say.
21 We don't have the background right now to say how that
22 195 was calculated.

23 THE WITNESS: No. Probably -- I would say
24 probably by the landowner at that time. The practice
25 at that time the landowners would come forward and

1 say, "Hey, I'd like to grow in this area. This is how
2 many units I'd like to build. This is how many acres
3 I think I'd need to be able to do this."

4 COMMISSIONER JUDGE: He probably had a plan
5 that showed that "This is what I'm trying to do."

6 THE WITNESS: Mm-hmm.

7 COMMISSIONER JUDGE: Okay. And at that time
8 it was 15 acres of single-family --

9 THE WITNESS: That's correct.

10 COMMISSIONER JUDGE: -- that they were
11 proposing versus the 34 that we're looking at today.

12 THE WITNESS: That's correct.

13 COMMISSIONER JUDGE: And that's what the CAC
14 had voted upon.

15 THE WITNESS: Yes.

16 COMMISSIONER JUDGE: Okay. Looking at the
17 second piece of information you gave us today, the
18 Maui Island Plan, and I understand it's a draft, but
19 that did go through quite a lengthy community process,
20 did it not?

21 THE WITNESS: Yes, it did.

22 COMMISSIONER JUDGE: I think Doug MacCluer
23 was here yesterday testifying. Was he part of that
24 plan, that CAC?

25 THE WITNESS: Yes he was.

1 COMMISSIONER JUDGE: Okay. And he's the one
2 that testified during that that they had not put this
3 in for directed growth. So there's a conflict there.

4 THE WITNESS: Yes. I guaranty there will be
5 a conflict more by the time this plan is adopted. My
6 understanding from -- I looked -- if you're into this
7 kind of thing you follow it, it kind of makes sense.
8 If you just take a quick peek it's kind of hard.

9 The General Plan Advisory Committee, the
10 GPAC, which Doug was apart of and Mr. Mayer, who's
11 present today also was a part, they looked where
12 certain growth areas were going to be and voted to
13 include them in the growth boundaries or not. That
14 also went to the Planning Commission.

15 I forget which order my predecessor planning
16 director made some decisions on the recommendations.
17 And all those things went up to the County Council.
18 My understanding is this map was changed after the
19 County council voted in favor of the 201H project.

20 So it's like the council have already
21 decided this. Let's make it consistent with the plan.
22 So they put it forward that way.

23 COMMISSIONER JUDGE: So if I understand what
24 you're saying is that the map that the GPAC had passed
25 is not this map that we're looking at today.

1 THE WITNESS: That's correct. This is the
2 current map what you're looking at.

3 COMMISSIONER JUDGE: Okay. This is not the
4 map that the community voted on. This is a map that
5 includes ...

6 THE WITNESS: That's correct. The map that
7 I've handed out today is what is currently in front of
8 the County Council and currently what they will act
9 on.

10 COMMISSIONER JUDGE: Okay. Okay. All
11 right. If I look at this, if I'm correct that that
12 little yellow outline is where the Project Petition
13 Area is, is that correct?

14 THE WITNESS: Yes.

15 COMMISSIONER JUDGE: So it's included partly
16 in the rural/service center and partly in the rural/
17 residential.

18 THE WITNESS: That's correct.

19 COMMISSIONER JUDGE: If I go now to the
20 second page with the descriptions and I'm looking at
21 the implementation strategy for the rural/service
22 center where it calls for "utilizing rural design
23 guidelines, appropriate infrastructure and subdivision
24 standards to protect the rural character."

25 Does the Petition that we're looking at

1 today utilize rural design guidelines and subdivision
2 standards?

3 THE WITNESS: I believe -- well, let me
4 answer that two ways. I believe he uses rural design
5 guidelines both in terms of the design of the units
6 because I've looked kind of briefly through the
7 Petition at the actual architecture that's going to be
8 used. I think it does fit in the character of the
9 Kula area.

10 One of the exemptions that he got from the
11 County Council was a little bit narrow roadway within
12 the subdivision itself that also keeps in more the
13 character of the Kula area.

14 The actual density that's being proposed is
15 a little bit denser than what's up here, but this area
16 is such a mix. Mr. Nishikawa pointed out there's
17 6,000 square foot lots just makai of here. I did make
18 a point of looking at this area last night.

19 And there's 6500 square foot lots, 6200,
20 8,000 and a couple of 10,000 square foot lots. So
21 it's quite a mixture. But smaller lots are not
22 unusual for this area.

23 COMMISSIONER JUDGE: But the lots for the
24 senior duplexes are about, what, 7500? So that would
25 put two houses, what, like roughly 3,700? 3700? My

1 math isn't good. We don't have -- I mean is there
2 anything like that you're familiar with in the Kula
3 community?

4 THE WITNESS: The closest for -- I'm trying
5 to say Kula Malu but that's more multi-family or
6 townhouses. No, this would be a first in this area I
7 think to have duplexes within this, you know,
8 immediate area.

9 COMMISSIONER JUDGE: Okay. You were here
10 yesterday and heard the testimony about the Lower Kula
11 Road.

12 THE WITNESS: Yes.

13 COMMISSIONER JUDGE: And you were here this
14 morning when Mr. Pascua talked about the TIAR. I did
15 ask him directly did he look at traffic on Lower Kula
16 Road. He basically said, no, he was mostly -- his
17 look at was at the intersections and the impact on the
18 intersections.

19 So is it your understanding -- I didn't
20 understand earlier when you said the TIAR -- that
21 would be covered under the TIAR, the traffic on Lower
22 Kula Road.

23 THE WITNESS: Certainly the traffic
24 generation and the turning movements out of the
25 Project and that kind of thing would be covered in

1 that.

2 COMMISSIONER JUDGE: Okay. So I think -- I
3 believe Mr. Pascua said there's something like 90 to a
4 hundred more cars that are going to be generated.

5 THE WITNESS: Okay.

6 COMMISSIONER JUDGE: And I also believe that
7 you testified that the road, in your opinion, or to
8 your knowledge, is still pretty narrow and it's a
9 rural road in character, is that correct?

10 THE WITNESS: Yes, that's correct.

11 COMMISSIONER JUDGE: It's not an urban road.

12 THE WITNESS: No, it's not.

13 COMMISSIONER JUDGE: Okay. The water. We
14 heard testimony from Mr. Nishikawa earlier about the
15 County and the discussions that have been going on at
16 the council between the director of Water Supply.

17 Are you going to be putting any more
18 information about that on the record about these 17
19 new sources and the availability of water? Because
20 that seems to be pretty critical information.

21 THE WITNESS: What I have is the letter that
22 the Commissioners have from the mayor dated August 17,
23 2011. I believe that's Commissioners' Exhibit 10 --
24 excuse me County's Exhibit 10. I wish I had made that
25 presentation that Mr. Taylor made to the council but I

1 missed it. So I don't really know what 17 different
2 sources he was referring to or if he even gave
3 information directly.

4 I am aware of the discussions, and I should
5 say peripherally aware of the discussions with
6 Pi'iholo South. That is certainly a possible source.

7 MR. HOPPER: Mr. Chair, we could offer to
8 supplement the record with a copy of Mr. Taylor's
9 presentation to the council. He's already testified
10 so I do not intend on recalling him. But we could
11 offer his written report that we gave to council or a
12 transcript of that meeting, if we could get it, and
13 submit that as an exhibit if that would be helpful to
14 you.

15 CHAIRMAN LEZY: Commissioner Judge?

16 COMMISSIONER JUDGE: I think that's
17 important, absolutely.

18 MR. HOPPER: We could do that.

19 CHAIRMAN LEZY: Petitioner, any objections?

20 MR. LIM: We have no objections.

21 CHAIRMAN LEZY: Office of Planning?

22 MR. YEE: No objection.

23 CHAIRMAN LEZY: Please go ahead, do that,
24 submit it to the staff.

25 MR. HOPPER: Yes, we will.

1 COMMISSIONER JUDGE: Again, my concern is
2 that this body, this Commission heard a District
3 Boundary Amendment on another parcel down in Pukalani
4 within the last couple years where they testified
5 about a well and that we were going to have -- we were
6 going to have water.

7 The County even testified oh, yes they're
8 going to get water. And they never got water. So
9 that's, I think, a very important critical aspect for
10 us to look at.

11 So I'm going to go back to what you
12 testified about the Public Works and the subdivision
13 process. I have limited knowledge about that, but I
14 remember as part of the subdivision you have to
15 provide legal access both ways. I think they say
16 26 feet on either side. Again, I don't know that. Do
17 you have anybody from Public Works coming?

18 MR. HOPPER: No. But, again, if that's a
19 question we'd be happy to follow up with Public Works
20 on that. We did not have Public Works on the witness
21 list.

22 COMMISSIONER JUDGE: Here's my question.
23 Because Lower Kula Road is very narrow, and I have a
24 nine year-old son and we go to basketball games. He
25 plays at the gym. And when that occurs there's cars

1 everywhere and only one car can go through there at a
2 time. The cars have to pull over. You can't get
3 through.

4 And it's an old neighborhood. It's rural
5 like you said. There's -- people have their houses
6 there, they have their rock walls there. If a 26-foot
7 access is going to be required, they perhaps -- and I
8 don't know this -- they might have to condemn property
9 to widen that road.

10 And I don't know whose responsibility that
11 is, if it's the Petitioner's responsibility or is it
12 the County's responsibility? I just don't know. But
13 I think for this community that's important to know
14 what's gonna happen because there's going to be no
15 other public hearings on this.

16 From here it goes straight to subdivision if
17 I'm correct. They don't have to go through zoning.
18 They don't have to go through community plan
19 amendments. They go straight to subdivision which is
20 not a public meeting.

21 And I think to urbanize Lower Kula Road has
22 a huge impact on this community. And if that's going
23 to happen I think we need to know about it.

24 MR. HOPPER: You're talking about the
25 potential road widening of Lower Kula Road along the

1 frontage of this property?

2 COMMISSIONER JUDGE: Not just the frontage,
3 no. I'm talking about all along Lower Kula Road.
4 Because in my experience going to the Public Works
5 Department they make you provide proof of legal access
6 from County roads. I don't know.

7 I don't know how that works. But if it's
8 just the frontage or if any of this is going to have
9 to be improved because at some of point down the road
10 with another hundred cars somehow this road's going to
11 have to be -- it's being urbanized, it's going to have
12 an urban road. And if that's going to happen, how is
13 it going to happen and who's going to pay for it?

14 CHAIRMAN LEZY: Mr. Lim?

15 MR. LIM: Mr. Chairman, perhaps some of
16 those questions can be answered. We have our Project
17 engineer Stacy Otomo who I'm going to call on redirect
18 and maybe he's going to be rebuttal.

19 COMMISSIONER JUDGE: Okay.

20 MR. HOPPER: We can submit a letter from the
21 Public Works director. Basically I just want to make
22 sure the questions are clear. In addition to frontage
23 will there be any requirements for this Project for
24 the subdivision, anything related to the required
25 widening of Lower Kula Road you want information on

1 that, whether or not that would be a subdivision
2 requirement?

3 COMMISSIONER JUDGE: Yeah. I guess my
4 question would be: During the subdivision process
5 what roadway improvements will be required from the
6 Petitioner?

7 CHAIRMAN LEZY: Are you done, Commissioner
8 Judge?

9 COMMISSIONER JUDGE: Yes.

10 CHAIRMAN LEZY: Commissioners, any other
11 questions?

12 MR. HOPPER: Mr. Chair, could I have a brief
13 redirect?

14 CHAIRMAN LEZY: No questions? Sure, go
15 ahead.

16 REDIRECT EXAMINATION

17 BY MR. HOPPER:

18 Q Just briefly, Mr. Spence. You talked about
19 that you believe that the Project was placed in the
20 rural growth boundaries of the draft plan after the
21 Project was approved by the County council?

22 A Yes. I asked my planning staff this morning
23 at what stage of the process this Project Area, the
24 Petition Area got into the Maui Island Plan maps. And
25 he said after the County council approved the 201H

1 project.

2 Q So the intent of recommending that the
3 council place this in these boundaries was, in part,
4 to have this Project included in those boundaries?

5 A That's correct.

6 Q So it would follow that the boundaries, if
7 they're adopted like this, that this Project would be
8 consistent with those boundaries?

9 A Yes. That's correct.

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

12 CHAIRMAN LEZY: Commissioner Judge, do you
13 have a follow-up?

14 COMMISSIONER JUDGE: Sorry, I had one more
15 question, Will. Yesterday Barbara Oura testified, and
16 I know show testified as an individual. But she's the
17 principal of Kula School.

18 And one of the things she testified about
19 was the safety of the children walking from this
20 Project down to Kula School because there is no way --
21 they're in bus range. There's no way -- there's no
22 sidewalks anywhere or ways to get to Kula School from
23 here.

24 And I think the Purdy Family also expressed
25 those concerns. Their family, they have to pick their

1 kids up because they won't let their kids (a) cross
2 and there's no way up, and there's no sidewalk
3 along -- there's no sidewalks along Kula Highway and
4 there's no sidewalks on Lower Kula Road from Copp Road
5 getting to this Petition Area.

6 So, again, would that fall on the County to
7 provide safe passage for those kids? Who's that going
8 to fall upon to provide safe passage since this is an
9 urban area?

10 THE WITNESS: Certainly that would be a
11 Public Works project. I've heard the particular
12 comment for years now the people from this area or I
13 should say the kids from this area walking to school,
14 you know, they cross private property and it's
15 basically just a path.

16 That could be -- I believe it would probably
17 be the County's responsibility if that was something
18 that the County wanted to pursue. They have their
19 budget hearings every year. And they go through that
20 cycle. They put particular projects in like this.

21 COMMISSIONER JUDGE: Okay. So that would be
22 probably a County responsibility. And there is no
23 safe passage right now from this Petition Area to the
24 Kula School.

25 THE WITNESS: I have never walked those

1 paths. So I can't say whether they're safe or not.
2 But certainly there is no public sidewalk from this
3 area down to the school.

4 COMMISSIONER JUDGE: Okay. Thank you.

5 CHAIRMAN LEZY: Commissioners, any
6 additional questions? Thank you, Mr. Spence.
7 Mr. Hopper, that's your final witness?

8 MR. HOPPER: Yes, Mr. Chair. The County
9 rests at this point.

10 CHAIRMAN LEZY: Would you state for the
11 record the additional exhibits you'll be offering?

12 MR. HOPPER: Yes. We will contact Dave
13 Taylor who made a presentation to the council, as I
14 understand it, regarding water throughout the County.
15 I don't think it was limited to just Upcountry. So we
16 can see what in writing he submitted to the council.

17 I could also look into providing the council
18 minutes as soon as they're available on that
19 presentation.

20 In addition, we're going to speak with David
21 Good, Public Works director, and request provided what
22 Mr. Otomo states, request basically what improvements
23 will be required for this subdivision under Title 18.

24 Again, there were some exemptions granted
25 but we would ask based on the exemptions granted what

1 improvements would be required for the subdivision.

2 CHAIRMAN LEZY: That would be County's
3 Exhibits 10 and 11 then?

4 MR. HOPPER: 12 and 13. Today we had 11 and
5 12 if we count those. So 13 and 14, I believe.

6 CHAIRMAN LEZY: Mr. Hopper, can you have
7 those additional exhibits submitted to the Commission
8 staff within two weeks from today?

9 MR. HOPPER: I will. Yes, I don't think
10 that would be a problem. I need to see what Public
11 Works would do. I don't know if at this stage they
12 would typically make all of the subdivision
13 requirements, if they would look over that at this
14 point. We should be able to get you something within
15 that two weeks and explain what it is essentially, if
16 it's missing anything.

17 CHAIRMAN LEZY: Can I ask that you contact
18 staff next week Friday and let them know what the
19 status is as far as being able to meet that two-week
20 requirement?

21 MR. HOPPER: That's fine. I'll send out
22 messages today to those departments. And then we'll
23 follow up next week. Next Friday we'll let the staff
24 know. I'll call Mr. Davidson maybe.

25 CHAIRMAN LEZY: Thank you. Office of

1 Planning are you prepared to proceed?

2 MR. YEE: Yes. We have one witness, Jesse
3 Souki, the director of the Office of Planning. For
4 the Commission's information given the agreement, we
5 are not calling a Department of Transportation
6 witness. And I did not hear any witnesses
7 specifically related to the state roads.

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

11 THE WITNESS: Yes.

12 CHAIRMAN LEZY: Please state your name and
13 your business address.

14 THE WITNESS: Jesse Souki, Hawai'i State
15 Office of Planning. I don't give my address out too
16 much. 230 South Beretania Street.

17 CHAIRMAN LEZY: With that, please proceed
18 Mr. Yee.

19 DIRECT EXAMINATION

20 BY MR. YEE:

21 Q Mr. Souki, you're the director of the Office
22 of Planning, is that correct?

23 A Yes, I am.

24 Q As the director could you please provide us
25 with the position of the Office of Planning in this

1 matter?

2 A Good morning, Commissioners and Chair Lezy.
3 This is sort of more on the testimony and position
4 statement we already submitted. So we're just
5 embellishing on that, focusing on the issues that came
6 up during the proceedings.

7 So to start out off the Office of Planning
8 develops its position. It evaluates whether the
9 Project meets the LUC decision-making criteria as well
10 as its conformance with the Coastal Zone Management
11 Act, objectives and policies.

12 In addition, the Office of Planning expects
13 petitioners to review their proposal with respect to
14 the Administration's priorities implementing the goals
15 of the Hawai'i State Plan and the Administration's
16 New Day Comprehensive Plan.

17 We encourage and welcome early consultation
18 with our office to discuss the Petition and the
19 criteria particularly in the areas of statewide
20 concern and how the proposed project will incorporate
21 Best Practices to encourage that the project advances
22 the state sustainability priority guidelines which
23 were recently enacted.

24 We also strongly recommend that petitioners
25 consult with affected state agencies early in the

1 project formation process, and that they continue to
2 do so so that potential impacts to resources,
3 facilities and services managed, provided by the State
4 and appropriate mitigation measures are identified and
5 carried out.

6 I would also like to note that our position
7 is weighted in favor of affordable housing because
8 this is a 201H Project. The Legislature, as you know,
9 in their wisdom passed a 201H and it will fast track
10 affordable housing.

11 And it allows petitioners and landowners
12 who are developing affordable housing projects that
13 qualify under 201H to be exempt from all statutes,
14 ordinances, charter provisions and rules related to
15 zoning, subdivision planning and so forth.

16 So with that in mind, having reviewed the
17 Petition, my staff and with the help of our attorney,
18 the Office of Planning supports the Petitioner's
19 request for reclassification with conditions. We
20 anticipate reaching substantial agreement on the Final
21 Decision and Order including all of the conditions to
22 be applied in this case.

23 The Project is consistent with the
24 Administration's New Day priorities by, among other
25 things, generating workforce housing for Maui's

1 residents, creating construction-related job
2 opportunities for our local workforce. And the
3 Project will incorporate park and open space areas
4 that will provide view corridors within and throughout
5 the Project.

6 The Project includes 34.5 acres to be
7 reclassified from Agricultural to Urban and 16.5 acres
8 from Agricultural to Rural. Again, this is a 201H
9 affordable housing project.

10 And based on the record no more than 120
11 residential units will be developed. It's estimated
12 that 36 of these units will be affordable
13 single-family homes, 34 will be affordable senior
14 duplex units, 42 market lots and 4 large lots plus
15 four accessible living dwellings.

16 As a qualifying 201H Project the Petition
17 meets the guidelines for affordable housing under the
18 State Planning Act. And although not directly
19 consistent, although the planning director said that
20 the plans were consistent for the Community Plan and
21 Maui Island Plan, it was one of the exemptions under
22 the County Council's 201H related ordinance.

23 So there are several issues that I wanted
24 to cover. The first issue, and this is not to
25 diminish all the other important issues we mentioned

1 in our testimony and statement, potable water.

2 The precise method by which the Petitioner
3 will get its water is unclear, although the Petitioner
4 did raise alternatives. We'd like to clarify here
5 that this does not seem to be an issue of whether
6 water is available, sources, but whenr and how it's
7 going to be delivered to the Project.

8 And having seen Exhibit 10 from the County,
9 August 17, 2011 letter from the mayor and the
10 testimony on the record, we believe that water will be
11 provided somehow to these new residents but that the
12 at least it's being negotiated as we speak.

13 Although a greater level of certainty would
14 have been preferable, we believe that the Petitioner
15 should be given an opportunity to move forward. There
16 are three major reasons why we feel this way.

17 The first is that this is a 201H affordable
18 housing project.

19 The second is that the Petitioner is at
20 least willing to pay up to \$2 million to improve the
21 County's water system.

22 And 3: The Petitioner will comply with the
23 County's "show me the water" quote, unquote ordinance
24 under chapter 14.12 of the Maui County Code before
25 final subdivision approval. And this will be a

1 condition of approval as well.

2 In the final analysis if the Petitioner is
3 unable to get its water meter or supply water the
4 deadline for infrastructure construction will lapse
5 and the Petition Area will be subject to reversion.

6 'Til then, however, Petitioner should be
7 given an opportunity to provide needed affordable
8 housing to the citizens of Maui particularly in the
9 Kula region where there's an apparent shortage.

10 Regarding the issue of sustainability, the
11 Petitioner has agreed to do the following sustainable
12 practices: Energy Star appliances for all the homes
13 built, Energy Star advanced lighting packages, US EPA
14 water sense plumbing fixtures, solar water heaters
15 with insulated hot water lines. All homes will be PV
16 ready and PV systems will be offered for purchase.

17 Work with the County to ensure consistency
18 with the greenway master plan for the area. Siting
19 homes along the east/west access to maximize natural
20 cooling and to minimize heat gain. Space for
21 recycling and material diversion within the lot plans.
22 R-13 insulation for exterior walls. And R30
23 insulation in attic areas. And to the extent
24 feasible, low impact development measures such as
25 grass swales for the Project.

1 Given the cost restrictions on affordable
2 housing and that again this is a 201H project, these
3 measures are consistent with the principles of
4 sustainability set forth in the Hawai'i State Plan.

5 Regarding traffic: The Petitioner has
6 agreed in consultation with DOT, Department of
7 Transportation, to revise its TIAR to include, among
8 other things, an updated traffic count, inclusion of
9 Copp Road in its Project Impact Analysis, a review and
10 further substantiation for the traffic counts for the
11 elderly housing and the 3-acre park, construction of
12 the mitigation measures recommended by the TIAR
13 including the left-turn storage lane from Kula to Old
14 Kula Road.

15 And in addition, the Department of
16 Transportation has let our office know that
17 Exhibit 34A, which was submitted by Petitioner and
18 lists out and enumerates the types of issues that will
19 be considered in the TIAR, are agreeable to the
20 Department of Transportation based on their recent
21 meeting with Petitioner.

22 With this agreement the State Department of
23 Transportation has conveyed to us they have no
24 objection to their reclassification conditions which
25 Petitioner has agreed to.

1 Regarding drainage: Water will be diverted
2 to a detention basin with any overflow into the
3 Keahuaiwi Gulch. Although it's preferable that the
4 overflow to the gulch rather than into neighboring
5 properties, low impact development can reduce the
6 burden or strain on the detention basin.

7 And by "low impact development measures" we
8 mean water catchment, using water barrels fo the
9 units, allowing more permeable surfaces. We have a
10 guidebook that the Petitioner can use.

11 The Petitioner has agreed to implement that
12 where to the extent feasible and prudent. Our concern
13 here is based on the fact that water that ends up in
14 the gulch will eventually reach the shoreline.
15 There's a concern any water that might end up in the
16 gulch is not carrying contaminants or too many
17 suspended solids.

18 Regarding archaeological and cultural
19 impacts, the Archaeological Inventory Survey
20 identified the significant archaeological sites and
21 appropriate measures for preservation is identified
22 therein.

23 A monitoring plan during construction is
24 required to be submitted for SHPD's, State Historic
25 Preservation Division's approval before any ground

1 disturbance work. Based on the record there isn't any
2 evidence of any existing gathering practices of any
3 plants associated with gathering rights within the
4 Petition Area.

5 The Petition Area has been in cultivation
6 and used by agricultural groups for agricultural
7 purposes for many years. Based on the evidence of the
8 record in this case the risk of cultural impacts due
9 to reclassification appears to be low.

10 Some miscellaneous items that we have been
11 in discussions with the Petitioner and we have brought
12 up on the record: Regarding Civil Defense, Petitioner
13 has agreed to provide a warning siren as required by
14 the state Office of Civil Defense.

15 Regarding wastewater: Petitioner has
16 agreed to comply with the Department of Health's
17 requirements for aeration of individual wastewater
18 systems including the requirement for single entity
19 being responsible for the annual maintenance, annual
20 reports and variance extension requests.

21 Regarding deadlines: The Petitioner has
22 agreed to a ten year infrastructure deadline. For
23 example, roads and sewer and electricity, water and
24 telephone, et cetera.

25 Regarding the County Council resolution No.

1 1057: Petitioner has agreed to comply with the
2 requirements of that resolution as it relates to the
3 requirements and exemptions under 201H.

4 Regarding scenic and open spaces:
5 Petitioner has proposed to place all utilities
6 underground and to use grade differentials to mitigate
7 views of the Project property from Kula Highway
8 downslope and along Kekaulike Highway upslope. And
9 that the proposed development will not block scenic
10 vistas or viewplanes.

11 Generally the Petitioner has agreed to
12 comply with all mitigation measures recommended by its
13 consultants in its July 2008 Environmental Assessment
14 and supporting studies.

15 In conclusion, based on the evidence in the
16 record and Petitioner's representations therein the
17 Office of Planning recommends approval of this
18 Petition for Reclassification with conditions.

19 Q Mr. Souki, I just want to clarify one
20 statement you made regarding the availability of
21 water. By that I take it you mean that the issue is
22 not how much water is in the aquifer. The issue is
23 whether a well exists to draw that water up.

24 A Yes, that's accurate.

25 Q So the water meter problem -- getting a

1 water meter isn't that there isn't enough water in the
2 ground. It's that there aren't enough wells or other
3 means by which the water can be transported.

4 A It's wells and water infrastructure.

5 Q That's the only clarification.

6 I have no further questions.

7 CHAIRMAN LEZY: Petitioner?

8 CROSS-EXAMINATION

9 BY MS. BENCK:

10 Q Good morning, Mr. Souki.

11 A Good morning.

12 Q Thank you for your testimony. I just have a
13 couple quick questions as well.

14 A Sure.

15 Q And it's again about the water. I'm sure
16 you're aware of it, but I'll just ask the Land Use
17 Commission standards for urban classification under
18 15-15-18 --

19 THE REPORTER: Ms. Benck, would you bring
20 the microphone a little closer, please.

21 MS. BENCK: Sorry.

22 Q One of the things that the Commission has to
23 take into account is the availability of basic
24 services. That sound correct to you?

25 A Yes.

1 Q Would you consider water a basic service?

2 A Yes.

3 Q Now, in your experience at a
4 reclassification stage, which is quite early in the
5 development stage, do most projects that are coming
6 before the Commission asking for reclassification have
7 full water infrastructure built and ready to go?

8 A No.

9 Q Thank you. And are you familiar with the
10 Land Use Commission's requirement for buildout on
11 urban reclassification? In other words, how quickly
12 does a project have to get built?

13 A Could you restate that question?

14 Q I'm sorry. One of the criteria that must be
15 discussed in a Petition is the development timeframe.

16 A Yes.

17 Q And for urban reclassification that
18 development timeframe is -- I'm asking if you're
19 familiar with what that period is.

20 A It's ten years.

21 Q That's correct. Thank you. So in light of
22 the Commission's obligation to consider the
23 availability of basic services, and also in
24 consideration of the ten year buildout period, is it
25 reasonable to assume that the expectation is that

1 things like water and other infrastructure is not
2 wholly secured at the point of reclassification but
3 that it better be secured and completed within ten
4 years of the reclassification?

5 A Right. To say it in another way, they need
6 to have that water infrastructure in -- well, the
7 condition will say before, I believe, subdivision
8 approval. But also before the ten years, yes.

9 Q Thank you.

10 MS. BENCK: I don't have any further
11 discussion.

12 CHAIRMAN LEZY: County?

13 CROSS-EXAMINATION

14 BY MR. HOPPER:

15 Q Just one quick question regarding the
16 infrastructure deadline again. If the Petitioner
17 fails to meet that deadline, what would happen, to
18 your knowledge?

19 A One of the tools that the Commission has and
20 it's a mighty tool, is reversion to the previous
21 classification and taking away, then, the entitlements
22 that they're getting here at this Land Use Commission
23 potentially.

24 Q And that would be through an automatic Order
25 to Show Cause?

1 A Someone would need to -- the Commission or
2 any party can bring an Order to Show Cause.

3 Q Would you have a condition stating there
4 could be an automatic Order to Show Cause?

5 A No such thing as an automatic Order to Show
6 Cause in the rules.

7 MR. HOPPER: Thank you very much.

8 CHAIRMAN LEZY: Mr. Yee, redirect?

9 MR. YEE: No redirect.

10 CHAIRMAN LEZY: Commissioners, questions?
11 Commissioner Judge?

12 COMMISSIONER JUDGE: I'd like to call for an
13 executive session at this point.

14 COMMISSIONER CHOCK: Second.

15 CHAIRMAN LEZY: All in favor? Opposed?
16 Unanimous. We'll break for just a short time.

17 (Executive session was held.)

18 CHAIRMAN LEZY: (12:11) Back on the record.

19 I think we left off I think I asked Commissioners if

20 they had any questions -- or intended to ask if

21 Commissioners had any questions of Mr. Souki?

22 Anybody? Okay. Thank you.

23 MR. YEE: The Office of Planning rests.

24 CHAIRMAN LEZY: Thank you, Mr. Yee.

25 Mr. Lim, I understand you have a couple of very brief

1 rebuttal witnesses?

2 MR. LIM: Right. It will just be one brief
3 rebuttal witness. I think that Mr. Spence ably
4 handled the Community Plan issues. So we would call
5 in rebuttal Mr. Stacy Otomo from Otomo Engineering,
6 Inc. was Project Engineer primarily to talk about the
7 Lower Kula Road improvements.

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

11 THE WITNESS: Yes.

12 CHAIRMAN LEZY: State your name and your
13 business address.

14 THE WITNESS: Stacy Otomo. Address is 305
15 South High Street, Suite 102 in Wailuku.

16 CHAIRMAN LEZY: Please proceed.

17 MR. LIM: Thank you.

18 REDIRECT EXAMINATION

19 BY MR. LIM:

20 Q Mr. Otomo, following up on your testimony we
21 had some discussion both yesterday from the public and
22 today from some of the Commissioners regarding the
23 improvements for the Project to Lower Kula Road. Is
24 it true that Lower Kula Road is a County road?

25 A Yes.

1 Q And based upon the Project as proposed, what
2 is your expectation of the Department of Public Works'
3 requirements for the improvements to Lower Kula Road?

4 A In addition to the sidewalk issue as it
5 relates to the subdivision, Title 18 of Maui County
6 Code requires that any subdivision that does not have
7 a direct frontage onto a County road be able to verify
8 that the existing pavement width is a minimum of 20
9 feet and the existing right-of-way width is a minimum
10 of 24 feet.

11 Q Based upon those requirements what is your
12 expectation of the Public Works' requirements for this
13 Project?

14 A In looking at the actual on ground survey
15 data that we have on file, and it's basically from the
16 Kula Community Center to the entrance to the Waldorf
17 School parking lot, we're proposing the ending of the
18 sidewalk there were a couple areas where the existing
19 pavement is, approximately 18 feet wide.

20 For the most part it is 20 feet wide but
21 there are a few deficient areas. So the expectation
22 would be to widen it out to a minimum of 20 feet. In
23 terms of the right-of-way, fronting the Kula Community
24 Center, the existing right-of-way is fairly wide,
25 approximately 40 feet. As you go north beyond the

1 Kula Community Center the existing right-of-way has a
2 width of 25 feet.

3 Q What is the minimum for the right-of-way for
4 the County Code?

5 A Twenty-four feet.

6 Q So that would be consistent with the County
7 code requirements?

8 A Yes.

9 Q These improvements would be implemented
10 during the subdivision process?

11 A That's correct.

12 MR. LIM: I have no further questions.

13 CHAIRMAN LEZY: County?

14 MR. HOPPER: Just to clarify.

15 CROSS-EXAMINATION

16 BY MR. HOPPER:

17 Q The road widening improvements you're
18 talking about they were exempted in the 201H process.
19 Therefore you would be required to comply with them
20 prior to -- as a condition of subdivision approval?

21 A That's correct.

22 Q Thank you.

23 MR. HOPPER: I have no further questions.

24 CHAIRMAN LEZY: Office of Planning?

25 xx

1 CROSS-EXAMINATION

2 BY MR. YEE:

3 Q Just for clarification. The County
4 requirement, does it apply only to the front part of
5 the Petition Area or does it apply -- does it apply
6 basically from the Petition Area all the way down to
7 Kula Highway?

8 A The section of the code that I was referring
9 to is for the portion of the subdivision that does not
10 have frontage onto a County road. However, you're
11 using that road to provide legal access to your
12 subdivision.

13 In this particular case that's Lower Kula
14 Road. All the roads within the subdivision itself
15 would meet the County standards.

16 Q So would the 20-foot -- I'm sorry the
17 24-foot -- is it 24 feet?

18 A The right-of-way has to be a minimum of
19 24 feet.

20 Q And the roadway itself is 20 feet.

21 A The pavement has to be a minimum of 20 feet.

22 Q Does that apply -- would that be a
23 requirement from the Petition Area all the way till
24 where?

25 A To a point where you have legal access. So

1 in this particular case it would be from Kula
2 Highway -- there's a little stub that's still owned by
3 the state. And in that portion it's fairly wide. So
4 it will be from the Project site down to that --

5 CHAIRMAN LEZY: Excuse me. I don't mean to
6 interrupt you but the rubbish guys are going to make a
7 lot of noise for just a second, so if we could just
8 hold for a moment so the court reporter can hear.
9 (Pause)

10 CHAIRMAN LEZY: You can proceed.

11 Q Once again, can you describe specifically
12 for this Project where that road widening goes from?

13 A For clarification it's not a road widening.

14 Q I'm sorry.

15 A It's a pavement right-of-way requirement
16 that goes from the entrance of the subdivision up to
17 the short little stubout that comes off of Kula
18 Highway, kind of north of the Waldorf School.

19 Q From that stubout to Kula Highway does that
20 meet the 20-foot pavement requirement already?

21 A I believe it does.

22 MR. YEE: I have no further questions.

23 CHAIRMAN LEZY: Redirect?

24 MR. LIM: We have no redirect.

25 CHAIRMAN LEZY: Commissioners, questions?

1 Commissioner Judge? Commissioner Heller?

2 COMMISSIONER HELLER: Just a clarification
3 on the 25-foot right-of-way that you mentioned. Are
4 you talking about a legal right-of-way or a physical
5 measurement from side to side?

6 THE WITNESS: It's the legal right-of-way
7 that's there now.

8 COMMISSIONER HELLER: Okay. So if on the
9 edge of the road there's a step dropoff physically,
10 there might still be a legal right-of-way there, but
11 not physically 25 feet of width at the same level, is
12 that correct?

13 THE WITNESS: In this particular case beyond
14 the Kula Community Center it has a uniform 25 feet
15 wide right-of-way.

16 COMMISSIONER HELLER: Legal right-of-way.

17 THE WITNESS: Yes.

18 COMMISSIONER HELLER: But what I'm asking is
19 if there are stretches where the physical width where
20 it's on the same level could be less than 25 feet?

21 THE WITNESS: The pavement could be less
22 than 25 feet, yes. But the right-of-way is 25 feet
23 wide.

24 COMMISSIONER HELLER: Based on a legal
25 right-of-way.

1 THE WITNESS: Yes.

2 COMMISSIONER HELLER: There's not
3 necessarily a 25-foot wide flat ground.

4 THE WITNESS: No.

5 COMMISSIONER HELLER: Okay. Thank you.

6 CHAIRMAN LEZY: Commissioner Judge.

7 COMMISSIONER JUDGE: Good morning,
8 Mr. Otomo.

9 THE WITNESS: Good morning.

10 COMMISSIONER JUDGE: I'm still confused
11 about what segment of Lower Kula Road we're looking at
12 this Project will be affected by. I'm looking from if
13 we go from the driving off Kula Highway, turning onto
14 Lower Road and then moving all the way back until it
15 goes back down to Copp.

16 Where along Kula Road are you talking about?
17 The whole thing?

18 THE WITNESS: My understanding it will be
19 from where would you drive off of Kula Highway coming
20 around by the Waldorf School up to the physical
21 entrance to the subdivision.

22 COMMISSIONER JUDGE: Okay. So you've looked
23 from the northern boundary to -- the only County
24 requirement is to look for the one way in from the
25 northern boundary to the subdivision. You have not

1 looked at the legal access going in the southern
2 direction.

3 THE WITNESS: That's correct.

4 COMMISSIONER JUDGE: That's correct. Okay.

5 And just your local knowledge what is your -- what
6 would you say is the pavement, if you have any, of the
7 road going that way?

8 THE WITNESS: You know, to be honest with
9 you I always come this way so I'm not very familiar
10 with going in the southerly direction.

11 COMMISSIONER JUDGE: Okay. That's fair
12 enough. So you have not taken a look at the roadway
13 going to the southern direction here. And you
14 couldn't be able to verify whether it would be that
15 legal access requirement of 20 feet of pavement and
16 25 feet of right-of-way.

17 THE WITNESS: That's correct. We have
18 basically looked at the northern end.

19 COMMISSIONER JUDGE: Okay. Thank you.

20 CHAIRMAN LEZY: Commissioners, any other
21 questions? Thank you, sir. Mr. Lim, that's your
22 final witness?

23 MR. LIM: That is. Petitioner rests.

24 CHAIRMAN LEZY: Thank you. Parties,
25 anything further? Thank you. Given that the parties

1 have completed presentation of their respective cases
2 before the Commission, the evidentiary portion of this
3 proceeding is now closed subject to the receipt of the
4 additional exhibits identified by the County.

5 The parties are directed to draft their
6 individual proposed Findings of Fact, Conclusions of
7 Law and Decision and Order based on the record in this
8 docket and to serve the same upon each other and the
9 Commission.

10 The proposed Findings of Fact must reference
11 the witness as well as the date, page, and line
12 numbers of the transcripts to identify your facts. In
13 addition to the transcript the exhibits in evidence
14 should also be referenced.

15 As the parties are aware the Commission has
16 standard conditions which the parties should consider
17 in preparing the proposed Orders. A copy of the
18 standard conditions may be obtained from the
19 Commission staff.

20 Should any of the parties desire to
21 stipulate to any portion or all of the Findings of
22 Fact, Conclusions of Law, and Decision and Order they
23 are encouraged to do so. The Commission anticipates
24 in this docket that may occur.

25 Regardless of whether the parties pursue a

1 partial or fully stipulated Order, each party is
2 directed to file its proposal with the Commission and
3 serve copies on the other parties no later than the
4 close of business on September 19th, 2011.

5 All responses or objections to the parties'
6 respective proposals should be filed with the
7 Commission and served upon the other parties no later
8 than the close of business on September 26, 2011.

9 Any responses to the objections must be
10 filed with the Commission and served on the other
11 parties no later than the close of business on
12 October 2, 2011.

13 The parties are directed to consult with
14 staff early in this process to ensure that any
15 technical and non-substantive formatting protocols
16 observed by the Commission are adhered to.

17 Are there any questions from the parties
18 regarding the post-hearing procedures?

19 MR. YEE: Chair, just for clarification. My
20 understanding is it would be acceptable to the
21 Commission if the Office of Planning either stipulated
22 to a D&O or submitted objections on 9/26/11. And that
23 it was not necessary for the Office of Planning to
24 submit its own D&O on 9/19/11 even if we had some
25 disagreements with Petitioner.

1 I say this because the Office of Planning
2 once simply received a draft, we gave our exceptions,
3 you know, on the appropriate time, and there was a
4 Motion to Strike our exceptions because they said we
5 didn't initially file our own D&O.

6 And while I believe we're very likely to
7 reach a stipulated agreement, I just want to be clear
8 it isn't necessary for the Office of Planning to
9 submit our own D&O on the 19th. And we are still
10 allowed to file exceptions, nevertheless.

11 CHAIRMAN LEZY: Petitioner, have any
12 objections?

13 MR. LIM: No objections.

14 CHAIRMAN LEZY: County?

15 MR. HOPPER: No.

16 CHAIRMAN LEZY: That's fine, Mr. Yee.

17 MR. YEE: Thank you.

18 CHAIRMAN LEZY: Any other matters? Any
19 questions? I'm sorry questions only from the parties.
20 Mr. Hopper.

21 MR. HOPPER: Just to clarify that we request
22 we be afforded the same standards there.

23 CHAIRMAN LEZY: Petitioner, objections?

24 MR. LIM: No objection.

25 CHAIRMAN LEZY: Office of Planning,

1 objections?

2 MR. YEE: No objection.

3 CHAIRMAN LEZY: That's fine, Mr. Hopper.

4 Deliberation and decision-making in this docket matter

5 is tentatively scheduled for November 3rd, 2011.

6 Unless there are any additional questions of the

7 parties we stand adjourned.

8

9 (The proceedings were adjourned at 12:25 p.m.)

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C E R T I F I C A T E

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4 I, HOLLY HACKETT, CSR, RPR, in and for the State
5 of Hawai'i, do hereby certify;

6

7 That I was acting as court reporter in the
8 foregoing LUC matter on the 26th day of August 2011;

8

9 That the proceedings were taken down in
10 computerized machine shorthand by me and were
11 thereafter reduced to print by me;

11

12 That the foregoing represents, to the best
13 of my ability, a true and correct transcript of the
14 proceedings had in the foregoing matter.

14

15

16 DATED: This _____ day of _____ 2011

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HOLLY M. HACKETT, HI CSR #130, RPR
Certified Shorthand Reporter

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