

LAND USE COMMISSION  
STATE OF HAWAII  
HEARING  
A10-787 MAUI R&T PARTNERS, LLC

The above-entitled matter came on for a Public Hearing at Kahului Marriott Courtyard, Kahului, Maui, Hawai'i, commencing at 9:40 a.m. on August 8, 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

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Docket No. A10-787 Maui R&T Partners, LLC

For the Petitioner: BENJAMIN MATSUBARA, ESQ.  
WYETH MATSUBARA, ESQ.  
CURTIS TABATA, ESQ.  
STEVE PERKINS, Project Mgr.

For the County: JAMES GIROUX, ESQ.  
Deputy Corporation Counsel  
KURT WOLLENHAUPT

For the State: BRYAN YEE, ESQ.  
Deputy Attorney General  
RODNEY FUNAKOSHI, OP  
Planning Program Administrator

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1           CHAIRPERSON McDONALD: I'd like to call the  
2 state of Hawai'i Land Use Commission meeting to order.  
3 The first order of business is the adoption of minutes  
4 from the July 25-26 meeting. Commissioners, any  
5 revisions?

6           COMMISSIONER ESAKI: Move to approve.

7           COMMISSIONER MATSUMURA: Second.

8           CHAIRPERSON McDONALD: Minutes are adopted.  
9 Mr. Orodenger, can you please advise the Commission of  
10 the tentative meeting schedule.

11           MR. ORODENER: Thank you, Mr. Chair. The  
12 next meeting in August is the 22 and 23rd. August 22  
13 we'll be here on Maui Halekua Development  
14 Corporation -- excuse me it's going to be on O'ahu --  
15 Halekua Development Corporation Motion to Amend  
16 Findings of Fact, Conclusions of Law. It will be at  
17 the airport conference room No. 3.

18           August 23rd we will be having a meeting  
19 just to provide the Commission with information from  
20 SHPD, Commission on Water Resource Management and  
21 OEQC. It's an informative meeting. No action on  
22 those days.

23           September 5th and 6th we'll be back here on  
24 Maui for CMBY, Investment, LLC. We will also be  
25 having a public hearing on our Administrative Rules

1 proposal. That's not a Commission meeting, but  
2 Commissioners should be aware that that's going on.  
3 September 18th to 20th we'll be at the HCPO at Keauhou  
4 Bay, Sheraton Kona. Once again we will be having a  
5 hearing on the Administrative Rules.

6           October 3rd and 4th there's currently --  
7 there's nothing on the agenda for those two days. And  
8 October 17th and 18th. October 17th, back here on  
9 Maui for Mau R&T R&T at the Maui Arts & Cultural  
10 Center.

11           And October 18 on O'ahu for Kuilima  
12 Development Corporation's Issuance of Order to Show  
13 Cause.

14           CHAIRPERSON McDONALD: Thank you. Okay.  
15 This is a continued hearing on Docket No. A10-787 Maui  
16 R&T R&T Partners, LLC to amend the land use District  
17 Boundary on certain lands situated at Kihei, Island of  
18 Maui, State of Hawai'i consisting of 253.05 acres from  
19 the Agricultural District to the Urban District Tax  
20 Map Key Nos. 2, 2-2, 24, parcel 16 and 17 and 2,  
21 2-2-002 portion parcel 84. Will the parties please  
22 identify themselves.

23           MR. MATSUBARA: Good morning, Mr. Chairman,  
24 Commissioners. My name is Benjamin Matsubara along  
25 with Curtis Tabata and Wyeth Matsubara representing

1 Maui R&T. Also with me today is Steve Perkins,  
2 project manager.

3 MR. GIROUX: Good morning. James Giroux  
4 deputy corporation counsel on behalf of the Department  
5 of Planning. With me is Kurt Wollenhaupt.

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

10 CHAIRPERSON McDONALD: Thank you. Let me  
11 update the record in this docket. On July 25th, 2013  
12 the Commission received County's List of Witnesses  
13 Amendment Number 2, List of Exhibits, Amendment No. 2  
14 and Exhibit 11 and commenced hearing in this docket.

15 On August 2, 2013 the Commission received  
16 Petitioner's Second Amended Witness List, Petitioner's  
17 Second Amended Exhibit List and Petitioner's  
18 Exhibit 49.

19 Let me describe our procedure for today.  
20 First, I will call those individuals desiring to  
21 provide 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 will be enforced.

25 The parties will then offer any final

1 exhibits that they would like to have admitted to the  
2 record and then complete the remainder of their  
3 presentations starting with the resumption of the  
4 State Office of Planning's witness Ms. Charlene  
5 Shibuya, then completion of Petitioner's witnesses and  
6 the final OP witness, Rodney Funakoshi. Does the  
7 County Planning Department have any new witnesses?

8 MR. GIROUX: The County does not have any  
9 new witnesses.

10 CHAIRPERSON McDONALD: Thank you. The  
11 Chair would also note for the parties and the public  
12 that from time to time I will be calling for short  
13 breaks. Are there any questions regarding the  
14 procedures for today?

15 MR. GIROUX: No questions from the County.

16 MR. MATSUBARA: No questions.

17 MR. YEE: No questions.

18 CHAIRPERSON McDONALD: Are there any  
19 individuals desiring to provide public testimony on  
20 this docket? Seeing none, Mr. Orodenger anybody  
21 signed up for public testimony?

22 MR. ORODENKER: We don't have anyone signed  
23 up, Mr. Chair.

24 CHAIRPERSON McDONALD: Mr. Matsubara,  
25 please describe the exhibits you wish to have

1 admitted into the record.

2 MR. MATSUBARA: The additional exhibit  
3 which we submitted, Petitioner's Exhibit 49, and it  
4 consists of the written testimony of Rory Frampton.  
5 Attached to that written testimony marked as Exhibit  
6 49, are Exhibits 1 through 6. We've distributed  
7 copies to the parties.

8 CHAIRPERSON McDONALD: Any objections from  
9 the parties?

10 MR. GIROUX: No objections.

11 MR. YEE: No objection.

12 CHAIRPERSON McDONALD: Commissioners, any  
13 objections? Seeing none, the exhibits are admitted to  
14 the record. County, please describe any exhibits that  
15 you wish to have admitted.

16 MR. GIROUX: I believe we had all of our  
17 exhibits admitted earlier.

18 CHAIRPERSON McDONALD: Nothing new.

19 MR. GIROUX: Nothing new.

20 CHAIRPERSON McDONALD: Thank you. OP?

21 MR. YEE: OP has no new exhibits.

22 CHAIRPERSON McDONALD: Perfect. (Laughter).  
23 Mr. Yee, can you get going with Ms. Shibuya.

24 MR. YEE: Ms. Shibuya is available for  
25 cross-examination.



1 CHAIRPERSON McDONALD: Ms. Shibuya, thank  
2 you again for being here. I just want to remind you  
3 that you are still under oath.

4 THE WITNESS: Yes, I understand.

5 MR. MATSUBARA: Should I begin cross?

6 CHAIRPERSON McDONALD: Please do.

7 MR. MATSUBARA: Thank you, Mr. Chair.

8 CROSS-EXAMINATION

9 BY MR. MATSUBARA:

10 Good morning, Ms. Shibuya. My name is Ben  
11 Matsubara and I represent Maui R&T. I have some  
12 follow-up questions based on the testimony, written  
13 testimony you provided last time.

14 When we broke last time you were talking  
15 about some of the important information that should be  
16 included in the TIAR. I just wanted to briefly look  
17 to the process by which a TIAR gets done, the normal  
18 process. Is it generally the process or procedure  
19 that the traffic engineer involved in the proposed  
20 Project would come and meet with the Department of  
21 Transportation to discuss traffic issues and traffic  
22 ramifications before they begin doing their traffic  
23 analysis?

24 A Yes. That's typical for the larger  
25 projects.

1           Q       And during the course of this discussion  
2 the Department of Transportation and the project  
3 engineer would discuss existing land uses and the  
4 proposed land use of the contemplated project?

5           A       Yes.

6           Q       Would they also be discussing the existing  
7 roadway system?

8           A       Yes.

9           Q       They'd also talk about the availability of  
10 any public transit?

11          A       Yes.

12          Q       You'd discuss intersections and existing  
13 traffic volumes. Would that also be discussed with  
14 the traffic engineer?

15          A       Yes. If you think they'll ask for it if  
16 they had any available existing data so they don't  
17 have to capture extra, yeah?

18          Q       Correct. And all of these things are  
19 criteria that DOT feels should be considered in a  
20 Traffic Impact Analysis so that you can make your  
21 determination as to what mitigation, if any, needs to  
22 be done?

23          A       Correct.

24          Q       And the Traffic Impact Analysis also needs  
25 to consider other projects in the area which would

1 contribute to the traffic affecting this particular  
2 Project?

3 A Correct.

4 Q So, like, in this particular Project as set  
5 forth in the TIAR, there were ten other projects that  
6 were discussed, for example, Kihei High School, is  
7 that correct? Pi'ilani Promenade?

8 A Yes. There is a list of all the projects  
9 that are upcoming.

10 Q About ten projects, yeah?

11 A Yes.

12 Q You also needed to get volume information  
13 from the Maui Travel Demand Forecasting model?

14 A Correct.

15 Q Would that be utilized also to get an idea  
16 of what the forecasted volume increases would be in  
17 traffic?

18 A Correct.

19 Q So this is a conservative approach to the  
20 extent that you want them to consider all projects  
21 that are contemplated, pending or approved that could  
22 have an impact on traffic.

23 A Correct. Yeah, like a best guess at that  
24 time.

25 Q Right, right. It's safer that way.

1           A       Correct. And tend to be almost like the  
2 worst scenario case.

3           Q       Yes. And the discussion you had with the  
4 traffic engineers it's all for purposes of developing  
5 a protocol under which the TIAR will be developed so  
6 that there's a common understanding that they know  
7 what you want and vice-versa.

8           A       Yes.

9           Q       Now, when the initial TIAR was done, which  
10 was, I guess, in this particular case when we file a  
11 Draft EIS you're provided a copy of the Draft EIS's,  
12 the TIAR. The DOT reviews the TIAR and then provides  
13 comments in regard to perhaps additional issues should  
14 be raised, covered or computations that should be  
15 reviewed that DOT believes should be done?

16          A       Correct.

17          Q       And you continue to have meetings with the  
18 traffic engineer?

19          A       Yeah, consultation tends to continue.

20          Q       It's a continuing dialogue.

21          A       For clarification.

22          Q       Right. And the whole purpose is to get a  
23 better idea what the traffic impacts are going to be.

24          A       Yes.

25          Q       Some of the information that should be

1 included in the TIAR, which is important, is, for  
2 example, last time we discussed like the location of  
3 roadways that would be important for determining  
4 traffic impact.

5 A You're talking about which intersections  
6 are gonna get evaluated?

7 Q Correct. The location of the roadways  
8 within the Project itself.

9 A Yes.

10 Q The number of lanes involved in the  
11 roadways?

12 A Correct. Yeah.

13 Q The use of the property?

14 A Yeah, definitely.

15 Q For example, you would be interested in  
16 knowing if it was residential, is that correct?

17 A Yes. That would determine the trip  
18 generation.

19 Q And if it was residential, whether it was  
20 single-family dwellings or multi-family dwellings.

21 A Correct.

22 Q And if it was a commercial -- if there were  
23 commercial components to the project you would also  
24 like to know the type of commercial activities that  
25 would be occurring there.

1           A       Yes, as well as the square footages.

2           Q       Correct. That also helps give you a better  
3 idea on the traffic generated.

4           A       Correct.

5           Q       I gather the most specific information the  
6 better?

7           A       Yeah. Essentially the best information at  
8 that time because to some degree the things that we  
9 can't look in a crystal ball. Right?

10          Q       Yes. After these continuing discussions  
11 and revisions are made this continues until DOT finds  
12 that the TIAR is sufficient that it can be accepted by  
13 DOT?

14          A       Yes.

15          Q       So this discussion continues up to that  
16 point. What factors are considered by DOT in  
17 determining whether or not to accept the TIAR?

18          A       Well, for example, typically got certain  
19 things that are pretty much set, you know. Like if  
20 you look at the traffic projections it's pretty much  
21 set by formulas or schedules.

22                   But typically they want to have some  
23 agreement and how they assign the traffic, what  
24 percentages are coming from wherever and how much of  
25 it is so-called new attractive trips versus what they

1 call the internal passerby trips. Also they kinda  
2 look at pre-existing problems in the area and  
3 essentially come to some agreement to after they do  
4 all the analysis, whether the recommendations look  
5 like it's in line with the analysis because the  
6 analysis essentially identifies what grade of levels  
7 you're going to get.

8           If it's unacceptable, they want some  
9 mitigation improvements, we run it in the program,  
10 make sure those Levels of Service come to acceptable  
11 levels.

12           So at that point they would want some  
13 agreement. But then, still yet, later on if the  
14 actual, you know, time the project is going to be,  
15 like, ten years down the line, we would still want,  
16 you know, another check before that phase is done  
17 'cause things change.

18           Q       Updates and revisions to the TIAR.

19           A       Correct, just before each phase that comes  
20 in. But you would at least wanna know in the early  
21 stages, you know, how you gonna phase it so we can  
22 sort of see how it aligns with our own state and  
23 county long-range transportation improvements too  
24 'cause we gotta see how realistic it is. Yeah?

25           Q       Now, the specificity of the TIAR is

1 important because does the TIAR form the basis of the  
2 Memorandum of Agreement that's entered into between  
3 DOT and the developer or the Petitioner?

4 A Yeah. I would say that would, pretty much  
5 for the transportation items that would be the primary  
6 technical basis we would use.

7 Q The Memorandum of Agreement or MOA, as it  
8 is referred to, it's a little like a contractual  
9 agreement between the developer and the state in  
10 regard to, for example, what mitigation needs to be  
11 provided and other transportation aspects that need to  
12 be covered as far as DOT is concerned.

13 A Yeah, which include timing also.

14 Q Correct. So before you enter into the MOA,  
15 which is basically like a contract, you want to make  
16 sure that it's based on as current and as detailed  
17 information as is available in the analysis.

18 A Yes, at the appropriate time.

19 Q Now, while the TIAR is being reviewed and  
20 the MOA is being negotiated, the Petitioner is also  
21 going to other agencies for additional approvals that  
22 they need for purposes of getting the entitlement to  
23 develop the Project, is that correct?

24 A Typically.

25 Q For example today we're before the Land Use



1 Commission.

2 A Yes.

3 Q The next step, assuming the Project is  
4 approved by the Land Use Commission, would be with the  
5 county zoning.

6 A Correct.

7 Q Now, at the land use level we're talking  
8 about land use and that's to reclassify the land from  
9 Agriculture to Urban, is that correct?

10 A Correct.

11 Q So when we go to the county we get a little  
12 more detail in regard to the type of uses that will be  
13 provided and the density of the Project based on the  
14 residential units versus commercial, versus the work  
15 areas?

16 A Correct.

17 Q The further down you go in the entitlement  
18 process the more detailed the development becomes in  
19 terms of concepts, if approved by the agency or  
20 commission, becomes Project details.

21 A Yeah, I guess depends on what you consider  
22 project details.

23 Q For example, we have a concept now what  
24 we'd like to do. But until we get the approvals from  
25 the Land Use Commission or the Planning Commission at

1 the county it's still a concept until approvals are  
2 issued so that we know we can go ahead and do it.

3 A Yeah, I guess concept in the sense you  
4 might not have detailed engineering plans but we would  
5 expect to at least have some idea like, say, if it's a  
6 residential subdivision how many lots.

7 Q Right.

8 A Yeah. And if it's a commercial you may not  
9 know the specific commercial but at least some idea of  
10 what kinda commercial you have and square footages.

11 Q Correct. Let's assume on a residential  
12 component if, for example, the original concept was  
13 for single-family dwellings but the zoning authority  
14 perhaps feels multi-family should be more appropriate  
15 use. Then that causes some changes in traffic  
16 generation?

17 A Correct.

18 Q That would be the same on whatever the  
19 final commercial square footage approved is in regard  
20 to knowing that that's the commercial component of  
21 traffic generation you would have to deal with.

22 A Yes.

23 Q After zoning you would go to the  
24 subdivision process and that's where you get into more  
25 detail on the street layouts, more definitively at

1 least?

2 A I guess definitive to the point of  
3 construction plan details. But in concept we expect  
4 it's gonna be generally that way except, you know, for  
5 all the details that you see on a construction plan.

6 So to me when you're saying "in concept" we  
7 still would know the general road layout, where the  
8 accesses are gonna tie into our highway, because we  
9 start to get interested in the number of access  
10 points, whether the access points are gonna create  
11 operational safety problems.

12 Q Right.

13 A So I'm not sure if we're on the same sheet.

14 Q Let me use this definition. In terms of  
15 "concept" it's what the developer is proposing to do.

16 A Yes. I guess what he's representing to do.

17 Q It's a proposal.

18 A That's correct.

19 Q Until approval is received from the agency,  
20 be it the state or county, to move it from concept to  
21 details of the Project, and that's how I'm using the  
22 difference between concept and approved details  
23 Project.

24 A Okay.

25 Q If there is a change -- let me back up. If

1 the Traffic Impact Analysis is done on concepts,  
2 certain concept, for example, the residential  
3 component versus the commercial component, and as part  
4 of the entitlement process the concept changes, if  
5 it's a significant enough change you would want the  
6 TIAR to be revised.

7 A Yes. We would want at least some  
8 validation whether that change is gonna make it worse,  
9 for example.

10 Q Okay. So the balance is to try and have a  
11 TIAR done when there's sufficient details to make it  
12 real so that what results you get from the TIAR is  
13 something you can rely on and base the Memorandum of  
14 Agreement on, the legal contract with the developer  
15 on.

16 A Yes. I guess so.

17 Q Okay. Thank you. In your testimony you  
18 discussed -- well, let me back up a little bit before  
19 I move to that. In any event, the developer cannot  
20 move forward until the DOT agrees and accepts the TIAR  
21 and there is an accepted Memorandum of Understanding.  
22 You have the ultimate authority. I mean we need to  
23 get your approvals before we move.

24 A Yeah, you mean towards --

25 Q Move forward, yes.

1           A       -- past the conceptual stage.

2           Q       Right. Right. So you have that -- you're  
3 the guardian of the gate. No matter what we may do or  
4 when we do it, until you approve we can't move  
5 forward. You didn't know you had that much power,  
6 huh? (Laughter).

7                   I just wanted to go through the regional  
8 traffic improvements you mentioned. For the  
9 Commissioners' reference this was Petitioner's  
10 Exhibit 26 which is from the Maui Island Plan. Can  
11 you see that?

12          A       Yes, I can see.

13          Q       Let me point to what I think you call the  
14 Kihei Upcountry Road. Is that it?

15          A       Yes, the Kihei Upcountry Highway.

16          Q       (off mic) And this would be -- what would  
17 this be called this? Mauka road?

18          A       We've been calling it the mauka road.

19          Q       Now, these are what we would call regional  
20 traffic improvements?

21          A       Yes.

22          Q       And what's the definition of a regional  
23 traffic improvement?

24          A       It's basically the improvements that go  
25 beyond what the Project directly impacts and local.

1 So it starts to get, like, where not only they create  
2 the need for that improvement, but it's like a lot of  
3 developments or the region creates the need for that  
4 improvement.

5 CHAIRPERSON McDONALD: Mr. Matsubara, what  
6 exhibit are you referring to?

7 MR. MATSUBARA: This is Petitioner's  
8 Exhibit 26.

9 CHAIRPERSON McDONALD: Thank you.

10 Q (By Mr. Matsubara): Ms. Shibuya, the  
11 regional traffic improvements usually involve  
12 participation by the state, county and the various  
13 landowners over whom the transportation highway  
14 passes over and who benefits from?

15 A Correct.

16 Q So both the Upcountry Road and the mauka  
17 collector would be considered regional traffic  
18 improvements that would fall --

19 A Yes.

20 Q -- under the definition.

21 A Yes.

22 Q Okay. Thank you.

23 MR. MATSUBARA: I have no further  
24 questions. Thank you very much.

25 CHAIRPERSON McDONALD: County?

1 MR. GIROUX: No questions.

2 CHAIRPERSON McDONALD: Redirect?

3 REDIRECT EXAMINATION

4 BY MR. YEE:

5 Q Ms. Shibuya, you were asked a variety of  
6 questions regarding the level of detail of facts as it  
7 relates to county approvals. Typically should there  
8 be sufficient facts available at the time of zone  
9 change approval in order to accept or to have a TIAR  
10 that's acceptable to DOT?

11 A Yes, correct. 'Cause, you know, we would  
12 still wanna know, I think, at the change in zoning  
13 stages, you know, based on the best information they  
14 have at that time.

15 If we can accept the TIAR we can see the  
16 representations made as far as density and where the  
17 roadways are gonna go. It gives us good information  
18 to feel comfortable that our transportation system can  
19 support this.

20 And then also to be in line, you know,  
21 talked about timeframes to be in line with the  
22 long-term transportation plans.

23 Q At the time of the tentative subdivision  
24 approval, referring to the individual lots, perhaps  
25 not the large lot subdivision, but at the time of the

1 tentative subdivision of those individual lots, should  
2 there be sufficient level of detail in order to  
3 execute an MOA?

4 A At that point it should. The important  
5 thing is that TIAR also identifies if additional lanes  
6 will be needed at the intersection approaches which  
7 dictates the rights-of-way of the internal roadways,  
8 or even whether road widening lots would be needed in  
9 our roadway that goes into this subdivision map.

10 MR. YEE: Thank you. I have nothing  
11 further.

12 CHAIRPERSON McDONALD: Thank you.  
13 Commissioners, any questions for Ms. Shibuya?  
14 Commissioner Esaki.

15 COMMISSIONER ESAKI: Ms. Shibuya, I think  
16 you were asked before about the excess fee. I  
17 understand it's based on improved land value.

18 THE WITNESS: Yes.

19 COMMISSIONER ESAKI: Would you say that  
20 if -- you know, of course, depending on the land  
21 value -- the fee could run into the tens of millions  
22 of dollars?

23 THE WITNESS: Well, I'm not qualified as an  
24 appraisal person. But basically Pi'ilani Highway back  
25 in the early '80s it was constructed using federal



1 funds. And part of that project we also purchased the  
2 right-of-way and access rights with federal funds. So  
3 in our Code of Federal Regulations, CFR 23 Part  
4 710.403 requires us that we shall -- if we purchase  
5 all these access rights and then they want it back,  
6 they want a new opening, then we expect to get  
7 so-called reimbursed or we'll charge them. It gets  
8 appraised on that side. I'm not qualified to give you  
9 an approximate number on that appraisal value.

10 COMMISSIONER ESAKI: Do you have the  
11 formula which is based on the appraisal?

12 THE WITNESS: We don't have a formula.  
13 It's like -- I don't know if you've seen land value  
14 appraisals. It's, like, based on a formula. They  
15 have accepted practices and I cannot elaborate on that  
16 'cause I'm not an expert. Our Right-of-Way branch  
17 does that stuff.

18 CHAIRPERSON McDONALD: Anything else,  
19 Commissioners? I've got a quick question. Honolulu,  
20 they have that 'Ewa impact fee. I think Commissioner  
21 Esaki was referring to the fee that's assessed for  
22 additional access to your facilities.

23 THE WITNESS: Okay.

24 CHAIRPERSON McDONALD: Is there any  
25 movement with regards on the state, county level where

1 such an impact fee could be assessed to these  
2 developers?

3 THE WITNESS: I understand that -- the  
4 county maybe would elaborate, but they have something  
5 where they're trying to develop. Actually, I believe,  
6 their consultant did come up with something, but I  
7 guess they have to go through various steps to get it  
8 implemented.

9 In my past 30 years it will always come up,  
10 but we never really got to the point where, like, the  
11 state, for example, had the mechanism that we could  
12 charge this impact fee. But I guess the County  
13 Planning Department could probably elaborate more on  
14 this.

15 CHAIRPERSON McDONALD: I ask the question  
16 because it seems like there's a lot of movement in the  
17 County of Maui.

18 THE WITNESS: Yeah. It encompasses our  
19 projects too. So I'm not sure how the eventual  
20 mechanism will come out where they capture the fee and  
21 then they give us the money? I'm not sure of all the  
22 details, but I know part of their consultant's effort  
23 captured both county and state projects.

24 They pretty much priced out everything and  
25 allocated it to different region. They did come up

1 with some sort of rhyme and reason, if you want to  
2 call it.

3 CHAIRPERSON McDONALD: County, do you want  
4 to respond?

5 MR. SPENCE: Thank you, Mr. Chairman. The  
6 County is working on a traffic impact fee, actually on  
7 the fee. We have no ordinance in place enabling us to  
8 do the studies to establish, you know, what the  
9 regional charge would be cause roadways in West Maui  
10 cost more than other places or South Maui, et cetera.

11 So that study is underway. The actual fee  
12 per unit has yet to be adopted by the county council.  
13 We're hopefully at the tail end of this exercise but  
14 it is underway.

15 CHAIRPERSON McDONALD: So this fee would be  
16 assessed at the building permit stage?

17 MR. SPENCE: That's correct. And some of  
18 the discussion was: Can we share with the state on  
19 regional improvements? I believe we have been  
20 working, we have been talking to the state on that and  
21 there will be some kind of Memorandum of Understanding  
22 on how we will do that.

23 CHAIRPERSON McDONALD: Great. Thank you.

24 MR. SPENCE: Thank you.

25 CHAIRPERSON McDONALD: Thank you,

1 Ms. Shibuya. Mr. Matsubara, can you proceed?

2 MR. MATSUBARA: The next witness will be  
3 Michael Dega.

4 CHAIRPERSON McDONALD: Good morning. Could  
5 you please state your name and address for the record.

6 THE WITNESS: My name is Michael Dega.  
7 Address 725 Kapiolani Boulevard in Honolulu.

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

11 THE WITNESS: I do. Good morning.

12 CHAIRPERSON McDONALD: Good morning.

13 DIRECT EXAMINATION

14 BY MR. TABATA:

15 Q Mr. Dega, could you please state your place  
16 of employment?

17 A SES Archaeological in Honolulu.

18 Q What's your position there?

19 A I'm part owner and one of the principal  
20 investigators in the company.

21 Q At our request did you prepare your written  
22 testimony, which included your list of qualifications  
23 which is Petitioner's Exhibit No. 46?

24 A Yes.

25 Q And in your list of qualifications it

1 states that you earned your Ph.D. in Anthropology at  
2 the University of Hawai'i at Manoa, is that correct?

3 A Yes.

4 Q And that you have 20 years of  
5 archaeological experience in the Pacific Basin  
6 including the Hawaiian Islands, Micronesia, Southeast  
7 Asia and South Asia, is that correct?

8 A Yes.

9 MR. TABATA: Mr. Chair, Petitioner requests  
10 that Dr. Dega be qualified as an expert in the field  
11 of archaeology.

12 CHAIRPERSON McDONALD: County, any  
13 objections?

14 MR. GIROUX: No objection from the County.

15 CHAIRPERSON McDONALD: State?

16 MR. YEE: No objection.

17 CHAIRPERSON McDONALD: He's admitted.

18 MR. TABATA: Thank you.

19 Q Dr. Dega, for this Project did you prepare  
20 the Archaeological Inventory Survey which is identified  
21 as Petitioner's Exhibit 11-D?

22 A I did.

23 Q And as you previously said you prepared  
24 your written testimony at our request which is  
25 Petitioner's Exhibit 46, correct?

1           A       Yes.

2           Q       Could you please summarize your written  
3 testimony for the Commission.

4           A       Okay. I'll try to keep this brief. We  
5 were hired to do an Archaeological Inventory Survey of  
6 the Project Area which is defined on the aerial up  
7 there. (indicating map) Inventory Survey is the basic  
8 level of archaeological research. That's where we walk  
9 up and down the entire landscape as a crew, and look  
10 for sites and things on the ground.

11                   And then if we do find them we record, map  
12 test and those sort of things. So we did complete an  
13 Inventory Survey of the entire Petition Area in 2008.  
14 We located five sites, three on parcel 17 and two on  
15 parcel 54. These included two historic modified  
16 outcrops.

17                   What does that mean? Outcrops/bedrock.  
18 Basically it's a solid rock. "Modification" means  
19 you've stacked rocks on top of that natural rock.  
20 That's what we mean by a modified outcrop.

21                   We had an historic wall running along the  
22 edge of the property. I think you've seen that.  
23 Another L shaped feature and three rock mounds which  
24 were not built on bedrock but they were stand-alone.  
25 These likely functioned as location markers for, say,

1 upland coastal trail area.

2           So we map recorded. We photographed these  
3 five sites. And as part of our requirements we have  
4 to assess them for significance under five of the  
5 state criteria. Basically everything in the state  
6 gets criteria D. If it's three rocks in a row you get  
7 criteria D for it. All five of these sites were  
8 assessed as Significant under criterion D. And the  
9 State concurred with that.

10           Our recommendations were no further work  
11 for four of the sites. The only one we did request  
12 some work on, which would be just a protective  
13 measure, for the wall. It's a long wall that runs  
14 along the top of drainage there, asking the client if  
15 A. They wanted to keep part of it or B. to put an  
16 orange fence next to it. 'Cause we're walking a  
17 little bit.

18           Sometimes we go out of the Petition Area  
19 just to get a feel for it. There were a couple little  
20 sites in the valley below. They put up a fence  
21 that'll protect the sites. The sites are not in the  
22 Petition Area. That's where we stand now.

23           The SHPD concurred with all this and  
24 accepted the Inventory Survey Report and  
25 recommendations.

1 MR. TABATA: Thank you. Dr. Dega is now  
2 available for cross-exam.

3 CHAIRPERSON McDONALD: County?

4 MR. GIROUX: No questions.

5 CHAIRPERSON McDONALD: State?

6 CROSS-EXAMINATION

7 BY MR. YEE:

8 Q I just want to clarify something. You had  
9 said you asked the Petitioner if they wanted to  
10 preserve. Was the recommendation in your AIS for the  
11 preservation of that rock wall within the gulch?

12 A It was not.

13 Q And what was the recommendation?

14 A The recommendation was to put up the orange  
15 fence along the top near the wall to protect a couple  
16 sites below outside the Project Area. We had written  
17 in our report's recommendation we will work with the  
18 client to see if they're interested in protecting the  
19 wall. There was no recommendation from the SHPD or us  
20 to actually preserve the entire wall.

21 MR. YEE: Thank you. Nothing further.

22 CHAIRPERSON McDONALD: Any redirect?

23 MR. TABATA: No redirect.

24 CHAIRPERSON McDONALD: Commissioners?  
25 Commissioner Esaki.



1 COMMISSIONER ESAKI: There's no guarantee  
2 that there are no further sites involved, right?

3 THE WITNESS: We did it to the best of our  
4 ability. We walked a hundred percent. There's no  
5 sites there. Nothing else. And I'm pretty assured --  
6 I mean there's no burials certainly. And I'm pretty  
7 assured that there's no other sites. The visibility  
8 is so high out there. You've heard the term "the  
9 barren zone" you can see forever. And you can see  
10 sites. And we're very closely spaced as we walked up  
11 and down the area.

12 COMMISSIONER ESAKI: Thank you.

13 CHAIRPERSON McDONALD: Thank you for your  
14 testimony.

15 MR. WYETH MATSUBARA: Petitioner's next  
16 witness would be Mr. Rory Frampton.

17 CHAIRPERSON McDONALD: Name and address for  
18 the record please.

19 THE WITNESS: Rory Frampton, 340 Napoko  
20 Place, Kula.

21 RORY FRAMPTON  
22 being first duly sworn to tell the truth, was examined  
23 and testified as follows:

24 THE WITNESS: Yes.

25 CHAIRPERSON McDONALD: Thank you.

1 MR. WYETH MATSUBARA: Thanks, Chair.

2 DIRECT EXAMINATION

3 BY MR. WYETH MATSUBARA:

4 Q Mr. Frampton, you're a land use consultant  
5 for Haleakala Ranch Company, correct?

6 A That's correct.

7 Q How long have you been a land use planner?

8 A On Maui I've been a Professional Planner  
9 for about 23 years.

10 Q How long have you been a planner for the  
11 ranch?

12 A I was retained by the ranch approximately  
13 three years ago.

14 Q You're familiar with the United States  
15 Department of Interior Fish and Wildlife Service  
16 letter dated July 25, 2013 that was sent to the Land  
17 Use Commission and was also read into the record on  
18 July 26, correct?

19 A That's correct. I was here when it was  
20 read into the record.

21 Q You also were able to review a copy of that  
22 letter, correct?

23 A That's correct.

24 Q You're also familiar with the TMK area in  
25 question that was raised in that U.S. Fish and

1 Wildlife Service letter in relation to the Haleakala  
2 Ranch Company, correct?

3 A That's correct.

4 Q And you've also prepared written testimony  
5 which has already been submitted and accepted into  
6 evidence which is Petitioner's Exhibit 49, correct?

7 A That's correct.

8 Q Could you please just briefly summarize  
9 your written testimony for us there?

10 A Okay. I'll start just by describing the  
11 parcel. The U.S. Fish and Wildlife letter referenced  
12 parcel 84. Parcel 84 is a large parcel that was  
13 2,300 acres mauka of the Project Area.

14 For the last couple of years it was in a  
15 subdivision process. And in April of this year a  
16 123-acre portion of that parcel was subdivided.  
17 That's the mauka northern piece of the Project that's  
18 under consideration.

19 On this map that's back before me, which is  
20 map No. 2, the yellow polygon on the mauka north side  
21 is the 123-acre parcel. I'll point to it right here.

22 MR. WYETH MATSUBARA: Just for the record I  
23 believe Mr. Frampton's pointing to Office of  
24 Planning's Exhibit No. 4.

25 CHAIRPERSON McDONALD: Thank you.

1           THE WITNESS: Yes. So it's that yellow  
2 polygon on the mauka north side of the Project. That  
3 123-acre parcel is no longer part of parcel 84. It's  
4 been subdivided. But the final subdivision approval  
5 did not occur until April of this year.

6           So the Fish and Wildlife Service saw the  
7 TMK 84 which had a portion of the project district in  
8 it up until April of this year. The County has not  
9 assigned it a new TMK. So it's still referred to, I  
10 guess, officially as a portion of 84 in the docket  
11 which probably led to the confusion of why they sent  
12 the letter.

13           The larger 2,300-acre parcel has a portion  
14 of the southern corner of the parcel designated as  
15 'proposed' critical habitat. It's not -- hasn't been  
16 finalized yet. It's a proposed critical habitat area.  
17 It's about a mile away from the project district. And  
18 it's not affected by the proposed District Boundary  
19 Amendment.

20           MR. WYETH MATSUBARA: Mr. Frampton's  
21 available for cross-examination.

22           MR. GIROUX: We have no questions.

23           MR. YEE: No questions.

24           CHAIRPERSON McDONALD: Commissioners, any  
25 questions? Thank you for your testimony.

1 MR. WYETH MATSUBARA: That concludes  
2 Petitioner's witnesses.

3 CHAIRPERSON McDONALD: Okay. Mr. Yee,  
4 could you please complete the remainder of your case.

5 MR. YEE: Our final witness is Mr. Rodney  
6 Funakoshi.

7 CHAIRPERSON McDONALD: Mr. Funakoshi, name  
8 address for the record, please?

9 THE WITNESS: Rodney Funakoshi, Office of  
10 Planning, 235 South Beretania Street, Honolulu.

11 CHAIRPERSON McDONALD: Thank you.

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

15 THE WITNESS: Yes.

16 CHAIRPERSON McDONALD: Go ahead.

17 DIRECT EXAMINATION

18 BY MR. YEE:

19 Q Mr. Funakoshi, what is your position with  
20 the State?

21 A I'm Planning Program Administrator with the  
22 Office of Planning's land use division.

23 Q Was Office of Planning's Exhibit 2, the  
24 OP's testimony in support of the petition with  
25 conditions, was that prepared by you or at your

1 direction?

2 A Yes.

3 Q Would you please summarize OP's testimony  
4 in this case?

5 A Okay. The Office of Planning recommends  
6 approval of the petition with conditions. The Maui  
7 Research & Technology Project is an existing  
8 operational technology park that has proven its value  
9 and is not unlike the technology park that we have on  
10 O'ahu, the Mililani Technology Park, which similarly  
11 has become unwieldy because of its large-lot and  
12 single-use focus.

13 On Maui, however, the opportunity of the  
14 site is to fix the single use site since there is  
15 ample room for expansion, unlike the Mililani Park on  
16 O'ahu.

17 OP commends the Petitioner for pursuing  
18 Smart Growth in its Master Plan and sustainability  
19 concepts in its development.

20 I'll touch on some of the issues of state  
21 concern. Relative to water resources this is not a  
22 State-regulated Groundwater Management Area. However,  
23 the Commission on Water Resource Management staff has  
24 expressed concerns with the desalination to be  
25 employed for this Project in particular because it is

1 a major use, a large Project with over a thousand  
2 residential units and concern primarily for what  
3 happens if the plan should cease operation.

4           However, it seems that the Petitioner  
5 appears to have thought this out well and hopefully  
6 will be pursuing other courses of action with the  
7 County's Department of Water Supply.

8           But the contingency plan here does appear  
9 to be well thought out. And brackish desalination is  
10 a feasible, though more costly, alternative. Flora  
11 and fauna surveys have been considered and that the  
12 only concern it has to do with the possibility of some  
13 nocturnal impacts which we've addressed through the  
14 condition.

15           The Archaeological Survey has been  
16 approved. There're no residual concerns with the  
17 exception of the one protection for the site in the  
18 Waipuilani Gulch.

19           Relative to agricultural resources the  
20 Project will not affect existing agriculture based on  
21 the soils and existing uses.

22           The Department of Transportation has  
23 expressed concerns primarily due to the approaching  
24 capacity of Pi'ilani Highway. In particular the kind  
25 of tenuous nature of plans for the mauka collector

1 road in particular, but also the Liloa Drive extension  
2 has been a very long time in being implemented.

3 OP is recommending conditions in support of  
4 the Department of Transportation's efforts to ensure  
5 that the Traffic Impact Study is done well, as well as  
6 the Memorandum of Agreement executed with the DOT.

7 Relative to schools, based on our  
8 discussions with the DOE we are recommending a  
9 condition requiring compliance with school impact  
10 fees. We note and support the Petitioner's  
11 representation to provide direct access to the  
12 proposed Kihei High School.

13 Then further we appreciate Petitioner's  
14 consideration of low-impact development measures in  
15 the construction of the Project.

16 All in all the Petition meets the standards  
17 for determining Urban District boundaries as set forth  
18 in the State Land Use Commission Rules. The proposed  
19 reclassification is consistent with the Hawai'i State  
20 Plans, the Coastal Zone Management program and with  
21 the County's Urban Growth Boundary of the Maui Island  
22 Plan.

23 I'll briefly review some of the major  
24 conditions of approval recommended by the Office of  
25 Planning. Relative to highway and road improvements,



1 that the Traffic Impact Study is required to be  
2 reviewed and accepted prior to zone change approval.  
3 The Petitioner will fund all the transportation  
4 improvements required to mitigate local and direct  
5 Project-generated transportation impacts; that a  
6 fair-share contribution be provided according to cost  
7 of regional transportation improvements to State  
8 Highways.

9 That the DOT should be paid its fair market  
10 value for access rights to Pi'ilani Highway. And,  
11 finally, that a Memorandum of Agreement be prepared  
12 prior to tentative subdivision approval being granted.  
13 And the executed MOA shall contain language to ensure  
14 that transportation improvements will be constructed  
15 concurrently with the development of the Project.

16 We are deleting a recommendation that we  
17 had included in our testimony relative to traffic  
18 noise levels. This was based on the noise  
19 consultant's testimony that there are no impacts, and  
20 also the development is situated far enough mauka of  
21 the highway to preclude such impacts.

22 We do have water conservation and  
23 stormwater management and drainage impacts that I will  
24 not go over. Also, that the Petitioner needs to  
25 provide a Civil Defense warning siren. On schools we

1 do have a condition that the Petitioner shall enter  
2 into an impact fee agreement with the DOE prior to  
3 County subdivision approval.

4           For archaeological resources: We do want  
5 to modify the condition, as stated in our testimony,  
6 to remove the requirement for an archaeological  
7 monitoring plan which was not recommended by State  
8 Historic Preservation Division. We have left in,  
9 though, the protection of archaeological features in  
10 Waipuilani Gulch.

11           Then, finally, we do have an infrastructure  
12 deadline completion that we want to impose: That the  
13 Petitioner shall complete construction of the backbone  
14 infrastructure within 15 years from the date of the  
15 Decision and Order approving the Petition.

16           Normally this is, we normally use ten years  
17 but we do acknowledge the Petitioner's incremental  
18 development plan and are allowing for this.

19           In general OP does not believe that  
20 incremental development is warranted and particularly  
21 for this Project. In any new mixed-use community one  
22 of the hardest things to establish is an employment  
23 base for the development.

24           This site has a very good head start in  
25 that it already has a nucleus employment base of

1 operation in the existing technology park. Expansion  
2 is logical at its outer boundaries, which is how the  
3 Project has been pursued.

4 OP's primary concern is within the  
5 infrastructure that we feel is the main factor in  
6 ensuring that the development will proceed. And on  
7 that basis we are recommending approval without  
8 incremental districting. And I think that's all I  
9 have. I'll conclude my testimony.

10 MR. YEE: No further questions.  
11 Mr. Funakoshi is available for cross-examination.

12 CHAIRPERSON McDONALD: Petitioner?

13 CROSS-EXAMINATION

14 BY MR. WYETH MATSUBARA:

15 Q 'Morning, Mr. Funakoshi. On behalf of the  
16 Petitioner we'd like to thank you for your support.  
17 And we will also work with the Petitioner in going  
18 forward with this Project and all the various issues  
19 and impacts that this Project has displayed through  
20 the EIS process, and through the entitlement process  
21 of the Land Use Commission. We appreciate your  
22 support in approval for the entire Petition Area as  
23 proposed by the Petitioner.

24 We look forward to continuing to work with  
25 you to hash out appropriate language regarding the

1 traffic and timing. We do appreciate the Office of  
2 Planning's efforts. Thank you very much.

3 CHAIRPERSON McDONALD: County?

4 MR. GIROUX: We have no further cross.

5 CHAIRPERSON McDONALD: No redirect  
6 questions? (laughter) Commissioners, any questions  
7 for Mr. Funakoshi?

8 COMMISSIONER CHOCK: One question. Thank  
9 you, Rodney, for your presentation. On the 15-year  
10 backbone infrastructure requirement, what's the  
11 rationale you folks used to get to that number?

12 THE WITNESS: We looked at their  
13 incremental development plan that they had in one of  
14 their appendices in the EIS. So that had a table and  
15 explanation of their development schedule. So I  
16 believe it provided -- it showed essentially about a  
17 12-year infrastructure buildout.

18 So on that basis could have said 12, but we  
19 gave them a little more room and said 15.

20 COMMISSIONER CHOCK: Is this the first time  
21 OP has kind of moved from 10 to 15 years on the  
22 backbone infrastructure requirement buildout?

23 THE WITNESS: I believe so.

24 COMMISSIONER CHOCK: Are you concerned in  
25 terms of any kind of precedent of future petitioners

1 coming forward asking for 15 versus 10?

2 THE WITNESS: No. If it makes sense to do  
3 that and this seems to have been well thought out.

4 So....

5 COMMISSIONER CHOCK: Okay. Thank you,  
6 Rodney.

7 CHAIRPERSON McDONALD: Thank you,  
8 Commissioner Chock. Any more questions? Commissioner  
9 Inouye.

10 COMMISSIONER INOUE: Thank you, Chair.  
11 And thanks, Rodney, for your testimony. My concern,  
12 as expressed in previous questions maybe, but the  
13 concept is great. This whole plan looks good. Now,  
14 implementation of it worries me a bit.

15 Is OP comfortable with the way that the  
16 flexibility given to the developer? So that it will  
17 in the end appear kind of like what is shown in the  
18 plans?

19 THE WITNESS: It's always hard to crystal  
20 ball what exactly is going to be developed. But I  
21 think what has been done will give the development a  
22 very good shot at trying to achieve how its vision has  
23 set this out. So, you know, it is a very much needed  
24 component.

25 In Mililani we faced exactly the same

1 thing. You had large lots that were difficult to  
2 market, single use; high tech focus initially that  
3 eventually had to be widened to make it more  
4 attractive. But unlike -- there was no room to  
5 expand.

6           So here you do have that opportunity to  
7 provide that. So I think that's very good. Of  
8 course, Maui increasingly is becoming not only more  
9 urbanized but also from the educational sector the  
10 former Maui Community College is now considered a  
11 university. They do have 4-year degrees and  
12 technology. I think all in all, you know, hopefully  
13 there will be some synergies in making this go  
14 forward.

15           COMMISSIONER INOUE: Okay. Specifically  
16 what in your mind are the controls that have been put  
17 in place to make sure that it moves towards the plan  
18 that's shown on many exhibits? But I'm looking at  
19 Exhibit 11Q page 59 which is just one of those plans  
20 that show the various mixed-use employment,  
21 residential development that it's going to look  
22 something like that.

23           What in your mind are the controls out  
24 there -- not to make sure, but to encourage this type  
25 of development 'cause nothing is for sure? I

1 understand that.

2 THE WITNESS: Yeah. A lot of times it's  
3 how it's set up. It seems like this one does have the  
4 essential elements. They are pursuing a form-based  
5 code zoning which is done, for example, right now only  
6 in Kaka'ako on O'ahu. But it allows, it allows for a  
7 new, hopefully, better way to zone. And so that's  
8 exciting.

9 And kind of like what I would compare this  
10 to might be Ko Olina on O'ahu where at the very outset  
11 decades ago the developer put in all of the  
12 infrastructure. Of course, the market was not  
13 immediate and followed a little more slowly, but there  
14 always was assurances because it was put in that it  
15 would follow when the market allowed it to follow. So  
16 pretty much it has followed to form in Ko Olina.

17 So similarly I would hope that this can  
18 kind of do the same.

19 COMMISSIONER INOUE: Okay. Let me be a  
20 little bit blunt. As I read some of the proposals,  
21 specifically 11-O which I finally was able to look at  
22 11-Q, some of that, there are some words in there that  
23 basically allow a lot of different things, for  
24 example, mixed use, residential mixed use.

25 The controls that I saw in the proposed

1 zoning code included something about a design review  
2 committee with no number of who's gonna be on the  
3 committee.

4           It talks about "be nice to have  
5 architecture and all that planners" maybe. There's no  
6 number. Could be one person, could be ten people. It  
7 also says that the ordinance is to be "liberally  
8 construed" which means that it's kind of wide open. I  
9 mean residential and everything.

10           So I'm just trying to see, other than being  
11 blunt, how does it prevent things like selling  
12 properties with these loose controls as part of the  
13 requirements or the restrictions I should say?

14           And having, say, foreigners come in, buy  
15 the property and do whatever's allowed in those loose  
16 restrictions, so that it now doesn't look like what  
17 the maps show here. My question, do you have  
18 concerns in that area?

19           THE WITNESS: Not particularly because, you  
20 know, you can go the other way extreme and kind of  
21 limit uses. But in this case kind of the -- if it was  
22 a completely new community I would say, yeah, you may  
23 not be sure of what you're gonna get. But, you know,  
24 just by virtue the technology kind of has been  
25 established here so it has a reputation here, then



1 there's at least a greater likelihood that it will  
2 follow.

3           The zoning code essentially would allow for  
4 making the live, work, play mantra a lot more  
5 attainable. A lot of times that is the problem with  
6 technology, attracting technology is that do you have  
7 the support, nearby communities and supporting  
8 commercial, and so forth, that will attract and make  
9 it a desirable place for employees.

10           So if you set up a community to do that,  
11 then there's just a greater likelihood that that's how  
12 it's going to be developed. In Kaka'ako, for example,  
13 the medical school in the makai area was put in early  
14 on.

15           And it *is* being basically an attractor to  
16 other similar medical type uses, the Cancer Center.  
17 But even Kamehameha Schools and others are kind of  
18 considering those kinds of biomedical, biotechnology  
19 type uses.

20           So it always first starts with having that  
21 kind of a base industry established. And then from  
22 there it's just a greater likelihood that's how it's  
23 going to work out.

24           COMMISSIONER INOUE: Yeah. And I don't  
25 know that much about how Kaka'ako was developed. But

1 it's been in the news about having a development  
2 authority of which these projects have to be approved.  
3 I don't know what the criteria are, but in this case  
4 it's different.

5           There is no such development authority.  
6 I'm not saying there should be. Don't get me wrong.  
7 I'm just saying that I'm just trying to see how  
8 comfortable OP is with something that in previous  
9 testimony there's no proven development, I believe,  
10 that shows this concept works.

11           So you're pretty comfortable that it's  
12 gonna come out.

13           THE WITNESS: It requires a trust of the  
14 counties that they'll do a good job. They seem to be  
15 on the right track in my opinion.

16           COMMISSIONER INOUE: Now, Exhibit 11Q and  
17 11-O. 11-O I believe is the County's proposed  
18 ordinance which may change a little bit according to  
19 Mr. Spence. And 11Q, which is the concept of the  
20 development code and all of that. I see there's some  
21 differences. In your mind which one controls or what  
22 do you expect? If there's conflicts which one would  
23 you say is controlling as far as what the developer is  
24 bound to?

25           THE WITNESS: I think I have to punt to the

1 County on that one.

2 COMMISSIONER INOUE: Would you like to?

3 MR. SPENCE: Could you please repeat the  
4 question.

5 COMMISSIONER INOUE: Okay. Specifically,  
6 and maybe I haven't read it carefully enough, but  
7 specifically 11Q page 60.

8 MR. SPENCE: So the question is about?

9 COMMISSIONER INOUE: Let me just get to  
10 the specific question. On page 60 under, in the  
11 discussion under "land use" it says that "part of the  
12 plan is that civic land may be changed to mixed use.  
13 Residential may be changed to employment. Employment  
14 may be changed to mixed use."

15 MR. SPENCE: Okay.

16 COMMISSIONER INOUE: Do you have that in  
17 your County11-0? If so, I didn't see it readily so  
18 I'm just wondering if that's part of what's allowed  
19 under the proposed code.

20 MR. SPENCE: I guess I don't quite  
21 understand the concern. There's a lot of things yet  
22 to be worked out in this code. There's going to be a  
23 lot of checks and balances built into it. There's  
24 going to be -- and I hope this is answering your  
25 question -- I hear the concern about is what's

1 presented here going to be what we get?

2 And I see a lot of checks and balances  
3 built into this code that the County will have certain  
4 responsibilities, but also there's going to be ongoing  
5 development review, and there's going to be design  
6 guidelines developed, that all development must meet  
7 as a part of whatever construction goes on.

8 So as a part of -- yes, there is  
9 flexibility being built into this. However, it still  
10 has to meet their own internal design review and it's  
11 going to have to meet the requirements of the County.  
12 We will check all these, whatever is being proposed,  
13 against the ordinance and against whatever conditions  
14 that this Commission and our own County Council puts  
15 on the zoning.

16 COMMISSIONER INOUE: Right. Again, don't  
17 get me wrong. I like new ideas, new ways of doing  
18 things and trying to let the process come out with a  
19 good product in the end.

20 MR. SPENCE: Right.

21 COMMISSIONER INOUE: I think you've heard  
22 in one of the questions this design review committee  
23 is not really defined other than it'd be nice to have  
24 somebody in architecture. But it's not defined. It's  
25 to be appointed by the Association. I'm not even sure

1 what the "Association" is. But in any case there's no  
2 requirement about having somebody from OP there,  
3 somebody from -- you there (addressing Mr. Spence) and  
4 some architect or anything in there. It's just  
5 whatever the Association decides.

6 That's a little bit of a concern for me  
7 because I like the last statement in the code. "The  
8 preceding standards of this chapter achieve the  
9 purpose and intent." It defines basically what the  
10 whole purpose of the thing is.

11 But having said that there's no requirement  
12 for anybody to follow what the whole intent is other  
13 than just kinda wide open.

14 MR. SPENCE: There are caps. I mean I  
15 understand maybe that's a good discussion just about  
16 the design review committee and what that's going to  
17 be composed of. I know that maybe the makeup of that  
18 is a good discussion to have.

19 They will be adopting design guidelines and  
20 I know those will be, you know -- any developer will  
21 bring those to the County and we'll work with them and  
22 ask questions on them. We commonly do that with, say,  
23 Project districts or other developments of those kind  
24 within the County. That's not unusual at all.

25 There are going to be caps on the number of

1 units and number of square feet of commercial, et  
2 cetera. So it's not just going to be a free-for-all.  
3 I mean there are going to be constraints built into  
4 the ordinance as proposed.

5 COMMISSIONER INOUE: Right. I couldn't, I  
6 couldn't put a handle around those constraints that it  
7 will be enough to ensure that things like what I just  
8 mentioned really bluntly, that, you know, speculators  
9 buy something with really loose restrictions, buy and  
10 sell and it becomes a free-for-all and we don't get  
11 what we want.

12 MR. SPENCE: Okay.

13 MR. TABATA: If I could, Commissioner --

14 COMMISSIONER INOUE: Sure.

15 MR. TABATA: -- on behalf of the  
16 Petitioner. The questions you're asking are exactly  
17 the type of issues that we are preparing for our final  
18 argument. We are keenly aware of the Commission's  
19 concerns as well as the agency's concerns about  
20 controlling what is being proposed, and  
21 representations are made to the Commission. And those  
22 controls are present and will be made more clear in  
23 final argument.

24 One of the representations we're making, we  
25 have made, are the commercial/retail space is going to

1 be capped at a hundred thousand square feet for our  
2 entire 400-acre Petition Area.

3           So whereas your typical big box operators  
4 at 200,000 square feet for one store, we are  
5 guaranteeing that we will not have any big boxes on  
6 our property. And our property will not turn into a  
7 large retail operation.

8           We will show that our controls will  
9 basically force us to continue with our  
10 knowledge-based industry focus. That will remain, it  
11 has been the case and will remain in the future.

12           As far as the design committee we have one  
13 currently existing and operating. That has resulted  
14 in what the tech park is currently comprised of, a  
15 fairly uniform buildings and setbacks that you see.  
16 So for your informations that is there.

17           As far as what presentations were being  
18 made -- are being made, and what controls are  
19 existing, we will definitely endeavor to explain all  
20 that and make it clear in our final argument.

21           COMMISSIONER INOUE: Okay. I appreciate  
22 that. Forgive me if I've haven't read a thousand  
23 pages.

24           MR. TABATA: No, no. (overlapping)

25           COMMISSIONER INOUE: I can't put a handle

1 on what it is that you are going to be promising to do  
2 that, you know, that will make us feel comfortable.  
3 And the reason I'm trying to strike a balance between  
4 allowing what you folks are asking to have this great  
5 concept come to fruition, and yet not have a  
6 free-for-all and all of a sudden what did we get.

7           And the reason I'm asking these things is I  
8 don't -- I haven't heard of any success stories out --  
9 you know, I've asked about on the mainland or here  
10 where this type of concept has worked. Doesn't mean I  
11 don't want to try it. I'd love to try new ideas but I  
12 have a little bit of discomfort just reading some of  
13 the exhibits that I have read that, you know, I'm just  
14 a little bit worried that we don't know what we're  
15 going to get. So I appreciate that.

16           One more question, Rodney. And maybe  
17 others can answer this. Would you not feel more  
18 comfortable, would OP not feel more comfortable in  
19 trying this out for, in increments? In other words,  
20 let's see how it works for, whatever, ten years? If  
21 it's coming to fruition that way, then we can go  
22 forward.

23           What limitations would that pose upon the  
24 developer in trying to come up with this entire  
25 concept?



1           THE WITNESS: Yeah, we don't have a problem  
2 with not having this be incremental districted. I  
3 kind of mentioned that, again, the main concern is  
4 that there be some little more definitive schedule for  
5 providing the infrastructure in which case development  
6 should follow.

7           In terms of what actually goes on, you  
8 know, we would have to put some faith in the  
9 proposed -- they have provided their proposed  
10 ordinance for this area which is, which is, you know,  
11 which is from my standpoint is very worthwhile to  
12 pursue.

13           And whether it actually turns out again is  
14 probably anybody's guess. But I think that this area  
15 and this Project has a good a shot as any of making it  
16 work.

17           COMMISSIONER INOUE: Thank you. I have no  
18 further questions. Thanks.

19           CHAIRPERSON McDONALD: Commissioners,  
20 anything else? Mr. Yee, does that conclude your case?

21           MR. YEE: We have no further questions and  
22 this will conclude our case.

23           CHAIRPERSON McDONALD: Thank you,  
24 Mr. Funakoshi. Mr. Giroux, anything else you would  
25 like to add?

1 MR. GIROUX: We have nothing further to  
2 add.

3 CHAIRPERSON McDONALD: Petitioner?

4 MR. TABATA: The Petitioner has nothing to  
5 add.

6 CHAIRPERSON McDONALD: Commissioners, any  
7 other questions before we move on? Okay. Given that  
8 the parties have completed their presentations before  
9 the Land Use Commission I declare the evidentiary  
10 portion of these proceedings to have been completed  
11 and is now closed.

12 Subject to the receipt of various follow up  
13 reports and/or answers that may have been requested  
14 during the course of this hearing, I direct that the  
15 parties draft their individual proposed Findings of  
16 Fact, Conclusions of Law and Decisions and Order based  
17 upon the record in this docket and serve the same upon  
18 each other, and the Commission.

19 The proposed Findings of Fact must  
20 reference the witness as well as the date, page and  
21 line numbers of the transcripts to identify your  
22 facts. In addition to the transcript the exhibits in  
23 evidence shall also be referenced.

24 I note for the parties that the Commission  
25 has standard conditions which we would like the

1 parties to consider in preparing their proposed  
2 orders. A copy of the standard conditions may be  
3 obtained from Commission staff.

4 Of course, should any of the parties desire  
5 to stipulate to any portion or all of the Findings of  
6 Fact, Conclusions of Law and Decision and Order  
7 they're encouraged to do so.

8 Regardless of whether the parties pursue a  
9 partial or fully stipulated order I direct that each  
10 party file its proposal with the Commission and serve  
11 copies on each other's part no later than the close of  
12 business on September 3rd, 2012.

13 All responses or objections to the parties'  
14 respective proposals shall be filed with the  
15 Commission and served upon the other parties no later  
16 than the close of business on September 25, 2013. Any  
17 responses to the objections must be filed with the  
18 Commission and served on the other parties no later  
19 than the close of business on October 3, 2013.

20 Could I prevail upon the parties to consult  
21 with staff early in the process to ensure that  
22 technical and non-substantive formatting protocols  
23 observed by the Commission are adhered to?

24 MR. TABATA: We will.

25 MR. GIROUX: Yes. I think we've had

1 discussions amongst ourselves as far as what kind of  
2 stipulations we're looking forward to.

3 MR. YEE: We certainly will, if I could  
4 just -- if now might be an appropriate time to comment  
5 on the proposed D&O to be filed. I believe the  
6 parties have agreed that both the County and the  
7 Office of Planning, because we are in substantial  
8 agreement that the reclassification should be granted,  
9 that both the County and OP would not be filing a  
10 proposed D&O. Instead it would just be the  
11 Petitioner.

12 OP and the County will then file our  
13 objections or comments to the D&O pursuant to your  
14 schedule. Then Petitioner will have an opportunity to  
15 then respond to those objections pursuant to your  
16 schedule. So if that's acceptable to the Commission?

17 CHAIRPERSON McDONALD: Okay. Great. Any  
18 other questions with respect to our post-hearing  
19 proceedings?

20 MR. TABATA: No more, no questions.

21 MR. GIROUX: No questions from the County.

22 MR. YEE: No questions.

23 CHAIRPERSON McDONALD: Deliberations and  
24 decision-making is tentatively scheduled for  
25 October 17, 2013. Okay. Any other questions from the

1 parties before we adjourn?

2 MR. TABATA: No questions.

3 CHAIRPERSON McDONALD: Commissioners?

4 Thank you. We stand adjourned.

5

6 (The proceedings were adjourned at 10:55 a.m.)

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## C E R T I F I C A T E

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

That I was acting as court reporter in the  
foregoing LUC matter on the \_\_\_\_\_ day of \_\_\_\_\_ 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

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