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LAND USE COMMISSION
STATE OF HAWAI'I

HEARING

A11-794 STATE OF HAWAI'I-)
DEPARTMENT OF EDUCATION/KIHEI HIGH SCHOOL)
_____)

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for a Public Hearing
at Courtyard Maui Kahului Airport Haleakala Room,
Hawai'i, commencing at 9:30 a.m. on June 13, 2013,
pursuant to Notice.

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

A P P E A R A N C E S

COMMISSIONERS:

KYLE J.K. CHOCK, CHAIRPERSON

CHAD McDONALD, VICE CHAIR

SHELDON R. BIGA

THOMAS CONTRADES

LANCE M. INOUE

ERNEST MATSUMURA

NICHOLAS W. TEVES, JR.

EXECUTIVE OFFICER: DAN ORODENKER

CHIEF CLERK: RILEY HAKODA

STAFF PLANNER: SCOTT DERRICKSON

DEPUTY ATTORNEY GENERAL: SARAH HIRAKAMI, ESQ.

AUDIO TECHNICIAN: WALTER MENCHING

Docket No. A11-794 State of Hawai'i Dept. of

Education, Kihei High School (Maui)

For the Petitioner: WILLIAM YUEN, ESQ.

MELISSA UHL, ESQ

NICK NICHOLS, DOE

For the County:

JAMES GIROUX, ESQ

Deputy Corporation Counsel

WILLIAM SPENCE,

Planning Director

For the State:

BRYAN YEE, ESQ.

Deputy Attorney General

RODNEY FUNAKOSHI, OP

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1 CHAIRMAN CHOCK: Good morning. I'd like to
2 call our meeting to order. Our first item of business
3 is the adoption of minutes. Is there a motion to
4 approve?

5 COMMISSIONER CONTRADES: So moved.

6 COMMISSIONER TEVES: Second.

7 CHAIRMAN CHOCK: Moved and seconded. Any
8 opposed? Minutes have been adopted. Executive
9 officer, can you brief us on our tentative meeting
10 schedule.

11 MR. ORODENKER: Thank you, Mr. Chair.
12 Tomorrow we are here for continuation of this hearing.
13 June 27th and 28th we'll also be on Maui for the state
14 of Hawai'i decision making, DOE decision making if
15 necessary and Kaonoulu Ranch Motion to Stay.

16 June 28 we will be on O'ahu for a
17 Commission briefing by OEQC.

18 July 11th and 12th is currently open. July
19 25th and 26th we'll be back on Maui at the Malcolm
20 Center of the Maui Economic Development Board for the
21 Maui R&T site visit and commencement of hearing.

22 August 8th, 9th once again on Maui for Maui
23 R&T.

24 CHAIRMAN CHOCK: Thank you, Dan. This is a
25 hearing on Docket No. A11-794 state of Hawai'i

1 Department of Education, Kihei High School to amend
2 the Agricultural Land Use District boundaries into the
3 Urban Land Use District for approximately 77.2 acres
4 of land at Kihei, Maui, Tax Map Key No. 2-2-02:81 and
5 83. Before I have the parties identify themselves for
6 the record I believe, Commissioner McDonald, would you
7 like to make a disclosure for the record?

8 COMMISSIONER McDONALD: Yes, thank you
9 Chair. I did raise this at the last hearing, but I did
10 want to point out that my firm has done work for the
11 Department of Education. We are not specifically
12 involved with this particular Project.

13 However, I would like to note for the
14 parties if they have any objections or comments now
15 would be the appropriate time to raise them. I don't
16 feel my participation in these hearings will in any
17 way affect my decision-making ability in these
18 proceedings. Thank you, Chair.

19 CHAIRMAN CHOCK: Thank you, Commissioner
20 McDonald. Parties, any objections?

21 MR. YUEN: No objection from Petitioner.

22 MR. GIROUX: County has no objection.

23 MR. YEE: No objection.

24 CHAIRMAN CHOCK: Commissioners, any
25 objections? (no response) Thank you very much.

1 COMMISSIONER INOUE: Mr. Chair, can I make
2 a disclosure as well?

3 CHAIRMAN CHOCK: Sure.

4 COMMISSIONER INOUE: Thank you. My
5 company Ralph Inouye Company, Ltd. is a construction
6 company. And we do compete in a lot of DOE projects.
7 We don't know if we're going to be competing in this
8 particular Project itself. But I just wanted to make
9 that disclosure as well and see if there's any
10 objections for my participation. Thank you.

11 CHAIRMAN CHOCK: Thank you, Commissioner
12 Inouye. Parties, any objections?

13 MR. YEE: No objection from Petitioner.

14 MR. GIROUX: County has no objection.

15 MR. YEE: No objection.

16 CHAIRMAN CHOCK: Commissioners, any
17 objections, any concerns? Thank you, Commissioner
18 Inouye. Before we begin today will the parties please
19 identify themselves for the record.

20 MR. YUEN: Thank you, Mr. Chairman.
21 William Yuen and Melissa Uhl on behalf of state of
22 Hawai'i Department of Education. With us is Nick
23 Nichols of the Department of Education.

24 MR. GIROUX: Good morning. James Giroux,
25 deputy corporation council representing the County

1 Planning Department. With me is William Spence.
2 Director.

3 MR. YEE: Good morning. Deputy Attorney
4 General Bryan Yee on behalf of the Office of Planning.
5 With me is Rodney Funakoshi from the Office of
6 Planning.

7 CHAIRMAN CHOCK: Good morning, everyone.
8 Let me briefly update the record on this docket. On
9 December 20th, 2011 the Commission received this
10 Petition for District Boundary Amendment and Exhibits
11 1 through 6. On December 22, 2011 the Commission
12 received Petitioner's Exhibits 7 and 8.

13 On February 6, 2012 the Commission received
14 a copy of a comment letter from Maui County Planning
15 Department to Christine Ruotola-Group 70.

16 April 30 the Commission mailed a letter to
17 Petitioner deeming the Petition defective.

18 February 7, 2013 the Commission received
19 Petitioner's Amended Petition for District Boundary
20 Amendment and Exhibits 9 through 15.

21 On February 14 a pre-hearing meeting was
22 conducted with the parties. And on February 20 a
23 Deemed Complete Notice was mailed to the parties.

24 On March 12 an affidavit of publication of
25 notice of hearing Exhibits 1 through 5 was received by

1 the Commission.

2 On March 22 the Commission received OP and
3 Maui County Planning Department's position statements.

4 On April 24th the Commission mailed its
5 pre-hearing order to the Parties.

6 On April 9 the Commission received County
7 Witness and Exhibit Lists and County Exhibits 1, 2, 4,
8 5; OP's Witness and Exhibit List. OP's Exhibits 1, 3,
9 4, 7, and 8, and Petitioner's Witness and Exhibit
10 Lists Exhibits 16 through 23.

11 May 16, 2013 the Commission received and
12 granted OP's request for time extension for filing
13 written testimony.

14 On May 17 the Commission received County's
15 List of Exhibits, Amendment No. 1 and County
16 Exhibits 3, 6, 7, 8; County's List of Exhibits
17 Amendment No. 2 and County Exhibits 9 and Petitioner's
18 Amended Witness and Exhibit Lists, Exhibit 17 through
19 30.

20 On May 20th the Commission received
21 County's List of Witnesses-Amendment No. 1, List of
22 Exhibits, Amendment No. 3, and County's Exhibit 10.

23 On May 23 the Commission received OP's
24 testimony in support of Petition with conditions and
25 OP Exhibit 5.

1 On June 5th the Commission mailed an agenda
2 notice for the June 13, and 14, 2013 LUC meeting to
3 the Parties, statewide and Maui mailing lists.

4 On June 10 Commission received Petitioner's
5 proposed Findings of Fact, Conclusions of Law and
6 Decision and Order, Amended Exhibit List and
7 Exhibit 31.

8 On June 12 the Commission received OP's
9 First Amended List of Exhibits, Exhibits 5A and 10.
10 Mr. Yuen, has our staff informed you of the
11 Commission's policy regarding the reimbursement of
12 hearing expenses?

13 MR. YUEN: Yes, Mr. Chair.

14 CHAIRMAN CHOCK: Okay. Could you state
15 your client's position with respect to this policy.

16 MR. YUEN: The Department of Education is
17 willing to abide by the policy.

18 CHAIRMAN CHOCK: Thank you very much. Let
19 me briefly describe our procedure for today. First I
20 will call on those individuals desiring to provide
21 public testimony on this matter to identify
22 themselves. All such individuals will be called in
23 turn to our witness box where they will be sworn in.
24 A 3-minute time limit on testimony will be enforced.

25 After completion of public testimony staff

1 will provide its map orientation. I will then give
2 parties an opportunity to admit their exhibits for the
3 record. After admission of exhibits the Petitioner
4 will begin its case. Once Petitioner is completed
5 with its presentation it will be followed by County of
6 Maui and State Office of Planning.

7 Parties will then present closing arguments
8 starting with the Petitioner. Also like to note that
9 the Chair will be calling for short breaks from time
10 to time. So are there any individuals wishing to
11 provide public testimony on this matter? Do we have
12 anyone signed up? Okay, if you're interested please
13 come forward. Good morning, sir. I need to swear you
14 in for the record. Could you please state your name
15 and address.

16 PUBLIC TESTIFIER: My name is James Beer,
17 56 Kalola Place Kihei, Hawai'i. 96753.

18 CHAIRMAN CHOCK: Good morning, James. Do
19 you swear to tell the truth in this matter?

20 THE WITNESS: Yes.

21 CHAIRMAN CHOCK: Thank you very much.
22 Proceed.

23 PUBLIC TESTIFIER: Dear Land Use
24 Commission: Thank you for having this meeting and
25 allowing us to testify. My name is James Beer. I am

1 on the Board of Directors for the Kihei Community
2 Association. And I am the chairman of the Kihei High
3 School Action Team. I will be speaking today on
4 behalf of myself as an individual and on behalf of the
5 Kihei High School Action Team.

6 The proposed Kihei High School has long
7 been advocated for the South Maui community. We
8 endorse the reclassification of this 77-acre property
9 from Agricultural to Urban. We support amending the
10 Agricultural land use district boundary into Urban
11 land use. Thank you.

12 CHAIRMAN CHOCK: Thank you for your
13 testimony. Parties, any questions?

14 MR. YUEN: No questions.

15 MR. GIROUX: No questions from the County.

16 MR. YEE: No questions.

17 CHAIRMAN CHOCK: Commissioners? Thank you
18 very much. Good morning, ma'am. Do you swear to tell
19 the truth?

20 PUBLIC TESTIFIER: Yes, I do.

21 CHAIRMAN CHOCK: Thank you. Could you
22 state your name and address for the record.

23 PUBLIC TESTIFIER: My name is Laura Marzke.
24 My address is 121 Kulipu'u Street, Kihei, Hawai'i
25 96753.

1 CHAIRMAN CHOCK: Thank you.

2 PUBLIC TESTIFIER: I am a part of the
3 education committee of Kihei Community Association.
4 And we endorse the reclassification of land for the
5 Kihei High School from Agriculture to Urban. We also
6 support the boundary reclassification from Agriculture
7 to Urban. Thank you.

8 CHAIRMAN CHOCK: Thank you. Parties, any
9 questions? Petitioner?

10 MR. YUEN: No questions.

11 MR. GIROUX: County has no questions.

12 MR. YEE: No questions.

13 CHAIRMAN CHOCK: Commissioners, any
14 questions? Thank you very much. Is there anyone else
15 in the audience wishing to provide public testimony on
16 this matter? Having seen none we'll now have a map
17 orientation provided by staff. Scott.

18 MR. DERRICKSON: Aloha, Commissioners.

19 CHAIRMAN CHOCK: Aloha.

20 MR. DERRICKSON: Okay. The Petition Area
21 is located in South Central Maui on USGS quadrangle
22 map M8 Pu'uokali quadrangle. It's 77.2 acres. It's
23 located on two complete tax map key parcels. There's
24 nearby two current dockets before the Commission. One
25 is just to the north. It's the Kaonoulou Ranch

1 Pi'ilani Promenade docket. And then just to the south
2 coming up with the Commission is a Maui R&T docket.
3 Major adjacent road running past the Project Pi'ilani
4 Highway. There are two gulches, one on each side.
5 North is Kulanihakoi Gulch. And then to the south is
6 Waipu'ilani Gulch.

7 CHAIRMAN CHOCK: Thank you very much,
8 Scott. Commissioners, any questions for Scott? Let's
9 proceed with the presentation of exhibits.
10 Petitioner, do you have any exhibits that you wish to
11 have admitted for the record?

12 MR. YUEN: I'd like to admit Petitioner's
13 Exhibits 1 through 31.

14 CHAIRMAN CHOCK: Parties, any objections?

15 MR. GIROUX: County has no objection.

16 MR. YEE: No objection.

17 CHAIRMAN CHOCK: Exhibits 1 through 31 have
18 been admitted. County?

19 MR. GIROUX: The County would like to
20 introduce Exhibits 1 through 9.

21 MR. YUEN: No objection.

22 CHAIRMAN CHOCK: State?

23 MR. YEE: No objection.

24 CHAIRMAN CHOCK: Okay, Bryan, any
25 exhibits?

1 MR. YEE: The Office of Planning would like
2 to admit Exhibits 1 through 4, 5A, 7, 8 and 10.

3 MR. YUEN: No objection.

4 CHAIRMAN CHOCK: County?

5 MR. GIROUX: No objection.

6 CHAIRMAN CHOCK: Okay. Parties, I believe
7 there's been some discussion with respect to the
8 handling of witnesses and cross-examinations of
9 witnesses. Could you please inform the Commission
10 what has been agreed to and what witnesses the parties
11 have stipulated to and which ones the parties will be
12 calling. Petitioner.

13 MR. YUEN: Petitioner has submitted written
14 testimony by three witnesses: Dan Lum, Gavin Matsui
15 and Bruce Plasch. Mr. Plasch is not present, but I
16 believe the parties have stipulated to his testimony.
17 Mr. Lum and Mr. Misaki are present. I do not intend
18 to ask them any questions other than to verify their
19 testimony. They will be available for questioning by
20 the Commission.

21 CHAIRMAN CHOCK: Okay. Thank you,
22 Petitioner. County.

23 MR. GIROUX: For the record we have
24 discussed these issues. And we did waive cross on
25 Mr. Plasch, Mr. Lum and Mr. Misaki. So we're

1 agreeable to be resting on their written testimony.
2 And I believe that we will be hearing testimony from
3 Mr. Nichols and Ms. Ruotola which we'll be making a
4 short cross on both of those.

5 CHAIRMAN CHOCK: Thank you, very much,
6 Mr. Giroux. State?

7 MR. YEE: This will confirm that the State
8 has waived cross-examination for the witnesses
9 identified by Mr. Yuen. We've stipulated to the
10 admission of their written testimony.

11 CHAIRMAN CHOCK: Wonderful.

12 MR. YEE: I'm sorry. Just to be clear:
13 And the Office of Planning has 2 witnesses that will
14 be called tomorrow.

15 CHAIRMAN CHOCK: Who are they?

16 MR. YEE: Alvin Takeshita, Department of
17 Transportation and Rodney Funakoshi, Office of
18 Planning.

19 MR. GIROUX: The County has some further
20 then.

21 CHAIRMAN CHOCK: Okay. Mr. Yuen, are you
22 ready to go?

23 MR. GIROUX: Oh, Chair, did you want me to
24 address the agreements I have on my witnesses at this
25 point in time?

1 CHAIRMAN CHOCK: Sure.

2 MR. GIROUX: I've submitted written
3 testimony only 4 of my 5 witnesses, 3 of whom I'll be
4 asking to have both parties agree to waive cross. I'm
5 prepared to have Mr. Spence testify. If the board
6 wants me to call my other witnesses for the purpose of
7 cross we are prepared to do that.

8 And if any of the parties at this time want
9 me to call the other 3 witnesses we are prepared to
10 have them on call if need be.

11 But at this time just for efficiency they
12 are prepared to waive cross-examination on Rowena
13 Dagdag, Kyle Ginoza and Paul Meyer. We would just
14 submit on their written testimony.

15 MR. YUEN: The Petitioner has agreed to
16 waive cross-examination on those 3 witnesses.

17 CHAIRMAN CHOCK: Very good.

18 MR. YEE: OP also waives cross-examination
19 for those witnesses.

20 CHAIRMAN CHOCK: Okay. Anything else,
21 parties, before we get going?

22 MR. YEE: Only to note that the Office of
23 Planning has withdrawn our CWRM representative. You
24 may note that was on the Witness List. We've, after
25 further discussion, decided there was no further issue

1 for CWRM to address.

2 CHAIRMAN CHOCK: Okay. Thanks, Bryan.

3 Okay. Bill, ready to go?

4 MR. YUEN: I first would like to call Dan
5 Lum.

6 CHAIRMAN CHOCK: Good morning, Mr. Lum.
7 Can I swear you in?

8 DANIEL LUM

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

11 THE WITNESS: Yes, I do.

12 CHAIRMAN CHOCK: Thank you. Could you
13 state your name and address, please.

14 THE WITNESS: My name's Daniel Lum. My
15 address is 1296 Kapiolani Boulevard unit 1704,
16 Honolulu.

17 MR. YUEN: I've introduced into evidence
18 Mr. Lum's resumé as Exhibit 19 and his written
19 testimony as Exhibit No. 25. I'd like to qualify Mr.
20 Lum as an expert in hydrogeology if there are no
21 objections.

22 CHAIRMAN CHOCK: Parties, any objections?
23 Commissioners? He's admitted.

24 MR. YUEN: And I'd just like to just ask
25 Mr. Lum is: Do you stand on your written testimony

1 that you submitted to the Commission?

2 THE WITNESS: Yes, I do.

3 MR. YUEN: And I have no further questions
4 of Mr. Lum.

5 CHAIRMAN CHOCK: Parties? County?

6 MR. GIROUX: We have no cross.

7 MR. YEE: Mr. Lum I believe is one of those
8 we've waived cross-examination for.

9 CHAIRMAN CHOCK: Okay. Great.
10 Commissioners, any questions? Thank you, Mr. Lum.

11 MR. YEE: Thank you, very much, Mr. Lum.
12 Next Gavin Misaki.

13 CHAIRMAN CHOCK: Good morning, Gavin. Can
14 I swear you in?

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

18 THE WITNESS: Yes, I you do.

19 CHAIRMAN CHOCK: Can you state your name
20 and address please.

21 THE WITNESS: My name is Gavin Misaki.
22 Work address 201 Merchant Street, suite 1900,
23 Honolulu, Hawai'i.

24 MR. YUEN: Mr. Misaki's resumé is attached
25 -- or has been submitted as Exhibit 20. And his

1 written testimony as Exhibit 26. I'd like for the
2 record that Mr. Misaki testify as an expert in civil
3 engineering. And I'm going to ask that he just be
4 prepared to answer any questions on his written
5 testimony.

6 CHAIRMAN CHOCK: Parties, any objections to
7 this witness being admitted as an expert?

8 MR. GIROUX: County has no objection.

9 MR. YEE: No objection.

10 CHAIRMAN CHOCK: Commissioners? He's
11 admitted.

12 MR. YUEN: And, Mr. Misaki, is your
13 written testimony what has been submitted to the
14 Commission?

15 THE WITNESS: Yes.

16 MR. YUEN: And I turn it over for any
17 questions. The other parties have waived
18 cross-examination on Mr. Misaki.

19 CHAIRMAN CHOCK: Okay. Commissioners, any
20 questions of Mr. Misaki? Commissioner McDonald.

21 COMMISSIONER McDONALD: Mr. Misaki, just a
22 quick clarification perhaps. Can you remind me what
23 service zone that the Kihei High School will be
24 supplied by the County Department of Water system?

25 THE WITNESS: I believe it's the central

1 district, central zone.

2 COMMISSIONER McDONALD: What's the actual
3 service zone as far as elevation? Okay. Let me ask
4 you this. What's the tank elevation at?

5 THE WITNESS: The tank -- I believe the
6 neighboring tank, oh, I can't recall at this moment.
7 Maybe it's 200 feet. I cannot recall.

8 COMMISSIONER McDONALD: I'm just wondering
9 if -- I know the Project will need to comply with the
10 necessary fire --

11 THE WITNESS: Yes.

12 COMMISSIONER McDONALD: -- professional
13 requirements. Do you see a need to put an actual
14 booster at the connection to the county system?

15 THE WITNESS: I believe based on, I guess,
16 what our, what we have now shown yes.

17 COMMISSIONER McDONALD: Yes, A booster may
18 be necessary for the Project.

19 THE WITNESS: For the fire.

20 COMMISSIONER McDONALD: For the fire.

21 THE WITNESS: Yes.

22 CHAIRMAN CHOCK: Okay. Thank you.

23 THE WITNESS: Thank you.

24 CHAIRMAN CHOCK: Commissioners, any other
25 questions for this witness? Thank you for your

1 testimony.

2 MR. YUEN: My next witness is Nick Nichols.

3 CHAIRMAN CHOCK: Good morning, Mr. Nichols.

4 NICK NICHOLS

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

7 THE WITNESS: Yes, I do.

8 CHAIRMAN CHOCK: Thank you. Could you
9 please state your name and address.

10 THE WITNESS: My name is Nick Nichols. I'm
11 with the Department of Education. Our work address
12 for the Office of School Facilities and Support
13 Services is Queen Liliuokalani Building, 1390 Miller
14 Street, Honolulu, Hawai'i.

15 CHAIRMAN CHOCK: Do you folks need a second
16 to get your PowerPoint up? Maybe we could have the
17 lights brought down a little bit. Okay, Mr. Yuen.

18 DIRECT EXAMINATION

19 BY MR. YUEN:

20 Q Mr. Nichols, what is your position at the
21 Department of Education?

22 A I'm a facilities planner for the Department
23 of Education of the facilities development branch.

24 Q First, Mr. Nichols, please explain why the
25 Department of Education is proposing to build a high

1 school in Kihei.

2 A Well, we feel that the Kihei population has
3 grown about 24, almost 25 percent between the years
4 2000, 2010. It went from 16,749 to 20,881. The Kihei
5 population is estimated in 2025 to be around almost
6 36,000 which is more than doubling the 2000
7 population.

8 And Kihei High School will reduce the
9 travel time and the distance for the Kihei students
10 attending high school in Kahului currently and it will
11 also ease the overcrowding at Maui High School where
12 the bulk of the kids are going right now.

13 Q Can you comment on the attendance of Kihei
14 students in Kahului?

15 A Yes. School year 2011-2012 there were 704
16 students from Kihei attending high school in Central
17 Maui. Also in that same school year Maui High School
18 had about 1,826 students which was exceeding their
19 design capacity of about 1,580.

20 And there's also a charter school in Kihei.
21 This is the only high school in South Maui it's my
22 understanding. And it has about 248 students.

23 Q Next, Mr. Nichols, I'd like you to describe
24 briefly the DOE plan for Kihei High School.

25 A What you see on the slide is a conceptual

1 plan.

2 MR. YUEN: This slide, excuse me, is in the
3 Petitioner's Environmental Impact Statement which is
4 Exhibit 9.

5 THE WITNESS: Initially we were going to
6 provide the school through a design bid build. So we
7 had a charrette. We worked with the community and the
8 stakeholders. So this conceptual plan reflects that.
9 Later a decision was made to build the school through
10 the design/build process.

11 So the school may not ultimately look like
12 this because that's one of the beauties of the
13 design/build process. But anyway it will probably
14 follow a lot of these common characteristics.

15 If you look at the top portion that's where
16 the instructional components, the main constructional
17 components it's a long sort of a mall. There's four
18 large houses that would have most of the classrooms.
19 The Admin, the cafeteria, the library are up in that
20 top portion.

21 In the middle portion you can see the
22 football field, soccer field, the gymnasium. And then
23 below that are more the athletic components, the
24 baseball, the softball fields.

25 In terms of square footage there's about

1 209,000 square feet of classroom houses and
2 educational support buildings. It will have
3 approximately 575,660 square feet of athletic
4 facilities or in the midportion of the campus.

5 In lower portion the athletic fields, the
6 drainage basin -- drainage detention basin and the
7 overflow parking will be located makai campus adjacent
8 to Pi'ilani Highway.

9 Q I'd like to refer back again to the site
10 plan. Briefly can you show the areas in which the
11 overflow parking is planned as well as the detention
12 basin?

13 A It will be the bottom left-hand corner.
14 You can see the road sort of wraps around it. That
15 would be land for overflow parking and also a
16 detention basin for that.

17 Q Why is the detention basin to be located in
18 that general area?

19 A That's the low spot on the site. So that's
20 where the natural drainage -- and we'll make obviously
21 drainage improvements. That's where that will be
22 kept.

23 Q Next I'd like to turn the phasing of Kihei
24 High School. Can you please describe the phasing for
25 the building plan. Again, this is figure 2.2 in the

1 Environmental Impact Statement that's Exhibit 9.

2 A Again, Phase 1 would include the mass
3 grading for the entire campus, construction of a
4 backbone infrastructure, an academic support, and
5 athletic facilities for 800 students.

6 Incremental redistrict was not appropriate
7 since the entire Petition Area will be developed in
8 Phase 1. Phase 2 involves the construction of
9 additional classroom houses and other scattered
10 facilities throughout the campus to bring it up to a
11 capacity of 1650.

12 Just for your information when I talk about
13 "houses", houses are the clusters of -- they hold
14 about 400 students each. So those would be -- if you
15 visit our Kihei High School, (sic) for example, it has
16 the same concept. So within those houses there are
17 general classrooms, sort of studio areas. And then
18 there's also specialty classrooms like graphics labs
19 and chemistry labs, physics and whatever. It would
20 give the school the flexibility.

21 For example, they could have it -- each
22 house could be, say, a 9/12 arrangement. Or they
23 might do it by academies. Or they might do it by
24 grade level. So it gives a lot of flexibility to
25 these schools.

1 Q What is the scheduled completion of Phase
2 1?

3 A We hope to have it, assuming the funding
4 and the need is there by 2025, within 10 years.

5 Q Could you describe -- well no, that's for
6 Phase 2, isn't it?

7 A Phase 2.

8 Q When do you anticipate starting Phase 1?

9 A Well, this past session the Legislature did
10 provide us \$130 million. That money will be available
11 the second year of this coming biennium. So assuming
12 that it goes well next session then it will be
13 available July 1. Once it's available the DOE would
14 address the release of that funding.

15 We will be starting the development of the
16 RFP documents hopefully later this summer so that we
17 will have them all prepared should the money be
18 available next July 1.

19 Q Then you indicated that Phase 2 would be
20 completed within 10 years after completion of Phase 1,
21 is that correct?

22 A Yes. That's the goal based on funding and
23 need. We would try to bring the houses on. The need
24 we felt with two houses that will accommodate 800
25 students. Then as it grows, let's say, gets up to

1 1200 we would bring on the third house. And when it
2 gets close to the 1600 we would bring up the fourth
3 house.

4 Q Next I'd like to turn to sustainable design
5 and building. Please explain how Kihei High School
6 intends to meet the state requirements for sustainable
7 building standards.

8 A Well, as you're well aware we need to build
9 to LEED Silver or that equivalent for all state
10 buildings. Last year we worked -- anyway it's I think
11 the law reads either LEED or any other nationally
12 recognized equivalent system for documenting
13 sustainable design.

14 There's the CHPS systems which stands for
15 Collaborative High Performance Schools. It is another
16 nationally recognized system. And this past year we
17 actually modified it and it now has become HICHPS.
18 It's basically the same criteria, all the same areas
19 of sustainability that LEED has, but it has been
20 personalized to meet the specific climates and our
21 location of Hawai'i. We were about the eleventh state
22 to do this adaptation.

23 The LEED-Silver per CHPS would be called
24 CHPS Verify Designation. And that's what we would be
25 seeking that as a minimum for Kihei High School.

1 Q Next could you describe the Department of
2 Education's plan to fund, design and build Kihei High
3 School.

4 A Well, in 2008 the Legislature appropriated
5 20 million for Kihei High School. And with that money
6 we did the site selection process, the land
7 acquisition and completed the EIS. The estimated
8 construction cost for Phase 1 is 130 million. And for
9 Phase 2 is 30 million. The DOE requested 130 million
10 for Phase 1 and the capital budget of fiscal year
11 2014-2015. DOE is pursuing a design/build procurement
12 for the design and construction for Kihei High School.

13 Q Next I'd like to turn to the county of
14 Maui's proposed conditions for reclassification. Can
15 you comment on the County's proposed conditions first
16 with regard to detention of stormwater?

17 A Yes. We would be detaining the water on
18 site and not dumping it into the Waipuilani Gulch.
19 The area fronting Pi'ilani Highway will be the site of
20 the drainage detention basin. So we will keep it
21 open. Obviously we wouldn't be planting trees inside
22 of it, but, however, we would be certainly willing to
23 landscape around it to try to meet that.

24 If the overflow parking lot is adjacent to
25 the Pi'ilani Highway as presently planned, again the

1 parking lot would have some landscape. We'll do what
2 we can and meet all the code regulations too.

3 Q Can you please comment on the Office of
4 Planning's proposed conditions of reclassification,
5 first with regard to the transportation study.

6 A We feel that the TIAR that we did is
7 adequate. And the traffic signal warranty study is
8 adequate. Both were included in the EIS which
9 addressed DOT's concerns. And the governor approved
10 it in November of 2012.

11 DOE will fund Pi'ilani Highway intersection
12 and acceleration and deceleration lane improvements.
13 However, we feel we cannot fund off-campus
14 improvements. DOT is willing to have the Kulanihakoi
15 Street access be perpendicular to the highway at least
16 200 feet.

17 Q One of the issues that DOT is concerned
18 about is the need for a grade-separated crossing
19 either construction of an overpass or an underpass
20 over Pi'ilani Highway or under Pi'ilani Highway at or
21 near the Kulanihakoi Street intersection.

22 Can you comment on Department of
23 Education's position with regard to a grade-separated
24 crossing?

25 A The DOE believes -- does not believe that a

1 pedestrian underpass or overpass is necessary for the
2 safety of the pedestrians crossing Pi'ilani Highway.
3 Whether or not to build an overpass or underpass is a
4 matter that we would like to see the two state
5 departments be able to resolve among themselves.

6 A third agency such as the LUC we would
7 suggest not resolve the issue for us. If the
8 grade-separated crossing is deemed necessary, however,
9 the DOE will seek the additional funding from the
10 Legislature to cover its added costs since it was not
11 included in the DOE's budget for Phase 1.

12 An overpass is preferred to an underpass if
13 we have to do one or the other. But both the overpass
14 and underpass we feel would pose operational and
15 security issues for the DOE. If we have to do one the
16 DOE would delegate the construction and maintenance of
17 the overpass to DOT as this facility would be on the
18 DOT's land.

19 MR. YUEN: I have no further questions of
20 Mr. Nichols.

21 CHAIRMAN CHOCK: County?

22 MR. GIROUX: Thank you, Chair.

23 CROSS-EXAMINATION

24 BY MR. GIROUX:

25 Q Mr. Nichols, you stated -- thank you again

1 for your testimony -- but you stated that you're aware
2 of the County's proposed conditions. But I only heard
3 the discussion about the drainage. I'd just like to
4 go through those conditions and see if we're on the
5 same page here.

6 A Okay.

7 Q Their condition, I guess, the 1B is the
8 high quality and direct access from the school to the
9 pedestrians and bikeway network. Can you address that
10 for us?

11 A When you say high?

12 Q They're looking for a design that will
13 promote the access from the school to other networks
14 around the community to look at future development, to
15 seek connectivity.

16 A Right.

17 Q And is that integrated into your design/
18 build I guess your bid or anything else that you guys
19 are going to have any control over?

20 A Well, what we would like to do is
21 definitely if there are existing bikeways and
22 pedestrianways that are adjacent to us we would
23 obviously like to tie into those because we recognize,
24 yes, connectivity is good.

25 However, we don't feel we should have to

1 extend way out into the community to create those
2 bikeways because again our focus is to build a school
3 on our campus.

4 Q Right. And do you see this condition as
5 basically just addressing the design of the property
6 that you have control over?

7 A Yes. That's where we feel our mandate is.
8 We must focus on building of the school on our own
9 property and doing the necessary immediate
10 improvements but not to reach out in the community.
11 Our funding just would not go that far.

12 Q Okay. I think we are on the same page.

13 A Okay.

14 Q That is a recommendation, that language is
15 a recommendation coming out of the Final EIS. And
16 you're aware that's in appendix N.

17 A Yes.

18 Q So is it fair to say that the State or DOE
19 is in agreement with that condition?

20 A Yes. Tie it in. I think that's what it
21 is, tie into it, you know. If those bikeways
22 pedestrianways are adjacent, yes we would certainly
23 want to tie into those.

24 Q Okay. Again the county is just looking for
25 that foresight as far as in the design. We don't

1 expect you to go to out into the community and force
2 those connections.

3 A For example, it came up in the charrette if
4 there was eventually, for example, a pedestrian
5 bikeway to the Maui Tech Park. There was talk that if
6 they came across the gulch would we be willing
7 obviously to have an opening and an entrance for our
8 students. And we said, "Of course, yes." We didn't
9 necessarily want to build the bridge over the gulch.

10 Q Right. And I guess there's other
11 developments possible around that area, the Promenade.

12 A I'm not too familiar with that. But, yes,
13 we would be certainly be willing to tie in connections
14 around our immediate thing.

15 Also from a security aspect we would
16 probably gate those so that at selected times they're
17 not open. Because again we're trying to provide a
18 safe, secure environment for our students. And to
19 have a lot of openings stay open 24/7 might not be in
20 the best interest of the school. But during our
21 school operation we would certainly probably welcome
22 those egress, open so that our students could
23 certainly come and go to and from school.

24 Q That sounds reasonable.

25 A Good! (laughter)

1 Q I guess the next condition I'd like to
2 address is concerning bus stops. I guess that's
3 planning Condition No. 3. It states that: "If
4 requested by the Maui County Department of
5 Transportation the Petition shall include an area for
6 public transit access to the school."

7 Do you want to comment on that?

8 A Nothing other than we would probably
9 definitely support that because we would realize
10 probably some of our students would ride the public
11 bus to school if it's available. So we would want
12 that integrated into the design so that they have a
13 safe path once they get off they can come to our
14 campus.

15 Q Okay. And that's supported by your Final
16 EIS on page 4-102 concerning public transit service,
17 correct?

18 A Yes.

19 Q It states: "It is common for high school
20 students to use a public transportation option to
21 travel to and from school."

22 A Right.

23 Q So we studied that to find common sense.

24 A Yes.

25 Q You're agreeable again to that condition.

1 A Yes. We have that condition for a lot of
2 our schools, if you're aware.

3 Q Moving on to Condition No. 4. "That to the
4 satisfaction of Maui County Department of Planning and
5 in accordance with the Kihei-Makena Community Plan
6 Housing and Urban Design Implementation Action D, the
7 Petitioner shall incorporate a landscape buffer on the
8 campus fronting the Pi'ilani Highway to achieve a
9 parkway character."

10 Do you want to comment on that?

11 A Well, my understanding is maybe those
12 guidelines aren't fully defined yet, but we would
13 certainly be in support once they are. Recognizing,
14 though, that we have, probably that's going to be
15 overflow parking and a detention basin, so we might
16 have to adjust the way things are planted and
17 landscaped to honor those.

18 I cannot see why we would not want to sort
19 of integrate in with the landscaped features along the
20 road, the highway. But it might not be exactly like,
21 say, the neighboring parcels that don't have, say,
22 those limitations for a drainage ditch or drainage
23 basin and parking lot to contend with.

24 Parking lots, for example, sometimes have
25 their own rules and regulations in terms of planting

1 of trees and this and that.

2 Q But you do acknowledge that that is coming
3 out of the Community Plan.

4 A Yes. We'd try to be a good neighbor to
5 them. That's the best way we could state it.

6 Q And are you agreeable to that condition?

7 A Yes, I guess so.

8 Q The next condition I'm looking at is No. 5.
9 It states that "To the satisfaction of Maui County
10 Police Department the campus design and development
11 shall incorporate best practices and criminal
12 prevention through environmental design, also known as
13 CPTED. Are you familiar with CPTED?

14 A Yes, I am. And I think that, you know,
15 from the perspective of that they want to be able to
16 visually see into a campus. So I think the DOE and
17 our designers would need to merge that perspective,
18 environmental design, with your landscape perspective
19 because they sort of go counter to each other.

20 Q They can be diametrically opposed.

21 A We could work it out.

22 Q Okay.

23 A That's why I think I prefaced in my last
24 statement that we would do -- it might not -- we would
25 meet the intent. Put it that way.

1 Q So you're agreeable with that.

2 A Yes.

3 Q You did address the issue of stormwater. I
4 just want to clarify this Condition No. 6 that states
5 that: "To the satisfaction of the Maui County
6 Department of Public Works no additional stormwater
7 result from the Petition Area shall be added to the
8 Waipuilani Gulch."

9 A That's right.

10 Q Do you want to add anything to that?

11 A No, not at this point.

12 Q You are agreeable to that condition.

13 A Yes.

14 Q Again, that's coming from the Public Works
15 statement Exhibit 7.

16 A Right.

17 MR. GIROUX: I have no further questions.

18 CHAIRMAN CHOCK: State?

19 CROSS-EXAMINATION

20 BY MR. YEE:

21 Q I'm going to go over some of the
22 representations that are in the EIS first and then
23 I'll move on to some other issues. With respect to
24 stormwater quality, will DOE represent that it will be
25 compliant with Maui County's recent stormwater quality

1 ordinance?

2 A Yes, I think so. Yes.

3 Q And with respect to potable water, use of
4 non-potable water for irrigation, will DOE represent
5 that it will be using non-potable water for its
6 irrigation uses?

7 A Yes. And we would probably be able to get
8 credit, for example, under the LEED and/or the HICHPS
9 for that. Definitely that is one of our key focuses
10 on many of our campuses. If it's available, in this
11 case we'd be drilling wells to actually allow that is
12 one means.

13 Q I noticed in your EIS it indicated -- well,
14 let's backtrack. The two potential sources of
15 non-potable water would be either a brackish well to
16 be drilled by DOE or R1 water to be taken from the
17 county system. Is that right?

18 A Right. Yes.

19 Q Would DOE be willing to do both? Or are
20 they wanting to do one or the other?

21 A Well, again we're looking at the expense.
22 Right now it's our understanding the offsite water is
23 not available near our campus. It's quite aways away.
24 We would rather not be stuck with having to bear *that*
25 cost to bring it adjacent to our campus.

1 If the county brings it adjacent to our
2 campus then that makes it much more reasonable for us
3 to tie in. That is one of the motivators that we
4 decided to try to drill our own two wells. We felt
5 that that's a much more cost effective way to get
6 non-potable water for the irrigation need.

7 Q If you drill the well and the R1 water
8 subsequently is located, over a line a located next to
9 the school system, would you connect up anyway? Or is
10 that at some point --

11 A That's a decision we would have to make
12 down the road when that's available. I don't -- I
13 don't think I can commit to that right now.

14 Q At what point, if you know, at what point
15 could you decide whether or not to do one or the other
16 in the planning process?

17 A Again, I would think that that needs to be
18 given some more thought when, more of the, say,
19 components are available. We do plan in the RFP to
20 have the inclusion of drilling the 2 wells on our site
21 as part of the RFP. So we will definitely have the
22 water available.

23 Yeah, I think it's still -- yeah, I think
24 that's the best answer I can give you. We will
25 definitely have non-potable water for the irrigation.

1 And if it's not available from the county side we will
2 have it on our site, and that's going to be part of
3 the RFP.

4 Q Just so that I'm clear. So you'll
5 definitely have non-potable water to be used, but
6 whether or not you will hook up to the R1 or not will
7 depend upon how the circumstances evolve?

8 A I would think so. I think there are other
9 people that are more qualified within the DOE working
10 on those particular components to make that decision.
11 From what I've heard cost is a factor. And we are
12 again trying to build a school, facilities for the
13 students.

14 If we get burdened with some of these other
15 things it makes it very hard for us to do that in the
16 fashion that we would like to and we feel that the
17 students and the staff deserve.

18 Q Okay. Thank you for the answer. I just
19 needed to have some clarity to understand as well as
20 the County's position on this.

21 With respect to Civil Defense will DOE
22 represent that it will provide an adequate space for a
23 Civil Defense siren in the Petition Area in a location
24 mutually agreeable to both the Department of Education
25 and Civil Defense?

1 A Yes.

2 Q With respect to flora and fauna will DOE
3 represent that any outdoor lighting, including any
4 lighting during nighttime construction would be
5 shielded so as to reduce the potential impacts to
6 nocturnal birds?

7 A Yes.

8 Q With respect to archaeology, will DOE
9 represent that it will submit an archaeological
10 monitoring plan to the State Historic Preservation
11 Division for approval and implementation -- for
12 approval and then implement that approved
13 archaeological monitoring plan?

14 A Right, yes.

15 Q You're, of course, familiar with the Final
16 Environmental Assessment in this case.

17 A Yes.

18 Q Will the Department of Education then be
19 implementing either the mitigation proposals by your
20 consultants or an equivalent mitigation or potentially
21 better mitigation in the final construction?

22 A Yes.

23 Q You talked about the backbone
24 infrastructure to be constructed for Phase 1. Is
25 there also additional backbone infrastructure for

1 Phase 2? Or will that all be completed in Phase 1?

2 A Again, depending on the exact design that
3 comes out of the design build. But we would like to
4 do as much of that infrastructure in the first phase
5 so that we don't have to come back and trench around
6 the campus and stuff 'cause that's rather disruptive
7 and costly. So we would like to do as complete as we
8 can within the first phase.

9 Q I notice that the funding for Phase 2 is
10 30 million which is in comparison to Phase 1
11 construction of 130 million. I take it in Phase 2
12 construction since they anticipated to be
13 significantly less expensive.

14 A Yes. I mean there's a lot more in Phase 1
15 than Phase 2.

16 Q Does that \$30 million include
17 infrastructure construction?

18 A I think the estimate right now it would
19 include what we feel is appropriate for doing Phase 2.

20 Q Well, is infrastructure part of --

21 A Yes.

22 Q -- I mean vertical construction is
23 obviously going to be required for Phase 2, right?

24 A Yes. I mean, yes, it would include the
25 infrastructure which primarily, you know, is

1 utilities, water, electricity, sewer. So that's
2 what's normally in infrastructure. That's what you
3 would have to have.

4 We would try to do as much of that to reach
5 the future buildings and whatever it is in the front,
6 again so that we don't have to tear up the campus
7 twice.

8 Q But wouldn't you have -- I can understand
9 you may need some additional lines potentially to a
10 new location. But wouldn't the backbone
11 infrastructure be all completed in Phase 1?

12 A I think that's what I said.

13 Q Okay.

14 A We would try to do, yes.

15 Q And when would Phase 1 be completed?

16 A I think we hope to -- well, again the money
17 will be available potentially next year 2014. By the
18 time it's released will probably be sometime at the
19 earliest in the fall of that year. Once we start the
20 design/build process it takes -- we're going through
21 it right now, for example, for Kapolei 2 an elementary
22 school. We did the RFQ process. We're going into the
23 RFP now.

24 Once you select and you go into a period
25 for that team that has to finalize their design and

1 then go into the construction. It's probably a
2 minimum of about 3-year process for building of a high
3 school, maybe even a hair longer.

4 So if we don't start till 2015 sometime I
5 don't think it would be available till 2018 or so.
6 But, again, it depends on exactly when the funding is
7 released and then how the process goes. But that's
8 about the best estimate I can give you right now.

9 Q So as I understood it the need for the
10 high school exists today for Phase 1. Correct?

11 A Yes.

12 Q You have the \$130 million appropriation
13 from the Legislature, correct?

14 A The money is not available until the second
15 year of the biennium.

16 Q Fair enough. But the money has been
17 appropriated for the second year of the biennium,
18 correct?

19 A Yes.

20 Q And I understand there are additional
21 processes that need to go into place. But there would
22 be no reason why Department of Education would delay
23 the construction of the high school.

24 A No. If we can get -- if available funding
25 is as anticipated, then we will try to be ready with

1 the RFP to go out so that, yes, we could get into that
2 process and ultimately design and build a school.

3 Q So your goal would be approximately 3
4 years.

5 A Yeah, I think that that would be a good
6 ballpark. Might be a little bit longer for a high
7 school because, you know, as compared to an elementary
8 school, for example, there's probably at least twice
9 to 3 times the square footage that we're talking
10 about. There's also all the athletic components.
11 They're really building an awful lot in a full blown
12 high school.

13 Q So taking into account I guess the
14 potential delays that may exist, at the very least the
15 backbone infrastructure, the backbone infrastructure
16 should be done in 10 years?

17 A That's our goal.

18 Q Well, your goal is less than 10 years.
19 Isn't your goal 3 years for completion of Phase 1?

20 A Well, yes. I mean...

21 Q So wouldn't the backbone infrastructure
22 have to be done before its completion, right?

23 A Yes.

24 Q So wouldn't the backbone infrastructure
25 have to be completed within 10 years?

1 A Yes. I mean we hope to have, assuming
2 there's need and the funding, after it's open within
3 10 years we would finish phase 2. Right? Is that
4 what you're saying? I'm not sure what you're asking.

5 Q I was focusing on the backbone
6 infrastructure which you said would be done in Phase
7 1.

8 A The backbone infrastructure has to come so
9 that the buildings are operational. That's going to
10 be one of the first things that will be done.

11 Q So if your goal is 3 years for construction
12 of Phase 1, and the backbone infrastructure should be
13 completed within Phase 1, then at the very least,
14 considering delays, the backbone infrastructure should
15 be completed at least within 10 years, is that right?

16 A Yes. We're moving right along aren't we.

17 Q I had a question. You know, every time we
18 come to the Land Use Commission the Office of Planning
19 asks developers to pay an impact fee to the Department
20 of Education.

21 And so these developers are presumably
22 paying the Department of Education something for the
23 various projects that are coming up and will probably
24 be asking for something from Maui R&T as well. Is any
25 of that money being used for this high school?

1 A I'm not involved in that. But, yes, the
2 impact fees, they do go towards our schools, yes.

3 Q Do you know what's going towards this high
4 school?

5 A I don't know the exact details of that no.
6 I can find out, though. We do have people in our
7 office that handle all of that. We could get back to
8 you.

9 Q I notice the reason for Kihei High School
10 is because Maui High School is filled -- has excess
11 students. Right? It's beyond their design capacity.

12 A Right.

13 Q So wouldn't that be the purpose of these
14 impact fees to pay for these types of constructions
15 where existing capacity is being overcrowded?

16 A I guess the short answer is yes. But I
17 can't give you the detail on that. I can talk with
18 our people that if you -- the kind of detail that you
19 want I would feel much more comfortable coming from
20 the people that handle it all the time, work directly
21 with all the developers on that. I'm not the one that
22 sits there. I'm involved more in the design of the
23 actual school.

24 Q I do have a question about the drainage
25 infrastructure. It's not a huge issue for OP. But I

1 just wanted to ask. When I reviewed Gavin Masaki's
2 testimony he referred to constructing an offsite ditch
3 along the upper boundary of the Petition Area to
4 divert sheet flow stormwater runoff from mauka areas
5 into Waipuילani Gulch. Are you aware of that?

6 A I think that question would be better
7 answered by our sub-consultants that worked on that
8 part of the study.

9 Q Well, my question -- well that's fine. And
10 the testimony speaks for itself. I guess my question
11 is why would you divert that water directly into to
12 Waipuילani Gulch if you then intend to hold all water
13 from the site onsite?

14 A I don't think I can answer that other than
15 it seems like you're talking about the water that's
16 coming down from above our site.

17 Q Yes. In other words, why wouldn't you --
18 in other words, why wouldn't you just take the excess
19 water or the water that's coming onto your site, put
20 it into your stormwater drainage system, reduce and
21 mitigate the stormwater quality damages and then have
22 the excess of that flow into Waipuילani Gulch rather
23 than have it all flow straight into Waipuילani Gulch
24 without going through the additional mitigation on
25 your site?

1 MR. YUEN: If you know.

2 Q (By Mr. Yee): If you know, yeah.

3 A No. Okay, I'll say it. At this point no I
4 don't know.

5 Q This particular school has 77 acres, is
6 that right?

7 A Approximately.

8 Q Approximately. Typically high schools
9 aren't they around 45 acres or so?

10 A No, they're around 58 acres, they average
11 50 useable acres.

12 Q Is this 77 acres, do they have only 50
13 useable acres?

14 A That's right. Because of the slope they're
15 going to be a lot of areas that will be bermed
16 somewhat. You really can't do too much on those. You
17 typically need more flat areas. For example, your
18 fields, even your building pads it's typically, then
19 your pedestrian walkways. Normally those are on
20 fairly flat areas.

21 Q Weren't school sites considered makai of
22 Pi'ilani Highway?

23 A I think we looked at about, overall
24 initially about 10 or 11 sites in the site selection
25 process.

1 Q Do you know if any of them were makai of
2 Pi'ilani?

3 A Makai. Well, we're makai of Pi'ilani --

4 Q Were any sites considered makai of
5 Pi'ilani?

6 A I can't recall.

7 Q You mentioned how the governor approved the
8 FEIS. Are you aware that typically Traffic Impact
9 Analysis Report that's contained in the FEIS is not
10 approved by the Department of Transportation prior to
11 acceptance by the accepting authority? (pause) Do
12 you want me to repeat the question?

13 A No. Again, I'm not familiar with that kind
14 of detail.

15 Q Okay. Your statement says that you believe
16 the transportation study was in the current
17 Transportation Impact Analysis Report is the EIS is
18 adequate.

19 A Yes.

20 Q Is that based on Pete Pasqua's opinion? Or
21 is that based upon some independent knowledge of
22 yourself?

23 A It's based upon Pete Pasqua's.

24 Q With respect to HICHPS, I believe you
25 testified that the criteria in LEED and the criteria

1 in HICHPS are very similar, is that right?

2 A Yes, overall.

3 Q You're aware that LEED has 4 levels:

4 Certified, silver, gold, and platinum?

5 A Yes.

6 Q You're aware that high CHPS has two levels:

7 verified and verified leader, is that right?

8 A Yes.

9 Q But each of these are based upon a
10 particular number of points within each respective
11 system, correct?

12 A That's right.

13 Q Could you explain why high CHPS verified is
14 equivalent to LEED Silver?

15 A That's our understanding with the
16 developers that that would be the equivalent. We
17 worked with the board of directors. They were
18 contracted from HICHPS and that's what they said would
19 be the equivalent to LEED Silver.

20 Q So it's based upon an opinion from -- I'm
21 sorry -- this board of directors, can you explain who
22 they are.

23 A Well, I mean they are from -- they're
24 actually with the board of directors of the CHPS
25 program. So they were one of the ones that obviously

1 had to approve as we went through that process. And
2 they gave us a lot of direction. And they said that
3 that would be the equivalent.

4 Q Just to complete it, CHPS Verified Leader
5 would then be equivalent to what? Do you know? Did
6 they tell you?

7 A No.

8 Q But you specifically asked them to make
9 sure that the Verified was going to be equivalent to
10 LEED Silver.

11 A Yes. That's our understanding.

12 Q Have you reviewed the Office of Planning's
13 proposed conditions?

14 A Not any more than -- no.

15 Q Have you seen the Office of Planning's
16 written testimony?

17 A No I haven't.

18 Q So how did the Department of Education come
19 to its conclusions as to what conditions would or
20 would not be acceptable to the Department of
21 Education?

22 A Well, I worked with my lawyer who's
23 represented us. I presented what we've agreed upon to
24 present.

25 Q But you didn't examine the Office of

1 Planning's proposed conditions in coming to that
2 conclusion. You personally didn't, right?

3 A I personally didn't, no.

4 Q You relied on someone else to review it for
5 you?

6 A Yes.

7 Q Well, then let's go over the conditions.

8 CHAIRMAN CHOCK: Bryan, how much more time
9 do you need?

10 MR. YEE: This may take -- it's not going
11 to be 5 minutes. It will be longer than that.

12 CHAIRMAN CHOCK: Why don't we take a short
13 recess for our court reporter, reconvene in 10
14 minutes. Thank you.

15 (Recess was held. 10:35-10:50)

16 CHAIRMAN CHOCK: Back on the record.
17 Bryan, where did we leave off?

18 MR. YEE: Thank you. I'm about ready to go
19 through OP's proposed conditions and its written
20 testimony. I'm going to skip Condition 1.

21 CHAIRMAN CHOCK: Thank you. (laughter)

22 MR. YEE: We're going to come *back* to that.
23 (Laughter).

24 Q So Condition 2. Have you had a chance to
25 review OP's Condition 2?

1 A Okay. Why don't you -- I have lots of
2 things in front of me. Why don't you tell me what
3 that one is, then we'll -- I'll respond.

4 Q Do you have Office of Planning's testimony?

5 A Yes, I do.

6 Q Go to page 12.

7 A Yes.

8 Q Do you see the water conservation?

9 A Yes, I do.

10 Q Do you have any concerns over Condition 2?

11 A No.

12 Q Condition 3, and I'm going to give you an
13 caveat in Condition 3. You'll notice in the second
14 sentence it says, "To the extent feasible." With the
15 understanding that feasibility includes both physical,
16 technical and economic issues or concerns, do you have
17 a concern with Condition 3?

18 MR. YUEN: Can you clarify what you mean by
19 "do you have a concern".

20 Q (By Mr. Yee): Do you have any reason why
21 you don't want to adopt or agree to Condition 3?

22 MR. YUEN: If you can answer.

23 A No, I don't think so.

24 Q (By Mr. Yee): Condition 4 regarding civil
25 defense. Do you have any concerns on condition 4?

1 A Haven't we already addressed all these
2 issues?

3 Q We've addressed the issues but now I'm
4 going specifically over the proposed conditions.

5 A And what is the difference?

6 Q The difference would be whether there's
7 anything in the way we phrased something that would
8 give you pause. And I will be stopping, for example,
9 on Condition 8 because I notice there's an issue in
10 your testimony. But I just want to make sure that
11 what we have proposed is acceptable to the Department
12 of Education.

13 A No. 4. No, I have no objection.

14 Q Condition 5, do you have any concerns?

15 A No.

16 Q Condition 6, do you have any concerns?

17 A No.

18 Q Condition 7, do you have any concerns?

19 A No.

20 Q Let me stop for a moment on Condition 8.
21 Condition 8 you will notice requires the backbone
22 infrastructure to be completed within 10 years. We
23 had a discussion about Phase 1 and Phase 2 and the
24 infrastructure that would be required. So I just want
25 to remind you of that.

1 With the understanding that Condition 8
2 applies to the backbone infrastructure and not
3 necessarily to every piece of infrastructure that
4 would be required, do you have any concerns about the
5 Condition 8?

6 A No.

7 Q Do you have any concerns about Condition 9?

8 A Why don't you clarify what you mean by No.
9 9.

10 Q Sure. You understand that the Department
11 of Education has made various representations in this
12 case, right?

13 A Yes.

14 Q Okay. So if you have made a representation
15 to the Commission, for example, you say "I'm going to
16 build a school." And then 10 years later you build a
17 shopping mall. That would be a -- that would not be
18 in substantial compliance with the representations to
19 the Commission, right?

20 A No, it wouldn't. And I would probably lose
21 my job if I tried to build a shopping mall with DOE
22 funds. (Laughter).

23 Q So Condition 9 would tell you that if you
24 develop the Petition Area which is not in substantial
25 compliance with your representations, and of course,

1 it has to be substantial compliance, that your failure
2 may result in reversion of the property. Do you know
3 what the term "reversion" means?

4 A Yes.

5 Q Okay. Do you understand that a failure to
6 substantially comply may result in reversion of the
7 Petition Area?

8 A Yes.

9 Q Do you have any concerns about Condition 9?

10 A No.

11 Q Let me go back to Condition 1 which I
12 understand is a more controversial question. I'm
13 going to break Condition 1 up as well. Conditions 1A,
14 B and C, could you review those and tell me whether
15 you have any concerns about 1A, B or C?

16 A Well, on the A, I mean I guess we wanted to
17 really have it clarified why we needed to redo it
18 again. Because if we're not clear on why we're
19 redoing it it's hard to redo it a complete and
20 acceptable manner. So I don't think No. 2 we have a
21 problem with.

22 Q You're referring to 1B.

23 A Yes. You're correct, B.

24 Q And 1C?

25 A Yes.

1 Q You have no concerns with 1C?

2 A No, not at this point. Like I said in No.
3 1A we would like to really know why we're being asked
4 to do it again. And before we would undertake that we
5 would want to know what is the new criteria or what
6 are the areas of concern. So that would spill into
7 No. 3. That's assuming that we agreed with you and
8 revised it.

9 Q With respect to -- well, let me just move
10 on before we go back to that. With respect to 1D. If
11 you remove the term "sidewalks" so it would only
12 require the installation of paved shoulders and
13 accommodations for bicycles. Do you have any concern
14 with 1D with that amendment?

15 A No.

16 Q I'm going to skip No. E.

17 MR. YUEN: Excuse me -- can I ask -- I
18 think the witness -- never mind. I'm sorry.

19 Q (By Mr. Yee): I'm going to skip E for now
20 because I understand that's also, that's probably the
21 most controversial question in this condition and move
22 on to 1F. Do you have any concerns about 1F?

23 A I guess not, no.

24 Q Then 1G regarding noise. Do you have any
25 concerns with 1G? It's on the next page.

1 A No.

2 Q Let me go back to the pedestrian overpass
3 and underpass. Well, actually let me go to an easier
4 question. Pi'ilani Highway is a state highway,
5 correct?

6 A Yes.

7 Q And in order to make any changes to
8 Pi'ilani Highway you will need the Department of
9 Transportation approval, correct?

10 A Yes, I think so.

11 Q So even if you're willing to pay for the
12 improvement you still need the Department of
13 Transportation approval before you can make a change
14 to the highway, correct?

15 A Yes.

16 Q So if the Department of Transportation is
17 not willing to accept your Traffic Impact Analysis,
18 for example, if they're not willing to accept the
19 traffic warrant study, you would not then be able to
20 get DOT approval to make changes to Pi'ilani Highway.
21 Do you understand that?

22 A Yes.

23 Q So do you then -- would it then also be
24 true that almost regardless what the LUC says you do
25 need to revise the TIAR to the satisfaction of the

1 Department of Transportation before you can operate
2 the school and have, for example, a safe crosswalk?

3 A Yes.

4 Q With that in mind is your concern about
5 DOT's, I guess, lack of information to you or failure
6 to provide sufficient information to you, is that a
7 barrier to the adoption of the condition 1A? Or is
8 that simply something you want to occur in the future
9 with respect to further communications with DOT?

10 A I think, you know, we would just like -- if
11 we're to redo it, we would like to have clear
12 understanding of why we're doing it and what is it
13 that they objected to the first time we did it.

14 Q Let me move then to the Condition 1E which
15 refers to a grade-separated pedestrian walkway
16 referred to generally as either overpass or underpass.
17 To what extent is this -- let me backtrack. The
18 Department of Education would prefer not to do either
19 an overpass or underpass, correct?

20 A That's correct.

21 Q To what extent is this an engineering
22 question on which you've relied upon Mr. Pasqua's
23 opinion? And to what extent is it simply independent
24 judgment by the Department of Education?

25 A I think it's both.

1 Q So what part of that decision is the
2 Department of Education judgment?

3 A Department of Education feels very strongly
4 that we shouldn't be in the business of building
5 overpasses and underpasses. We're trying to build
6 schools.

7 Q So it's more of a jurisdictional question
8 for the Department of Education.

9 A Yes, I guess so.

10 Q If the -- does the Department of Education
11 believe that it has an obligation to mitigate the
12 impacts which the school will cause?

13 A Yes.

14 Q To the extent that there's increased
15 traffic across Pi'ilani Highway, is that an impact
16 that should be mitigated by the Department of
17 Education?

18 A Yes, I guess so. I mean we build and
19 obviously we're going to bring more people at certain
20 times to that area because we do want the students to
21 attend the school.

22 Q So backtrack. So the Department of
23 Education does have an obligation to provide a safe
24 crossing on Pi'ilani Highway.

25 A Yes.

1 Q Whether or not that safe crossing is an
2 at-grade crosswalk or overpass/underpass, to what
3 extent is that a Department of Education judgment
4 versus an engineering judgment?

5 A I don't think I can answer that because to
6 me I think obviously both factors. We hired a
7 consultant, are obviously going to try to respect what
8 his recommendations are. Otherwise we probably
9 wouldn't have hired him.

10 We also have an understanding in the DOE
11 we're trying to provide safe environments for our
12 students. So they sort of go hand-in-hand I would
13 think.

14 Q With respect to the engineering judgments
15 would you be deferring to Pete Pasqua?

16 A Yes, I think so.

17 Q Would you agree that if there's not a
18 crosswalk at the intersection of Kulanihakoi and
19 Pi'ilani, that an alternative means of crossing is
20 required?

21 A Yes. We do want the kids to come to
22 school.

23 Q In that situation would an underpass or
24 overpass be warranted?

25 A I guess it would narrow it down to

1 something like that if you're not going to have an
2 on-grade crossing. And as we've earlier stated both
3 those have some real negative potential and
4 operational difficulties that have also been stated in
5 all the studies that I think DOE issued and are out
6 there.

7 So it's not something to be taken lightly.
8 Sometimes those kinds of things just don't work out
9 because of the overriding safety, kids not feeling
10 safe, kids being mugged, negative things happening.

11 Q There are operational challenges --

12 A Yes.

13 Q -- in overpasses and underpasses, correct?

14 A Yes.

15 Q So you've expressed those operational
16 challenges. That's what you're referring to.

17 A Yes.

18 Q Have you tried to look at ways to mitigate
19 these operational challenges?

20 A Yes. I mean if you had to do those you
21 would obviously try to mitigate the negatives that you
22 think may happen. So again we're trying to do a safe
23 environment. It can be very challenging.

24 Q So are you saying that that analysis of
25 trying to mitigate these operational challenges would

1 be done in the design/build phase, if it had to be
2 done?

3 A Yes, I think the specifics of your
4 mitigation would come at that time, yes.

5 Q But at this point because you're opposed to
6 it you have not yet done that analysis.

7 A No, not an in depth because we feel it's
8 not a place we want to go because of the general --
9 those before solutions.

10 Q With respect to a pedestrian route study do
11 you have any opposition to doing a pedestrian route
12 study for the Department of Transportation?

13 A So now that's an additional? Or is that a
14 component of the TIAR? Or is that a separate study in
15 conjunction? Or, I guess I'm asking how many things
16 are we going to be asked to do?

17 Q Well, I'm referring obviously to the
18 revised Department of Transportation testimony which I
19 understand you may not have had an opportunity to
20 review.

21 A Is that the one that you gave us yesterday?

22 Q That's right.

23 A Yeah, we feel that wasn't very prudent on
24 your part. We would really appreciated much more
25 time.

1 Q I take it you don't have an objection,
2 though, to the Department of Transportation's decision
3 to eliminating the need to construct sidewalks.

4 A No. If they don't require it at this
5 point. But earlier obviously -- well, if it's not
6 needed at this time, yeah, we would rather spend our
7 money on the facilities.

8 Q And the Department of Transportation's
9 decision to say we would recommend but not require an
10 pedestrian overpass if an at-grade crosswalk is
11 allowed, you're happy with that statement as well?

12 A Yes.

13 Q So when you say you don't appreciate the
14 Department of Transportation's late testimony, there
15 are parts of it you actually do appreciate.

16 A That's correct.

17 MR. YEE: All right. I have nothing
18 further. Thank you.

19 CHAIRMAN CHOCK: Before we go to redirect,
20 Counsel, would you mind putting up the conceptual land
21 use slide back up on the map so we have some frame of
22 reference before the Commission gets into questions
23 and answers. That'd be great. Thank you. Mr. Yuen,
24 do you have any redirect?

25 MR. YUEN: Yes, I do.

REDIRECT EXAMINATION

BY MR. YUEN:

Q Mr. Nichols, with respect to the recommended conditions that Mr. Yee was asking you about, Condition No. 1D, that the "Petitioner shall install sidewalks and paved shoulders along Pi'ilani Highway fronting the school and provide accommodation for bicycles."

Mr. Yee indicated that the Department of Transportation is no longer requiring a sidewalk. And you indicated that you had no objection to paved shoulders.

Are you also willing to provide a separate bike lane?

MR. YEE: We would ask: You mean along Pi'ilani Highway?

MR. YUEN: Yes.

MR. YEE: Okay. Just for clarification.

A Okay. First of all, we would try to do things directly in front of our school that would meet the needs. So I guess I'm not real clear on whether we had a bike lane that would not also be, say, a pedestrian walkway. I don't know exactly how you folks do that. But, anyway, I think until we would -- I can't say no to any of this because I think we're

1 trying to have the students come safely to the school.

2 Q (By Mr. Yuen) But you can't say yes to
3 everything on the other hand either, is that correct?

4 A Yeah. Some of the stuff I don't see, I
5 don't think it's very clear to myself what I'm being
6 asked about.

7 Q Next. With respect to the underpass and
8 overpass is this the first school that's located
9 adjacent to a state highway?

10 A I don't think so. Like Central
11 Intermediate.

12 Q I was going to ask you next to give some
13 examples of high schools that are next to major state
14 highways or major thoroughfares.

15 MR. YEE: I'm going to object on the basis
16 it's beyond the scope. I haven't asked him for other
17 examples. I haven't asked him for anything related to
18 the subject matter.

19 MR. YUEN: I'm using this to get around to
20 the Department of Education's position or why the
21 Department of Education believes that the underpass or
22 overpass is not necessary, which is the thrust of
23 your questioning to Mr. Nichols.

24 CHAIRMAN CHOCK: Overrule on the objection.
25 Proceed, Mr. Yuen.

1 Q (By Mr. Yuen): Thank you. Can you give
2 the Commission an example of some schools that are
3 adjacent to state highways?

4 A Okay. Let me throw out this. Central
5 Intermediate it's not a high school but we have an
6 overpass there. Now, I'm not up on the highways. Is
7 that a state highway that goes right by Central?

8 Q Vineyard. We're referring to Vineyard
9 Boulevard --

10 A Yes.

11 Q -- which is a state highway.

12 A Okay. Yes, we have that. I'm not sure...

13 Q Who's responsible for maintaining that
14 overpass?

15 MR. YEE: Same objection. Beyond scope.

16 CHAIRMAN CHOCK: Proceed.

17 THE WITNESS: In talking with our
18 construction management section recently, there was
19 some improvements that needed to be done on that. My
20 understanding was DOT did not have it as a priority.
21 So DOE funded those improvements that had to be done.

22 And I guess we were sort of questioning why
23 we had to do it, but we did it because DOT said it
24 wasn't a priority for them is my understanding. And
25 we needed, we felt, to make it safe for our students,

1 we had to step up.

2 Q (By Mr. Yuen) Do you recall or do you know
3 whether this overpass was originally installed by DOT
4 or DOE?

5 A I don't have that kind of information. I
6 don't recall that, no.

7 Q Okay. In the case of Kalani High School is
8 this school adjacent to a major state highway?

9 MR. YEE: Can I just have a running
10 objection as I will be asking to do recross after
11 based upon the questions' beyond the scope so I don't
12 have to keep interrupting.

13 CHAIRMAN CHOCK: Sure.

14 MR. YEE: Thank you.

15 Q (By Mr. Yuen): Kalani High School, is this
16 adjacent to a major state highway?

17 A If Kalaniana'ole is a major state highway it
18 is, yes.

19 Q Is there an overpass or underpass there?

20 A No, there's not.

21 Q Are you aware of any safety issues or
22 concerns in the students going to and from Kalani High
23 School and crossing that highway?

24 A No. It seems to work well.

25 Q Your office physically is at Kalani High

1 School, is it not?

2 A That's right. I go through that
3 intersection 2 to 3 times a day.

4 Q If the Department of Transportation were to
5 insist on an overpass or underpass, is there
6 presently funding available to construct this
7 facility?

8 A No. We would have to go back to the
9 Legislature and ask for additional funding.

10 Q So that the Department of Education's
11 willingness or ability to comply with any condition
12 would be subject to funding?

13 A Yes. We would want to seek additional
14 funding rather than lessen the scope of Phase 1 like,
15 for example, doing less facilities to cover the cost
16 of an overpass or underpass.

17 Q And would the Department of Education
18 prefer to have Department of Transportation operate
19 and maintain such an overpass or underpass?

20 A Yes, we would. If we were successful in
21 getting the additional funding we would likely
22 delegate it to the Department of Transportation to
23 design and construct and maintain it.

24 Q What's the reason for that?

25 A Because it seems like that is more their

1 responsibility than ours.

2 Q Can you think of any other examples where
3 the Department of Education has actually closed an
4 underpass adjacent to a school?

5 A No.

6 Q What about Mililani High School?

7 A That has been closed, yes.

8 Q What was the purpose of that underpass?

9 A What was -- I guess to get on the other
10 side of the highway.

11 Q Okay. Do you know the reason why the
12 Department of Education closed that underpass?

13 A I think there was some safety, negative
14 activities that were going on as best I recall. I
15 didn't get heavily involved in that decision. So I
16 don't know the exact. From what I heard in general it
17 wasn't a safe situation for our students.

18 Q By "safe situation" you're not referring to
19 the use of the underpass for crossing the street.

20 A No. It was the -- my understanding it was,
21 you know, negative things that potentially were
22 happening or were happening under there.

23 MR. YUEN: No further questions. Thank
24 you.

25 CHAIRMAN CHOCK: Thank you, Mr. Yuen.

1 Commissioners, questions? I've got a couple
2 questions, Mr. Nichols. What's the cost to construct
3 and design an overpass?

4 THE WITNESS: We don't have that
5 information.

6 CHAIRMAN CHOCK: Rough estimate. Rough
7 order of magnitude? We don't need precision.
8 10 million, 5 million, 2 million? A hundred thousand?

9 THE WITNESS: I've never been involved in
10 that. I think that would come better from DOT. Like
11 I said I'm not involved in the design of overpasses. I
12 think it would be substantial because it would
13 require accessibility on both ends.

14 So it would probably require things like
15 elevators if not 2, and a ramping, long ramping on the
16 site. I would think it would be in the millions but
17 I'm not expertise. I think someone from DOT could
18 give us a better estimate. I think it's substantial.

19 CHAIRMAN CHOCK: Sure. If you were to have
20 an overpass or underpass constructed, where would that
21 go on that conceptual site plan? Where would you
22 place it?

23 THE WITNESS: I cannot --

24 CHAIRMAN CHOCK: Again without precision,
25 roughly speaking where would it go?

1 THE WITNESS: Well, I guess it would try to
2 go close to the intersection.

3 MR. YUEN: Could you point to the location
4 of the intersection with the pointer.

5 CHAIRMAN CHOCK: What kind of discussions
6 have you had with DOT with respect to pedestrian
7 safety for the students and for the community that
8 would be accessing the school?

9 THE WITNESS: I'm not aware that we've had
10 a lot of discussions at this point. That's why we
11 would like to have, if -- I think we feel that we need
12 to have further discussions with them on that.
13 Obviously we want to provide a safe access for our
14 students, but so far there hasn't been, that I'm
15 aware, any detailed discussions with this other than
16 the past 2 or 3 weeks we had some meetings where they
17 gave us their initial input and that's it.

18 CHAIRMAN CHOCK: But I think you'd probably
19 agree that those conversations need to happen rather
20 soon.

21 THE WITNESS: Yes.

22 CHAIRMAN CHOCK: Given this is a major
23 source of I think concern that --

24 THE WITNESS: That's right.

25 CHAIRMAN CHOCK: -- we have before us.

1 THE WITNESS: That's what we would like.

2 CHAIRMAN CHOCK: This current Petition is
3 pedestrian safety, student safety. Okay. Of the
4 \$130 million appropriation how of much of that -- is
5 that for all construction or is that for design and
6 planning? Or how is that 130 breakdown?

7 THE WITNESS: I think most of that would be
8 earmarked for the construction. Like for the RFP
9 development we still have design funds for that.

10 CHAIRMAN CHOCK: What stage are you in
11 planning and design right now?

12 THE WITNESS: Well, we're beginning --
13 we're in the beginning steps of development of the
14 RFQ, RFP, but it's been hold on. It's been on a hold
15 until we were aware of our funding.

16 CHAIRMAN CHOCK: Why did the department go
17 from design, bid, build to design/build?

18 THE WITNESS: Basic idea is that you hope
19 to get maybe more facilities for your dollars because
20 you're working, say, with a contractor and his
21 architectural team. And perhaps the goal is through
22 their 2 expertises that they are giving you something
23 more maybe cost effective in the construction.

24 CHAIRMAN CHOCK: What about in terms of the
25 timeline? Is there any savings in terms of the time?

1 THE WITNESS: I don't think there's a great
2 savings in terms of the timeline because the
3 development time it takes for an RFQ and an RFP is
4 pretty substantial. Though you're not designing it
5 you are conceptually designing it, and then you put in
6 all the detail of all the things that you want. So
7 you're doing a pretty complete process with your
8 stakeholders.

9 Then it goes out. Once you select the
10 award winning team they go through their -- they've
11 given you a conceptual that you're awarded them on.
12 But then they need to do the completion of their
13 design.

14 So like in the elementary's case we're
15 estimating 5 months, a minimum of 5 months just to
16 compete the design of an elementary school once we've
17 made the selection in the fall. When you add all
18 those together I don't think the process, especially
19 right now, design/build especially in Hawai'i, but I
20 can only speak to Hawai'i, it's still a learning
21 curve.

22 So when you -- it's sort of like you're
23 design almost somewhat twice. Then you go into the
24 construction. Maybe the construction's going to be a
25 little bit quicker because it's ideally you're

1 selecting a very competent contractor. And they're
2 going to try to minimize because they have their
3 architect on board. They're going to try to minimize
4 change orders, try to catch a lot of the glitches that
5 might come up in a regular design, bid, build. I'm
6 not convinced it's a faster process.

7 CHAIRMAN CHOCK: I'm just trying to
8 understand the process and the timeline. So from the
9 time the department receives the release of funds in
10 the second year of the biennium, you're saying from
11 start to finish it's a 3-year process from once the
12 funds are released to opening Phase 1?

13 THE WITNESS: Probably yes.

14 CHAIRMAN CHOCK: 3 years?

15 THE WITNESS: I would say. I don't think
16 any quicker than that, but yeah. We will try to have
17 the RFP ready to go by, say, mid-summer next year so
18 that if the funding is available and then once it's
19 released we're gonna try to move that part ahead.

20 CHAIRMAN CHOCK: So you go to RFP
21 mid-summer in 2014.

22 THE WITNESS: I don't think we'll be able
23 to go until the funding is actually released and in
24 DOE's hands. And though it's available as of July 1
25 DOE then has to actually request it.

1 CHAIRMAN CHOCK: Right.

2 THE WITNESS: So depending on how quick
3 that process goes it might not be released, you know,
4 for several months.

5 CHAIRMAN CHOCK: So roughly speaking
6 summer-fall 2014.

7 THE WITNESS: Definitely probably the Fall
8 2014.

9 CHAIRMAN CHOCK: Okay. So after you go to
10 RFP what's next in the scope in terms of the sequence
11 of the Project?

12 THE WITNESS: The RFP will take you through
13 the selection of the actual team that's going to build
14 it. So you go through the RFQ first where you open it
15 up to all the interested parties. Then once those
16 have come in your deadline, then you go through,
17 screen those. And you, like in the elementary case,
18 we narrowed it down to 5. We interviewed 5. We
19 narrowed that to the 3 that are going to move forward
20 into the actual development of the RFP from their
21 perspective.

22 CHAIRMAN CHOCK: Okay. So how long does
23 that process take to select your team if you go to RFP
24 in Fall 2014? I'm just trying to understand the
25 sequence and the timeline 'cause I know the community

1 has waited a long time for this school.

2 THE WITNESS: Right. Right. We're well
3 aware of that.

4 CHAIRMAN CHOCK: I'm trying to get a sense
5 for how the department is gonna try to maybe value
6 engineer some of the timing to get under construction
7 as soon as possible.

8 THE WITNESS: Well, we would try to have --
9 I guess to give you a short answer. I'm guessing if
10 we had it all in place and once we had the money
11 because my understanding we cannot actually start the
12 system until the money is in our hands, so it doesn't
13 go awry. So I guess maybe 3 to 6 months once the
14 money's in hand we can hopefully get through that
15 process and award it to a team.

16 CHAIRMAN CHOCK: So 3 to 6 months to select
17 a team.

18 THE WITNESS: Yes.

19 CHAIRMAN CHOCK: Then what's the
20 construction timeline for Phase 1 improvement? Site
21 work --

22 THE WITNESS: We were estimating, and this
23 we heard from all the teams we interviewed for the
24 elementary, 15 to 17 months for the construction of
25 the elementary school. Of course, a high school is

1 much bigger. So I would think it would probably be
2 closer to 20ish, 20 months or so. Again, this will be
3 the first time we've ever done it for a high school.
4 This is one that we just were in the process of
5 getting going as the first we'll do for an elementary.

6 So it's very new for us. I wish I could be
7 more exact in my answers. But a lot will depend on,
8 for example, how fast the permitting goes. Of course
9 if they find anything on the site in terms of
10 archaeology. There's a lot of -- well, you're we'll
11 aware of all the permitting concerns.

12 CHAIRMAN CHOCK: Sure. Since this is -- it
13 sounds like it's somewhat of uncharted territory for
14 the department, are you folks using any kind of
15 construction management expertise outside or
16 consulting?

17 THE WITNESS: Yes. we've hired DBIA
18 Consultants that are walking us and guiding us through
19 both these processes. Those are very highly
20 qualified. The one we used for the elementary had
21 been a past president of that. And the one we're
22 using for Kihei is also a nationally recognized under
23 DBIA standards. He's really helping us to go through
24 it.

25 CHAIRMAN CHOCK: Okay. Great. I know

1 there was one question asked earlier about the impact
2 fees. And I know you answered that you didn't know.
3 But I think it would be helpful to this Commission to
4 maybe hear back from you or through your counsel at a
5 later date, maybe tomorrow, if he can get us some
6 feedback on it.

7 Because I do think it's one of those issues
8 that we hear commonly at the LUC in terms of impact
9 fees and then we don't necessarily see the return
10 because most of us are off the Commission by the time
11 the schools come up. But I would personally like to
12 know.

13 THE WITNESS: Your question was directly
14 impact fees how it would affect Kihei High School.

15 CHAIRMAN CHOCK: I think that was the
16 specific question that was asked. But I think it
17 would be good if you could enlighten us a little bit
18 on how that's worked on Maui County per se and maybe
19 elaborate on that or have somebody else in the
20 department get us some additional information that'll
21 be useful.

22 THE WITNESS: Okay.

23 CHAIRMAN CHOCK: Okay. I have no further
24 questions. Commissioners? Commissioner Inouye.

25 COMMISSIONER INOUE: Thank you, Chair, but

1 I think Bryan is itching to ask his re-cross first, so
2 I think I'd defer to Bryan.

3 MR. YEE: I'm asking to recross on the
4 matters that I had -- I had objected to on the basis
5 of non-descript. May I be allowed to recross?

6 CHAIRMAN CHOCK: Why don't we get through
7 Commissioners' questions first then we'll come back.
8 Commissioner McDonald. I'm sorry, go ahead.

9 COMMISSIONER INOUE: I just had one
10 question following the Chair's questions. I thought
11 you indicated that you already had the design money so
12 you're able to construct the RFP thing.

13 And are you not able to do that before
14 July 1st of next year to get the process that he was
15 taking about done and awarded to a design/build entity
16 by July 1st next year so that the construction funding
17 can quick in and just start design and build?

18 THE WITNESS: It's my understanding that,
19 if I understand your question, we do have the design
20 funding. So that would be the funding that we would
21 use for the development of the RFQ and RFP. So we
22 will try to do that, have that intact, say, by mid,
23 next summer. But we can't -- it's my understanding,
24 I'm pretty sure this is accurate -- we cannot actually
25 start the solicitation, make all those decisions until

1 we have the money released with the DOE because it's
2 just like we, yeah, that's just the law.

3 We can't -- like we don't do our consultant
4 selection until we actually have the funding released
5 and in hand. Because you don't want to go through all
6 of that, especially in a design/build case, with
7 parties, have them doing all that work. Let's say the
8 money did not materialize?

9 For example, in the elementary's case the
10 winning team will obviously become awarded the
11 contract. But we're giving the two losing teams, they
12 will get sort of a stipend. Again, anyway, so, yeah,
13 you can't have it all set and the person chosen before
14 the funding is released. That's my understanding.

15 COMMISSIONER INOUE: Let me rephrase the
16 question. Can you get through the process of
17 determining who would be the selected contractor,
18 design/builder, done with your design funding that you
19 already have up to the point of actually awarding the
20 design/build entity come July 1st of next year? I'm
21 just trying to understand.

22 THE WITNESS: I would need to check with my
23 planners. But my understanding they would say no
24 because you only have design money if you selected
25 them, let's say the construction money doesn't

1 materialize, they put in all this work. So what are
2 you going to pay them with? But I can get back to
3 you. But I do not think you can do that.

4 COMMISSIONER INOUE: Fair enough. Thank
5 you very much.

6 CHAIRMAN CHOCK: Commissioner McDonald.

7 COMMISSIONER McDONALD: Thank you,
8 Mr. Nichols. I think you answered one of my questions
9 as far as the stipend. Sounds like you folks are
10 going to be short listing the design/build teams to go
11 into a second phase for the conceptual design.

12 THE WITNESS: Yes.

13 COMMISSIONER McDONALD: So the winning team
14 would be awarded the Project. The 2 losing teams
15 would be provided....

16 THE WITNESS: Some kind of stipend.

17 COMMISSIONER McDONALD: Some kind of
18 stipend to cover their costs.

19 THE WITNESS: Well, it doesn't cover their
20 costs.

21 COMMISSIONER McDONALD: Yeah.

22 THE WITNESS: But it sort of shows good
23 faith --

24 COMMISSIONER McDONALD: Right. Right.

25 THE WITNESS: Because overall you want

1 teams, especially the ones that lose, should we do
2 this again you would want them to participate. And
3 it's felt that, we've been told that at least that
4 shows sort of good faith on the DOE or whoever is
5 letting the contract, that we do appreciate that
6 effort by the 2 teams that lose.

7 COMMISSIONER McDONALD: Right.

8 THE WITNESS: Also we've been told it's
9 good practice to narrow that down to, say, 3 versus
10 asking 5 because at least with 3 and 1 you have a
11 better chance of winning. So we would use that advice
12 method.

13 COMMISSIONER McDONALD: I think that would
14 be appreciated. I believe DOT Highways has gone
15 through the design/build process. They did not offer
16 these stipends to the losing teams. It could be the
17 result of. But there are protests that eventually
18 happen by the losing team.

19 So going back to Chair Chock's concerns
20 about schedule, you know, the whole protest process
21 could kind of stretch this thing out. So I'm
22 wondering if that's been taken into account as far as
23 addressing protests.

24 THE WITNESS: Yes. I mean -- well, first
25 of all, one of the reasons we hire consultants is try

1 to make it a much more clear and well-defined
2 design/build process so that you wouldn't be, say,
3 subject to as many potential protests.

4 We also have built that in we go through a
5 debriefing. In our debriefing we would hope that to
6 those that don't win we would hope we would be able to
7 explain to them well enough that they would accept our
8 decision.

9 COMMISSIONER McDONALD: I think this is
10 more of a comment from myself going back to
11 Mr. Misaki's response to the water system. I was able
12 to dig up some of his reports. And he did confirm
13 that service zone is 220. I believe your site is set
14 at about 150 elevation based on the exhibits. Running
15 some quick numbers, the static pressure is about 30
16 PSI.

17 And I asked that question because past
18 experience has shown that developing on the mauka side
19 of Pi'ilani has been, there has been some issues
20 regarding the water pressure. And you've mentioned
21 Department of Education fighting with their budgets,
22 not impacting their educational program.

23 But I just wanted to make the DOE aware
24 that there's potential that, you know, booster pump as
25 well as reservoir to address the fire protection and

1 those domestic requirements. And the County of Maui,
2 their criteria could require in excess of a quarter
3 million gallon tank to address it. I just wanted to
4 kinda point that out that is a potential.

5 THE WITNESS: Okay.

6 COMMISSIONER McDONALD: If that's kind of
7 captured in your budget. Because we would hate to see
8 your program, your educational program being affected
9 by these potential infrastructure improvements.

10 THE WITNESS: Okay. I appreciate your
11 concern. And we can -- I can take that information
12 back and work with our consultant and try to make sure
13 that it is clearly defined.

14 COMMISSIONER McDONALD: Thank you.

15 CHAIRMAN CHOCK: Thank you, Commissioner
16 McDonald. Commissioner Biga.

17 COMMISSIONER BIGA: Good morning,
18 Mr. Nicholas.

19 THE WITNESS: Good morning.

20 COMMISSIONER BIGA: Thank you for being
21 here this morning.

22 THE WITNESS: Thank you.

23 COMMISSIONER BIGA: I just had some
24 questions about the overpass and the underpass again.
25 From what I sitting here what I see it's kind of like

1 who's going to be the responsibility to build it. is
2 it going to be DOT or DOE? I look at it what's going
3 to be safe for the kids that's going to be using it
4 for the school.

5 On the makai side you have all these
6 residential areas. I don't know what is the
7 qualification for using the bus to go to school, what
8 is the perimeter? A mile? I'm not sure what that is.

9 THE WITNESS: I think it's typically
10 greater than a mile. I think lately it's been under
11 some revision because of budgetary constraints, but
12 anyway it does have a set distance.

13 COMMISSIONER BIGA: So you would be having
14 all these kids living in that area that'll be coming
15 across that crosswalk, hopefully an overpass. For me
16 I look at the safety for them. I understand what's
17 happening in that area that you guys closed in
18 Honolulu. Possibly there's criminal activity
19 happening in there. I don't know.

20 But it's too bad that we had to close that,
21 shut that place down because of that and we couldn't
22 work in a way to make it safer for everyone. I just
23 go along the lines of again safety for the kids.

24 THE WITNESS: For the kids.

25 COMMISSIONER BIGA: And using that to have

1 the kids walk over from the residential area to go to
2 school, you know. That's a concern that I'm really
3 looking at. Hopefully we can get over this and find
4 out who can be responsible in doing this Project
5 whether overpass or underpass that won't impact the
6 school. Because living in Maui we hear it screaming,
7 yelling for having a high school to be built and as
8 soon as possible.

9 And all the questions that Commissioner
10 McDonald pointed out and the other Commissioners, it's
11 just we want it yesterday.

12 THE WITNESS: Right.

13 COMMISSIONER BIGA: That's what we're
14 looking at to help the south Maui side. Thank you.

15 THE WITNESS: Thank you.

16 CHAIRMAN CHOCK: Thank you, Commissioner
17 Biga. Commissioners, any other questions? No
18 questions. Okay. If you could just hold on for a
19 second. I think Bryan had some followup.

20 MR. YEE: Mr. Chair, I'll try to be fast.

21 RECROSS-EXAMINATION

22 BY MR. YEE:

23 Q You were asked the question to name schools
24 that were adjacent to a state highway. I think you
25 named Central Intermediate and Kalani High School. Do

1 you remember that?

2 A Yes, I do.

3 Q Central Immediate has an overpass, correct?

4 A Yes, it does.

5 Q Kalani High School does not, correct.

6 A No, it doesn't.

7 Q Kalanianaʻole is the state highway next to
8 Kalani High School, correct?

9 A That's correct.

10 Q And the speed limit on Kalanianaʻole is 35
11 miles per hour, is that right?

12 A I don't know. It might be a little bit
13 higher. I drive it. I try to abide by the speed.

14 (Laughter)

15 Q I live on the east side. So I suggest you
16 should be a little more attentive when you go to
17 work.

18 A I've taken it. I know it very well.

19 Q If Kalanianaʻole is 35 miles an hour are you
20 aware that makes a difference in the federal highways
21 guidance as to when an overpass or underpass is
22 required?

23 A Yes, I've screened that a bit.

24 Q 'Cause it's 40 miles per hour the federal
25 guides, correct, as to when an overpass or underpass

1 is warranted.

2 MR. YUEN: If you now.

3 Q (By Mr. Yee) If you know.

4 A I'm going to say if I know. At this point
5 I'm not.

6 Q You are aware, though, that Kalaniana'ole
7 Highway in rush hour traffic is significantly slower
8 than 35 miles an hour?

9 A Yes, at rush hour, yes.

10 Q Then you also named Mililani High School as
11 having an underpass as well, correct?

12 A Yes. It has an underpass.

13 Q Does it have a gate on the underpass?

14 A I haven't walked it. I don't know.

15 Q Are you familiar with the underpass under
16 Pali Highway to Hongwanji?

17 A No, not in detail.

18 Q Are you aware that there is an underpass
19 with a gate to it?

20 A Yes.

21 Q Are you aware of any concerns about the
22 underpass which is gated?

23 A I'm not aware of that. If it's not a DOE
24 school I'm not aware.

25 Q So you're not -- so as far as you know

1 Mililani High School has not attempted to control the
2 negative activities in the underpass through a gate.

3 A I would think that school would have tried
4 to control it. I think they have competent
5 administrators there. They're concerned about their
6 students' safety. So I think they probably did what
7 they could.

8 Q So you don't know about Hongwanji, but you
9 know enough about Mililani High School to say that you
10 think they did try to gate the underpass under
11 Mililani?

12 A I don't know the details of Mililani. I
13 haven't walked it.

14 MR. YEE: All right. That's it. Thank
15 you.

16 CHAIRMAN CHOCK: Okay. Thank you. Thanks,
17 Bryan. Thank you very much for your testimony.
18 Appreciate you being here. Thank you very much. Who
19 do we have next, Mr. Yuen?

20 MR. YUEN: Next witness is Pete Pascua.

21 CHAIRMAN CHOCK: How much time do you have
22 for direct for this witness?

23 MR. YUEN: The direct testimony is going to
24 be about 15 minutes. whenever you're ready. Actually
25 I'll swear you in first.

1 PETE PASCUA

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

4 CHAIRMAN CHOCK: Thank you very much. Name
5 and address, please.

6 THE WITNESS: My number is Pete Pascua. My
7 address is 1907 South Beretania Street Suite 400
8 Honolulu, Hawai'i 96826.

9 CHAIRMAN CHOCK: Proceed.

10 DIRECT EXAMINATION

11 BY MR. YUEN:

12 Q Where is your professional affiliation?

13 A I'm vice president and director of traffic
14 engineering at Wilson Okamoto Corporation.

15 MR. YUEN: We've submitted Mr. Pascua's
16 resume as Exhibit 22. I'd like to have Mr. Pascua
17 qualified as an expert in traffic engineering.

18 MR. YEE: No objection.

19 MR. GIROUX: No objection.

20 CHAIRMAN CHOCK: Commissioners, any
21 objections? Proceed.

22 Q (By Mr. Yuen): Thank you. Mr. Pascua, I'm
23 going to refer to what has been marked as Petitioner's
24 Exhibit No. 27 which is your PowerPoint. Can you
25 please describe your approach in preparing this

1 traffic study.

2 A Yes. First we collected traffic data in
3 the vicinity of the proposed Kihei High School site,
4 incorporated some ambient growth projections to
5 account for future growth in the area; performed some
6 computer modeling to project traffic conditions to
7 year 2015 with and without the high school as well as
8 at full buildout year 2025.

9 We assumed that the access would be
10 provided -- access to the high school would be
11 provided off of an access road, a new access road
12 connecting the intersection of Kulanihakoi Street and
13 Pi'ilani Highway which would be located on the eastern
14 side or mauka side of the highway. Then we conduct a
15 traffic analysis based on the concept using the
16 concept of Level of Service.

17 Q Please describe the existing roadways and
18 traffic patterns in the vicinity of Kihei High School.

19 A Well, the Kihei area is being served by two
20 primary arterials, north/south arterials. Pi'ilani
21 Highway is a 2-way 4-lane in general, 4-lane
22 north/south arterial running the length of Kihei.
23 Parallel to that is South Kihei Road which is also a
24 north/south roadway running along the coastline of
25 Kihei.

1 And again, the high school is on the -- or
2 the proposed site for the high school is on the
3 eastern side of Pi'ilani Highway. You've got
4 connecting roads in the vicinity between the two
5 arterials.

6 One is Kaonoulu Street which is to the
7 north of Kulanihakoi Street. To the south of
8 Kulanihakoi Street you've got another connecting
9 roadway connecting both arterials which is East
10 Waipuilani Road. And further south is Pi'ikea Avenue.
11 And you've got other connecting roads also further
12 north and further south of these roadways.

13 Q Can you please summarize your conclusions
14 with respect to the impact Kihei High School will have
15 on Pi'ilani Highway and the study intersections in
16 both 2015 and 2025.

17 A Well, traffic impacts of Kihei Highway will
18 be minimal at the year 2015. That's based on an
19 enrollment of 800 students. The Level of Service at
20 the study intersections will remain similar or if not
21 the same as existing conditions.

22 MR. YUEN: Let the record reflect that the
23 witness is testifying; the slide in the PowerPoint is
24 taken from the Environmental Impact Statement labeled
25 "Critical Intersections and Impacts".

1 A And if you notice on that slide year 2025
2 estimates which is a hypothetical case based on
3 maximum design enrollment, you have some degradation
4 of the Level of Service at the studied intersections.

5 What is recommended and partly is to do an
6 update of the TIAR after the completion of Phase 1
7 to -- when you have better enrollment projections as
8 well as clearer so you can provide a clearer
9 assessment on the impacts, the direct impacts.

10 Q Next, Mr. Pascua, can you please summarize
11 your recommendations for traffic improvements for
12 Kihei High School?

13 A Well, in the year 2015 although the Level
14 of Service at the studied intersections would operate
15 satisfactory with the construction of Kihei High
16 School first phase plan, several recommendation were
17 identified in the traffic study.

18 One of 'em is to provide an access road or
19 construct an access road at the intersection of
20 Kulanihakoi Street and Pi'ilani Highway to the school.

21 Another is to provide northbound decel and
22 accel lanes along Pi'ilani Highway to facilitate
23 ingress and egress to the school. Also to install a
24 traffic signal system at the intersection of
25 Kulanihakoi and Pi'ilani Highway to accommodate both

1 increase in vehicular movements as well as pedestrian
2 demand.

3 Q Can you summarize the conclusions of your
4 TIAR.

5 A Like I mentioned earlier, Phase 1, which is
6 based on the 800 students at the school, Kihei High
7 School, is not expected to have a significant impact
8 assuming that these traffic improvements I had
9 mentioned earlier are made.

10 The projected Level of Service operating
11 conditions at the studied intersections would remain
12 similar if not the same as existing conditions in
13 2015.

14 When you jump to 2025 that's when the Level
15 of Service is expected to change and degrade due to
16 not only Project enrollment increases but also other
17 projects in the vicinity of the high school.

18 Q Before we leave the TIAR, Mr. Pascua,
19 approximately how many Traffic Impact Analysis Reports
20 have you prepared during the course of your career?

21 A Over 1500, a thousand 500 studies.

22 Q Have these all been performed in Hawai'i or
23 the majority in Hawai'i?

24 A The majority in Hawai'i. I've prepared
25 traffic studies in Asia as well as in California for

1 CalTrans, California Department of Transportation, as
2 well as served as expert witness in traffic safety and
3 traffic engineering for the Department of Justice for
4 the Midwest.

5 Q With respect to the TIARs that you've
6 prepared in Hawai'i, by and large have they been
7 accepted by the Department of Transportation?

8 A Yes. The ones that are already closed out,
9 yes.

10 Q It has been recommended by the Department
11 of Transportation that your TIAR be revised. Have you
12 had any communication with the Department of
13 Transportation as to what specifically they want
14 revised?

15 A Not directly. But I understand there are
16 some components that they felt should be included or
17 incorporated in the revised TIAR, one of which is the
18 incorporation of other projects in the vicinity which
19 would end up more like a, not a site-specific traffic
20 impact study but more of a regional study to
21 incorporate these other projects or proposed
22 developments in the area regardless whether they're
23 entitled or not.

24 Q In preparing your TIAR was the criteria of
25 whether you considered a project for an adjoining area

1 related to whether that project was entitled or not?

2 A I'm sorry, I don't understand the question.

3 Q Okay. Did you consider the impact of
4 projects that may have been proposed by a landowner or
5 developer but were not entitled?

6 A No, did not. But I did incorporate ambient
7 growth projections based on historical data.

8 Q Okay. In the course of preparing a TIAR is
9 it customary to include the impact of projects which
10 are not entitled?

11 A Generally not, but lately DOT has been
12 requesting the inclusion of these other projects
13 whether they're entitled or not, even if they're
14 speculative; early in the planning stages.

15 Q Okay. I want to turn to the condition
16 of -- or the suggested condition by the Department of
17 Transportation that a grade separation pedestrian
18 crossing be incorporated here.

19 First of all, do you feel from an
20 engineering perspective or traffic engineering
21 perspective that a signalized intersection would
22 provide both sufficient safety for pedestrians as well
23 as accommodate vehicles, accommodate the free flow of
24 vehicles through this intersection?

25 A Based on the study we have done up to Phase

1 1 of the Project it's my opinion that the intersection
2 of Kulanihakoi and Pi'ilani Highway with a signalized
3 system installed would accommodate both vehicular and
4 pedestrian safely.

5 Q What are some of the considerations that
6 you -- what did you consider in reaching this
7 conclusion?

8 A Well, obviously safety as I mentioned
9 earlier. Also, though, the systemwide coordination of
10 the arterial. I know some people believe that if you
11 put a traffic signal in then you kinda screw up the
12 flow of traffic. But if you can coordinate or
13 consider the entire arterial as one, then you should
14 be able to improve traffic flow actually by moving
15 platoons through the arterial. That's another, or one
16 factor that was considered, also economics obviously.

17 And I know that there was a question asked
18 on cost. And roughly in my opinion it's in the order
19 of 5 million to 10 million depending on how the design
20 ends up because Pi'ilani Highway, if you've driven
21 that roadway, doesn't have a median. What it is is a
22 double yellow stripe in the center of the roadway to
23 separate opposing traffic flow.

24 To put in an overpass would have to --
25 would entail an expensive bridge structure that can,

1 that can span the entire roadway. An alternative,
2 which may be costly, is to provide a median at the
3 intersection which means you need to widen the
4 roadway, provide transitions to go around a column to
5 support the span of the bridge.

6 Maybe I'm going a little bit too much but I
7 know the question was asked about costs.

8 Q I think that's fine. The DOT has cited in
9 its recommendation two references: First the American
10 Association of State Highway and Transportation
11 Officials Guidelines and Standards. Can you tell the
12 Commission what the ASHTO guidelines are?

13 A The ASHTO -- it's called policy on
14 geometric design of highways and streets, also known
15 as the Green Book. That's a set of guidelines that
16 are prepared or was prepared by the Federal Highways
17 Administration in conjunction with the U.S. DOT for
18 highway design.

19 It's -- what it is it's a guideline. It
20 does not mandate whether a grade-separated crossing is
21 required or not. Doesn't identify if one is warranted
22 or mandated.

23 Q The DOT also based its recommendation on
24 the Federal Highway Administration report entitled
25 "Warrants for pedestrian over and underpasses" that

1 was prepared in 1984. We've attached excerpts or
2 introduced excerpts from this report as Petitioner's
3 Exhibit No. 31.

4 Mr. Pascua, can you tell the Commission
5 whether this report provides standards that the State
6 or the Commission should be following with respect to
7 determining whether an overpass or underpass is
8 warranted in this situation?

9 A Well, that document you cited, the FHWA
10 document, or Federal Highways Administration document,
11 is really a research paper. It was a research paper
12 to identify or looked at sites with existing grade
13 separated pedestrian crossings.

14 It does not tell you whether it's a site
15 without a grade separated pedestrian crossing is
16 required or not or warranted or not. It looks at or
17 tries to develop warrants based on empirical data
18 looking at the success and unsuccessful rates of
19 existing grade-separated pedestrian crossing.

20 So what it is is really a research paper.
21 It's not a regulation. It's not an standard.

22 Q The report did propose some warrants, did
23 it not?

24 A Yes, it did.

25 Q Okay. I'd like to turn your --

1 A I'm sorry.

2 Q Go ahead. Go ahead finish.

3 A Those warrants were proposed back in 1984.
4 'Til this date Federal Highways Administration has not
5 adopted those as a standard.

6 Q I would like to ask you to discuss these
7 warrants in particular. Do you have a copy of that
8 with you?

9 A No, I don't.

10 Q I want to turn to what's been marked as
11 Exhibit 31. And in particular page 4 the warrants,
12 the proposed warrants.

13 A Yes.

14 Q In its testimony with respect to the first
15 warrant regarding pedestrian volumes, using DOT's
16 estimate of 20 percent of students crossing Pi'ilani
17 Highway, do you feel that the first warrant for an
18 overpass is satisfied in this case?

19 A That's assuming you, you recognize that as
20 a warrant?

21 Q Yes, assuming that's recognized as a
22 warrant.

23 A Well, DOT, I guess, in some testimony that
24 I read, assumed that 20 percent or could assume that
25 20 percent of pedestrians would be crossing the

1 highway. Then it would meet the warrant. But at 800
2 students 20 percent is really 160 roughly. So it
3 wouldn't even meet the warrant assuming it's even a
4 warrant. But, you know...

5 Q Go ahead.

6 A But not only the number of pedestrians, but
7 also I think it looks at speed limits over 40 miles
8 per hour, speeds over 40 miles an hour.

9 Q Is the speed limit over 40 miles an hour in
10 this case?

11 A No it's not. It's at 40.

12 Q So that assuming this were a warrant to be
13 satisfied because the speed limit is not over 40, it
14 wouldn't satisfy the warrant. Is that how you
15 understand --

16 A Assuming again it's a warrant, yes,
17 correct.

18 Q Now, what about the third warrant, a
19 600-foot minimum distance to the nearest safe
20 crossing. And the fourth warrant a physical barrier.
21 Are these warrants -- assuming these warrants were in
22 effect, would they be satisfied in this case?

23 A Well, the proposed warrant, I guess it's
24 warrant No. 3 --

25 Q Warrant No. 4?

1 A -- in the FHWA document, a safe crossing of
2 600 feet or greater. Then this warrant wouldn't be
3 met assuming you would signalize an intersection at
4 Kulanihakoi and Pi'ilani Highway and allow pedestrian
5 crossings. Because then pedestrian crossings would
6 be within the 600 feet distance.

7 Warrant No. 4 or the fourth item, fourth
8 proposed warrant regarding physical barrier to prevent
9 at grade crossing. Like I had mentioned earlier
10 Pi'ilani Highway is separated by the double yellow
11 striping, no medians.

12 To install a barrier to prevent or prohibit
13 crossing at grade would be difficult or more
14 expensive. So that warrant is not met under existing
15 conditions either.

16 Q Are any other proposed warrants
17 unsatisfied?

18 A I think that FHWA document also has a
19 proposed warrant to ensure that adequate funding is
20 available. What I understand adequate funding is not
21 available based on previous testimony.

22 Q Now, it's also been suggested that DOE
23 consider the use of storm drain culverts in the
24 neighboring gulches as pedestrian underpasses. Do you
25 believe that it would be practical to implement that

1 suggestion?

2 A Well, I understand there are two gulches
3 crossing Pi'ilani Highway in the vicinity. One is
4 Waipuiani Gulch. The other one is Kulanihakoi Gulch.
5 To provide a crossing you need to provide also a link
6 to the high school if you were to provide that
7 underpass crossing, which would result in perhaps
8 about a thousand feet in both directions, both sides
9 to the school of sidewalk, a thousand feet of
10 sidewalk.

11 But I would discourage having to allow
12 pedestrians to walk alongside Pi'ilani Highway on the
13 sidewalk.

14 Q Can you comment on some of the other
15 considerations, perhaps not quantitative
16 considerations, but considerations in determining
17 whether to recommend a pedestrian overpass or
18 underpass at the Pi'ilani Highway/Kulanihakoi
19 intersection?

20 A Yeah, in general pedestrians would want to
21 cross at grade. It's the most convenient route, most
22 direct route. Also other considerations would be the
23 safety and human behavior. Even though you discourage
24 pedestrian crossings you want to be sure you don't
25 allow illegal crossers to try and run across the

1 street through gaps of the traffic stream. It becomes
2 even more dangerous a situation than a signalized or
3 controlled intersection crossing.

4 Q DOT now appears to suggest that a traffic
5 signal warrant study be revised as a prelude perhaps
6 to determining whether a grade separated crossing is
7 necessary. Your firm prepared a traffic signal
8 warrant study for this intersection, correct?

9 A Yes, that's correct.

10 Q And was your conclusion that a traffic
11 signal is warranted at this intersection?

12 A Yes. Traffic signal warrants are based on
13 9 warrants established by the Federal Highway
14 Administration, the same organization that sponsored
15 the research paper mentioned earlier.

16 And this, based on the existing conditions,
17 the intersection of Kulanihakoi Street and Pi'ilani
18 Highway overwhelmingly satisfies the first 2 warrants,
19 Warrant 1 and 2 which is based on 8 hours of traffic
20 flow and 4 hours of traffic flow respectively. But
21 that's under existing conditions. So if it's
22 warranted under existing conditions with or even
23 without the school.

24 Q DOT appears to suggest that the traffic
25 signal warrant study should be revised and right turn

1 movements should not be considered in determining
2 whether a traffic signal is warranted. Is this a
3 standard practice in conducting a traffic signal
4 warrant study?

5 A It is if you're looking at only vehicular
6 traffic. Right turn movements in general -- well, in
7 this case, for example, the eastbound right turn
8 movements coming on Kulanihako'i going south on
9 Pi'ilani Highway, that right turn movement, assuming
10 pedestrian crossings are allowed or provided at that
11 section, that right turn movement has to be controlled
12 or should be controlled by traffic signal for the
13 safety of the crossing, pedestrians crossing the
14 street.

15 So in that sense since that right turn
16 movement would be conflicting with pedestrians
17 crossing that street, assuming you provide an at grade
18 crossing, it should be included in the signal warrant
19 study as part or incorporated in the numbers to
20 identify when a traffic signal is warranted or not.

21 Q So in the guidelines that -- in the federal
22 -- excuse me. Let me start again. Do you feel that
23 you have adequately followed the federal guidelines in
24 preparing the traffic signal warrant study for this
25 intersection that your firm prepared?

1 A Yes, I do. The federal guidelines
2 identifies approach volume of an intersection to
3 determine whether a signal is warranted or not. It
4 does not say to eliminate right turn movements. And
5 especially if there's going to be potential conflicts
6 with pedestrians crossing.

7 Q So the only purpose of suggesting that you
8 eliminate right turn movements would be to
9 predetermine the result of the study then?

10 A I don't know about that. But it would
11 drive the study towards a certain conclusion.

12 MR. YUEN: Thank you. I have no further
13 questions.

14 CHAIRMAN CHOCK: County?

15 MR. GIROUX: Chair, can I ask for a quick
16 break? We had a late filing from the DOT and I'd just
17 like to quickly talk with my clients, see if we can
18 speed this up.

19 CHAIRMAN CHOCK: It's almost 10 after. How
20 much time do you have on direct for this witness?

21 MR. GIROUX: Not much. In fact if I can
22 talk to my client real quick I think we can try to
23 speed it up.

24 CHAIRMAN CHOCK: Why don't we take maybe
25 like a couple minutes recess in place and then come to

1 even break for. Then Bryan can pick up where we left
2 off after lunch. Brief recess in place.

3 (Recess was held.)

4 CHAIRMAN CHOCK: (gavel) We are back on the
5 record. County.

6 MR. GIROUX: Thank you, Chair. We have no
7 cross for the witness.

8 CHAIRMAN CHOCK: No cross. Okay. Bryan,
9 I'm assuming you're going to take more than 5 minutes.
10 (Laughter)

11 COMMISSIONER CONTRADES: Great
12 assumptioning. (Laughter).

13 CHAIRMAN CHOCK: So why don't we recess
14 then lunch, give Holly a break, then reconvene -- how
15 much time you guys need? An hour? Who do we have
16 left this afternoon, Mr. Yuen?

17 MR. YUEN: I have Christine Ruotola, my
18 planner. And that's the last witness.

19 CHAIRMAN CHOCK: That's the last witness.
20 And, County, are you calling on anyone today?

21 MR. GIROUX: We have Will Spence but his
22 direct shouldn't be more than 15 minutes.

23 CHAIRMAN CHOCK: Okay. Sounds good. Why
24 don't we take a casual hour and be back at around
25 1:15. (laughter) Then we'll hammer through this, get

1 as much as we can done today. Okay. Thank you.

2 (gavel)

3 (Recess was held at 12:15)

4 CHAIRMAN CHOCK: Okay. Good afternoon.

5 We're back on the record. Bryan, your witness.

6 MR. YEE: Thank you.

7 CROSS-EXAMINATION

8 BY MR. YEE:

9 Q Mr. Pascua, did you say that your study
10 horizon was the 2015?

11 A For Phase 1, yes.

12 Q If Mr. Nichols testified that the school
13 opens in fall of 2017 does that require some revision?

14 A Generally yes because of the outdated
15 baseline data.

16 Q Do you know what the ADT in horizon year
17 2015 year is?

18 A No.

19 Q So you don't know it for the horizon year
20 2025 either.

21 A Not ADT. The study is based on peak hour
22 traffic movements from AM and afternoon.

23 Q It's typical to require an updated TIAR for
24 something like a Phase 2 of a project, correct?

25 A Yes.

1 Q So it's a reasonable request in this case
2 for an updated TIAR for Phase 2.

3 A Yes. In fact it's a recommendation,
4 original TIAR.

5 Q I understand that you had said you had done
6 1,500 Traffic Impact Analysis Reports. How many
7 pedestrian studies have you done?

8 A In the order of about a hundred.

9 Q Would be the same number of bike studies
10 that you've done as well?

11 A Bike studies a little bit less.

12 Q Is a pedestrian route study reasonable to
13 request for a school project?

14 A Yes, I believe so.

15 Q Have you done a pedestrian route -- or has
16 a pedestrian route study been done for this Project?

17 A That's my understanding by another
18 consultant, yes.

19 Q Was that included in your analysis at all?

20 A No, it was not.

21 Q And in your calculation or assumptions for
22 your TIAR, I understand you said you did not include
23 some of the new developments that may be occurring in
24 the area. Do you remember that?

25 A Yes. Because the study is based on the

1 2015 horizon year. Didn't expect the projects to
2 be -- that are not entitled at least to be completed
3 or even built or even occupied by 2015.

4 Q Did you include Pi'ilani Promenade in your
5 assumptions?

6 A No, I did not. What I did -- sorry. What
7 I did include is an estimate of other projects based
8 on ambient growth or based on historical data to
9 reflect as ambient growth in the area.

10 Q So I take it then you did not include Maui
11 R&T's proposed development either.

12 A That's correct. Bear in mind the study was
13 done in 2011. I understand Maui R&T was before the
14 Commission recently.

15 Q A change from a light industrial to a
16 primarily commercial project like Pi'ilani Promenade
17 would require different analysis on traffic impacts if
18 you were to include that in your study, is that right?

19 A Yes.

20 Q And would you agree that typically a TIAR
21 is accepted by the Department of Transportation after
22 the EIS is accepted?

23 A After the EIS is accepted?

24 Q Yes.

25 A I've gotten approvals in both cases, before

1 and after in the past. I'm unsure what you're asking.

2 Q Mr. Nichols gave some testimony about how
3 the EIS is accepted, indicating that was evidence that
4 the TIAR should be acceptable to DOT as well. Is it
5 typical that you've seen TIAR's accepted after the EIS
6 acceptance?

7 A It has happened. I'm not sure if it's
8 typical. It has happened in the past.

9 Q You've done quite a few -- or you've done a
10 few, at least, Land Use Commission cases, haven't you?

11 A Yes, I have.

12 Q In any of those cases has a TIAR been
13 accepted prior to the LUC decision?

14 A No.

15 Q And in all those cases the LUC decision was
16 done after the EIS was accepted, correct?

17 A I'm not sure about the situation. I just
18 prepare the traffic study. (Laughter)

19 Q Okay. It's not your job. That's fine.
20 Now, you did a traffic signal warrant for the
21 intersection of Kulanihakoi and Pi'ilani.

22 A That's correct.

23 Q And I think you said it met the first two
24 warrants for the 4-hour, 8-hour traffic. Is that
25 right?

1 A Yes, that's correct.

2 Q And if I understand this correctly, you
3 really only need to satisfy one of those warrants in
4 order to justify a traffic signal.

5 A In general the guidelines always leave it
6 to engineering judgment.

7 Q There's always provision for engineering
8 judgment in any warrant, correct?

9 A That's correct.

10 Q But the technical requirement is to meet at
11 least one of them.

12 A That's correct.

13 Q And if you can meet at least one of them
14 then you can justify under the traffic warrant study
15 at least....

16 A Installation of a signal.

17 Q Yes. The particular traffic mitigation in
18 this case, the traffic signal.

19 A Yes.

20 Q When you reviewed the FHWA guidance for
21 overpasses or underpasses, I understand you said there
22 was nothing mandatory about the document, correct?

23 A That's my understanding, yes.

24 Q In your research would it be correct to say
25 that the federal government does not necessarily

1 mandate overpasses or underpasses as a general matter?

2 A As a general matter, yes.

3 Q They do indicate when pedestrian crossings
4 are appropriate, correct?

5 A Appropriate or to be considered, yes.

6 Q But they don't say how that pedestrian
7 crossing is to be achieved. That is they don't say it
8 has to be a crosswalk or it has to be an overpass.

9 A That's correct.

10 Q Would you agree that the 1984 document
11 that's attached as Petitioner's Exhibit 31 is
12 basically the best guide that's available on the issue
13 of overpasses and underpasses?

14 A On the issue, yes.

15 Q And when you look at that document and it
16 lists those 8 potential warrants page 4 that you
17 discussed, do you remember that?

18 A When I looked at...

19 Q Okay. Well, let's go back.

20 A At this hearing?

21 Q Yeah. Remember looking at page 4
22 discussing those 8 warrants?

23 A Yes.

24 Q And I want to be fair. I understand it's
25 not a warrant according to your testimony, but if it

1 was treated as a warrant there would be 8 -- there
2 were 8 warrants in the study, correct?

3 A Correct.

4 Q No. 1 was referring to the pedestrian
5 volumes, correct?

6 A Yes.

7 Q At full buildout after Phase 2 would those
8 pedestrian volumes be met?

9 A It may or may not. That's why I
10 recommended an update be done when you get better
11 information on enrollment projections as well as
12 ambient growth projections, other projects in the
13 area.

14 Q You know that the projected growth at full
15 buildout, do you remember the number?

16 A Number...?

17 Q Of the school population.

18 A Students. 1650.

19 Q Would 20 percent of that number be more
20 than 300?

21 A Yes.

22 Q So if at full buildout they reached that
23 enrollment number, then at least the pedestrian volume
24 number would be met under that, what we're going to
25 call the warrant.

1 A Yes.

2 Q But you didn't actually do a pedestrian
3 count or didn't include a pedestrian count or estimate
4 in your TIAR, correct?

5 A We did only to establish baseline
6 conditions which as -- well, I'm not sure if everybody
7 knows but there's no pedestrians crossing Pi'ilani
8 Highway at Kulanihakoi at the moment.

9 Q Well, there's no crosswalk there either.

10 A That's correct. That's correct.

11 Q So anyone crossing would be running across
12 the highway.

13 A Right. But you asked me if I counted
14 pedestrian traffic. The answer is no. Because there
15 is no pedestrian crossing at the intersection.

16 Q Fair enough. I should have been clear.
17 You did not do an estimate for how many school
18 children would be walking across that intersection at
19 Phase 1 or Phase 2, correct?

20 A That's correct.

21 Q Did you do a traffic count for that
22 intersection?

23 A Traffic count in terms of vehicular
24 traffic?

25 Q Yes.

1 A Yes, I did.

2 Q Under warrant 2 of the 1984 research study,
3 would that traffic count be met at Phase 1 or Phase 2?

4 A I need to look at what warrant 2 is.

5 Q Sure.

6 CHAIRMAN CHOCK: What exhibit?

7 MR. YEE: Petitioner's Exhibit 31 page 4.

8 CHAIRMAN CHOCK: Hang on. Let's give
9 counsel a chance to show Mr. Pascua the exhibit.

10 THE WITNESS: I have a copy, Bryan. Could
11 you repeat the question, please.

12 Q (By Mr. Yee): Would the vehicle volume
13 number in warrant 2 be met at Phase 1?

14 A Warrant 2 is associated with ADT's which I
15 had previously said that I did not count ADT's. I
16 counted peak hour volumes is what the traffic study is
17 based on, the morning peak and afternoon peak.

18 Q So you don't know because you didn't
19 calculate the ADTs.

20 A That's correct.

21 Q With respect to the third warrant regarding
22 an alternative safe crossing 600 feet away. If there
23 is no crosswalk at the intersection of Kulanihakoi and
24 Pi'ilani where's the next safest...

25 A Signalized crossing?

1 Q Signalized crossing.

2 A To the south would be Pi'ikea Avenue and to
3 the north Ohukai Street.

4 Q Do you know how far away either of those
5 are?

6 A Greater than 600.

7 Q Would you agree that it would be safer to
8 use a grade-separated walkway across Pi'ilani Highway
9 than an at-grade crosswalk?

10 A It depends on the configuration or design
11 of the grade-separated pedestrian crossing. What you
12 want to discourage is people trying to avoid using the
13 overpass and trying to run across the street between
14 the gaps in the traffic stream on the highway. Then
15 it becomes a more hazardous condition.

16 Q I understand that there are other issues to
17 address. But I want to first establish the question
18 of is a grade -- is a basically well designed grade
19 separated cross -- I'm sorry pathway -- safer to use
20 than an at grade crosswalk?

21 A Yes. You separate pedestrians from
22 vehicular traffic.

23 Q And you understand the Department of
24 Education is relying on your opinions and coming to
25 its conclusions that it does not want to construct a

1 grade-separated walkway.

2 A I understand.

3 Q As you looked generally at this area would
4 you agree that children living makai of Pi'ilani
5 Highway would be walking along the side streets to get
6 to Kulanihakoi and then crossing at the intersection
7 of Kulanihakoi and Pi'ilani?

8 A Yes. Residential units are located on the
9 makai side. And the mauka side would be the high
10 school.

11 Q The children are going to be using the side
12 streets to get to Kulanihakoi rather than using
13 anything along Pi'ilani Highway, correct?

14 A I would hope so, yes. You don't want to
15 encourage pedestrians on the highway, the state
16 highway.

17 Q So your overpass entrance does not need to
18 be at the intersection of Kulanihakoi and Pi'ilani.
19 Your entrance could be further makai, correct?

20 A Entrance? Could you explain what you mean?

21 Q Well, let's take a step back. A ramp would
22 often be needed -- either a ramp or an elevator would
23 be needed for an overpass, right?

24 A Yes to satisfy ADA requirements.

25 Q So if you wanted to -- the ramp has to be

1 at a certain grade or incline, right?

2 A Yes. Five percent or 30 feet with a
3 landing in between.

4 Q So you could locate, I guess, that entrance
5 to the ramp not on Pi'ilani but further away in order
6 to achieve that grade, correct?

7 A Yes. More than likely you would have to.

8 Q So that entryway to the ramp could be
9 located further makai to the areas where the children
10 would probably be walking, wouldn't you?

11 A Yes, you could.

12 Q If you did it so the children are walking
13 along, if that ramp was going along Kulanihakoi, that
14 would be one factor that would encourage the children
15 to use the pedestrian overpass as they'll be following
16 a similar route, but not waiting for a traffic light.

17 A Yes. The encouragement of pedestrians
18 using the ramp would be good. But it's not a direct
19 route. You would have to ascend or descend an
20 overpass. And sometimes, a lot of times, studies have
21 shown that it's inconvenient for pedestrians to
22 utilize.

23 Q Have you done an analysis to look for other
24 ways to design the overpass that would encourage
25 pedestrian traffic?

1 A No, I didn't do an analysis of the overpass
2 or design of the overpass.

3 Q Okay. So you didn't look for ways to
4 overcome some of the concerns regarding whether
5 pedestrians would or would not be using the overpass.

6 A No, I did not because the intersection --
7 signalized intersection of Kulanihakoi and Pi'ilani
8 Highway would suffice in terms of accommodating
9 pedestrians and vehicular traffic.

10 So, in other words, I didn't take it to the
11 next step because it was already a feasible
12 alternative.

13 Q You gave us a 5 to \$10 million estimate for
14 the overpass. If an underpass was created at the
15 Waipuילani Gulch, do you have an estimate, ballpark
16 estimate for how much that would cost?

17 A No, I don't. I know you need to
18 incorporate sidewalks or at least a walking pedestrian
19 facility to connect the high school to the gulches on
20 the mauka side at least. But I don't have an estimate
21 at this point.

22 Q Have you looked at all of the Maui R&T
23 proposal for a walkway or some access point between
24 Maui R&T and the school across Waipuילani Gulch?

25 A I didn't review the Maui R&T matter.

1 Q Generally would it be true that an
2 underpass is less expensive than an overpass?

3 A Generally. Could work the other way
4 around.

5 Q You could always find extraordinary
6 circumstances for anything, right?

7 A Sure.

8 Q Okay. But as a general matter underpasses
9 tend to be less expensive than overpasses.

10 A The crossing element itself, like I had
11 mentioned earlier, an underpass might be cheaper than
12 an elevated overpass. But the supporting facilities
13 like sidewalks along the highway may overcome the cost
14 of an overpass.

15 Q You think they'd be \$5 million?

16 A Like I said I don't know. I didn't run a
17 cost estimate but --

18 Q Of the sidewalks.

19 A -- probably not. But thousand feet both
20 sides or at least one side. That's assuming too you
21 could do it on an existing roadway without providing
22 additional buffers for pavement to separate or at
23 least maximize the distance between the travelway or
24 the walkway.

25 So there's a lot of other factors that need

1 to be taken into consideration. So the cost of the
2 sidewalk is not the only cost or could not, may not be
3 the only cost.

4 Q Well, whenever you do either an underpass,
5 overpass or crosswalk there's further engineering work
6 to be done, correct?

7 A Yes.

8 Q You didn't look for what engineering
9 solutions would be available to make the underpass
10 challenges -- how to meet some of those underpass
11 challenges.

12 A That's correct. Like I said the
13 intersection -- signalized intersection would be able
14 to accommodate vehicular traffic as well as pedestrian
15 traffic. So I didn't take it one more step or a step
16 further to check other alternatives besides signalized
17 intersections.

18 Because generally recommendations is to not
19 only accommodate pedestrians but also to accommodate
20 vehicular traffic demand as well. An overpass and/or
21 underpass only satisfies or accommodates pedestrian
22 movements, not vehicular traffic.

23 Q If the underpass was created at Waipuilani
24 Gulch, there would be, I guess, an obvious connection
25 then to Maui R&T as well wouldn't there? That would

1 be a natural conclusion one would look at or option
2 one would look at?

3 MR. YUEN: The witness has already stated
4 he has not studied Maui R&T's project at all.

5 MR. YEE: I think the witness can answer
6 based purely upon the fact that Waipuilani Gulch
7 straddles, is right between Kihei High School and Maui
8 R&T. So I'm just asking given his general knowledge
9 whether an underpass leads to, you know, adjacent to
10 Maui R&T, whether it'd be natural, then, to look at a
11 connection to Maui R&T as well.

12 A Yes.

13 Q Does the Pi'ilani right-of-way width allow
14 for an overpass? Do you know?

15 A I don't know. It's best answered by a
16 civil engineer.

17 Q Are you familiar with the Mililani High
18 School underpass that was mentioned by Mr. Nichols?

19 A Yes.

20 Q How close is the underpass to the high
21 school? Do you know?

22 A No, I don't. I know there's a post office
23 between the highway and the high school. The
24 underpass runs past the -- the underpass route runs
25 past the Post Office but the exact distance I really

1 don't know.

2 Q So it's roughly at least one lot away from
3 the school.

4 A Yes.

5 MR. YEE: Can I have just one minute? I
6 have just a few more questions, but I just want to
7 organize them so I can ask this. (pause)

8 Q Just two more hopefully very quick line of
9 questions. Just for the record would you agree that
10 schools generate really significantly greater amounts
11 of pedestrian traffic than most other developments?

12 A Most other developments?

13 Q Yes.

14 A In general, yes.

15 Q There's always other developments that
16 might generate more but schools are on the upper end
17 of pedestrian traffic, correct?

18 A Yes. But not as much as what DOT had
19 claimed to be, which is 20 percent. Or if they assume
20 20 percent of enrollment would be crossing the
21 highway. If you look at Campbell High School crossing
22 Fort Weaver Road.

23 You look at Kapolei High School crossing
24 Fort Barrette Road, all state facilities as well as
25 Kal Highway or Kalaniana'ole Highway, for Kalani High

1 School pedestrian movements. And albeit residential
2 displacement is different for each location, but
3 20 percent figure of enrollment crossing is actually
4 extremely high in my opinion.

5 Q You could actually do a study to look at
6 this particular location and calculate the -- or give
7 an estimate of anticipated pedestrian traffic,
8 couldn't you?

9 A It would be an estimate, yes.

10 Q Well, I mean vehicle counts are going to be
11 an estimate, aren't they?

12 A Yes. Vehicle counts. but it's based on
13 existing traffic now that can be projected as opposed
14 to a facility where there are no pedestrians and
15 trying to project something out in the future where
16 there's nothing.

17 Q But it is something that is done to do
18 estimates of pedestrian traffic?

19 A Yes.

20 Q And if you had an at grade crosswalk at the
21 intersection of Pi'ilani and Kulanihakoi, would that
22 tend to increase the signal phasing time?

23 A It could.

24 Q It probably would, wouldn't it?

25 A No. Because pedestrian movements would be

1 tied into a vehicular phase. For example, at the
2 intersection of Kulanihakoi and Pi'ilani Highway
3 whenever you have the green movement on Kulanihakoi
4 that's where you have the walk movement for
5 pedestrians to cross the intersection. So regardless
6 of whether you have one or a hundred percent
7 pedestrians, the phased timing will still remain the
8 same to accommodate vehicular traffic.

9 Q I guess I'm asking if you compare the
10 phasing time for with and without crosswalk, wouldn't
11 the signal phasing time tend to differ, tend to
12 change?

13 A It may or may not.

14 Q In this case do you think, it would or
15 wouldn't?

16 A In this case I think it wouldn't because
17 you would have the demand of the side street, in this
18 case Kulanihakoi Street, controlling the time to
19 cross.

20 Q So you think the vehicle traffic is going
21 to control rather than the pedestrian traffic.

22 A Yes.

23 Q Okay. Thank you. I have nothing further.

24 CHAIRMAN CHOCK: Thank you, Bryan.
25 Petitioner?

1 MR. YUEN: Just a couple of short
2 questions.

3 CHAIRMAN CHOCK: Could you bring the lights
4 up, please.

5 RE-DIRECT EXAMINATION

6 BY MR. YUEN:

7 Q Mr. Yee was asking you to speculate on the
8 possibility of constructing an entrance to an overpass
9 an Kulanihakoi Street. Do you recall that?

10 A Yes.

11 Q Isn't the level of Kulanihakoi Street below
12 the elevation of the Pi'ilani Highway?

13 A Yes. Somewhat, yes.

14 Q So that if you constructed an entrance or
15 exit to a pedestrian overpass, say, 50 yards down from
16 Pi'ilani Highway on Kulanihakoi Street, that would be
17 even more of an elevation that one would have to climb
18 to cross over the street?

19 A Yes. You would have to go down and back
20 up.

21 Q So it would make the travel time and
22 inconvenience greater.

23 A Yes.

24 MR. YUEN: No further questions.

25 CHAIRMAN CHOCK: Commissioners, any

1 questions for this witness? Commissioner Teves.

2 COMMISSIONER TEVES: Thank you, Mr. Pascua,
3 for your testimony. I have a question regarding your
4 traffic study. Did you take into consideration the
5 amount of accidents involving vehicles and pedestrians
6 on the Pi'ilani Highway?

7 THE WITNESS: Yes, I did as supplied by the
8 Department of Transportation. I don't have the
9 figures with me. There are various types of
10 accidents. It's associated with dollar amount of
11 damage that occurs in an accident.

12 COMMISSIONER TEVES: I was more concerned
13 about pedestrian accidents.

14 THE WITNESS: No, I don't have that data.

15 COMMISSIONER TEVES: Was there any?

16 THE WITNESS: Not from the data that was
17 given to me, no.

18 COMMISSIONER TEVES: Okay. Thank you.

19 THE WITNESS: I'm sorry, Commissioner. At
20 that location?

21 COMMISSIONER TEVES: Or any location on
22 the Pi'ilani Highway.

23 THE WITNESS: I didn't request beyond study
24 limits. Could have been, but I hadn't requested that
25 information.

1 COMMISSIONER TEVES: Thank you.

2 CHAIRMAN CHOCK: Commissioners, questions?
3 I have a quick question. On the tabular data on the
4 Level of Service that you walked us through earlier,
5 did I read your chart correctly in that a good
6 majority of the Petition Area would be operating under
7 a Level of Service D in 2025?

8 THE WITNESS: In 2025 there are some D's.

9 CHAIRMAN CHOCK: D as in dog?

10 THE WITNESS: Yes. Some D's and like I
11 said some E's as well in 2025.

12 CHAIRMAN CHOCK: And that's without the
13 cumulative impact of some of the other projects in
14 Kihei, Makena, et cetera.

15 THE WITNESS: That's right.

16 CHAIRMAN CHOCK: In your professional
17 opinion what kind of additional mitigation might
18 either the Commission or the DOT consider with respect
19 to Level of Service D? Because I would assume that's
20 not very acceptable to residents who have to move
21 through that Level of Service.

22 That's gradually going to get worse
23 especially if not all the cumulative impacts were
24 taken into account.

25 THE WITNESS: Yes. Level of Service E is

1 related to the delay that a motorist would experience
2 driving along the highway. The reason for the Level
3 of Service E is when the capacity of the roadway
4 reaches a certain threshold, then it degrades the
5 Level of Service as you meet certain levels or
6 volumes of traffic on the highway.

7 So it's really a capacity issue. When I
8 say "capacity issue" meaning is the 4 lanes going to
9 be sufficient? Maybe perhaps 6 lanes may be required
10 as you go beyond the capacity of the roadway as
11 traffic increases due to other developments or
12 whatever it may be in the area.

13 So the Level of Service E really is a
14 representation of the capacity, again, the capacity of
15 the roadway.

16 CHAIRMAN CHOCK: So purely carrying
17 capacity and use.

18 THE WITNESS: Yes, correct. But like I had
19 mentioned earlier, although we didn't account for
20 external growth from other projects, we did
21 incorporate an ambient growth of 1 percent per year.

22 The study was based -- was prepared in
23 2011. So if you go 1 percent year up to 2025 you're
24 adding was it 24 -- 14 percent.

25 So really the assumption is 14 percent of

1 increase of traffic from today would result in
2 something Level of Service.

3 CHAIRMAN CHOCK: Okay. Thank you. I have
4 no further questions. Commissioners, any further
5 requests for this witness? Commissioner McDonald.

6 COMMISSIONER McDONALD: Did I hear
7 correctly that DOT Highways just provided comments to
8 your most recent TIAR?

9 THE WITNESS: Yes.

10 COMMISSIONER McDONALD: That was yesterday?

11 THE WITNESS: Well, the position statement
12 I believe was released yesterday. Comments were
13 provided maybe a month ago.

14 COMMISSIONER McDONALD: And it's mainly
15 addressing the -- I believe you had said the regional
16 impacts from the proposed developments. That was the
17 main point.

18 THE WITNESS: Yes.

19 COMMISSIONER McDONALD: From DOT.

20 THE WITNESS: Correct.

21 COMMISSIONER McDONALD: At 2025 Level of
22 Service D and E I think the Commission is aware of a
23 few projects on the boards within the region. Would
24 you have any idea based on your professional
25 experience as far as what the Level of Service could

1 potentially bring at 2025?

2 THE WITNESS: Could be in some locations.
3 And as you may or may not know there are constraints
4 along the highway that may prohibit the flow or
5 compromise the integrity of the flow of the highway.

6 At 2025 you can incorporate all these other
7 projects whether it be the Wailea 670, Maui R&T, the
8 Ranch projects, even the projects in Wailea, further
9 down toward Makena we can be looking at capacity
10 constraint issues associated with the existing
11 facilities. So more than likely be in the E and F
12 range which would require increase in capacity in the
13 roadway or at least a bypass to accept the additional
14 -- and I'm just speculating -- I don't want to talk
15 too much about bypasses, but you need the laneage to
16 accommodate the traffic.

17 COMMISSIONER McDONALD: Right. So as a
18 result and again this is just a possibility until you
19 run the analysis that the increasing capacity which
20 easiest thing would be widening may be required to
21 address or actually to mitigate.

22 THE WITNESS: From a regional perspective
23 yes. It's the north/south mobility. That's the one
24 that's critical. South Kihei Road you're already
25 built out in terms of ability to widen. Pi'ilani

1 Highway, you know you got some cut slope embankments
2 on both sides as you head towards Wailea area heading
3 southbound. That would have to be pushed way back out
4 which would affect any potential overpass crossings if
5 any.

6 COMMISSIONER McDONALD: Thank you.

7 CHAIRMAN CHOCK: Any other questions,
8 Commissioners? Maybe just as a follow up to
9 Commissioner Teves' question on pedestrian accidents
10 and fatalities. Maybe that's something you guys can
11 go back to. I'd personally be interested in hearing
12 what the data might have been over the last maybe 5,
13 10 years on pedestrian accidents and/or fatalities on
14 Pi'ilani. Thank you very much for your testimony.

15 THE WITNESS: Thank you.

16 CHAIRMAN CHOCK: Next witness.

17 MR. YUEN: Our next witness is Christine
18 Ruotola.

19 CHAIRMAN CHOCK: Good afternoon, Christine.

20 CHRISTINE RUOTOLA

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

23 THE WITNESS: I do.

24 CHAIRMAN CHOCK: Could you state your name
25 and address.

1 THE WITNESS: My name's Christine Ruotola.
2 And my business address is 935 Bethel Street, fifth
3 floor, Honolulu, Hawai'i 96813.

4 DIRECT EXAMINATION

5 BY MR. YUEN:

6 Q Ms. Ruotola, what is your business
7 affiliation?

8 A I'm a planner and principal with Group 70
9 International Planning, Architecture and Civil
10 Engineering firm.

11 MR. YUEN: I've submitted as Exhibit 22
12 Ms. Ruotola's resumé. And we're referring to
13 Exhibit 28 which is her PowerPoint. I'd first like to
14 have Ms. Ruotola qualified as an expert in land use
15 planning.

16 CHAIRMAN CHOCK: Parties, any objections?

17 MR. GIROUX: No objection.

18 MR. YEE: No objection.

19 CHAIRMAN CHOCK: Commissioners? She's
20 admitted.

21 Q (By Mr. Yuen): Ms. Ruotola, can you first
22 describe the existing pedestrian and bicycle
23 facilities in the vicinity of Kihei High School?

24 A Sure. During the EIS process going from
25 Draft EIS to Final EIS in response to comments we were

1 asked to do some additional studies. The staff did
2 consulting and we referred to them, did a pedestrian
3 and bicycle study. So what they found is that
4 Kulanihakoi is expected to be that major route that
5 any pedestrians and bicyclists would take to the
6 school.

7 Right now there are not bicycle lanes -- or
8 not continuous bicycle lanes. There's a small portion
9 on Kulanihakoi. There are, I believe are bicycle
10 lanes on Pi'ilani. They're not expecting that
11 students will be using those heavily. And further
12 recommendation is that the DOE will construct bike
13 paths from the intersection up to the campus and then
14 have bicycle facilities on campus, storage, bike
15 storage.

16 Q Did Stantech Consulting reach any
17 conclusion regarding whether construction of a
18 pedestrian overpass or underpass over Pi'ilani Highway
19 is necessary to assure pedestrian safety?

20 A What they concluded was that an at-grade
21 crosswalk was adequate. So what they point out about
22 overpasses, what we're talking about is the
23 convenience factor. So people choosing not to use
24 them and then with underpasses the security and the
25 maintenance issue keeping it clear.

1 Q Can you describe how the Petition Area and
2 the proposed use for Kihei High School comply with the
3 Maui County General Plan 2030?

4 A Sure. The General Plan, Maui County
5 General Plan has 3 components: the Countywide Policy
6 Plan, which I've talked about in my written testimony,
7 the Island Plan and the Community Plan.

8 So with respect to the Island Plan the
9 Project site is in the Urban Growth Boundary for the
10 area. This was approved in December of last year,
11 well within the boundary, Urban Growth Boundary, to
12 direct growth and prevent sprawl. So the site is
13 within that.

14 The next exhibit shows the public
15 facilities map that's part of the Island Plan. The
16 proposed high school is included in that exhibit. So
17 it's part of the County's plan, the proposed high
18 school. You may have it clearer in what you're
19 looking at. It's the yellow flag facilities of the
20 proposed high school.

21 Q Next could you please describe how Kihei
22 High School complies with the Kihei-Makena Community
23 Plan?

24 A Sure. As it has been mentioned today the
25 planning for a high school in Kihei has been years in

1 the making and long sought after. So the Kihei
2 Community Plan expresses that one of its statements is
3 to support a high school when the growth warrants it.
4 And as an implementing action to site, locate the high
5 school.

6 The land use plan in the Kihei-Makena
7 Community Plan for this site it's split. Half of 48
8 acres is designated as quasi public facility which is
9 the designation that's appropriate for a school.
10 29 acres is designated as agriculture. So we are also
11 going through the county process to change that
12 designation.

13 Q Next, please summarize Kihei High School's
14 compliance with the Land Use Commission's
15 reclassification criteria pursuant to HRS section
16 205-17.

17 A Provision of a high school project site
18 does comply with the State Plan and certain of the
19 Functional Plans with the State Plan as it relates to
20 social wellbeing and education and providing services
21 with urban growth.

22 Other non-threatened or endangered species'
23 critical habitats in the Petition area, flora and
24 fauna. During the EIS process we've had the
25 architectural -- or archaeological and cultural

1 studies. And there will not be adversely affect
2 significant historical archaeological resources.

3 THE REPORTER: Would you do me a favor and
4 just kind of slow down your speed.

5 THE WITNESS: I've been told that before.

6 CHAIRMAN CHOCK: Just for the benefit of
7 our court reporter so she doesn't miss anything you
8 say.

9 THE WITNESS: Thank you. I apologize. The
10 Project site does not contain important cultural,
11 natural or agricultural resources. As has been
12 discussed, the Legislature appropriated \$130 million
13 for the high school. The Project site is poor
14 agricultural potential. And so that the development
15 of the school will not impair the agricultural
16 production ability. It doesn't qualify as Important
17 Agricultural Land. Again, it's consistent with
18 county-wide planning with the General Plan and its
19 components.

20 Q Finally, can you please summarize Kihei
21 High School's compliance with the Land Use
22 Commission's Urban District classification criteria
23 contained in the Administrative Rules section
24 15-15-18?

25 A As we've had discussed today the area is

1 characterized by city-like concentrations of people,
2 residential development and the associated
3 infrastructure. The Project site is adjacent to
4 Pi'ilani Highway and continuous to the Urban District
5 in South Maui, the primary trading centers, centers of
6 trading and employment in Wailea and Kihei.

7 Basic services in terms of infrastructure
8 are available to the area. The school obviously
9 provides one of the basic services to a community.

10 The site itself has appropriate topography
11 and drainage and is free from the natural adverse
12 environmental effects. So it's appropriate for
13 development as a school.

14 It's, as we've talked about the urban
15 growth, the kids now going to central Maui schools the
16 demand is there based on population for an educational
17 facility.

18 Again, it is consistent with the county
19 planning, the Island Plan and predominantly consistent
20 with the community, Kihei-Makena Community Plan. As
21 it relates to potential for spot zoning I think the
22 map here indicates the urban uses and urban
23 designations nearby. So it would not be spot zoning
24 to reclassify this as an urban designation.

25 MR. YUEN: Thank you. I have no further

1 questions of this witness.

2 CHAIRMAN CHOCK: Thank you, Mr. Yuen.
3 County?

4 MR. GIROUX: We have no questions.

5 CHAIRMAN CHOCK: Bryan?

6 CROSS-EXAMINATION

7 BY MR. YEE:

8 Q Ms. Ruotola, do you have a projected number
9 of pedestrian crossings on Pi'ilani?

10 A Mmm-hmm. No.

11 Q Have you done an estimated projected number
12 of bicycle crossings on Pi'ilani?

13 A No. And I guess I can say I'm not sure the
14 methodology of Stantech. I'm reporting what they
15 reported out. So no, I do not have those figures.

16 Q I know you testified that there's currently
17 no bicycle lanes that go from, along Kulanihakoi to
18 Pi'ilani Highway.

19 A Okay.

20 Q At the moment, though, there's no reason to
21 have a bike lane that goes along Kulanihakoi.

22 A I believe there's a small area where this
23 is, but correct.

24 Q When the school is constructed, however,
25 isn't there then a need to have a bikeway which

1 connects the neighborhood makai of Pi'ilani to the
2 school?

3 A That would be good. It would also be
4 good -- there's a gap in the sidewalk on Kulanihakoi.
5 That also would be a good thing to complete to
6 support pedestrians.

7 Q Then once they cross Pi'ilani Highway,
8 though, wouldn't they need a bikeway to get to the
9 school?

10 A And they will have that. The Department of
11 Education, the RFP that will go out to the
12 design/build entity will include those improvements
13 that are agreed upon at the intersection and that the
14 facilities to the school. So the sidewalk, bike lane,
15 as well as bike parking, you know, at the school to
16 support that use, yes.

17 Q So when they said that there would be bike
18 accommodations on campus, that includes the lane
19 adjacent to the campus or the Kulanihakoi Street
20 adjacent to the campus?

21 A "On campus" is on campus. But I believe
22 that the remedy -- the RFP will include the
23 improvements on the roadway to the access road.

24 Q The improvements meaning it would include a
25 bike lane on Kulanihakoi.

1 A The extension of -- it is.

2 Q On the extension of Kulanihakoi from
3 Pi'ilani to the school.

4 A Correct. Mauka.

5 Q Do you know what percentage of students
6 would be walking or biking to the school?

7 A No.

8 Q Within, say, one mile radius?

9 A No.

10 Q Does the governor's approval of the Final
11 Environmental Impact Statement confer approval of the
12 Traffic Impact Analysis Report?

13 MR. YUEN: If you know.

14 THE WITNESS: Yeah, I don't believe it
15 states explicitly that.

16 Q (By Mr. Yee): Then I'm not going to into
17 this very deeply, but just for the record you're
18 familiar with the term "public trust resources"?

19 A Shallowly, yes.

20 Q I'm not going to get further than this
21 question. But would it be your opinion that an
22 adequate evaluation and assessment of public trust
23 resource impacts have been integrated into the
24 analysis and recommendations in this case?

25 A I'd need more specificity.

1 Q Okay. That's fine.

2 MR. YEE: Nothing further.

3 CHAIRMAN CHOCK: Redirect?

4 MR. YUEN: No redirect.

5 CHAIRMAN CHOCK: Commissioners, any
6 questions for this witness? Thank you for your
7 testimony.

8 THE WITNESS: Thank you.

9 CHAIRMAN CHOCK: Petitioner, anyone else
10 today?

11 MR. YUEN: That's it for me.

12 CHAIRMAN CHOCK: County?

13 MR. GIROUX: Thank you, Chair. I guess can
14 I do some house cleaning first to get my other
15 witnesses out of the way just to make sure. We
16 submitted resumés for Rowena and Diane Dagdag, our
17 Public Works person, Kyle Ginoza, our environmental
18 management person, and Paul Meyers our Water. So I'd
19 just like to qualify them as experts if there's no
20 objection and then submit on the record of their
21 written statements.

22 CHAIRMAN CHOCK: Parties, any objections?
23 Petitioner?

24 MR. YUEN: No objection.

25 CHAIRMAN CHOCK: State?

1 MR. YEE: No objection. We believe or we
2 understand that their area of expertise is as listed
3 in their Witness List.

4 MR. GIROUX: That's accurate.

5 CHAIRMAN CHOCK: Okay. Very good.
6 Proceed.

7 MR. GIROUX: I'll be calling Mr. Spence.

8 CHAIRMAN CHOCK: Good afternoon.

9 WILLIAM SPENCE

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

12 THE WITNESS: I do.

13 CHAIRMAN CHOCK: Name and address, please.

14 THE WITNESS: My name is William Spence.
15 I'm the planning director for Maui County. My
16 business address is 250 South High Street, Wailuku,
17 96793.

18 MR. GIROUX: Thank you, Chair. We
19 submitted Mr. Spence's resumé and we'd like to qualify
20 him as an expert in the area of planning.

21 CHAIRMAN CHOCK: Parties, objections?

22 MR. YUEN: No objection.

23 MR. YEE: No objection.

24 CHAIRMAN CHOCK: This witness is admitted.

25 DIRECT EXAMINATION

1 BY MR. GIROUX:

2 Q Mr. Spence, you wrote a position statement
3 and also written testimony in this case?

4 A Yes, we did.

5 Q And could you summarize those briefly for
6 the Board.

7 A Real briefly. The Planning Department is
8 in support of this change from Agriculture to Urban.
9 This has been a long time coming. Virtually every
10 meeting I've ever been to in South Maui people are
11 looking forward to having a high school in South Maui.

12 Certainly this administration supports it
13 and so does the County Council by evidence of the
14 resolution to forward the change in zoning unanimously
15 passed by the Council.

16 So we have submitted conditions in our
17 testimony. And as noted earlier this morning
18 Mr. Nichols agreed to those. That pretty much
19 summarizes it. Short and sweet.

20 Q With the State agreeing to the conditions
21 as written in your statement, do you feel that all of
22 the County's concerns regarding this Project have been
23 addressed?

24 A Yes. For the County's concerns, yes.

25 MR. GIROUX: No further questions.

1 CHAIRMAN CHOCK: Petitioner?

2 MR. YUEN: Yes, just briefly.

3 CROSS-EXAMINATION

4 BY MR. YUEN:

5 Q In response to questioning by the deputy
6 corporation counsel, Mr. Nichols generally expressed
7 the willingness of the Department of Education to
8 comply with the County's suggested conditions on
9 landscaping, on an overflow parking lot and
10 stormwater.

11 But Mr. Nichols expressed a concern that
12 the County's recommended condition of compliance with
13 the Police Department's Crime Prevention Through
14 Environmental Design may conflict with some of the
15 suggested guidelines to create a parklike character of
16 landscaping.

17 Is the County willing to -- or how does the
18 County propose to resolve any conflicts between
19 competing guidelines that the county would like the
20 Department of Education to follow?

21 A I think Mr. Nichols expressed it best that
22 we'd work on it together. There's going to be pluses
23 and minuses in those areas.

24 Q The County has also suggested that the
25 Commission require that Project design to be submitted

1 to the County's Urban Design Review Board. Isn't the
2 Urban Design Review Board a County creation or a
3 County agency?

4 A Yes, it is. It's a county board.

5 Q If so why should the state be concerned
6 about whether the County, a County agency reviews the
7 plan? Isn't there ample authority when the DOE takes
8 this Project through the county process for the
9 County to assure compliance with its various review
10 processes?

11 A I sort of heard a compound question.

12 Q Can you give a compound answer?

13 (laughter)

14 A Well, one, I always think County review is
15 appropriate. But we did not pursue that particular
16 condition. And when Mr. Giroux was questioning
17 Mr. Nichols we didn't hear an answer that the state
18 would agree to that or disagree to it.

19 Q So you're not pursuing that.

20 A We're not pursuing that.

21 Q Thank you. Finally, with respect to the
22 grade-separated crossing, the county has expressed a
23 preference for a grade-separated crossing. But if DOT
24 decides that it is willing to accept an at-grade
25 crossing or that an at-grade crossing is adequate,

1 would that satisfy the county?

2 A I think, like everybody involved, our
3 concern is for the safety of pedestrians and
4 bicyclists crossing the highway. However, the
5 condition comes out I believe would be satisfactory to
6 us.

7 I would like that condition to be based on
8 some kind of findings rather than just a preference
9 between DOE and DOT and whatever disagreements they
10 may have. But, yes, I trust the decision-making
11 process on that.

12 MR. YUEN: Thank you very much. No further
13 questions.

14 CHAIRMAN CHOCK: State?

15 CROSS-EXAMINATION

16 BY MR. YEE:

17 Q A couple of clarifications. Condition 6
18 that you proposed says that "To the satisfaction of
19 the Maui County Department of Public Works no
20 additional stormwater resulting from the Petition Area
21 shall be added to the Waipuילani Gulch." You saw
22 that?

23 A Yes.

24 Q Is that different than the general County
25 requirements that no net increase shall occur?

1 A That we spoke with Ms. Dagdag-Andaya at
2 lunch. And what they intended for this -- for the
3 Department of Public Works intended that this be
4 reflective of the County of Maui's stormwater rules
5 and regulations, that there be no net increase.

6 Q So it wouldn't be the county of Maui that
7 would be asking that mauka water be diverted straight
8 into the Waipuailani Gulch, is that right?

9 A I can't answer that. What I can say is
10 generally I find when large projects come before the
11 public, Department of Public Works, however those
12 regulations are met, you know, that's what they're
13 going to go with.

14 Q But this is to reflect basically existing
15 county ordinances, then?

16 A That's correct.

17 Q So it's not a sort of a 100 percent
18 prohibition against allowing any water whatsoever
19 under any conditions to go into the gulch. That's not
20 the County ordinance, is it?

21 A If there was a catastrophic event I'm not
22 sure how you would prevent additional water from going
23 into the gulch.

24 Q Okay. Then I was wondering about the R1
25 water connection. If you could, what is the County

1 requirement for that?

2 A I can't answer that.

3 Q Okay. Do you know if there's a certain
4 point at which the Department of Education can
5 either -- knows whether or not there's going to be --
6 let me rephrase this.

7 The Department of Education could be
8 constructing 2 brackish wells for irrigation use,
9 right?

10 A That's what I heard in the testimony.

11 Q Would there be a point at which the county
12 would say, "Well, since you're so far along with
13 development and you constructed the wells, you do not
14 need to connect up to the R1 water supply at this
15 point because by the time we get to you you'll have,
16 you know, developed -- gone so far into your
17 development that it just wouldn't be cost effective."

18 A So I'm not sure what the question is.

19 Q Is there a point at which the county would
20 not require the R1 water connection because
21 development of the school has progressed so far?

22 A I think it would be -- I'm not sure that
23 I'm qualified to answer that question. I believe it
24 is -- I mean it would be the county's preference. I
25 think that's safe to say. It would be the county's

1 preference to take reclaimed water. But I understand
2 the cost implications as well.

3 Q The proposal for the use of the R1 water is
4 based upon whether or not the R1 water is available up
5 to the land, up to the parcel?

6 A Yes. That would be a part of the costs is
7 building the infrastructure to bring that over.

8 Q And is that a county cost?

9 A No. I would suspect that would be DOE.
10 They're building the facility. Okay. I think I'm
11 getting beyond my...

12 Q Okay.

13 A ...area of expertise here.

14 Q All right. Well, you know, that's fine.
15 What's the status of the needed community plans and
16 zoning amendments for this Project?

17 A The county council introduced a resolution
18 to initiate the change in zone -- the district or
19 excuse me -- the Community Plan Amendment and the
20 change in zoning. And that was Resolution 13-34. And
21 I can get you a date on that. That was passed by the
22 Council. It was certified on April 5th, 2013. And it
23 was a unanimous vote by the Council.

24 So what happens after that is that
25 resolution is transmitted to the planning department.

1 We process it. We have 60 days to get it to the
2 Planning Commission once the resolution reaches our
3 office.

4 Then we have -- as soon as we have the
5 public hearing on that I believe we have 120 days to
6 get it back up to the county council. We anticipate
7 getting it up a lot sooner than that as soon as
8 possible after that hearing.

9 Q Do you have a general timeframe when that
10 would be?

11 A I would say 30 to 45 days depending on --
12 usually what the holdup is is getting the minutes
13 done. Or perhaps the Council can accept the
14 transmittal without the minutes. There may be a court
15 reporter involved. We don't know.

16 Q So you think within, let's say 2 months
17 it's going back to the County Council?

18 A I would say so. And we're currently -- we
19 are already scheduled for a public hearing with the
20 Planning Commission for July 23rd.

21 Q Can all that occur concurrently with this
22 LUC process?

23 A Yes. I don't believe -- we can't -- the
24 county council cannot pass a zoning until such time as
25 this Decision and Order is granted -- until this

1 amendment is granted by this body.

2 Q So you think within 2 months. So basically
3 they have would need this LUC Decision in about 2
4 months.

5 A Whenever this -- whenever the LUC passes,
6 assuming it's passed, yes, we can, the county council
7 can then grant zoning.

8 MR. YEE: Okay. Thank you. I have nothing
9 further.

10 CHAIRMAN CHOCK: Mr. Giroux, any redirect?

11 MR. GIROUX: Thank you Chair.

12 REDIRECT EXAMINATION

13 BY MR. GIROUX:

14 Q I hear the concern of the Petitioner
15 regarding the landscaping and the -- (cellphone
16 ringing). Can you just explain a little bit or
17 expound about how your department, because you would
18 be in charge of enforcement, how you would go about
19 trying to make sure that both of those conditions
20 could be met without them being diametrically opposed?

21 A Probably what would happen after zoning,
22 after the boundary amendment is granted and after
23 zoning is granted we actually receive a, either
24 building permit application or we meet with the build/
25 design group.

1 We would probably -- we'd probably like to
2 meet with them, discuss with the Planning Department.
3 We'd probably invite the Police Department as well to
4 look at some design considerations.

5 Q Would you feel comfortable if there was
6 additional language that "to the extent practicable"
7 or "to the satisfaction of the Maui Planning
8 Department" so that they would actually be able to
9 have somebody to make that decision and not have the
10 developer stuck in a quagmire or a quandary between
11 these two conditions?

12 A That would be fine. There have to be some
13 flexibility built into this for all the parties. You
14 know, there's rare occasions when things have to be
15 hard and fast.

16 You know as has been discussed and
17 testified, you know, there needs to be some, there
18 needs to be some flexibility in this regard when it
19 comes to landscaping and the sub-tank considerations.

20 MR. GIROUX: Okay. No further questions.

21 CHAIRMAN CHOCK: Commissioners, questions
22 for Mr. Spence? Commissioner McDonald.

23 COMMISSIONER McDONALD: Just a quick
24 question, Mr. Spence. Not sure if you know, but as
25 far as the County non-potable system do you have an

1 idea where that terminates? I know that the treatment
2 plant is probably maybe a mile or so down from this
3 site. I'm not sure how far down the non-potable
4 system runs.

5 THE WITNESS: There is a line that runs --
6 I will say the one line I'm aware of, I believe it's a
7 12-inch line on the makai side of Pi'ilani Highway
8 where the north/south collector is supposed to go. I
9 can't say how far away that is. Then it would be
10 uphill from there.

11 But that, to my knowledge that's the
12 closest point where an existing pipeline would be.
13 Other than that it would, it would be a new pipeline
14 along the mauka side somewhere.

15 COMMISSIONER McDONALD: Is that something
16 the County can provide as far as the location? It
17 could be diagramatic.

18 THE WITNESS: We could probably provide
19 that for the Commission.

20 COMMISSIONER McDONALD: The reason why I
21 ask is DOE is planning on drilling a couple wells for
22 brackish use of the irrigation.

23 THE WITNESS: That's correct.

24 COMMISSIONER McDONALD: There's capital
25 costs involved with that. There's operation

1 maintenance costs associated with that as well. So
2 it's an annual cost the state would be paying.

3 THE WITNESS: Sure.

4 COMMISSIONER McDONALD: Whereas I'm not
5 sure if the analysis was done, but if the county
6 system is close enough, although the capital cost
7 might be a little higher for installing it for the
8 state, in the long run it might be a cheap
9 alternative. I don't know. The state may have
10 already investigated it.

11 But another option is that non-potable
12 source could be used as fire protection, for their
13 onsite fire protection. We have, we have used in the
14 past. I know projects have used in the past. The
15 County Fire Department has accepted the use of the
16 non-potable water for fire protection.

17 Like I had mentioned before the fire
18 protection requirements that the County require, may
19 be requiring, may result in an on-site storage tank
20 because they don't have the pressures. Just a
21 consideration. Thank you.

22 THE WITNESS: I think we would look forward
23 to working with DOE on their options.

24 COMMISSIONER McDONALD: Thank you.

25 CHAIRMAN CHOCK: Commissioner Biga.

1 COMMISSIONER BIGA: Mr. Spence, thank you
2 for your testimony. Is it common practice that either
3 the Petitioner or the developer needs to bring that
4 source of the R1 water to their project to hook up?
5 Or is that a common practice?

6 THE WITNESS: I think the reason I stepped
7 away from that testimony is because it's much more
8 Department of Environmental Management manages that
9 system. I'm not a hundred percent sure of their
10 policies when it becomes a condition or not. That's
11 also why -- I'd leave it open to we're willing to work
12 with DOE on whatever is the most cost effective manner
13 is for them. I think that's safe to say that the
14 county is willing to work with them on that.

15 COMMISSIONER BIGA: And that's great for
16 the betterment of all the students in Kihei. They cry
17 out for the school. I'm sure you've heard it numerous
18 times.

19 THE WITNESS: Oh, yes.

20 COMMISSIONER BIGA: So have we. So if we
21 can all work together to accomplish this I think it
22 will benefit the kids. Thank you.

23 CHAIRMAN CHOCK: Thank you very much,
24 Commissioner Biga. Any other questions for this
25 witness, Commissioners? Thank you, Mr. Spence.

1 THE WITNESS: Thank you, Commissioners.

2 CHAIRMAN CHOCK: Petitioner, anybody else?

3 MR. YUEN: I have nobody else on direct.

4 As an administrative matter I want to be able to call
5 Pete Pascua as a rebuttal witness to the DOT witness
6 tomorrow. He has to leave by 11:00. I'd like to be
7 able to have him testify right after Alvin Takeshita.
8 Mr. Yee has indicated no objection to that if it's all
9 right with the Commission.

10 CHAIRMAN CHOCK: I'm okay with that.
11 Bryan, you okay?

12 MR. YEE: That's fine with us.

13 CHAIRMAN CHOCK: You've got 2. You've got
14 Takeshita and Funakoshi tomorrow?

15 MR. YEE: Yes.

16 CHAIRMAN CHOCK: Okay. Any other
17 housekeeping business, Parties? Mr. Giroux.

18 MR. GIROUX: Chair, just to be clear I can
19 call off all of my witnesses that I've submitted
20 written testimony? There's no, not necessary for
21 cross from the Board on those witnesses?

22 CHAIRMAN CHOCK: Commissioners, was there
23 any interest in questions for any of the County's
24 witnesses? (no response) I think we're good.

25 MR. GIROUX: They'll be calling in sick

1 tomorrow. (laughter)

2 CHAIRMAN CHOCK: At least they're not
3 furloughed. (laughter)

4 MR. YEE: Chair, I had a quick question. I
5 don't know if you want to address this now or address
6 this tomorrow. But with respect to the schedule once
7 the evidentiary hearing is done, I know your executive
8 director talked about scheduling this for 2 weeks from
9 now.

10 It's the Office of Planning's view that we
11 will not be ready to have a D&O available to you to
12 vote on or to consider from our perspective within 2
13 weeks.

14 CHAIRMAN CHOCK: Bryan, why can't you get
15 that done in 2 weeks?

16 MR. YEE: Several reasons. One, the
17 proposed D&O from Petitioner was received yesterday.
18 There are no record sites.

19 2. The transcripts for this case will not
20 be available for at least some period of time, so it
21 would be difficult for us to get all that information
22 down.

23 As you know we indicated in prior hearings
24 is that we're looking -- we're looking very closely at
25 the Findings of Fact more recently since we've agreed

1 to amend the condition with respect to compliance with
2 representations. That is we're limiting the condition
3 for compliance with representations to those
4 representations that are contained within the findings
5 of fact.

6 That makes it a much more detailed and
7 technically rigorous review process for us. I will
8 say we will be ready -- we would be prepared to give
9 final argument 2 weeks from now with respect to all
10 matters including the proposed conditions.

11 We simply would not be ready with a
12 proposed D&O for your review and consideration or
13 comments on their proposed D&O in time within 2 weeks.

14 CHAIRMAN CHOCK: What is so technically
15 difficult about this particular Petition when there
16 seems to be just one issue that seems to be in
17 everyone's concern with respect to this
18 overpass/underpass?

19 The reason I'm bringing this up because we
20 have some terms expiring here at the end of the month.
21 We're going to be losing 2 Commissioners. And the 2
22 new Commissioners would need to get up to speed
23 relatively quickly.

24 So in terms of everyone's interest in
25 moving this along I'm not sure where the technical

1 complexity is coming from.

2 MR. YEE: Sure. Admittedly, these are a
3 lot of technical issues that probably escaped your
4 review and notice because they're matters that we deal
5 with, as I said, on the Findings of Fact. So it would
6 be, for example, we would review the transcripts to
7 look closely what the representations were made
8 regarding bike paths or archaeology or R1 water, et
9 cetera.

10 Then making sure that those representations
11 are properly included within the Findings of Fact so
12 that the condition, which mandates that each developer
13 comply with the representations as set forth in the
14 D&O, that we have all those representations in the
15 findings. And you know the findings are fairly long.

16 Now, supposedly if we had a stipulation of
17 course this would be much easier. But because we
18 don't have a stipulation it's harder.

19 We're okay with the general action vote as
20 I said. So we'd be prepared to make final argument
21 and for you to take action on this case. It's just
22 our ability to comment on or to provide you comment on
23 the particular document would be beyond our capacity
24 within 2 weeks.

25 CHAIRMAN CHOCK: Okay. We'll get into the

1 details of that tomorrow. But my Chair's preference
2 is to move this thing along sooner rather than later.

3 MR. YEE: Just for the record one other
4 thing. That is while I understand the issue for the
5 LUC in terms of having enough members in terms of the
6 timing of this Project for the Department of
7 Education, because it is going concurrent with the
8 County process, we do have at least a couple months to
9 reach a decision. So just wanted to note that. Thank
10 you.

11 CHAIRMAN CHOCK: Thanks, Bryan. Appreciate
12 it. Any other questions, parties? Commissioners?
13 Okay. We're adjourned until tomorrow at 8 a.m. Thank
14 you.

15
16 (The proceedings were adjourned at 2:45 p.m.)

17 --oo00oo--
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C E R T I F I C A T E

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

That I was acting as court reporter in the
foregoing LUC matter on the 13th day of June 2013;

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

That the foregoing represents, to the best
of my ability, a true and correct transcript of the
proceedings had in the foregoing matters.

DATED: This_____ day of_____2013

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