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LAND USE COMMISSION

STATE OF HAWAI'I

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TRANSCRIPT OF PROCEEDINGS

The above-entitled matters came on for an Action Meeting and Public Hearing at Marriott Courtyard Hotel, Haleakala Room, Kahului, Maui, Hawai'i, Hawai'i, commencing at 9:30 a.m. on September 5, 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 CHOCK

RONALD HELLER, CHAIRMAN

CHAD McDONALD, VICE CHAIR

SHELDON R. BIGA

LANCE M. INOUE

ERNEST MATSUMURA

EXECUTIVE OFFICER: DAN ORODENKER

CHIEF CLERK: RILEY HAKODA

STAFF PLANNERS: SCOTT DERRICKSON, BERT SARUWATARI

DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

AUDIO TECHNICIAN: WALTER MENCHING

Docket No. A94-706 KA'ONO'ULU RANCH

For the Petitioner: JONATHAN STEINER, ESQ.

For the County: MICHAEL HOPPER, ESQ.
Deputy Corporation CounselFor the State: BRYAN YEE, ESQ.
Deputy Attorney General
RODNEY FUNAKOSHI, OP

1 CHAIRMAN HELLER: (Gavel) Let's get
2 started, call the meeting to order. The first order
3 of business is adoption of the minutes from our
4 meeting of August 22, 23. Is there a motion to
5 approve the minutes?

6 COMMISSIONER BIGA: So moved.

7 CHAIRMAN HELLER: Is there a second?

8 COMMISSIONER McDONALD: Second.

9 CHAIRMAN HELLER: All in favor?

10 COMMISSIONERS: Aye.

11 CHAIRMAN HELLER: Any opposed? (no
12 response) Thank you. The minutes are approved. The
13 next order of business is the tentative meeting
14 schedule. Mr. Orodenger, will you update us on the
15 schedule.

16 MR. ORODENER: Thank you, Mr. Chair.
17 September 18 through 20 we will not be holding a
18 meeting. However, we will be attending the HCPO on
19 the Big Island.

20 October 4th we have a video conference
21 scheduled to approve -- for approval to proceed with
22 the next phase of the Administrative Rules process.
23 October 17th and 18th we will be back here on Maui for
24 oral argument and decision-making for Maui R&T, and if
25 so needed, CMBY.

1 November 7th and 8th we will be on O'ahu
2 for the Kuilima Development Corporation hearings. The
3 remainder of the schedule is open at this point. I
4 would like to update the Commission on our rules
5 hearings. We will be having a hearing on Maui,
6 actually here today this afternoon, on our rules.
7 This is not a Commission meeting, these are just for
8 the public to make comment.

9 We'll also be having a rules hearing on the
10 10th on O'ahu and on the 11th on Molokai, on the 18th
11 on the Big Island, on the 25th on Kaua'i and I'm
12 missing Lana'i someplace. We do have one scheduled
13 for Lana'i. I just don't have the date in front of me
14 right now -- oh, it's on the 23rd. Thank you.

15 CHAIRMAN HELLER: Thank you. Maybe we
16 should also note the schedule looking ahead to 2014.
17 Some of our neighbor island meetings, actually most of
18 them, have been scheduled on Thursday and Friday which
19 results in Commissioners trying to get flights back
20 from the neighbor islands on Friday afternoons, which
21 is often difficult.

22 So we're trying to shift for next year's
23 schedule to moving those meetings to Wednesday and
24 Thursday instead of Thursday and Friday. Those are
25 not all locked in yet, but just to let people know

1 we're anticipating that a lot of the meetings will be
2 Wednesday/Thursday rather than Thursday/Friday.

3 The next order of business is an action
4 meeting on Docket No. A94-706 Ka'ono'ulu Ranch. This
5 is an action meeting to determine whether the Land Use
6 Commission is the appropriate accepting authority
7 pursuant to Chapter 343 Hawaii Revised Statutes of an
8 Environmental Impact Statement relating to the
9 Pi'ilani Promenade Project at Ka'ono'ulu Makawao,
10 Wailuku, Maui, Hawai'i TMK: (2) 3-9-01:16 and 170
11 through 174.

12 And to determine whether the proposed
13 action may have a significant effect to warrant the
14 preparation of an Environmental Impact Statement
15 pursuant to Chapter 343 Hawaii Revised Statutes.

16 On July 12, 2013 the Commission granted
17 Pi'ilani Promenade South, LLC and Pi'ilani Promenade
18 North LLC's Motion to Stay Phase II of the Order to
19 Show Cause proceedings to determine whether the
20 reversion of the Petition Area to its former land use
21 classification, or to a more appropriate
22 classification was the appropriate remedy.

23 The Commission conditioned the stay on both
24 Pi'ilani and Honua'ula refraining from commencing any
25 construction or development activities on their

1 respective parcels within the Petition Area during the
2 stay.

3 The Commission further conditioned the stay
4 on Pi'ilani filing a Motion for Order Amending the
5 Findings of Fact, Conclusions of Law and Decision and
6 Order to reflect the changes in the development of the
7 Petition Area from the uses originally proposed by
8 Ka'ono'ulu Ranch, and requested, among other things,
9 the bifurcation of this docket to cover its parcels
10 not later than December 31, 2013.

11 On August 14, 2013 the Commission received
12 Pi'ilani Promenade South, LLC and Pi'ilani Promenade
13 North, LLC's Environmental Preparation Notice.

14 On August 29, 2013 the Commission was
15 notified that Mr. Steiner would be representing both
16 Pi'ilani Promenade South, LLC and Pi'ilani Promenade
17 North, LLC and Honua'ula Partners in this matter.

18 Let me briefly describe our procedure for
19 today on this docket. First, we'll have the parties
20 identify themselves for the record. I will then call
21 those individuals desiring to provide public testimony
22 to identify themselves. All such individuals will be
23 called in turn to our witness box where they will be
24 sworn in prior to their testimony.

25 After completion of the public testimony

1 the Petitioner will make its presentation. After
2 completion of the Petitioner's presentation we will
3 receive any comments from the County of Maui Planning
4 Department and the State Office of Planning. And the
5 Commission will then conduct its deliberations.

6 The Chair would also note for the parties
7 and the public that from time to time I may be calling
8 for short breaks. Are there any questions regarding
9 our procedure for today? Hearing none, will the
10 parties please identify themselves for the record.

11 MR. STEINER: Good morning, Chair. Good
12 morning, Commissioners. Jonathan Steiner here on
13 behalf of Pi'ilani Promenade North and Pi'ilani
14 Promenade South. I also represent Honua'ula Partners,
15 LLC regarding this docket.

16 CHAIRMAN HELLER: Thank you.

17 MR. HOPPER: Michael Hopper, deputy
18 corporation counsel. I'm representing Maui County
19 Department of Planning. Ann Cua is also in the
20 gallery, staff planner. Thank you.

21 CHAIRMAN HELLER: Thank you.

22 MR. YEE: Good morning. Deputy Attorney
23 General Bryan Yee on behalf of the Office of Planning.
24 With me is Rodney Funakoshi from the Office of
25 Planning.

1 CHAIRMAN HELLER: Thank you. Do we have
2 people signed up for public testimony?

3 MR. ORODENKER: We have no one signed up at
4 this time, Mr. Chair.

5 CHAIRMAN HELLER: Is there anyone present
6 today who wishes to provide public testimony? Seeing
7 none, Mr. Steiner, are you ready to make your
8 presentation?

9 MR. STEINER: I am. Thank you.

10 CHAIRMAN HELLER: Please proceed.

11 MR. STEINER: I'll try to keep this as
12 brief as possible. We've submitted an Environmental
13 Impact Preparation Notice for Pi'ilani Promenade for
14 the proposed Project which will be presented to the
15 Commission as part of our Motion to Amend. It's
16 prepared by Chris Hart and Company -- or Chris Hart
17 and Partners, Inc.

18 I have present today Bert Davis as well as
19 Jordan Hart in the event the Commission has any
20 questions regarding the Environmental Impact Statement
21 Preparation Notice.

22 This is one of the steps involved in
23 regards to our proposed or our anticipated Motion to
24 Amend that we plan to file before the end of the year.
25 It sets forth a preliminary statement of the possible

1 impacts of the Project which will be fleshed out in
2 the anticipated Environmental Impact Statement.

3 What we're asking the Land Use Commission
4 to do today is to agree to be the appropriate
5 accepting authority pursuant to Chapter 43 of this
6 Environmental Impact Statement Notice and therefore
7 transmit it. And to also determine that the proposed
8 action would have a significant impact.

9 It's our plan to go directly to an
10 Environmental Impact Statement as opposed to an
11 Environmental Assessment. Unless the Commission has
12 any questions I don't have anything further.

13 CHAIRMAN HELLER: Commissioners, any
14 questions?? Mr. Hopper?

15 MR. HOPPER: Thank you, Mr. Chair. County
16 of Maui supports the Commission as the accepting
17 authority for the EIS and believes it is the
18 appropriate accepting authority under the law in this
19 case. Other than that we do not have anything to add.
20 If there are questions we can answer them to the best
21 of our abilities but that's all for now.

22 CHAIRMAN HELLER: Commissioners, any
23 questions? Mr. Hopper, I assume the County concurs,
24 then, that moving directly to an AIS is appropriate?

25 MR. HOPPER: Yes, Mr. Chair. I think

1 that's something that the Applicant has decided to do.
2 So we do not have an objection to that approach.

3 CHAIRMAN HELLER: Thank you. Mr. Yee.

4 MR. YEE: OP concurs with the Petitioner
5 that the Land Use Commission is the appropriate
6 accepting authority as well as the decision to move
7 forward directly to an EIS. Thank you.

8 CHAIRMAN HELLER: Thank you.
9 Commissioners, any questions? Commissioners, what is
10 your pleasure on this subject? Commissioner McDonald?

11 COMMISSIONER McDONALD. Thank you,
12 Mr. Chair. Regarding docket A94-706 Ka'ono'ulu Ranch
13 I'd like to move that the Land Use Commission is the
14 accepting authority pursuant to Chapter 343 Hawaii
15 Revised Statutes of an Environmental Impact Statement
16 related to the Pi'ilani Promenade TMK 3-9-01: Parcels
17 16 and 170 through 174.

18 In addition I'd like to move that the
19 proposed action may have a significant impact,
20 therefore warrant the preparation on an Environmental
21 Impact Statement pursuant to Chapter 343.

22 CHAIRMAN HELLER: Thank you. Is there a
23 second?

24 COMMISSIONER BIGA: Mr. Chair, I second
25 that motion.

1 CHAIRMAN HELLER: Thank you.
2 Commissioners, any debate, comments, questions?
3 Seeing none, Mr. Orodenger will you poll the
4 Commission.

5 MR. ORODENER: Thank you, Mr. Chair. The
6 motion is to become the accepting authority for the
7 proposed EIS and that there is a significant impact
8 that would warrant the drafting of an EIS.
9 Commissioner McDonald?

10 COMMISSIONER McDONALD: Yes.

11 MR. ORODENER: Commissioner Biga?

12 COMMISSIONER BIGA: Yes.

13 MR. ORODENER: Commissioner Matsumura?

14 COMMISSIONER MATSUMURA: Yes.

15 MR. ORODENER: Commissioner Chock?

16 COMMISSIONER CHOCK: Yes.

17 MR. ORODENER: Commissioner Inouye?

18 COMMISSIONER INOUE: Yes.

19 MR. ORODENER: Commissioners Esaki,
20 Nakasone and Torigoe are excused. Chair Heller?

21 CHAIRMAN HELLER: Yes.

22 MR. ORODENER: Mr. Chair, the motion
23 passes unanimously.

24 CHAIRMAN HELLER: Thank you. Is there any
25 further business on this docket? Seeing none, we will

1 move on to the next order of business which is action
2 meeting on Docket No. A13-797. We'll take a short
3 pause while the parties adjust themselves at the
4 table.

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A P P E A R A N C E S

Docket No. A13-797 CMBY 2011 Investment LLC

For the Petitioner: JENNIFER BENCK, ESQ.
CHARLES JENCKS

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

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

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1 CHAIRMAN HELLER: I guess I can update the
2 the record while everybody's unpacking their papers.

3 This is a hearing on Docket No. A13-797
4 CMBY 2011 Investment, LLC (Maui) to amend the Land Use
5 District Boundary of certain lands situated at
6 Pulehunui, Wailuku, Island of Maui, State of Hawai'i
7 consisting of approximately 86.03 acres from the
8 Agricultural District to the Urban District TMK Nos.
9 3-8-008:019. Will the parties identify themselves for
10 the record.

11 MS. BENCK: Good morning, Chairman,
12 Commissioners. This is Jennifer Benck representing
13 the Petitioner CMBY 2011 Investment, LLC. With me to
14 my right is Mr. Charlie Jencks, landowner's
15 representative. And also here in the audience is
16 Ms. Blanca Lafolette who's the Project coordinator for
17 a number of our witnesses. Thank you.

18 CHAIRMAN HELLER: Thank you. County?

19 MR. GIROUX: Thank you, Chair. James
20 Giroux, deputy corporation counsel on behalf of the
21 Department of Planning Maui County. With me is Kurt
22 Wollenhaupt.

23 MR. YEE: Good morning. Deputy Attorney
24 General Bryan Yee on behalf of the Office of Planning.
25 With me is Rodney Funakoshi from the Office of

1 Planning.

2 CHAIRMAN HELLER: Thank you. Let me update
3 the recent record in this docket. On May 3, 2013 the
4 Commission received this Petition for District
5 Boundary Amendment, 2 full-sized tax maps, Exhibits 1
6 through 11 and a \$500 Application fee.

7 On June 18, 2013 the Commission received
8 Petitioner's supplemental Certificate of Service, a
9 full-sized easement map included as Appendix D1 of the
10 Petitioner's's Exhibit 1, a full sized tax map
11 outlining the Petition Area and supporting material.

12 The LUC acknowledged receipt of the
13 Petition and deemed it a proper filing on the same
14 date.

15 On July 12, 2013 a Pre-Hearing Notice was
16 mailed to the parties. And a pre-hearing conference
17 was held on July 15, 2013.

18 From July 15, 2013 to August 19, 2013 the
19 Commission received the position statements of the
20 parties, their witness and exhibit lists and exhibits,
21 amended witness and exhibit lists and additional
22 exhibits and Petitioner's errata to Petitioner's
23 Exhibits 40 and 42.

24 On August 8, 2013 the Commission conducted
25 a site visit to the Petition Area. On August 28, 2013

1 the Commission mailed an agenda notice for the
2 September 5-6, 2013 LUC meeting to the parties,
3 statewide and Maui mailing lists.

4 On August 29, 2013 the Commission received
5 Petitioner's Notice of Hearing with time stamp for the
6 Lieutenant Governor's office.

7 Ms. Benck, has our staff informed you of
8 the Commission's policy regarding the reimbursement of
9 hearing expenses?

10 MS. BENCK: Yes, it has.

11 CHAIRMAN HELLER: If so, would you state
12 your client's position with regard to the policy?

13 MS. BENCK: My client accepts the policy.

14 CHAIRMAN HELLER: Thank you. Let me
15 describe our procedures for today. First, I will call
16 for those individuals desiring to provide public
17 testimony on this matter to identify themselves. All
18 such individuals will be called in turn to our witness
19 box where they will be sworn in. A 3-minute time
20 limit on testimony will be enforced.

21 After completion of the public testimony
22 staff will provide a map orientation. After staff has
23 provided the map orientation I will give an
24 opportunity for the parties to admit their exhibits to
25 the record. After the admission of exhibits to the

1 record the Petitioner will begin its case. Once
2 Petitioner has completed with its case it will be
3 followed by Maui County and by the State Office of
4 Planning. The parties will then present closing
5 arguments starting with Petitioner.

6 The Chair would also note for the parties
7 and the public that from time to time I may be calling
8 for short breaks. Are there any individuals desiring
9 to provide public testimony on this docket? Please
10 come forward. Do we have a sign-up sheet?

11 Please state your name and address for the
12 record.

13 THE WITNESS: Good morning, Commissioners.
14 My name is Garret Hew. And I worked for Hawaiian
15 Commercial and Sugar Company.

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

19 THE WITNESS: I do.

20 CHAIRMAN HELLER: Please proceed.

21 THE WITNESS: I'm here today to testify on
22 the 86-acre parcel, Petitioner's request to change the
23 zoning from Ag to Urban. I've work for HC&S for about
24 30 years now. I'm very familiar with the property. In
25 regards to the concrete-lined ditch and roadway that

1 goes through the property, I just wanted to testify
2 that the ditch and also the roadway serves no purpose
3 and is not in use at this time.

4 CHAIRMAN HELLER: Parties, any questions?

5 MS. BENCK: No questions.

6 MR. GIROUX: No questions.

7 MR. YEE: No questions.

8 CHAIRMAN HELLER: Commissioners, any
9 questions? Thank you for your testimony.

10 THE WITNESS: Thank you.

11 CHAIRMAN HELLER: Is there anyone else
12 present who wishes to provide public testimony? (no
13 response) Okay. Before we proceed with the map
14 orientation I forgot one thing. That is I have to put
15 my usual disclosure on the record in this docket. I
16 represent taxpayers in real property tax cases
17 including certain cases on Maui, which means that my
18 clients are adverse to the county of Maui in those
19 cases.

20 I don't think that will affect my ability
21 to be impartial in this case but I need to note it on
22 the record for this docket. And if anybody has any
23 objections this would be the time to raise them.

24 MR. GIROUX: No objection.

25 CHAIRMAN HELLER: Thank you. Who's doing

1 the map orientation?

2 MR. DERRICKSON: Good morning,
3 Commissioners. The LUC Petition A13-797 CMBY 2011
4 Investment, LLC, the Petition Area is approximately
5 86.03 acres located entirely within the USGS
6 quadrangle map M8 Pu'u O Kali outlined here.

7 The Petition Area is right here. It's
8 located in Central Maui adjacent to Mokulele Highway
9 which runs north/south and connects Kahului to Kihei.
10 The surrounding area contains a mix of industrial uses
11 under state special permits and former agricultural
12 lands some of which are in grazing use.

13 Downslope of note from the Petition Area
14 along Ma'alaea Bay is Kealia Pond National Wildlife
15 Refuge. If you have any questions, I'd be happy to
16 answer them.

17 CHAIRMAN HELLER: Commissioners, any
18 questions? (no response) Thank you. Let's move on
19 to exhibits. Ms. Benck, do you have exhibits you wish
20 to admit to the record at this point?

21 MS. BENCK: Yes. Thank you, Chair. The
22 Petitioners would like to admit the Petitioner's
23 Exhibits 1 through 47 all of which we've previously
24 filed. We note for the record that there are some
25 errata pages to Petitioner's Exhibit 40 which is the

1 PowerPoint presentation and Petitioner's Exhibit 42
2 there was also an errata that was filed. So 1 through
3 47.

4 CHAIRMAN HELLER: Are there any objections
5 to Petitioner's 1 through 47?

6 MR. GIROUX: No objection.

7 MR. YEE: No objection.

8 CHAIRMAN HELLER: Petitioner's 1 through 47
9 will be admitted. County, do you have exhibits you
10 wish to admit?

11 MR. GIROUX: Yes. Thank you, Chair.
12 County has Exhibits 1, 2 and 4 that they would like to
13 have admitted. We will be withdrawing Exhibit No. 3
14 which is the resumé of Rowena Dagdag Andaya because we
15 will not be calling her as a witness. So we're just
16 making a record of that.

17 CHAIRMAN HELLER: Okay. So 3 is withdrawn
18 and you're offering 1, 2 and 4.

19 MR. GIROUX: Yes.

20 CHAIRMAN HELLER: Are there any
21 objections?

22 MS. BENCK: No objection.

23 MR. YEE: No objection.

24 CHAIRMAN HELLER: 1, 2 and 4 will be
25 admitted for the County. Mr. Yee.

1 MR. YEE: The Office of Planning submits
2 Exhibits 1, 2, 3 and 6, 7 and 8. The parties have
3 reached, I believe, an agreement on the pollution
4 prevention plan condition. So we are withdrawing our
5 Department of Health representative and the related
6 exhibits.

7 CHAIRMAN HELLER: So 4 and 5 are withdrawn.
8 And you're submitting 1, 2 and 3, and 6, 7 and 8,
9 correct?

10 MR. YEE: Correct.

11 CHAIRMAN HELLER: Any objections?

12 MR. GIROUX: No objection.

13 CHAIRMAN HELLER: OP's 1, 2 and 3, and 6, 7
14 and 8 will be admitted. Petitioner, are you ready to
15 proceed with your presentation?

16 MS. BENCK: I am. Thank you. Before
17 calling our first witness I'd like to mention some
18 preliminary matters and also ask the County and the
19 Office of Planning to concur that both to concur and
20 that is both to the qualifications of our witnesses as
21 expert witness.

22 And then secondarily the County has
23 indicated that they're willing to waive
24 cross-examination on a number of our -- actually on
25 all of our witnesses.

1 So there will be a number of witnesses who
2 we'll not be calling. The Office of Planning has
3 indicated a willingness to waive cross-examination on
4 several, but not all of our witnesses. So I want to
5 put that before the Commission and mention that we do
6 have all of our witnesses here. And they'll be
7 available to testify. However, there are some who the
8 parties have agreed to.

9 And if the Commission doesn't have any
10 questions for them we would like to release those
11 witnesses. If I may I'll indicate which witnesses
12 now?

13 CHAIRMAN HELLER: Sure.

14 MS. BENCK: Okay. So the witnesses who we
15 will be calling today are Mr. Glenn Tadaki, Stacy
16 Otomo, Mike Dega -- although OP had agreed to waive
17 cross-examination on Mike Dega, we did want to put him
18 forth -- Glenn Kunihiisa who, again, OP indicated a
19 willingness to waive cross, but we are going to bring
20 him forth; Charlie Jencks. And then tomorrow we'll
21 have Tom Nance and Steve Dollar.

22 Two witnesses who we have in the room today
23 are Barry Neal and Yoichi Ebisu. Those are air
24 quality expert and our noise expert. The parties have
25 indicated a willingness to waive cross on those. And

1 those don't seem to be particularly significant issues
2 in this case at this time.

3 So if after the Commission's had a chance,
4 perhaps, to hear our first witness or whatever at your
5 discretion, we'd like to release those witnesses today
6 so that they can go back on their plane and go back
7 where they need to go. So specifically Mr. Ebisu and
8 Mr. Neal.

9 CHAIRMAN HELLER: All right. I'll give the
10 Commissioners a few minutes to consider that. Then
11 when we have a break sometime fairly soon we'll ask if
12 any of the Commissioners want them to stay. If not
13 they can be released. I'm assuming the County and OP
14 concur that there's no need to keep them here?

15 MR. GIROUX: Yes. As far as the County's
16 position is that all of the Petitioner's witnesses
17 that submitted written statements we're willing to
18 waive cross-examination.

19 CHAIRMAN HELLER: Thank you. OP?

20 MR. YEE: Office of Planning also concurs.
21 I guess we only wanted to clarify that OP was willing
22 to waive cross-examination on Mr. Dollar as well.

23 CHAIRMAN HELLER: Thank you.

24 MR. YEE: And if I could just note,
25 however, for the record, that our willingness to waive

1 cross-examination was for the purposes of allowing
2 them to dismiss the witnesses. We did indicate, I
3 think, that if they decide to call them we did reserve
4 the right to cross-examine after all regarding any
5 oral testimony they presented.

6 CHAIRMAN HELLER: That's understood that
7 if -- *if* the Petitioner for some reason does actually
8 put them on they're subject to cross-examination.

9 MS. BENCK: That's understood.

10 CHAIRMAN HELLER: Commissioners, I'll ask
11 you to decide if you have any questions for the two
12 witnesses that they're proposing to dismiss. If not
13 we'll let them go shortly. Thank you.

14 MS. BENCK: Thank you.

15 CHAIRMAN HELLER: So are you ready to
16 proceed?

17 MS. BENCK: I am. Thank you. So the first
18 witness we would like to call is Mr. Glenn Tadaki.
19 Glenn is the Project Planner. And while he's taking
20 his seat I'll just direct the Commission to the
21 exhibits that he can specifically address.

22 And that would be his written direct
23 testimony which was filed as Exhibit 27, and the
24 PowerPoint presentation which is what Glenn will use
25 to orient the Commission on this Project. And that

1 was filed as Petitioner's Exhibit 40.

2 GLENN TADAKI

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

5 THE WITNESS: Yes, I do.

6 CHAIRMAN HELLER: Please go ahead.

7 MS. BENCK: Thank you.

8 DIRECT EXAMINATION

9 BY MS. BENCK:

10 Q Glenn, so as I just stated Petitioner's
11 Exhibit 35, is that your written direct testimony?

12 A Yes, it is.

13 Q And approximately how many pages long is
14 that?

15 A As I recall it was approximately 16 pages.

16 Q So shall we read that word-for-word now for
17 the Commission?

18 A I'd prefer not to. (laughter)

19 Q Okay. I think that tha's probably a good
20 bet. Rather than starting out by going through your
21 testimony, not word-for-word, would you please present
22 the PowerPoint presentation which is Petitioner's
23 Exhibit 40. I may stop and ask you questions. And of
24 course, the Commissioners may ask you questions
25 throughout that presentation.

1 A That will be fine. (PowerPoint being
2 shown) To start things off I'll be providing you with
3 a brief overview of the proposed Project which is the
4 Pu'unene Heavy Industrial Subdivision which is Docket
5 A13-797.

6 The Petition Area is approximately 4 miles
7 south of Kahului and 3 miles north of Kihei. It's
8 located on the Central Maui Plain about midway between
9 both communities.

10 The Petition Area is located in the State
11 Land Use Agricultural District and is designated for
12 agricultural uses by both the Kihei-Makena Community
13 Plan and Maui County zoning. The Petition Area also
14 lies within the Urban Growth Boundary of the Maui
15 Island Plan which was adopted in December of last
16 year.

17 The Petition Area is, as I previously
18 mentioned, approximately midway between Kahului and
19 Kihei. This slide shows the Petition Area in relation
20 to surrounding roadways and developed areas in the
21 region. This is a view of the Petition Area showing
22 existing surrounding land uses. The Hawaiian Cement
23 quarry is an industrial use and it's located to the
24 east of the subject property.

25 To the northeast, south of the Petition

1 Area are lands that are cultivated in sugarcane by
2 Hawaiian Commercial and Sugar Company. To the west is
3 the existing Maui Raceway Park as well as the Hawai'i
4 National Guard Armory.

5 This slide shows the Petition Area's
6 location within the State Land Use Agricultural
7 District. As you can see most of the surrounding
8 lands are designated for agricultural use by the State
9 Land Use Commission.

10 There is an existing industrial use which
11 is located at the Central Maui Baseyard which is
12 approximately 1.3 miles north of the Petition Area and
13 encompasses a total of 52 acres.

14 Q (By Ms. Benck): Mr. Tadaki, are there any
15 residential uses surrounding or in the vicinity of the
16 Petition Area?

17 A There are no residential uses within the
18 immediate proximity or vicinity of the Petition Area.

19 Q Thank you.

20 A This slide shows the Petition Area and its
21 location within the Urban Growth Boundaries which is
22 shown on the directed growth map which is contained in
23 the Maui Island Plan. The Petition Area, also known
24 as the Pulehunui Planned Growth Area in the Maui
25 Island Plan, this area encompasses 639 acres and

1 represents a logical expansion of industrial land uses
2 in the area.

3 As you may recall the Central Maui Baseyard
4 is located to the north of the subject property while
5 the Hawaiian Cement quarry is located to the east.

6 The Pulehunui plant growth area's location
7 midway between Kahului and Kihei make it an ideal site
8 to accommodate the island's long-term heavy industrial
9 needs.

10 This slide shows that the Petition Area is
11 located in the Kihei-Makena Community Plan's
12 agricultural area. I should also point out that
13 Project District 10, which I will be talking about
14 shortly, is located to the west and adjacent of the
15 Petition Area.

16 This slide depicts the Petition Area's
17 location in the county agricultural zoning district.
18 As you can see the surrounding lands are all in
19 agricultural use and zoned as such. The agricultural
20 uses border the Petition Area on the northeast and
21 south while Project District 10, which is the old
22 Pu'unene Airport area, borders the property on the
23 west.

24 Project District 10 encompasses
25 approximately 561 acres and was established by the

1 Kihei-Makena Community Plan essentially to provide a
2 Master Planned area for industrial expansion and
3 recreational uses to meet future recreational needs
4 and provide appropriate areas for industrial
5 activities including government facilities whose
6 locations are best suited away from urban areas.

7 Existing land uses within the Project
8 District 10 include Maui Raceway Park as well as other
9 recreational motor sport activities.

10 The Hawai'i National Guard Armory is also
11 located within Project District 10. Existing heavy
12 industrial uses in the Petition Area are at the
13 Hawaiian Cement Quarry and Central Maui Baseyard.

14 The photo on the upper left facing toward
15 the Petition Area, which is around there, this is
16 viewed from the intersection of Mokulele Highway and
17 Kama'aina Road. The Petition Area is located
18 approximately 1 mile southeast from this intersection.

19 This photograph is a view of the Petition
20 Area in a southeast orientation. The radio tower
21 that's shown in this photograph has since been
22 removed. The photo on your lower left is a typical
23 scene that you'll encounter within the Petition Area.

24 This photo shows the sugarcane fields to
25 the east of the Petition Area and the Hawaiian Cement

1 Quarry in the background.

2 Q Mr. Tadaki?

3 A Yes.

4 Q Are there any activities taking place at
5 the Petitioner Area right here?

6 A There are currently no activities occurring
7 on the subject property. There's no active use on the
8 site since 2007.

9 Q Thank you.

10 A This photograph shows the HC&S irrigation
11 reservoir which is located adjacent and north on the
12 subject property. Here's a photo of the Hawaiian
13 Cement Quarry which is located east of the Petition
14 Area. And the bottom photo is a panoramic view of
15 Project District 10, the old Pu'unene Airport area.
16 The Maui Raceway Park can be seen in the background.

17 Back on April 12th of this year the Board
18 of Land and Natural Resources granted the Petitioner
19 access and utility easements to the site starting from
20 Mokulele Highway down Kama'aina Road, Lower Kihei Road
21 to the Petition Area itself.

22 In order for the Petitioner to implement
23 the proposed Project the following land use amendments
24 will be required.

25 Q Mr. Tadaki, I'm sorry to interrupt, but

1 would you please describe the proposed Project so the
2 Commissioners know what it is that we are going to
3 develop.

4 A The description of the proposed Project is
5 a couple slides later, but I'll be more than happy to
6 jump forward at this point. Preliminarily the
7 proposed Project involves a subdivision of the
8 Petition Area to set aside 66 acres for up to 28
9 developable lots ranging in size from half acre to
10 20 acres. It will also include 11 acres for internal
11 roads and 9 acres for drainage retention basins.

12 The final number of lots as well as lot
13 sizes will be determined and based on market
14 conditions at the time the Petitioner receives final
15 subdivision approval or when the Petitioner's ready to
16 proceed with construction.

17 The estimated construction costs for the
18 Project in 2011 dollars is approximately \$20 million.
19 The estimated construction timeframe is approximately
20 30 months.

21 Q Thank you. That is to develop a heavy
22 industrial project?

23 A Yes, it is. It will be an M3 restricted
24 industrial zone situation which will provide for uses
25 that are -- pertain to manufacturing and are generally

1 considered nuisance type industries or activities.

2 Q So going back to your slide No. 13, you
3 were describing the various land use entitlements that
4 need to be obtained for the Project.

5 A Yes. In order to implement the proposed
6 heavy industrial subdivision a State Land Use District
7 Boundary Amendment from the State Land Use
8 Agricultural District to the Urban District will be
9 required.

10 In addition, a Community Plan Amendment
11 from Agriculture to Heavy Industrial is needed as well
12 as the change in zoning from the County Agricultural
13 Zoning District to the MP Restricted Industrial Zoning
14 District.

15 The consolidated application for the
16 Community Plan Amendment and a change in zoning was
17 filed with the planning department on April 16th of
18 last year. The CPA and CIZ applications are being
19 held in abeyance until the District Boundary Amendment
20 process has been completed.

21 Q Mr. Tadaki, is a Community Plan Amendment a
22 trigger requiring an Environmental Assessment under
23 Chapter 343?

24 A Yes, you're correct.

25 Q Was an Environmental Assessment prepared

1 for this Project?

2 A Yes, it was.

3 Q Thank you. I believe that was filed as
4 Petitioner's Exhibit 1, correct?

5 A Correct.

6 Q You were the chief planner and preparer of
7 that Environmental Assessment?

8 A Yes, I was.

9 Q Would you please tell the Commission very
10 briefly the steps that you went through with that?
11 And I do mean briefly, but just let them know who
12 accepted the EA and when it was accepted.

13 A I'd be more than happy to do so. The early
14 consultation process for the preparation of the Draft
15 Environmental Assessment commenced on June 23rd, 2011.
16 Requests for comments were sent out to 34 parties
17 which encompassed various government agencies,
18 community groups and landowners.

19 The comment period deadline for receipt of
20 early consultation comments expired on July 29, 2011.
21 We received 20 comment letters. We then moved on to
22 prepare the Draft Environmental Assessment which was
23 sent out to 40 various parties, again government
24 agencies, community groups, landowners, interested
25 individuals.

1 The Notice of Availability of the Draft EA
2 was published in the OEQC Bulletin on June 8, 2012.
3 The Draft EA comment period expired on July 9th. We
4 received a total of 28 comment letters to which we
5 responded to.

6 During the Draft EA comment period the Maui
7 Planning Commission had an opportunity to review and
8 comment on the Draft EA at its meeting on June 26 of
9 2012.

10 We then moved on to prepare the Final EA.
11 And that was published in the January 8, 2013 edition
12 of the OEQC Bulletin. Prior to that the Maui Planning
13 Commission had met and reviewed the Final EA,
14 proceeded to accept it and authorize the publication
15 of the Notice of Availability of the Final EA and the
16 finding of No Significant Impact. The legal challenge
17 period for the Final EA expired on February 7th of
18 this year.

19 Q Were any legal challenges filed?

20 A There were no legal challenges filed.

21 Q Thank you. Mr. Tadaki, during that early
22 consultation period was there any attempt to
23 communicate with the Kihei Community Association?

24 A Yes. The Kihei Community Association was
25 sent an earlier consultation letter. They were also

1 sent a copy of the Draft Environmental Assessment.
2 They did not provide any comments whatsoever during
3 both the early consultation phase or the draft
4 environmental review phase for the Project.

5 Q Are you aware of any objections the Kihei
6 Community Association has to this Project?

7 A To the best of my knowledge I know of no
8 objections or opposition that KCA has to this Project.

9 Q Thank you.

10 A Also like to mention, since we're on the
11 subject of the KCA, that the Petitioner had followed
12 up further with the KCA in conjunction with the State
13 Land Use reclassification process. And I believe on
14 two occasions had provided them with further
15 opportunity to comment to which they received no
16 comments.

17 Q That's correct. I believe copies of the
18 correspondence was filed as Petitioner's Exhibit 9.

19 A That's correct.

20 Q Please continue with the presentation.

21 A The ordinance establishing M3 restricted
22 industrial zoning was adopted on September 24th of
23 last year. Basically M3 zoning includes uses
24 involving manufacturing processing, storage or
25 treatment of goods. And is intended to provide

1 variance for manufacturing and nuisance industries.
2 Specifically excluded from the M3 restricted
3 industrial zoning district are general retail and
4 office uses.

5 What you see on this slide are some of the
6 additional uses that were added onto the former M2
7 heavy industrial district zoning's permitted uses.
8 These five uses make up, in addition to the former M3
9 uses, the permitted uses that are allowed under M3
10 zoning.

11 Q Mr. Tadaki, so the Maui County ordinance is
12 Ordinance 3977?

13 A That is correct.

14 Q That created this new heavy industrial
15 district.

16 A Yes.

17 Q And that was filed as Petitioner's
18 Exhibit 39?

19 A That is correct.

20 Q Are residential uses permitted in that?

21 A Residential uses are not permitted within
22 the M3 zoning district.

23 Q Thank you. Would you please let us know,
24 and I know this was what you were saying, timing-wise
25 you were going on to explain that the timing of -- if

1 the Commission were to grant the reclassification what
2 our next steps are.

3 A Yeah. In terms of timing, assuming the
4 Land Use Commission grants the Petitioner's request to
5 reclassify the property to the State Land Use Urban
6 District, the next step in the land use permitting
7 process would be to go before the Maui Planning
8 Commission and provide them with an opportunity to
9 review and comment on the Community Plan Amendment and
10 change in zoning.

11 The MPC, Maui Planning Commission, will
12 then provide their comments and recommendations to the
13 Maui County Council. Subsequently the CPA and CIZ
14 requests will be scheduled for council processing,
15 referred to their land use committee for discussion,
16 and then transmitted to the full Council for first
17 reading, then second reading, and subsequently
18 adoption.

19 Q Thank you.

20 A This is a slide of the land development
21 plan for the proposed heavy industrial subdivision.
22 The smaller lots within the subdivision are color
23 coded in green. And the larger lots are color coded
24 in gold. This is the conceptual landscape plan of the
25 proposed subdivision.

1 This slide depicts the water system
2 components and layout which our water resources and
3 civil engineering consultants will discuss later.

4 This is a slide of the preliminary grading
5 and drainage plan which our civil engineering
6 consultant will discuss during his testimony phase.

7 In terms of assessing impacts relative to
8 this Project, there are no adverse drainage impacts to
9 adjacent downstream properties. The proposed Project
10 is not expected to have an adverse impact upon
11 traffic.

12 Improvements to the intersection of
13 Mokulele Highway and Kama'aina Road such as bullet
14 points 1, 2 and 3 will address and accommodate
15 Project-related traffic.

16 In terms of tower and communication systems
17 these existing facilities will be extended from their
18 existing locations and installed underground.
19 Exterior lighting will be shielded and downward
20 protected to prevent fallout to any seabirds
21 traversing the Project Area.

22 Future lot owners will also be encouraged
23 to utilize conservation measures and water
24 conservation measures when developing their lots in
25 the future.

1 Q Mr. Tadaki, if I may --

2 A Yes.

3 Q -- how will those lot owners be encouraged
4 to do so? Will there be some sort of agreement?

5 A The future lot owners will be provided with
6 sustainable guidelines that they're free to implement
7 when developing their project. These are guidelines
8 that the state Office of Environmental Quality Control
9 has available on their website.

10 Q Will the Project be subject to some sort of
11 declaration of conditions, covenants and restrictions?

12 A The declaration of covenants, conditions
13 and restrictions can include provisions to encourage
14 future lot owners to implement, consider utilizing
15 energy, water conservation measures as well as
16 sustainable building designs and practices.

17 This slide shows the proposed traffic
18 improvements to the intersection of Mokulele Highway
19 and Kama'aina Road. Our traffic engineering
20 consultant will be able to discuss this in further
21 detail during his phase of testimony.

22 Also like to mention that there are no
23 wetlands or critical habitat that are located in the
24 Petition Area, nor were there any threatened
25 endangered species of plant, animal or insect life

1 observed on the property.

2 Noise impacts are not anticipated due to
3 the distance between the Petition Area and the nearest
4 residential areas. The State Historic Preservation
5 Division accepted both the Archaeological Inventory
6 Survey and the Archaeological Monitoring Plan that
7 were prepared for the Project.

8 The Cultural Impact Assessment did not
9 identify any cultural resources or activities within
10 the Petition Area, nor were any ongoing traditional
11 practices being exercised.

12 The Petition Area is unclassified by the
13 Agricultural Lands of Importance to the state of
14 Hawai'i. Also has a Land Study Bureau rating of E as
15 an echo. The E rating represents poor overall
16 productivity.

17 The State Department of Agriculture has
18 confirmed that the proposed reclassification is not
19 expected to have an adverse impact on agriculture on
20 Maui. The proposed Project is not expected to have an
21 adverse impact on groundwater resources, downstream
22 properties and marine waters.

23 The reclassification of the Petition Area
24 will not adversely impact neighboring land uses. The
25 existing character of the lands in the vicinity will

1 continue to be maintained. The reclassification of
2 the Petition Area will not adversely affect
3 agriculture, nor will it have a negative effect on the
4 inventory of agricultural lands that are used for
5 large-scale or diversified agricultural use on the
6 island.

7 The Project is not expected to result in
8 any adverse environmental and social impact effects.
9 And it's not expected to have an adverse effect upon
10 existing public service or service area limits.

11 The infrastructure system such as water,
12 sewer, drainage, roadways would be privately owned and
13 maintained and will not affect any public systems.

14 The proposed Project is expected to
15 alleviate the demand for heavy industrial purposes.
16 By that I mean the demand for land for heavy
17 industrial purposes given the very limited
18 availability of those type of lands that currently
19 exist.

20 The use of the Petition Area for heavy
21 industrial uses is consistent with existing heavy
22 industrial uses in the area. And it's compatible with
23 planned uses that are set forth for Project District
24 10 by the Kihei-Makena Community Plan.

25 As I previously mentioned the Petition Area

1 lies within the limits of the Urban Growth Boundaries
2 of the Maui Island Plan. That concludes our
3 PowerPoint presentation.

4 Q Thank you, Mr. Tadaki. I'm going to try to
5 put some of what you were saying at the end there into
6 legalese so forgive me for that. But a lot of what
7 you were saying the last few minutes to me sounds like
8 whether or not you believe in your professional
9 opinion that this reclassification complies with the
10 standards set forth under Hawaii Revised Statutes
11 205-17. Are you familiar with HRS 205-17?

12 A Yes.

13 Q And are you familiar with one of the
14 requirements for the Commission to consider is the
15 extent to which the proposed clarification conforms
16 with the Hawai'i State Plan?

17 A Yes.

18 Q In your professional opinion does this
19 proposed Project conform with the Hawai'i State Plan?

20 A It's my feeling that it does.

21 Q Thank you. And are you familiar with the
22 district standards for reclassifying to the Urban
23 District which is what we are proposing here?

24 A I believe those are the standards that are
25 set forth in HAR 15-15-18, 1 through 8.

1 Q Correct.

2 A Yes.

3 Q And in your professional opinion does this
4 Project meet with those district standards?

5 A Yes, they do.

6 Q Thank you very much. Under HRS 205-17-3D
7 the Commission must consider whether or not this
8 Project involves a commitment of any state funds or
9 state resources. As far as you know are any state
10 funds or resources being committed for this Project?

11 A As far as I know no state funds or
12 resources are being committed for this Project.

13 Q And are you familiar with that the
14 Commission must consider the extent to which a project
15 conforms with HRS Chapter 205A which is the Coastal
16 Zone Management Act?

17 A Yes, I am.

18 Q And is this Project consistent with Chapter
19 205A?

20 A Yes, it is.

21 Q Is this Project within the Special
22 Management Area?

23 A No, it's not.

24 Q Could you please tell the Commission how
25 close this Project is to the ocean.

1 A The ocean is approximately, I think it was
2 2.5 miles away from the Petition Area.

3 Q Thank you very much. Do you believe that
4 this Project is consistent with the applicable County
5 Plans?

6 A Yes. The Project is consistent with the
7 Maui Island Plan, the Countywide Policy Plan and the
8 Kihei-Makena Community Plan. It's also consistent
9 with the former General Plan which was in effect until
10 the Maui Island Plan was adopted.

11 Q Under current zoning is the Project
12 consistent with current zoning?

13 A The Project being Agricultural District
14 zoned is a, is a -- well, it does not have the
15 appropriate heavy industrial zoning for the proposed
16 use because it is currently zoned for agricultural use
17 by the county of Maui.

18 So we're seeking to change the zoning of
19 the property from Agricultural District zoning to M3
20 Restricted Industrial zoning.

21 Similarly we're requesting a Community Plan
22 Amendment to do the same, change the Community Plan
23 land use category from Agriculture to Heavy
24 Industrial.

25 Q And that Community Plan change would be

1 consistent with the description you gave earlier in
2 your testimony regarding what the Maui Island Plan
3 describes for this geographical area.

4 A Yes.

5 MS. BENCK: Thank you. I have no further
6 questions at this time.

7 CHAIRMAN HELLER: Mr. Giroux.

8 MR. GIROUX: Thank you, Chair. Chair, just
9 one procedural. I note that Mr. Tadaki was asked --
10 well, he submitted his resumé and there was a general
11 request that the board receive him as an expert. I
12 just wanted to clarify that the board did receive
13 Mr. Tadaki as an expert in planning. I think that
14 needs to be put on the record.

15 CHAIRMAN HELLER: Well, actually there's
16 been no determination yet. Is anybody objecting to
17 him as an expert?

18 MR. GIROUX: We have no objection. I was
19 just going to ask that he be accepted as an expert
20 because I'm going to be asking him his legal -- I mean
21 not legal, but his professional opinion.

22 CHAIRMAN HELLER: Mr. Yee?

23 MR. YEE: No objection.

24 CHAIRMAN HELLER: I assume the Petitioner
25 has no objection.

1 MS. BENCK: No objection. That was my
2 oversight not to complete the initial request. Thank
3 you.

4 CHAIRMAN HELLER: Commissions, are there
5 any questions regarding his expertise? (no comment)
6 He will be accepted as an expert witness.

7 MR. GIROUX: And all of his opinions that
8 he's been giving will be received as an expert?

9 CHAIRMAN HELLER: He's accepted as an
10 expert effective from the beginning of his testimony.

11 MR. GIROUX: You thank, Chair. So now my
12 turn.

13 CROSS-EXAMINATION

14 BY MR. GIROUX:

15 Q Mr. Tadaki, have you read Mr. Spence's
16 written statement? It's Exhibit No. 4. It's quite
17 lengthy.

18 A Exhibit 4. Please bear with me.

19 Q County's Exhibit 4.

20 MS. BENCK: May I approach the witness and
21 give him my copy of the exhibit?

22 CHAIRMAN HELLER: Yes, go ahead.

23 THE WITNESS: Yes, I've read Exhibit 4.

24 Q (By Mr. Giroux): Okay. I just want to
25 point your attention to, I guess, Page 61 of that

1 document where Mr. Spence suggests some conditions for
2 the Project.

3 A Yes.

4 Q Were you able to read those?

5 A Yes.

6 Q As a planner do you have any problems or
7 objections to any of those proposed conditions for the
8 Project?

9 A I can only speak for myself, but I do not
10 have any opposition or objections to the County's
11 conditions.

12 Q I guess as a planner in your experience
13 you've had opportunities to, I guess, participate or
14 help create conditions for projects?

15 A Yes.

16 Q Do you find these conditions to be
17 reasonable?

18 A They seem reasonable to me.

19 Q Okay.

20 MR. GIROUX: I have no further questions.

21 CHAIRMAN HELLER: Mr. Yee.

22 CROSS-EXAMINATION

23 BY MR. YEE:

24 Q I'm sorry. Could I also bring up a
25 preliminary procedural matter? It was not clear to me

1 with respect to five other witnesses for the
2 Petitioner. Mr. Breuner, Mr. Hobdi, Ms. LeGrande
3 Mr. Vuich and Mr. Rowell who are also witnesses I
4 believe for the Petitioner, but that were not
5 specifically mentioned -- we had not -- we were
6 willing to waive cross-examination for these, but I
7 just wanted to know if they were not identified to
8 you. I don't know if they were intended to be called
9 tomorrow or if they were also being asked to be
10 waived.

11 MS. BENCK: If I may respond to that. As
12 indicated on our Witness List, all of our witnesses
13 will be available except for Mr. Breuner and
14 Mr. Hobdy. Ms. LeGrande can cover their testimony if
15 there were questions because those were all the
16 biological experts. So with the exception of those
17 two, all of our, I think it's 15 witnesses, are
18 available.

19 The request I made earlier was to allow two
20 of our witnesses to be released, you know, at a
21 suitable time when the Commission is ready. However,
22 the other witnesses will remain and can be brought up
23 if any of the parties or if the Commission has
24 questions. So that would apply to Mr. Vuich,
25 Ms. LeGrande, Mr. Rowell. They're here and they can

1 speak, but we don't intend to call them unless the
2 Commission has questions. Does that respond, Bryan?

3 MR. YEE: Right. So the Commission
4 understands there are other witnesses that if you had
5 questions of you could ask. It seemed to me at the
6 time that you're willing to let Mr. Neal and Mr. Ebisu
7 go, you might be willing to consider letting some of
8 the others go as well is the only thing I was
9 suggesting.

10 You were thinking about all the other
11 witnesses as well at the same time is what I'm trying
12 to say. All right. I can move on.

13 Q Mr. Tadaki, as I understand, then, this
14 Petition Area will be used for the uses identified in
15 county zoning M3, is that right?

16 A That is correct.

17 Q That does not include retail or commercial
18 uses, correct?

19 A That is correct.

20 Q It also does not include residential, is
21 that correct?

22 A That is correct.

23 Q And the precise number of lots isn't
24 specifically known because that may be changed at some
25 later date, but it's roughly approximately 28 lots?

1 A Would be up to 28 lots, you're correct.

2 Q Okay. And you concluded that there would
3 be no significant environmental impacts from this
4 Project, correct?

5 A My feeling is that there are no adverse
6 environmental impacts that are not capable of being
7 mitigated.

8 Q That was actually my next question because
9 I guess I just wanted to clarify that assumes that
10 appropriate mitigation measures are taken.

11 A Yes.

12 Q You testified regarding the consistency of
13 this Project with the Chapter 205 requirements. Do
14 you remember that?

15 A Yes.

16 Q I noticed in your written testimony you go
17 through several of the priority guidelines in the
18 State Plan. You touched on elsewhere in your oral
19 testimony today a discussion on sustainability. But I
20 didn't see an analysis of consistency of the Project
21 with the sustainability priority guideline under the
22 State Plan in your written testimony.

23 Do you have an analysis?

24 A A sustainability plan? Is that what you're
25 asking?

1 Q Well, let's start more basic. You're aware
2 that there is a sustainability priority guideline in
3 the State Plan.

4 A Yes, I believe so.

5 Q Did you do an analysis to determine whether
6 or not this Project is consistent with the
7 sustainability priority guideline?

8 A In terms of proposed uses? Is that what
9 you're asking? Or generally?

10 Q Just generally is the Project consistent
11 with the priority guideline for sustainability?

12 A I feel that it is.

13 Q I ask this because I didn't notice that
14 discussion in your written testimony. But I did hear
15 some discussion about sustainability in your oral
16 testimony?

17 A Right.

18 Q You had, in your oral testimony you said
19 something about CC&R's and energy and water
20 conservation. Do you remember that?

21 A Yes.

22 Q Could you elaborate on what that was going
23 to say or what that's going to do?

24 A These measures for energy and water
25 conservation is something that future lot owners will

1 be asked to consider for implementation when
2 developing their lots. As I mentioned the OEQC's
3 sustainable building guidelines provides some good
4 suggestions for utilizing sustainable building
5 practices and measures.

6 The water conservation measures, some
7 measure's already built into the Maui County Code I
8 believe for plumbing. They encourage the use of
9 low-flow fixtures, et cetera to conserve water. It's
10 my understanding that the CC&R's can include
11 provisions that would include or encourage lot owners
12 to implement water energy conservation measures,
13 sustainable building practices.

14 Q Other than directing lot owners to the OEQC
15 website, is there anything else that the CC&R's would
16 be doing to encourage water or energy conservation?

17 A I'm sure there are other guidelines that
18 are out there that can be found used by other states
19 or available at resource reference sites on the
20 Internet that can be considered for inclusion and
21 implementation.

22 Q Is that the full gamut of energy and water
23 encouragement, the conservation encouragement?

24 A If you're looking for specific examples is
25 that what you're asking or...?

1 Q I guess I'm asking you to tell me what
2 you're going to do. It's not my Project, so I'm just
3 asking the question.

4 A Well, there are various types of energy
5 conservation measures that can be utilized. Some
6 measures include using fiberglass insulation in
7 ceiling and walls to help keep temperatures stable,
8 glass tinting on windows, extended roof overhangs,
9 solar energy systems, solar water heating systems,
10 photovoltaic systems, low-flow fixtures as I mentioned
11 utilizing either time sensitive or rainfall-triggered
12 sensor for irrigation systems.

13 What else? Using drip irrigation systems,
14 using drought-tolerant plants for landscaping, using
15 low energy appliances is very common. Then putting
16 your lights on on timers. Those are just some
17 examples of energy water conservation measures that,
18 you know, a future lot owner could consider for
19 implementation.

20 Q So I understand you're not requiring the
21 lot owners to do any of these things. How do you
22 encourage them to do these things?

23 A We can provide them, for example, with a
24 copy of OEQC's Sustainable Building Guidelines or some
25 other informational packet which would include energy

1 conservation measures, water conservation measures.
2 Essentiality it's incumbent upon the lot owner to
3 implement these types of measures especially if he
4 wants to have an efficient operation. And it'd be
5 beneficial for them to do so in terms of some
6 financial savings in terms of operational costs and
7 maintenance.

8 Q Are there any sustainable measures you're
9 taking with respect to your stormwater use?

10 A Sustainable measures for stormwater use. I
11 understand that low-impact development features is
12 something I believe our civil engineer can discuss
13 with you.

14 In so far as energy water conservation
15 measures that's something so that the Petitioner can
16 also discuss with you.

17 Q But the stormwater would be something that
18 the Petitioner -- the stormwater measures are
19 something the Petitioner is going to take care of
20 rather than the individual lot owners, correct?

21 A My understanding is that the Petitioner
22 will be responsible for essentially constructing all
23 the backbone infrastructure.

24 Q Fair enough. I forgot to acknowledge that
25 there are maybe additional stormwater measures taken

1 by the individual lot owners given they have the
2 commercial aspect.

3 A Correct, yes.

4 Q That's a fair point. But with respect to
5 the larger site stormwater, that will be something
6 done by the Petitioner.

7 A Yes. It will be a privately owned and
8 maintained drainage system.

9 Q Okay. And I should direct any questions
10 about any sustainability measures to Mr. Otomo.

11 A In terms of?

12 Q Stormwater.

13 A Yes.

14 Q In your -- or in the Environmental Impact
15 Statement I noticed that you had listed some of the
16 land use approvals, you included in your oral
17 statement as well, the Community Plan Amendment and
18 the change in zoning. Just to go over a couple more.
19 I assume you're going to need tentative subdivision
20 approval?

21 A Yes.

22 Q And you'll also need final subdivision
23 approval?

24 A Yes.

25 Q In your EIS I think you said in 2011 the

1 land use and subdivision approval process was
2 estimated to take four to five years. Do you remember
3 that statement?

4 A From, yeah, from starting from 2011,
5 correct.

6 Q Is that timeline you think still correct?

7 A That would be -- yeah, I believe it's
8 correct, still valid.

9 Q So 2015 or 2016 you should be able to be
10 completed with the land use and subdivision approvals?

11 A That's my feeling.

12 Q When you talk about subdivision approval
13 were you talking about the tentative subdivision
14 approval or the final subdivision approval?

15 A We're looking at final subdivision
16 approval.

17 Q When do you think you'll finish tentative
18 subdivision approval?

19 A I think the intent is to file an
20 application for preliminary subdivision approval as
21 soon as we receive our change in zoning and Community
22 Plan Amendment approvals which would be subsequent to
23 the State Land Use reclassification.

24 Q You estimate the construction for the
25 infrastructure will take approximately 30 months?

1 A Yes.

2 Q When did that begin?

3 A Let's see.

4 Q Would that begin after tentative
5 subdivision approval?

6 A It could have to. Wait. Construction
7 would commence after final subdivision approval.

8 Q So you don't intend to do grubbing or
9 grading, and any of that construction work prior to.

10 A I'm not sure what the Petitioner's timeline
11 is in terms of those tasks. So I think that's
12 something that Mr. Jencks can clarify or respond to.

13 Q So in your EIS where you estimated 30
14 months after land use approvals, you're not exactly
15 sure when that 30 months occurs within that land use
16 approval process? You don't know if the 30 months
17 begins at tentative subdivision approval, final
18 subdivision approval or some other time?

19 A It would -- the 30-month construction
20 period would commence after site-work begins which
21 would occur after receiving final subdivision approval
22 which would occur after the land use entitlements have
23 been received.

24 So I cannot specifically say when that
25 point in time will occur at this point. I think

1 that's something, you know, that, you know, Petitioner
2 will be able to provide you with an estimate on.

3 Q Okay. I just have one last follow up. I
4 noticed there's a reference regarding the State
5 Historic Preservation issues, the archaeological
6 issues that (a) That a further study was not needed
7 because the alternative access road was not being
8 pursued. Do you know whether the alternative access
9 road is being pursued?

10 A No. The alternative access road will not
11 be pursued since the Petitioner was granted the
12 access utility easement by DLNR this past April.

13 Q Who owns -- is it Kama'aina Road?

14 A Kama'aina Road falls under the jurisdiction
15 of the Department of Land and Natural Resources.

16 MR. YEE: Thank you. Nothing further.

17 CHAIRMAN HELLER: I think it's about time
18 to give our court reporter a short break. So let's
19 take about a ten minute recess. When we get back I'd
20 like to ask the Commissioners about releasing the
21 witnesses that are proposed not to be called.

22 Ms. Benck, are you going to have redirect?

23 MS. BENCK: Maybe one or two questions, if
24 I may. We could after the recess.

25 CHAIRMAN HELLER: Sure. Well, if it's just

1 one or two questions why don't you go ahead and then
2 we'll let him go.

3 MS. BENCK: I'll make it very quick. Thank
4 you.

5 Q Mr. Tadaki, a couple quick things like I
6 said. When Mr. Giroux asked you to look quickly
7 through the conditions proposed in the County's
8 testimony and you did so and gave your opinion on
9 those. I'd like to ask you on the record have you
10 conferred with Petitioner about those conditions? And
11 has Petitioner indicated to you that Petitioner is
12 willing to accept all those conditions as drafted?

13 A Those were my personal feelings, my opinion
14 on the County's recommended conditions.

15 Q So you have not conferred with Petitioner
16 on those conditions?

17 A Not on a point-by-point basis.

18 Q Thank you. And if I may, one more
19 question. This is to address something that was
20 raised by Mr. Yee regarding the Petitioner's
21 obligation to maintain the stormwater, the major
22 stormwater infrastructure. You did indicate that that
23 was Petitioner's obligation, correct?

24 A I said it would be maintained and operated
25 by the Petitioner or the subdivision lot owners'

1 association.

2 Q Thank you. It was just that last, that
3 last part of your sentence that I wanted to make sure
4 the Commissioners understood.

5 A Oh, okay.

6 Q When Petitioner -- when Petitioner exits
7 itself from this Project, it will turn over those
8 obligations to whom?

9 A The subdivision lot owners' association
10 will be responsible for operating and maintaining the
11 subdivision improvements.

12 MS. BENCK: Thank you. I have no further
13 questions.

14 CHAIRMAN HELLER: Commissioners, any
15 questions for this witness? Commissioner Biga.

16 COMMISSIONER BIGA: I have a few but do we
17 wanna go on recess, Chair or go ahead?

18 CHAIRMAN HELLER: Why don't we go ahead.

19 COMMISSIONER BIGA: Okay. Thank you,
20 Mr. Tadaki. I just had a few questions. When you said
21 this is a heavy industrial subdivision, this is just
22 for commercial, it's not like a residential area,
23 right?

24 THE WITNESS: That is correct. Residential
25 uses are barred from the MP3 restricted industrial

1 zoning district.

2 COMMISSIONER BIGA: Okay. I noticed on
3 some of the maps there's some DHHL land --

4 THE WITNESS: Yes.

5 COMMISSIONER BIGA: -- around the area.
6 Are they -- this is what I've heard. I'm not sure if
7 that's been already, information has been provided
8 yet, but would DHHL have, in the future if you know,
9 residential lots in that area or it's just strictly
10 commercial?

11 THE WITNESS: DHHL has approximately 184
12 acres of land that's bounded by Meamea Loop and
13 Mokulele Highway. That's zoned for commercial use by
14 DHHL. They also own a 600-acre parcel approximately
15 adjacent to and south of the Petition Area. That land
16 is zoned for agricultural use by DHHL. It does not
17 allow for any homestead or residential use.

18 COMMISSIONER BIGA: Okay. I guess going
19 back to that question that the Petitioner asked you
20 about as far as turning the, I guess, the authority of
21 who's gonna be, I guess, policing the conditions of
22 the subdivision. How much authority will the
23 association have in following the conditions that was
24 instilled to the Petitioner?

25 THE WITNESS: I believe they'll have a

1 considerable degree of authority to exact compliance
2 from the lot owners. And enforcement provisions will
3 be included, I believe, in the CC&R's.

4 COMMISSIONER BIGA: Thank you.

5 CHAIRMAN HELLER: Commissioners, anything
6 else? Thank you. Let's take our ten minute break
7 now. When we come back we'll address letting some of
8 the witnesses depart.

9 (Recess was held. 10:55 to 11:10)

10 CHAIRMAN HELLER: (gavel) Let's go back on
11 the record. We're ready to continue with Petitioner's
12 case. But before we do that, as I understand it the
13 Petitioner is proposing to allow Mr. Neal and
14 Mr. Ebisu to depart at this point unless there are
15 questions for them. Those are the experts on air
16 quality and noise issues, is that correct?

17 MS. BENCK: That is correct.

18 CHAIRMAN HELLER: Commissioners, does
19 anybody want either of them to stay? Or does anybody
20 have questions for them? It appears that they can be
21 released.

22 MS. BENCK: Thank you very much.

23 CHAIRMAN HELLER: Are you ready to go with
24 your next witness?

25 MS. BENCK: We are. Thank you, Chairman.

1 Petitioner's next witness is Mr. Michael Dega. And in
2 follow up to what Mr. Giroux said earlier I would like
3 to, again, reiterate that all of our witnesses I
4 believe have been qualified as expert witnesses and
5 ask for the County and the State's concurrence with
6 that determination.

7 MR. GIROUX: Yes, we concur.

8 MR. YEE: No objection.

9 CHAIRMAN HELLER: So you're offering
10 Mr. Dega as a witness.

11 MS. BENCK: Mr. Dega and all subsequent
12 witnesses we put on.

13 CHAIRMAN HELLER: I think we should do them
14 one at a time. For the record would you state the
15 area of his expertise.

16 MS. BENCK: Absolutely. Thank you.
17 Mr. Dega's area of expertise is archaeology and
18 historical preservation. He will also be testifying
19 on Cultural Impact Assessments.

20 CHAIRMAN HELLER: Commissioners, are there
21 any questions regarding his background or expertise?
22 He will be accepted as an expert witness.

23 MS. BENCK: Thank you, Chairman.

24 xxx

25 xxx

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MICHAEL DEGA

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

THE WITNESS: I will.

CHAIRMAN HELLER: Go ahead, please.

DIRECT EXAMINATION

BY MS. BENCK:

Q Mr. Dega, I'd like to, if we may, direct
you and direct the Commission to your written direct
testimony. Are you familiar with Petitioner's
Exhibit 19?

A Yes.

Q And what is the name of Petitioner's
Exhibit 19?

A What's the name of...?

Q The Petitioner's Exhibit 19.

A Written direct testimony of Mike Dega.

Q Thank you. In doing your written direct
testimony you base this on certain studies. Can you
please tell the Commission what studies were prepared
and what studies you described in this testimony?

A Just related to the Petitioner's area?

Q Correct.

A Okay. We did two studies. There was an
Archaeological Inventory Survey. I think I talked

1 about this a few weeks ago. This is the baseline
2 archaeological study where everything goes from here.
3 That's where we walk the entire Petition Area. If
4 needed we also test the area. I'll summarize real
5 quickly the results.

6 Q Thank you. But before doing so would you
7 please give the title of your study and indicate if a
8 copy of that study has been provided to the
9 Commission.

10 A It's called an Archaeological Inventory
11 Survey of approximately 917 meters. Long alternative
12 access road in 86.029-acre property in Pu'unene
13 ahupua'a Wailuku District, Island of Maui.

14 Q Thank you. Was a copy of that study
15 provided to the Commission?

16 A Yes.

17 Q It was provided as Appendix I to -- I'm
18 sorry -- Appendix I to the Environmental Assessment
19 that was filed as Petitioner's Exhibit 1, is that
20 correct?

21 A That's correct.

22 Q Thank you. I'm sorry. Now please describe
23 the study.

24 A Like I said the first one's the inventory
25 survey. That's where we walk everywhere around the

1 landscape surveying and seeing what's on the surfaces.
2 We also did representative subsurface testing on this
3 one because we felt there may be cultural deposits
4 below the surface.

5 As part of the study, that we also do
6 background research, archival work. We look in old
7 books and see what people talk about through time. We
8 also look at previous archaeological studies of the
9 area. In this case it was really beneficial because
10 the Petitioner's area had already been subject to an
11 inventory survey in 1999. So we were quite fortunate
12 to have a lot of this or half of it at least, done for
13 us at this point.

14 So in that case during our survey what we
15 want to do is go back and relocate the sites that were
16 previously identified in 1999, which we did. We also
17 added 15 more features that were missed in the
18 previous study to the current site population.

19 So we documented, let's see here -- there's
20 two main sites out there. One is at Pu'unene Naval
21 Air Station and one is related to post World War II
22 cattle ranching sites. We identified both of those
23 and added additional features to both the Naval Air
24 Station site and the ranching site.

25 What kind of sites are these? Basically

1 all you're gonna find is concrete foundations related
2 to the Naval Air Station: Former housing areas,
3 communication barracks, things like that. All you
4 see, really, is a concrete slab out there. They're
5 fairly -- they've been neglected, they've been
6 impacted by modern machinery. And, of course, they've
7 been abandoned for quite a while probably since the
8 late 1940's or early '50's.

9 We also document land use change through
10 time. So not only do we get the World War II Naval
11 Air Station concrete features, we also get what
12 happened after. That the World War II cattle
13 ranching, then the area turned into a piggery. So
14 they were using some of the old Navy buildings into,
15 as a piggery. This is called reuse and adaptation, I
16 guess. Then they turned part of it into sort of a
17 recycling area.

18 Then in the 1970s this was a drag racing
19 area. They used to drag race up and down the runway
20 strips because the airport had closed in the 1960s.
21 This is more reuse.

22 We were curious to see if there was
23 anything prehistoric below the surface because we
24 could see all the historic things out there including
25 artifacts. We dug deep trenches. We did 20 in

1 representative fashion around the Petition Area. We
2 didn't find very much.

3 We found another concrete foundation, I
4 guess, related to the Naval Air Station. So that was
5 not very interesting. But we did date it. We found a
6 couple of these 1944 wheat pennies. And for an
7 archaeologist this is awesome 'cause it's a real date
8 right in the dirt. We don't have to send away carbon
9 samples or anything.

10 And that's about the most exciting thing we
11 found during the survey I'm sorry to say. No
12 pre-contact evidence for agriculture habitation,
13 burials, et cetera, et cetera.

14 We submitted the report to the state.
15 Amazingly in 10 months later it got accepted. It was
16 reviewed and accepted. So our recommendation -- we
17 had no more recommendations for archaeological work on
18 this site.

19 There's no monitoring, burial treatment
20 plans, no recommendations. And the SHPD concurred
21 with that assessment. That's the inventory survey.

22 Q Thank you. Could you please clarify why
23 was it amazing that SHPD accepted it? Did you have
24 concerns about the quality of the survey?

25 A No. It's a time thing. The Maui SHPD is

1 one of the busiest SHPD offices in America, one of the
2 top 3 in *America*. They had one person working there.
3 So to get -- you turn in a report. Then the permits
4 come in from the County. It's impossible for them to
5 do it. It's just a lack of human power down there.
6 So we were happy to get it reviewed within the time it
7 was.

8 Q Thank you. You mentioned something about
9 no need for monitoring.

10 A Right.

11 Q Was a monitoring plan prepared?

12 A One was prepared for the 970-meter
13 whachucalit, the bypass or the road that was going to
14 go through the Project Area. But I'm not certain
15 that's -- and it was approved by the state --but I'm
16 not sure that will be in play there.

17 Q Was a Cultural Impact Assessment done for
18 the Project?

19 A Yes. The CIA was done for the Project by
20 Dr. Bob Spear, my colleague, and Kathleen Deger,
21 (phonetic) also my colleague.

22 Q Was a copy of that Cultural Impact
23 Assessment provided to the Commission?

24 A Yes.

25 Q It was provided as part of the

1 Environmental Assessment?

2 A Yes.

3 Q Thank you. Could you please summarize.
4 You indicated that did not prepare that assessment.
5 Can you summarize, please, what that assessment
6 determined?

7 A Sure. She's right. I didn't prepare it,
8 but I've done quite a few and I'm familiar with the
9 process. A Cultural Impact Assessment is done to
10 identify ongoing cultural activities and identify
11 cultural, natural resources within a Petition Area.
12 You do that by looking at background archival research
13 a little more intensely than an archaeological study.
14 Then you go into the community and you talk
15 to those knowledgeable about the Petition Area to try
16 to understand not only the history, but if there are
17 ongoing cultural practices in the Project Area.

18 I followed the OEQC guidelines 1997, blah,
19 blah, blah. As part of the impact assessment we try
20 to identify members who would know about the Petition
21 Area. In this case we sent letters to 8 different
22 individuals and organizations includes the SHPD,
23 Office of Hawaiian Affairs on Maui and O'ahu, Central
24 Maui Hawaiian Civic Club, Kimokeo who actually
25 prepared CIA's himself, the Cultural Resources

1 Commission and several other places.

2 We do this because we want to find these
3 individuals who can teach us about the area and what
4 happened there in the past and if something's
5 happening now.

6 In addition, we also publish CIA notices in
7 the Honolulu Star Advertiser and the Maui News on
8 Sundays and sometimes during the week like a
9 Wednesday. We also publish in the OHA Kawaiola news
10 letter. So it's a pretty extensive blanket where we
11 try to find people who are interested or knowledgeable
12 about an area. So we did this.

13 And after 90, 120 days, whatever, we only
14 got one response and that was from OHA on O'ahu. They
15 had talked about something completely non-related to
16 the cultural aspect side of this Project or the
17 archaeological side.

18 So at that point based on the results of
19 that as well as the, I guess, our archaeological and
20 cultural background, there's no adverse effect
21 determination for the Petition Area based on the CIA.
22 There are no ongoing cultural practices that we are
23 aware of nor that would affect any use of this parcel.

24 Q Mr. Dega, did you or did anyone at your
25 company prepare any data recovery or preservation or

1 burial treatment plans for the Petition Area?

2 A We did not because it wasn't required.
3 These are only proposed if you find something of
4 significance and we did not archaeologically.

5 For instance, we didn't find a burial,
6 therefore we don't have to prepare a burial treatment
7 plan. There was nothing significant about the
8 concrete foundations. Therefore we don't have to
9 preserve them. And the State concurred with that, the
10 same with data recovery.

11 Q My last question for you, Mr. Dega, is
12 going back to the monitoring plan. And with the
13 Commission and the parties' permission I'd like to
14 approach the witness and give him a copy of Appendix J
15 of the Final Environmental Assessment just to help
16 refresh his memory as to the title of that document.

17 CHAIRMAN HELLER: Go ahead.

18 Q (By Ms. Benck): Thank you. In terms of
19 the monitoring plan -- and if you could please
20 indicate the full scope of the monitoring plan.

21 A I wrote this. Gotta make these titles
22 shorter. An archaeological plan for 917-meter long
23 alternate access road, an 86-acre property in Pu'unene
24 Pulehunui ahupua'a, Wailuku District, Island of Maui,
25 Hawai'i. This was for the 86 acres as well as the

1 alternate access road which I believe it's been taken
2 out of play at this point. So now it would just be
3 related to the 86-acre parcel.

4 Q That's correct. Thank you. I believe you
5 stated this earlier, but did SHPD acknowledge receipt
6 of that monitoring plan?

7 A They acknowledged receipt and they accepted
8 this monitoring plan.

9 MS. BENCK: Thank you. I have no further
10 questions of this witness.

11 CHAIRMAN HELLER: Mr. Giroux?

12 MR. GIROUX: No cross.

13 CHAIRMAN HELLER: Mr. Yee?

14 CROSS-EXAMINATION

15 BY MR. YEE:

16 Q The location of the alternate access road,
17 do you know who's the owner of that road?

18 A I don't.

19 MR. YEE: Okay. That's all.

20 CHAIRMAN HELLER: Commissioners, any
21 questions? Commissioner McDonald.

22 COMMISSIONER McDONALD: I'm just curious.
23 Why was a monitoring plan prepared when there wasn't
24 any real significant findings? I don't believe there
25 was a request of SHPD.

1 THE WITNESS: You're right. It wasn't. I
2 think it's just a proactive approach on behalf of the
3 Petitioner just to cover all their bases as they go
4 ahead with this. It's happened more frequently in the
5 present. People say, "What if you find something in
6 the future?" Well, now it's covered.

7 COMMISSIONER McDONALD: Thank you.

8 THE WITNESS: Thanks.

9 CHAIRMAN HELLER: Commissioners, anything
10 further? Thank you.

11 MS. BENCK: The next witness we'd like to
12 call -- if we can continue?

13 CHAIRMAN HELLER: Yes.

14 MS. BENCK: Is Mr. Glenn Kunihisa who is
15 our market and fiscal impact expert.

16 CHAIRMAN HELLER: And you're offering him
17 as an expert in...?

18 MS. BENCK: We're offering him as an expert
19 in, as I said, market and economic impacts and also to
20 discuss the economic impacts from taking this out of
21 agricultural production -- I'm sorry, agricultural use
22 and putting it into urban uses. So he's a market and
23 econ-fiscal expert.

24 His resumé was provided as Exhibit 26 if
25 anybody cares to review it before deciding whether or

1 not he qualifies as an expert.

2 CHAIRMAN HELLER: Any objections to
3 admitting him as an expert?

4 MR. GIROUX: No objection.

5 MR. YEE: No objection.

6 CHAIRMAN HELLER: Commissioners, any
7 questions about background or expertise? Okay.
8 Received as an expert witness.

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

12 THE WITNESS: Yes, I do.

13 CHAIRMAN HELLER: Go ahead.

14 DIRECT EXAMINATION

15 BY MS. BENCK:

16 Q Thank you, Mr. Kunihisa. Are you familiar
17 with Petitioner's Exhibit 27?

18 A The final, final direct written testimony?

19 Q That's correct. With your name and
20 signature.

21 A Yes, I am.

22 Q Okay. Thank you. And in preparing your
23 written direct testimony I believe you referenced
24 certain studies that you had done for the Final
25 Environmental Assessment.

1 A Yes, I did.

2 Q Would you please tell the Commission and
3 the parties what those studies were and briefly
4 describe the scope of those studies?

5 A I provided a market analysis of the
6 property, a market analysis and economic impact study.
7 And I also prepared an agricultural impact analysis
8 for the subject.

9 Q And copies of those studies were provided
10 to the Commission, is that correct?

11 A Yes, they were.

12 Q Could you please describe the scope of the
13 market studies.

14 A Well, the market study pretty much simply
15 is, asks the question: Is the Project needed? And if
16 it is how will the market respond to its development.
17 In doing so we defined the market area and analyzed
18 the current supply and demand.

19 We look at -- we identify anticipated
20 developments which would be in competition with the
21 subject. We also look at the forecasted economic
22 condition.

23 Q And can you please describe what sort of
24 economic uses are surrounding this property?

25 A I think Mr. Tadaki covered most of it, in

1 fact all of it. You have a quarry, you have the
2 raceway park and agricultural activities by HC&S as
3 well as the Central Maui Baseyard approximately 1 mile
4 north.

5 Q Are there any heavy industrial uses
6 immediately surrounding this Petition Area?

7 A The quarry itself. And there are a number
8 of heavy industrial users in the Central Maui
9 Baseyard.

10 Q Other than the Central Maui Baseyard are
11 there many opportunities for heavy industrial uses in
12 this area?

13 A No, there aren't.

14 Q Could you please describe your assessment
15 of a market demand for heavy industrial use?

16 A Well, supply and demand? Okay. Well, let
17 me start with the supply. First of all, there are
18 very, very few vacant land parcels zoned for heavy
19 industrial use on Maui.

20 We were only able to identify a handful of
21 them totaling a total of approximately 16 acres. That
22 may seem like a lot of land. However, their potential
23 for heavy industrial use is limited because of the
24 developments that have sprouted out near them or
25 around them or adjacent to it.

1 If you look right next to this hotel
2 there's an M2 heavy industrial zoned lot. It's
3 vacant. And just because this hotel has risen up next
4 to it I doubt there will ever be a heavy industrial
5 use on that property.

6 Similarly, there's a very nice rectangular,
7 level acreage lot on Beach Road that's zoned heavy
8 industrial. But because there's a condominium
9 project, residential condominium project adjacent to
10 it odds are it will not be used for nuisance type of
11 industries as described in the zoning ordinances.

12 So what we found is that there has not been
13 any heavy industrial subdivision developed on Maui for
14 more than a decade. The last one that was the end
15 product was retail and establishments and car
16 dealerships.

17 So what ends up happening is that the heavy
18 industrial user has been gradually squeezed out of
19 their spaces because there are higher order retail and
20 office uses that would pay more. They don't have the
21 intrusions of noise and dust and vibrations, et
22 cetera. And visibly they're more pleasing.

23 We find that the heavy industrial users not
24 only is there not land available, none has been
25 created recently. These guys are being squeezed out

1 of their current locations. So we found that now this
2 goes on to demand, there's a very, very strong demand
3 for heavy industrial land.

4 The population has been growing. It's
5 grown excessively in the last two decades. It's
6 forecasted to continue its growth in the next two
7 decades. The economy is -- which has been stagnant
8 for a number of years -- is now showing some signs of
9 turn around. There are a lot of construction projects
10 being finished off and planned for the future.
11 Interest rates are another stimulus to fuel this
12 demand.

13 Now, I think if you talk to a lot of heavy
14 industrial users, and we do, many of them have been
15 confined to make use of what they have. They don't
16 have the necessary land to expand their operations.
17 So they have to go out and lease on a temporary basis
18 yard space or other lands. I think the subject offers
19 a fee simple opportunity for many of the businesses
20 here.

21 Q Mr. Kunihisa, may I direct your attention,
22 please, to page 6 of your testimony. At the top of
23 page 6 where you're discussing Petitioner's
24 Exhibit 39, which is a copy of the zoning ordinance
25 that allows the kind of industrial uses that

1 Petitioner is proposing, and you're familiar with
2 Petitioner's Exhibit 39, the zoning ordinance?

3 A The M3 zoning?

4 Q Yes.

5 A Yes.

6 Q Now, the name of this M3 zoning district,
7 is it called the heavy industrial zoning district?

8 A It's called the restricted industrial.

9 Q Thank you. Could you please explain to the
10 extent you can why it's the redistricted industrial
11 district when we're talking about doing heavy
12 industrial uses?

13 A Well, because it will allow for what they
14 call the nuisance industries, manufacturing and so
15 forth. It would also restrict retail and office uses.

16 Q Thank you very much. And to that point if
17 I may on line 6 of your testimony, if you could read
18 that last sentence, I believe the third word might be
19 a typographical error.

20 A "Importantly general *"retail"* not *"retain"*,
21 retail and office uses are specifically excluded from
22 the M3 district."

23 Q Thank you. That's the correction I was
24 hoping you would make. So the M3 district is made
25 specifically to allow the kinds of industrial uses

1 that you seem to be indicating other users can't find
2 space to operate in.

3 A That's correct.

4 Q Looking over Petitioner's Exhibit 39 again,
5 the zoning ordinance, could you give us a handful of
6 examples of what kind of uses you anticipate based on
7 your professional opinion may take place at this
8 property?

9 A Well, I think you have manufacturing
10 industries such as countertops, stone countertops,
11 concrete fabrication, truss fabrication, things like
12 that where they take raw material and process it into
13 an end product that's being used primarily in
14 construction I would think.

15 Q Thank you. Did you do an analysis of what
16 the economic impacts of this Project as proposed, what
17 those impacts would be on the state and the county?

18 A Yes, I did.

19 Q Could you briefly summarize those impacts?

20 A Well, first of all the development of the
21 Project is expected to generate significant
22 expenditures to the Petitioner. This will -- as well
23 as the secondary owners of the individual lots. These
24 investments I think will have a positive on the county
25 and state economies.

1 Beginning with the development of the
2 subdivision itself the Petitioner is expecting to
3 spend approximately \$20 million over a 2 and-a-half
4 year period. Then during the acquisition and
5 development of the individual lots, the secondary
6 owners are expected to spend a total of approximately
7 \$175,000,000.

8 In turn, looking further down the line,
9 these expenditures are expected to generate indirect
10 sales as the money trickles down through the economy
11 and cycles around and around. We expect that the
12 subdivision development will create approximately \$10
13 million of indirect sales and 20 million during the
14 lot buildout period.

15 As far as job creation is concerned we
16 expect 65 new jobs on Maui created during the
17 subdivision construction and another 142 new jobs
18 during individual lot construction. We also expect
19 another -- additional jobs on O'ahu resulting from
20 these expenditures.

21 Q Thank you. If I can now I'm going to turn
22 briefly to the study, the Agricultural Impact
23 Assessment for the proposed Pu'unene Heavy Industrial
24 Subdivision.

25 A Yes.

1 Q That study that you prepared. If you could
2 please just let the Commission know are there
3 agricultural activities taking place at the Petition
4 Area?

5 A No, there are not.

6 Q Through that assessment did you determine
7 that there would be any impact on agricultural
8 production if this Commission were to approve the
9 reclassification and if this subdivision were to go
10 forward as planned?

11 A I think, as Mr. Tadaki mentioned, there are
12 a number of soil conditions or ratings of the soil
13 conditions that would, that make it a very unfavorable
14 lot for farming. Would you like me to go through?
15 Well, I'll go through it. Primarily you have subclass
16 7S rating which has very severe soil limitations.
17 It's very stoney. And it's generally recognized that
18 the cutoff for effective ag use is class 4. This is a
19 class 7. So it's far from being appropriate for
20 cultivation.

21 The Agricultural Lands of Importance in the
22 State of Hawai'i designates the subject as residual,
23 which means that it's not in any of the three
24 important land categories of Prime, Unique, and Other
25 Important Ag Lands.

1 Third, the UH Land Study Bureau map
2 indicates an overall productivity rating of E which is
3 the lowest, meaning that it is very poor and not
4 suitable for agricultural production.

5 Obviously it's not -- it's currently not in
6 ag production. HC&S removed it from ag production.
7 So we feel that the reclassification of this property
8 would be insignificant to agriculture in Hawai'i.

9 MS. BENCK: Thank you. The Petitioner has
10 no further questions for this witness.

11 CHAIRMAN HELLER: Mr. Giroux?

12 MR. GIROUX: No questions.

13 CHAIRMAN HELLER: Mr. Yee?

14 MR. YEE: Since you're here. (audience
15 chuckling)

16 CROSS-EXAMINATION

17 BY MR. YEE:

18 Q Did you hear Commissioner Biga's question
19 regarding the potential future uses of the DHHL lands
20 nearby?

21 A I did hear -- yes, I did hear that.

22 Q And I know Mr. Tadaki testified about
23 current zoning. Have you had an opportunity to look
24 at what the proposed future uses would be of the DHHL
25 lots?

1 A I'm aware of a plan that they had put
2 together. I think it was called Pulehunui Master --

3 Q Master Plan, yes.

4 A And that included public and quasi-public
5 as well as commercial, industrial and open space
6 lands.

7 Q And just to finish up. None of the uses on
8 the DHHL land would have included residential, is that
9 correct?

10 A That's correct.

11 MR. YEE: Nothing further. Thank you.

12 CHAIRMAN HELLER: Commissioners, any
13 questions?

14 COMMISSIONER MATSUMURA: What is the market
15 value of the M3 properties on Maui at present per
16 square foot?

17 THE WITNESS: There's no M3 land right now.
18 But if you look at M2 you have some -- well, A&B, for
19 instance, is selling light industrial M1 land for
20 approximately 45 to \$60 per square foot.

21 COMMISSIONER MATSUMURA: So what is the
22 projected sales on this property?

23 THE WITNESS: That's hard to say. In 2011
24 we utilized \$20 per square foot for this property
25 being that, first of all, the economy was bad.

1 Secondly, its location is pretty remote.
2 There were no complementary businesses surrounding it
3 at the time. We felt that -- and the lots are
4 relatively large. We have some at half acre but you
5 also go up to 20 acres. So it can be -- we felt it
6 should be a lower value than what's being sold in the
7 prime areas of Kahului.

8 COMMISSIONER MATSUMURA: So it's going to
9 be less than \$45 above \$20?

10 THE WITNESS: That's a fair range I would
11 say.

12 COMMISSIONER MATSUMURA: Thank you.

13 CHAIRMAN HELLER: Commissioners, anything
14 else? I have a question just to follow up a little
15 further. We've heard that the final number and size
16 of the lots may depend on market forces and there's no
17 final plan yet. Can you tell us a little bit more
18 about when and how that final decision will be made as
19 to the number and sizes of the lots?

20 THE WITNESS: I'm not sure when that
21 decision would be made. You know, I think every
22 project needs a wide range of sizes just to be able to
23 satisfy the different demands of various buyers.

24 Obviously if there were people standing in
25 line for large lots and you'd end up with 4 large

1 lots, it's not for me to say at this point in time,
2 but I think the plan right now is to go with 28 lots
3 and work from there. I think you need the smaller
4 ones as well as much larger ones.

5 CHAIRMAN HELLER: Do you have any specific
6 data at this point as to specific users or specific
7 anticipated uses and what kind of lot sizes they
8 would need?

9 THE WITNESS: No, I don't.

10 CHAIRMAN HELLER: Thank you. If there is
11 nothing else for this witness, Ms. Benck, are you
12 ready to call your next witness?

13 MS. BENCK: Our next witness is Mr. Stacy
14 Otomo. He's our civil engineer. And I'll ask that he
15 be qualified as an expert in civil engineering.

16 CHAIRMAN HELLER: While he's coming up here
17 are there any objections?

18 MR. GIROUX: No objection.

19 MR. YEE: No objection.

20 CHAIRMAN HELLER: Commissioners, does
21 anybody have any questions regarding background or
22 qualifications? Accepted as an expert witness.

23 MS. BENCK: Thank you very much.

24 xxx

25 xxx

1 STACY OTOMO

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

4 DIRECT EXAMINATION

5 BY MS. BENCK:

6 Q Good afternoon -- or good morning,
7 Mr. Otomo. Are you familiar with Petitioner's
8 Exhibit 29?

9 A Yes, I am.

10 Q And that is called?

11 A The written direct testimony of myself.

12 Q Thank you. In preparing this written
13 direct testimony did you rely on any studies or any
14 work product that you had done?

15 A Yes. We were retained by the Petitioner to
16 do a preliminary engineering report for the Project.

17 Q Was a copy of that preliminary engineering
18 report provided to this Commission?

19 A Yes, it was.

20 Q It was included in the Final Environmental
21 Assessment?

22 A Yes.

23 Q In doing the preliminary engineering report
24 did you analyze the current state of infrastructure on
25 the Petition Area and around the Petition Area?

1 A Yes, we did. What we did was we looked at
2 the existing infrastructure that's available for the
3 Project. Looked at what the Project needed and did an
4 evaluation of what the Project needs to provide to
5 make it a successful Project.

6 Q And in evaluating what the Project needs
7 you assumed that the Project would consist of what?

8 A We were looking at 28 heavy industrial lots
9 varying in sizes.

10 Q Thank you. So based on the 28 industrial
11 lots does that cover the entire 86-acre Petition Area?

12 A Yes, it does.

13 Q What infrastructure demands do you believe
14 that the 28 lots will require?

15 A Let me start on the roadways. It starts
16 from Mokulele Highway, a signalized intersection with
17 Kama'aina Road. A portion of Kama'aina Road is
18 currently paved with concrete, it's 24 feet wide. So
19 roughly 1500 feet.

20 It becomes an asphalt paved road
21 approximately 24 feet wide which runs to south
22 Firebreak Road and Lower Kihei Road almost to the
23 northern end of the property. Within the property
24 there's no roadway infrastructure. So roads will have
25 to be constructed as part of subdivision improvements.

1 We also looked at water. There are no
2 county water sources available for this Project. The
3 intent is to drill a private well and maintain a water
4 system. Similarly with the sewer. There's no county
5 sewer in the vicinity. It's about the closest
6 connection point would be about 10,000 feet toward
7 Kihei. So each lot would do their own individual
8 wastewater system.

9 And in terms of the drainage the design
10 would be such that it meets all county and state
11 regulations in terms of runoff.

12 Q You know, Mr. Tadaki's PowerPoint
13 presentation showed a nice picture of the Project. It
14 was included as slide 17 of the PowerPoint, if the
15 Commissioners want to turn to that. But my question
16 to you, Mr. Otomo, is this: Along the, is it west end
17 of the property, there was a yellow strip on the site
18 plan. What is proposed for along that western edge of
19 the property?

20 A Along the western edge it's approximately
21 9 acres that would be primarily used for the retention
22 basin to mitigate the drainage from the Project site.

23 Q Thank you, Glenn. That was exactly the
24 slide that I was asking for. Thank you. And how
25 large is that retention basin?

1 A The area itself is approximately 9 acres.
2 There'd be a series of 3 or 4 retention basins. We're
3 looking at a linear retention -- a series of linear
4 retention basins 3 or 4 feet deep along pretty much
5 the entire strip of land.

6 Q Now, will that be the only drainage
7 improvement that will be part of this Project?

8 A No. That would be the so-called backbone
9 for the subdivision. It takes all the subdivision
10 drainage. However, in the roadways itself there will
11 be catch basins, storm drain manholes, drain lines and
12 so forth that actually outlets into the retention
13 basins.

14 Q So will each lot have a drainage system?

15 A What would happen is on the backbone
16 infrastructure in a subdivision a stubout would be --
17 a drainage stubout would be provided to each of the
18 lots. And as each lot comes in for development they'd
19 be obligated to tie in their drainage system to the
20 back bone system subdivision.

21 However, as each lot comes in they'd be
22 subject to county requirements in terms of getting
23 their building permits. So they'd be also faced with
24 drainage requirements on their property.

25 Q Understood. Thank you. If you would,

1 switching gears a little bit, please describe the
2 wastewater system or systems that's proposed for this
3 Project.

4 A Since there is no county sewer nearby each
5 individual lot would come in at the time of building
6 permit with an individual wastewater system. It's
7 going to be an aerobic system. And depending on the
8 location of the lot, each lot would have their own
9 leach field for the septic system.

10 The ones that are close to the influence of
11 a thousand feet from the domestic well, would be
12 possibly combined with two lots that have a common
13 leach field that's outside the thousand foot radius of
14 a domestic well.

15 Q So based on your response to that question
16 is it fair for me to say that in doing the engineering
17 and the preliminary site planning for this Project,
18 you took into account the location of the future
19 potable well and the location of the waste systems
20 that will be installed within each lot?

21 A That's correct. The final subdivision
22 layout of the 28 lots would be such that it would take
23 into respect the thousand foot radius from the potable
24 drinking water well.

25 Q Now, when it comes to talking in any great

1 detail about the water system, are those questions
2 best addressed to you or best addressed to Mr. Tom
3 Nance?

4 A It would be best addressed by Mr. Nance.

5 Q Thank you very much. If we could quickly
6 go a little bit back to the roadway discussion. You
7 were describing the road from the highway. And the
8 highway is under the jurisdiction of whom?

9 A The State Department of Transportation.

10 Q Thank you. When we leave the highway and
11 drive to the Petition Area you were describing various
12 paved areas. As far as you know does the Petitioner
13 have the right to drive over and take access to the
14 Project site?

15 A Yes. It's my understanding that easements
16 are granted to the Petitioner.

17 Q Okay. Do you know which agency?

18 A I believe one was DLNR and I'm not
19 100 percent sure for the South Firebreak Road portion.

20 Q DLNR.

21 A Would be.

22 Q Thank you. In describing the roadways at
23 the start of your testimony you said there was one
24 area and that was sort of right at the northern tip of
25 our Petition Area where it sounded like some

1 improvements are needed. Could you describe that a
2 little bit more, please?

3 A That's the area considered to be lower
4 Kihei Road. The pavement there might not be in the
5 best of condition. So there may be some pavement
6 work. I would say roughly about 300 feet from the end
7 of South Fire Break Road to the property that may need
8 some improvements on it.

9 Q Is it the intention of Petitioner to have
10 the internal roadways dedicated to the county of Maui?

11 A My understanding is the roadways will
12 remain private.

13 Q Will they be built to standards that the
14 county of Maui finds acceptable for private roadways?

15 A It would be meeting county standards. The
16 Petitioner, I think, is also considering going in for
17 a -- I'm losing that name of the -- yeah, exemptions
18 to the roadway standards.

19 Q What kind of users do you anticipate will
20 be driving over those roadways?

21 A It's primarily the tenants of the
22 subdivision itself, the heavy industrial users.

23 Q So will a lot of the general public be
24 accessing this property?

25 A No.

1 MS. BENCK: With that I have no further
2 questions for this witness.

3 CHAIRMAN HELLER: Mr. Giroux?

4 MR. GIROUX: We have no questions.

5 CHAIRMAN HELLER: Mr. Yee?

6 CROSS-EXAMINATION

7 BY MR. YEE:

8 Q Mr. Otomo, you're aware that an individual
9 wastewater system has to be located at least 1
10 thousand feet or more from a potable water source?

11 A The leach field has to be, yes.

12 Q Okay. Have you identified the location of
13 the potable water source on this property?

14 A There was a map that was shown that had a
15 preliminary location, right, on this drawing. It's
16 not 100 percent set that it will be there, but it will
17 be somewhere in this vicinity.

18 Q Have you tried to look at the area 100 --
19 I'm sorry, 1 thousand feet away to look at what is in
20 that 100-foot area?

21 A We did prepare a radius map, yes.

22 Q What is within that radius?

23 A The bulk of the radius contains the
24 subdivision itself. There's some overlap into the
25 makai area, which is I think owned by HC&S. There may

1 be some overlap in the makai area below the proposed
2 retention basin. I believe that is DLNR land.

3 Q Do you know how much land would be there?

4 A Not right offhand. The makai portion would
5 be fairly minimal. There'd be some overlap on the
6 mauka portion in the HC&S land.

7 Q Did you submit that radius map anywhere in
8 this record?

9 A No, we did not.

10 Q Did you submit the tentative location in
11 the record?

12 A I believe it was part of the exhibit in the
13 record, yes.

14 Q And was that on a map that was drawn to
15 scale?

16 A Yes.

17 Q Was it your exhibit?

18 A We prepared the map, yes.

19 Q Was it in the EIS?

20 A The EA was it actually?

21 MS. BENCK: May I respond?

22 MR. YEE: Sure, please.

23 MS. BENCK: Petitioner's Exhibit 42 errata
24 is the well infrastructure site plan that I think may
25 be helpful to Mr. Yee and to the Commissioners. Do

1 you have that handy, Stacy?

2 THE WITNESS: Yes.

3 MS. BENCK: And that just indicates
4 proposed locations. And I'll note the reason for the
5 errata is because, I believe, original Petitioner's 42
6 indicated a storage tank of a certain size. This
7 errata Petitioner's Exhibit 42 indicates the correct
8 storage size. That's the difference between the two
9 of them.

10 Q (By Mr. Yee): As I'm looking at this -- I
11 see. Okay. Would the location of this, if it was in
12 this location, would that impact the ability for any
13 of the proposed lots to have an individual wastewater
14 system?

15 A What the final lot layout would accommodate
16 is the thousand foot radius. The lot layout would be
17 such that the leach fields would be outside of that
18 radius.

19 Q So given the conceptual plan you've got
20 right now can you reasonably have a leach field more
21 than a thousand feet away from this potential well
22 site?

23 A Yes.

24 Q Would you anticipate that this location
25 would have the impact on any property outside in their

1 ability to use their land?

2 A The radius, like I said, does extend into
3 the mauka and makai properties as well.

4 Q I guess I'm asking does it extend so far as
5 it would prevent them from using their land, if they
6 were going to develop it, they would have to have an
7 individual wastewater system as well?

8 A It would be in the radius. However, the
9 parcels that are affected are very large parcels. So
10 it does have some effect on it. They should be able
11 to stay outside the radius as well.

12 Q Typically when does construction, if you
13 know, occur on the lot with respect to the various
14 land use approvals?

15 A Assuming we're successful in getting
16 through the Land Use Commission, with the county
17 council and all the entitlements are in place, at that
18 point we need to submit construction plans for all of
19 these improvements to, in this case, the Department of
20 Health, the Department of Transportation, the
21 Department of Public Works, and the Department of
22 Water Supply to some extent. And we need to secure
23 all of their approvals. And construction can begin
24 after all of those approvals are granted.

25 Q Do you know typically when they begin?

1 Does it begin after -- it begins before or after
2 zoning?

3 A It's the Petitioner's choice. They can
4 start now but obviously there are some risks if the
5 approvals are not granted. The construction drawings
6 can start at any point in the Project but there are
7 some risks involved.

8 Q So construction can occur earlier. It's
9 just that if they don't get the approval from the
10 relevant agency they take a risk that change might be
11 needed.

12 A Let me clarify. The preparation of the
13 construction plans can start at any time. To get
14 actual construction started, for example, on the
15 grading, you know, there'd be supplemental permits
16 that need to be obtained like the grading permit, the
17 NPDES permit, before any grading can commence.

18 Q You would typically have zoning before you
19 begin grading, though, correct?

20 A That would be the normal route, yes.

21 Q But you don't necessarily have to have your
22 subdivision done before you start grading.

23 A The steps are -- I know you referred to
24 this to a previous testifier, but there's a
25 preliminary subdivision approval which basically you

1 take your plan and some support information, submit
2 that to the county. The county has 45 days to issue
3 you a preliminarily subdivision approval.

4 And on that letter there would be all the
5 conditions that you need to get final subdivision
6 approval. So normally that's the time that you'd want
7 to start your construction drawings.

8 Q With respect to -- in your testimony you
9 talked about the roadway construction and the Traffic
10 Impact Analysis Report. When do you think that TIAR
11 is going to get submitted, if you know?

12 A I believe the DOT provided comments on what
13 was submitted so far. And I'm sure at some point in
14 time we need to seek their approval on the TIAR
15 including the recommendations for the subdivision in
16 that document.

17 Q So that's part of the subdivision process.

18 A Yes.

19 Q Would that be one of the issues that has to
20 be looked at, a tentative subdivision approval?

21 A No. The preliminary subdivision approval
22 the DOT gets solicited for comments.

23 Q Well, so you would have the DOT comments
24 before the preliminary subdivision approval occurs.

25 A The DOT comments would be on the

1 preliminary subdivision approval letter.

2 Q Okay. And you can construct following that
3 preliminary subdivision approval if you have all
4 other...

5 A Approvals for construction plans, yes.

6 Q For tentative subdivision approval is one
7 of the things that you're looking at where the roads
8 go and what improvements should be made?

9 A It would show all the roadways both offsite
10 and onsite. The county normally comments back on what
11 standards the design needs to be based on.

12 Q Wouldn't you also want to know what roadway
13 improvements need to be made?

14 A It will come out in the preliminary
15 subdivision approval letter, the types of improvements
16 that needs to be made. It's normally correlated to
17 the zoning.

18 MR. YEE: That's it. Thank you very much.

19 CHAIRMAN HELLER: Ms. Benck, any redirect?

20 MS. BENCK: If I may just briefly.

21 REDIRECT EXAMINATION

22 BY MS. BENCK:

23 Q Stacy, you mentioned that when an Applicant
24 submits a subdivision application, within 45 days the
25 county issues a preliminary subdivision approval

1 assuming that they submitted --

2 A Yes.

3 Q -- the documentation that was required.

4 But then you were also discussing how a preliminary
5 subdivision approval includes comments that were
6 received by agencies and certain requirements imposed
7 by agencies.

8 So my question to you is this: Does
9 preliminary subdivision approval from the county
10 necessarily always include the requirements that the
11 different agencies have imposed? Or are sometimes
12 those requirements determined later?

13 A There's several things that happen.
14 Because the county's, by ordinance, obligated to give
15 you the preliminary subdivision approval 45 days to
16 the time the application is accepted by them. On many
17 occasions certain agencies do not respond back within
18 the 45 days.

19 So, for example, if the DOT does not
20 respond back in 45 days, the standard comment would
21 be, you know: Meet all the DOT requirements. Contact
22 the DOT for maybe specific information.

23 So those kind of comments does come out in
24 the preliminary subdivision approval letter. In the
25 case of -- in this particular case what I can see

1 happening is the DOT may come back at a later date
2 after, for example, the TIAR is accepted, to come back
3 with conditions saying: "Well, the TIAR, the final
4 accepted TIAR has these conditions. And you need to
5 address this prior to final subdivision approval." So
6 there may be comments that come out after the issuance
7 of the letter.

8 Q Understood. In your experience would a
9 subdivider for a project such as this be able to
10 obtain final subdivision approval from the county of
11 Maui if the Department of Transportation had not
12 signed off on construction plans or otherwise
13 indicated its approval?

14 A No. All of the conditions on the
15 preliminary subdivision approval letter must be
16 addressed to secure final subdivision approval. So
17 normally what happens is if an agency does not respond
18 back the consultants normally go and try and meet with
19 those agencies and try to get their formal comments to
20 come out. But you need to definitely address those
21 comments.

22 Q So, again, I'm going to ask the same
23 question but maybe just a little bit differently.
24 Will the county of Maui issue final subdivision
25 approval without having gotten a communication from

1 State Department of Transportation stating that the
2 State Department of Transportation has approved this
3 Project?

4 A No, they will not.

5 Q Thank you.

6 MS. BENCK: I have no further questions for
7 this witness.

8 CHAIRMAN HELLER: Commissioners, any
9 questions? Commissioner McDonald.

10 COMMISSIONER McDONALD: Mr. Otomo, thank
11 you for being here. Just a couple clarifying
12 questions. If you turn back to that slide 17, maybe
13 the one that showed the detention basin. I guess that
14 will do. You mentioned that the lower portions of the
15 west, the west side that's where you anticipate
16 locating the 9-acre detention basin?

17 THE WITNESS: Yes.

18 COMMISSIONER McDONALD: Is that specific
19 for the roadway infrastructure? Or is that taking
20 into account the development of the 28 lots?

21 THE WITNESS: We would treat the 28 lots as
22 being developed for industrial uses. So it's not
23 going to be evaluated based on having nothing on
24 there. The detention basins are sized as if the lots
25 were developed.

1 COMMISSIONER McDONALD: Is that to also
2 address the county requirements for water quality?

3 THE WITNESS: Yes.

4 COMMISSIONER McDONALD: So as far as the
5 stubouts being provided to the individual lots, the
6 individual lot owners will not need to provide the
7 necessary water quality, water quantity prior to
8 discharge into the subdivision infrastructure.

9 THE WITNESS: In terms of the quantity they
10 would not be. However, each individual lot owner
11 would come in for a building permit.

12 And at the time they go in for a building
13 permit they would have to have site specific Best
14 Management Practices as it relates to stormwater
15 treatment on each of the lots. So that would be
16 handled during the building permit process for each of
17 the lots.

18 COMMISSIONER McDONALD: So the individual
19 lot owners will be responsible to address the county's
20 requirements for water quality.

21 THE WITNESS: Quality, yes.

22 COMMISSIONER McDONALD: Thank you. I'm not
23 sure if you know, but if you do have any idea where
24 the Department of Health UIC line falls with relation
25 to the property?

1 THE WITNESS: I'm not sure. I think it is
2 within the UIC line.

3 COMMISSIONER McDONALD: It's within the
4 underground injection control.

5 THE WITNESS: Yes.

6 COMMISSIONER McDONALD: I know you folks
7 are still planning this out. Just based on the
8 location of the water system and the thousand foot
9 radius might be difficult to kind of fit in an
10 absorption bed because of that radius that's required
11 to be set back from the well source.

12 The reason why I asked was the possibility
13 of an underground injection. If it's above that line
14 then might be additional challenges.

15 THE WITNESS: The conversations we've had
16 with the Department of Health is that they would allow
17 us to combine maybe 3 or 4 lots that fall within that
18 thousand foot radius, to combine to align, have the
19 leach field on a lot that's outside of the thousand
20 foot radius provided that there's the proper easement
21 and documentation provided.

22 COMMISSIONER McDONALD: Great. Thank you.

23 CHAIRMAN HELLER: Commissioners, anything
24 else? Commissioner Inouye.

25 COMMISSIONER INOUE: Thank you. I'm

1 looking at Exhibit 42 errata. It's one of the slides
2 there too I think. It's Exhibit 42 errata but I think
3 you have a slide that has maybe a portion of it. The
4 water treatment system. Yeah. Okay.

5 I'm trying to get a feel for what that
6 thousand foot radius is. I guess that's not the right
7 exhibit to look at because it doesn't show the entire
8 property.

9 But the entire property length is, what, or
10 the width? Trying to figure out what thousand feet is
11 like.

12 THE WITNESS: The width is less than
13 thousand feet. Like I previously mentioned a thousand
14 foot radius would go outside of the mauka boundary as
15 well as the makai or the west boundary. It would
16 have -- it would probably extend somewhere down in
17 this area and a portion right in this area right here
18 outside of the property.

19 COMMISSIONER INOUE: Okay. So that's just
20 a tentative location, right?

21 THE WITNESS: That's correct, yeah.

22 COMMISSIONER INOUE: I'm trying to
23 determine whether the adjoining landowner, which I
24 think is DLNR.

25 THE WITNESS: This site is DLNR. This site

1 is HC&S.

2 COMMISSIONER INOUE: Okay. Have they been
3 informed that there might be restrictions to sewer
4 systems?

5 THE WITNESS: Let me tell you what my
6 understanding is. You could probably address this
7 question to Mr. Nance when he comes up to testify.
8 Part of the process in the private water system was
9 that the adjacent landowners that are affected by the
10 thousand foot radius would have to be notified.

11 COMMISSIONER INOUE: I missed the first
12 part. When do they have to be notified?

13 THE WITNESS: Can I ask you to ask
14 Mr. Nance that question? But that's why I'm saying
15 they would be notified. At what particular time I'm
16 not sure of that. But they would be notified.

17 COMMISSIONER INOUE: By that I meant is it
18 during a permit process? I can ask Mr. Nance.

19 THE WITNESS: Yes. I would suggest that
20 Mr. Nance answers that question.

21 COMMISSIONER INOUE: Okay. And is it your
22 understanding that as far as individual lot owners --
23 because that's not really defined yet -- the CC&R's or
24 the properties themselves would contain conditions and
25 easements to make sure they understand that the

1 leaching field has to be outside the thousand foot
2 radius?

3 THE WITNESS: Yes. And the ones that are
4 affected by it, they would have to have easements
5 designated on their property to make sure that they're
6 outside the thousand foot radius.

7 COMMISSIONER INOUE: Thank you.

8 CHAIRMAN HELLER: Commissioners, anything
9 else? Just following up again on that. And this may
10 be a question for Mr. Nance or somebody else. You
11 mentioned that there has to be notice to the adjoining
12 landowners who are affected. Is it just notice or is
13 it an actual consent of some sort required?

14 THE WITNESS: Mr. Nance will be better to
15 answer that question.

16 CHAIRMAN HELLER: Okay. Anything else for
17 this witness? I think it's an appropriate time to
18 take a lunch recess. Let's try to reconvene at 1:30.
19 Just so everybody knows the schedule we will go from
20 1:30 until a few minutes before 3, and then we have to
21 stop for today because there's the hearing scheduled
22 on the proposed new rules at 3:00.

23 MR. GIROUX: Chair, the County anticipates
24 that if there's only one more witness after lunch that
25 we can have Mr. Spence available. We're willing to

1 take him out of order if there's no objection.

2 MS. BENCK: Petitioner has no objection to
3 taking Mr. Spence out of order.

4 CHAIRMAN HELLER: Sure. We would like to
5 use the time we have available.

6 MR. GIROUX: Okay. I'll get him on the
7 Smart Phone.

8 CHAIRMAN HELLER: Okay. We'll reconvene at
9 1:30.

10 (The proceedings were adjourned for lunch
11 at 12:15-1:35)

12 CHAIRMAN HELLER: Okay. Let's go back on
13 the record, get started again. Ms. Benck, do you have
14 any further witnesses?

15 MS. BENCK: Yes, we do. Thank you. The
16 last witness we'd like to call today is Mr. Charlie
17 Jencks. And we would ask that Mr. Jencks be qualified
18 as an expert in planning, permitting and project
19 feasibility. His resumé was submitted as I believe
20 Petitioner's Exhibit 32 if anybody cares to look that
21 over.

22 MR. GIROUX: We have no objection.

23 MR. YEE: No objection.

24 CHAIRMAN HELLER: Commissioners, any
25 questions? Accepted as an expert witness.

1 CHARLES JENCKS

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

4 THE WITNESS: Yes, sir.

5 CHAIRMAN HELLER: Go ahead.

6 MS. BENCK: Thank you, Mr. Chair.

7 DIRECT EXAMINATION

8 BY MS. BENCK:

9 Q Mr. Jencks, is Petitioner's Exhibit 33 your
10 written direct testimony?

11 A Yes, it is.

12 Q Rather than reading through that testimony
13 word-for-word would you please let us know your
14 background briefly and then, more importantly, your
15 involvement in this Project.

16 A Certainly. I am at present an employee of
17 Pacific Rim Land, Incorporated which is the land
18 acquisition development arm of Goodfellow Brothers,
19 Incorporated. I also work for Mr. Steven Goodfellow
20 on a variety of partnerships that he's involved in
21 representing him as the owner's representative, and
22 through Pacific Land was involved in the Project
23 before you today.

24 I generally -- I was a State Land Use
25 Commission member for about a year. I have worked for

1 the County of Maui. I was the Director of Public
2 Works for 8 years and a Deputy Director for 2 years.
3 And spent since about 2000 in the private sector
4 working for Steve and on various projects and Pacific
5 Rim Land.

6 CHAIRMAN HELLER: Excuse me, Mr. Jencks.
7 For the benefit of the court reporter slow it down a
8 little bit, please.

9 THE WITNESS: I'll slow it down. The
10 Project before you today I became involved in about
11 2010. Working for GBI Holding, Incorporated, we
12 formed a subsidiary CMBY to acquire the land.

13 I participated in the acquisition process
14 looking at the purchase, sales agreements, the
15 amendments to the agreements, and the financing of the
16 Project through GBI Holding.

17 So I am familiar with the Project also
18 working with Blanca who's here today as well, on the
19 layout of the Project, the design and the various
20 entitlement aspects of the Project, hiring the
21 consultant team, getting the Environmental Assessment
22 completed, working with Chris Hart and Partners on
23 that process, then also hiring a staff of technical
24 consultants to assist us in this process working all
25 the way through change in zoning and Community Plan

1 Amendment with the county of Maui.

2 Q Could you please describe what is intended
3 to be developed in this Project?

4 A The Project is, as has been described and
5 shown on that map, generally 86 acres located in the
6 central area of the isthmus of the Island of Maui.
7 It's intended to be developed as a heavy industrial
8 area as Mr. -- as Glenn was saying earlier there
9 really isn't much heavy industrial land to speak of
10 that's available that's suitable for the types of uses
11 that the County of Maui has designated in the new M3
12 restricted zoning ordinance.

13 We acquired this land from Alexander &
14 Baldwin from the beginning with the idea that it would
15 be a heavy industrial use area simply because, as
16 Glenn said, there isn't anything else available.

17 And what is available it's compromised by
18 adjacent uses that are not compatible with the heavier
19 uses types that you'd find in a heavy industrial use
20 area.

21 So 86 acres, heavy industrial as has been
22 stated previously today. We have a layout of
23 approximately 28 lots. That number of lots could
24 evolve given market demand. Maybe we'll have more
25 half-acre area lots, maybe more larger lots. It's

1 going to be driven by what the market is gonna demand.

2 But you'll also notice on that map there's
3 a series of large lots in the middle of the property
4 that we deliberately laid out hoping that we would
5 have folks coming in and purchasing land in the heavy
6 industrial use area that could be used for some of the
7 uses like storage.

8 You pay a lower value per square foot, get
9 some of these containers out of the public
10 right-of-way in the Kahului Industrial Complex, get
11 'em out here for storage which is a better site.

12 So the combination of smaller lots and
13 larger lots we think today addresses the market, but
14 that market as interest rates change, as the economy
15 changes, will evolve over time.

16 Q Mr. Jencks, Petitioner's Exhibit 39 is a
17 copy of zoning ordinance 3977 that established the M3
18 restricted industrial district?

19 A Yes.

20 Q One of the permitted uses in there is
21 landfill, solid waste processing and disposal. Does
22 the Petitioner intend to develop this property to
23 include a landfill?

24 A At this time, no. If I may elaborate --

25 Q Please.

1 A -- on that. As you drive around Maui, Maui
2 has one operating municipal landfill which is off
3 Pulehu Road. It's owned and operated by the county of
4 Maui. There's also a one construction/demolition
5 landfill which is located in the Ma'alaea area that is
6 near capacity. It's probably got two years of
7 capacity left.

8 When I initially sat and talked to Steve
9 Goodfellow and Chad Goodfellow, who's now the
10 president of the company, about acquiring this piece
11 of land, one of the ideas we had was using this piece
12 -- a portion of this piece of land as a construction,
13 demolition/recovery facility similar to -- there's one
14 on O'ahu in the Wai'anae area. PVT I think is the
15 name of it.

16 We looked at that. We agreed that we would
17 evaluate that potential use. A landfill is a
18 permitted use in the M3 district, restricted district.
19 It doesn't require in the county of Maui any
20 discretionary permits. It does require from the State
21 Department of Health an Environmental Impact Statement
22 and other permits from the State Department of Health.
23 In the county now, with M3 it's a permitted use.

24 We've looked at the feasibility of that
25 type of use on this land. We spent a lot of money

1 with consultants proving out the feasibility. What we
2 concluded was, and I think everybody would understand
3 this fairly easily, it's very expensive to dig a hole
4 and fill it with something else. It doesn't make any
5 economic sense.

6 At the end of the day that type of use,
7 construction/demolition recovery facility requires a
8 landfill operation because there's no hole here. Many
9 of you drove out and saw the site. There's no hole to
10 fill. So the idea of digging a hole and putting
11 something back in it doesn't -- financially doesn't
12 make any sense.

13 So at this point in time we decided, look,
14 we're going to back away from that concept. We'd like
15 to help the county out because once the existing
16 facility closes it goes to the county landfill which
17 is expensive to operate, fill and close. So as of
18 today no landfill is proposed.

19 If indeed sometime in the future we elected
20 to do that which I cannot foresee, we'd have to go
21 through a whole 'nother process including a Motion to
22 Amend this Application because it's not on the table
23 today.

24 It doesn't say, however, that one of the
25 permitted uses is a concrete recycling facility in the

1 M3 district. As you may or may not be aware
2 Goodfellow Brothers spends a lot of time and effort
3 recycling material on Maui. They have a facility in
4 Kihei on land that was recently zoned, I think it's
5 M2, along with their construction headquarters in a
6 series of modular trailers.

7 We may chose to move that operation out
8 here. It doesn't require a landfill. It's a very
9 simple and straight forward operation. So that's a
10 possibility here, but that's as far as we're going
11 today.

12 Q Did the Environmental Assessment assess
13 the impacts of developing this property as a landfill?

14 A No.

15 Q So if a landfill would be proposed would a
16 new Environmental Assessment have to be done?

17 A Yes. An Environmental Impact Statement
18 would have to be required.

19 Q And is it your representation that you
20 would come back before the Commission to seek a Motion
21 to Amend should a landfill ever be pursued?

22 A Absolutely.

23 Q Thank you. Mr. Jencks, there were a number
24 of questions earlier this morning about the potential
25 impacts to adjacent property owners. I know -- and

1 it's potential impacts to adjacent property owners
2 with respect to the ability for them to put in wells
3 in relationship to the individual wastewater systems
4 that are going to be developed on the CMBY property.

5 If you could, please, describe what kind of
6 outreach you conducted with adjacent property owners.

7 A I guess the best way to put this is we
8 closely watched the county of Maui in the process of
9 reviewing and approving the Maui Island Plan that
10 Glenn Tadaki referenced earlier today, specifically
11 with respect to where the Urban Growth Boundaries
12 would be located adjacent to this property.

13 There was thought at one time that the
14 growth boundary would be on the makai side. It is now
15 located on the mauka side of the property allowing
16 this area within the Urban Growth Boundary.

17 In the context of those discussions the
18 Department of Land and Natural Resources and DHHL came
19 to the Council and proposed plans for the area makai
20 of this property.

21 The Council reviewed their proposals which
22 were very, very extremely non-specific. They had big
23 colored areas. They wanted to do light industrial
24 here, heavy industrial here and commercial light
25 industrial here but nothing specific. They couldn't

1 come up with any square footage numbers. They had no
2 idea what they wanted to do, numbers of lots.

3 So what happened in that discussion was the
4 Council basically said: We're not going to consider
5 this, these changes for inconclusion into the Urban
6 Growth Boundary because you can't tell us what it is
7 you want to do here. Maybe go back and rethink your
8 plans we'll talk about it again.

9 I was invited to attend a couple meetings
10 with DLNR and DHHL in their consultant's office in
11 Wailuku. I was invited because they asked me to come
12 in and help them maybe put together a plan that they
13 could take back to the Council to make their case.

14 And we sat and talked about what their
15 plans were. During those conversations I have to say
16 I made it abundantly clear with both agencies that we
17 were here. I told them what we intended to do. I
18 told 'em our intention is to create a water source for
19 the Project, and address our drainage issues on site.

20 And if you want to participate we welcome
21 that. Whatever it is we can do with regard to access,
22 whatever we can do with regard to creation of water
23 supply for your future operations it's better to get
24 people to work together. To this day I received
25 nothing in response.

1 Also talked to HC&S about their lands which
2 are mauka, the sugarcane operation controlled by
3 Alexander & Baldwin, they have no plans. They're well
4 aware of what it is we're doing. So I have talked.
5 I've had discussions with. I've advised them. I've
6 asked them. And we've received nothing in return with
7 regard to their potential needs and what we could do
8 to cooperate and work together.

9 I would also say with regard to the
10 racetrack area that's been talked about as well.
11 That's actually, it's owned by the County. It was an
12 executive order to the County of Maui, gosh, I think
13 maybe in the '70s where the racetrack is that Mike
14 talked about and Glenn.

15 The Parks Department. We went to the Parks
16 Department and suggested, "Look. This is your
17 recreational area. Can we work together on something
18 with regard to *your* future needs?" And we basically
19 got nothing in return.

20 So in direct answer to that we understand
21 who's adjacent to us. We have reached out and asked
22 and basically got nothing in response.

23 Q This will be further addressed with
24 Mr. Nance tomorrow. But as Petitioner's
25 representative if there are any notification

1 requirements in connection with drilling potable wells
2 or getting a potable water system approved for this
3 Project, will Petitioner comply with all notification
4 requirements?

5 A Absolutely.

6 Q Thank you. I'm going to turn tack a little
7 bit now and talk about the development timeline. Are
8 you familiar with the Commission's requirement that in
9 order to be reclassified to the Urban District the
10 development of the infrastructure must be completed
11 within ten years of the Commission's reclassification?

12 A Yes, I am.

13 Q So can you please tell us what the
14 development timeline is for this Project?

15 A Certainly. We have been in the process --
16 we acquired the land in 2011. Today we are here
17 before this Commission asking for a District Boundary
18 Amendment.

19 It would be my desire that we could, once
20 receiving the District Boundary Amendment, assuming
21 you grant it, we would try to get in front of the Maui
22 Planning Commission perhaps maybe by the end of the
23 year, most likely first quarter next year.

24 I think that would be a fairly straight
25 forward process with the commission, couple meetings.

1 The problem then in the calendar year is that the
2 Council starts its budget deliberations in March. And
3 they don't do anything other than budget till the
4 budget's approved. So that's the end of June, 1st of
5 July. I would expect by the end of this coming
6 calendar year we will be fully entitled, zoning
7 approval, Community Plan Amendment with both Planning
8 Commission and the Maui County Council.

9 Sometime in that timeframe after Planning
10 Commission approval which, hopefully, will be the
11 first quarter, I will submit -- I want to submit a
12 preliminary subdivision map with the county of Maui to
13 start the process.

14 Now, I cannot get a final map on that until
15 I get the zone change approved by the Council. The
16 idea here is that this is exactly, this is exactly the
17 process we followed with Waiko, which you heard
18 recently. We received Maui Planning Commission
19 approval.

20 I filed a preliminary map with Mr. Otomo. I
21 have an idea what the needs are gonna be. I get the
22 comments. I can't get a final 'til I get zoning but
23 it allows me to then start the design process for all
24 the civil construction plans.

25 So I will, I *will* certainly file a map, get

1 the preliminary. It will give me a basis for
2 continuing on. I will then go to Council get the
3 change in zoning formally approved, then the Community
4 Plan Amendment. As soon as those two documents are
5 approved and a unilateral agreement recorded, I want
6 to go to a final map.

7 I would like to go to final map, start the
8 civil construction work, get people back to work, as
9 soon as I get a preliminary map in Maui County -- I
10 don't know about the other jurisdictions -- but in
11 Maui County with the preliminary I can actually go and
12 I can advertise property for sale.

13 I can't go into a hard -- I can't transfer
14 interest. But I can certainly do it by contract and
15 start the interest process for possible financial
16 funding for the Project.

17 And I would expect that we're looking at
18 maybe a year to a year and-a-half's worth of work on
19 the onsite infrastructure.

20 Q Mr. Jencks, this is maybe a legal question.
21 Because of your expertise in project development I'll
22 throw it at you. Will you be able to close on a lot
23 sale prior to obtaining final subdivision approval
24 from the County?

25 A No.

1 Q Thank you. In that description of timing
2 you mentioned construction and when you would start
3 construction. But what I want to be very specific
4 about is would you start construction prior to
5 obtaining final subdivision approval?

6 A I guess that depends on what you define as
7 "construction".

8 Q Please, you define it.

9 A Okay. We have done -- as part of the work
10 on the feasibility for the potential landfill on this
11 property we spent a lot of time and money evaluating
12 the substrata on the property. And I actually have a
13 restriction in the deed that restricts me from
14 quarrying activity on this property because of
15 Hawaiian Cement is just up the hill.

16 We would probably want to do some grading
17 activity on property because there is some high
18 quality rock that we can process and use on this
19 Project not for export but use to help develop this
20 Project.

21 We have roadways to build. We have
22 infrastructure to complete. We have vetting material
23 we need to generate. And, of course, Goodfellow
24 Brothers would be doing that work because they own the
25 property.

1 So we would want to do some work
2 potentially but that work you have to understand you
3 don't want to get too far out ahead of yourself. You
4 want to start that work in a reasonable timeframe so
5 that when you have that material together you can then
6 actually start the onsite construction work for the
7 roads and the utility services. So, yeah, we would --
8 it would be good to start that work and start
9 developing that resource.

10 Q Thank you. In terms of Project feasibility
11 certainly cost is an issue. And the Commission's
12 required to feel and get comfortable with whether or
13 not the Petitioner has the financial capability to
14 pursue the Project as described.

15 So now the Project as described involves
16 purely infrastructure development, is that correct?

17 A Essentially, yes.

18 Q Can you give us an estimated cost for that
19 development?

20 A The current estimate for on and offsite
21 infrastructure development, which I believe is a worse
22 case scenario, is approximately \$20 million.

23 Q What is your means of financing that
24 construction cost?

25 A Well, there's the most logical approach

1 would be to partially fund it through GBI Holding.
2 I've already had discussions with a couple of lenders
3 on the Project.

4 As soon as I can demonstrate, once again
5 getting back to the subdivision process, if I can
6 establish a preliminary map and get interest, there
7 are a variety of lenders that would be interested in
8 talking to me about loaning me the money which,
9 frankly, with GBI Holding and Steve's approach we
10 would like to do that. If necessary we'll fund it on
11 our own and phase the construction accordingly.

12 Q So financing is a viable option and having
13 preliminary subdivision approval is an important
14 component of getting financing?

15 A Yes.

16 Q Thank you. Now I'm going to move on to a
17 different subject area. That's I'd like to discuss
18 the Association that will control this Project when
19 you leave.

20 There's been some talk about the sort of
21 declaration of conditions, covenants and restrictions
22 that will be imposed on the Project and the kind of
23 limitations that will be in those CC&R's.

24 I'd like to, if I may, direct you to some
25 of the conditions that we have been trading with the

1 Office of State Planning over the last week. I'll
2 call these colloquially the "DOH conditions".

3 Looking over the DOH condition, meaning the
4 pollution prevention Best Management, pollution
5 prevention Best Management Practices, are there any
6 language in that most recently proposed iteration that
7 Petitioner has concerns with?

8 A No.

9 Q Is it Petitioner's representation that you
10 would adhere to these conditions?

11 A Yes.

12 Q Thank you. If that's Petitioner's
13 representation, when the Petitioner is gone who will
14 adhere to these conditions?

15 A It would be -- if the Petitioner is gone,
16 as a part of the implementation of these provisions we
17 would establish an association. There will probably
18 be two associations.

19 One will be a water association to maintain
20 and process and make sure the water system remains in
21 compliance with DOH Clean Water Branch regulations,
22 but also an organization that would be responsible for
23 all the common area and enforcing these CC&R's you're
24 referencing in this document.

25 Q So even when Petitioner is no longer

1 involved with the Project there will be an entity that
2 will have the ability to lien parcels?

3 A Yes.

4 Q If there's a failure to comply with the
5 CC&R's.

6 A And, frankly, that's not uncommon. One
7 project in particular, the Lahaina Business Park, has
8 a similar organization for not water maintenance but
9 for common area drainage maintenance, those kinds of
10 things. Very common. Consolidated Baseyard has the
11 same thing. So it's not uncommon.

12 Q Is there any intention of selling water to
13 people outside the Project Area?

14 A No, there's not.

15 Q Thank you. Before I turn you over are
16 there any last comments you would like to make?

17 A No. I think we have covered everything.

18 MS. BENCK: Thank you. That's it.

19 CHAIRMAN HELLER: Mr. Giroux.

20 CROSS-EXAMINATION

21 BY MR. GIROUX:

22 Q Thank you. Thank you, Mr. Jencks. Have
23 you read Mr. Spence's written statement?

24 A I believe I did, yes.

25 Q It's Exhibit 4, County's Exhibit 4 I

1 believe.

2 MS. BENCK: I just gave Mr. Jencks my copy
3 of County's Exhibit 4.

4 MR. GIROUX: Okay.

5 THE WITNESS: I remember reading through
6 this, yes.

7 Q Okay. Do you have any concerns about these
8 conditions as far as the applicability to your
9 Project?

10 A Well, there's been a lot of conditions,
11 drafts going back and forth. Generally speaking these
12 are fine except for I don't recall if there was an
13 issue here with regard the traffic improvements or
14 not. But that is one area's --

15 Q That's No. 5.

16 A No. 5.

17 Q Why don't we focus on that.

18 A Okay.

19 Q I think we're pretty good on all the
20 others. If you want to just read No. 5 really quickly
21 and then maybe we can have a discussion about what
22 your concerns are with that.

23 MS. BENCK: Would you like Mr. Jencks to
24 read it?

25 Q (By Mr. Giroux): Yeah, if you're more

1 comfortable you want to read it into the record.

2 A No, it's okay. I can handle it.

3 Q To summarize it looks like it's a DOT type
4 of condition that's concerning a TIAR. The issue
5 looks like it's an issue of timing regarding when that
6 TIAR is to be submitted or accepted in relation to the
7 county subdivision process.

8 A Correct.

9 Q Can you, I guess, expound about what your
10 concerns are regarding that condition?

11 A Well, given my vast experience in this
12 area, (laughter), I can tell you that the process of
13 developing the Environmental Assessment a TIAR was
14 done and submitted for review and comment.

15 To this day I think we're still working
16 with State DOT on what it is they would want. This
17 process goes on, goes on, goes on. It's very
18 difficult to get acceptance or a buyoff, if you will,
19 from an agency that -- the best way to describe it is
20 if you want something done with that agency the best
21 way to get it is to create some kind of urgency. "I
22 need this now. We need to get agreement. I need to
23 move on. Every other agency in the state has signed
24 off except you. Can we move this process along?"

25 In the context of the subdivision process,

1 the TIAR identifies the potential impacts and then
2 also identifies, through consultation with DOT and
3 possibly the County of Maui, the mitigation that
4 you're gonna have to provide to address the traffic
5 impacts.

6 There are times when that mitigation is a
7 moving target because things change with DOT. The
8 most desirable approach is to start the process with
9 the Environmental Assessment, which my consultant has
10 done, we start the dialogue. We have discussions.
11 I'm allowed to file a subdivision map. The
12 subdivision map also goes to DOT for review and
13 comment. You get more comments on the TIAR. This is
14 an iterative process so that at some point the
15 mitigation that's needed is solidified.

16 The civil plans can be developed, as
17 Mr. Otomo described earlier. Once you get a
18 preliminary approval map and your comment letter you
19 know more specifically what State DOT wants.

20 Then the process starts of developing the
21 civil plans, getting those plans approved by DOT and
22 getting them to sign off on the plans. And they will
23 *not*, by the way, do that until they've agreed that the
24 TIAR adequately addresses the impacts and the proper
25 mitigation.

1 Once they sign off on the civil plans *then*
2 and only then can I receive a final subdivision map.
3 So it's an iterative process. I guess the best way to
4 describe this is saying that I need to have a TIAR
5 submitted prior to submitting a subdivision
6 Application. Having acceptance on that is simply,
7 it's not possible. It just simply doesn't happen in
8 the world that we live in. It's always an iterative
9 process with DOT. Goes all the way through the
10 process up until the very end.

11 And, frankly, I can give you an example
12 where it took me years to get my civil plan approved
13 working with DOT.

14 I finally got to that point. They signed
15 the civil plans and then put an asterisk that said,
16 "Oh, by the way, no occupancy until we say you can
17 occupy." So it doesn't seem to ever end, if you know
18 what I mean. There's always something.

19 And besides that, I have to tell you, that
20 even if you *have* the approved plans it's still an open
21 book. These folks can change at their whim the width
22 of the lanes. They can. And they have done that. So
23 it's an ongoing process.

24 I would say to you the best approach on
25 this is to allow the process to work itself through

1 and get yourself to the end where you finally have a
2 buyoff with all these agencies.

3 Q So what you're saying is you would feel
4 more comfortable if that condition read that TIAR
5 would be accepted prior to *final* subdivision?

6 A Yes.

7 Q Okay. So absent that are you okay with all
8 of the other conditions as far as if those were
9 imposed on the Project?

10 A Yes.

11 MR. GIROUX: No further questions.

12 CHAIRMAN HELLER: Mr. Yee.

13 CROSS-EXAMINATION

14 BY MR. YEE:

15 Q Mr. Jencks, with respect to the mitigations
16 recommended by your consultants in the EIS, is the
17 Petitioner willing to perform or implement the
18 mitigations recommended by your consultants or an
19 equivalent mitigation or better mitigation?

20 A Yes.

21 Q With respect to the timeline for
22 construction, is it your representation that
23 Petitioner will be completed with *its* construction of
24 this Project within ten years?

25 A Yes.

1 Q You went over a timeline. And I just
2 wanted to -- maybe I was getting a little confused.
3 But I want to go over some of those dates and
4 processes with you again. If I understood your
5 testimony you said you expected to get the zone change
6 and Community Plan Amendments completed by the end of
7 2014.

8 A That's correct.

9 Q Now, prior to then you anticipate
10 submitting a Preliminary Subdivision Application.

11 A After Maui Planning Commission approval I
12 would like to submit a preliminary map.

13 Q Okay. So the map gets submitted after
14 December of 2014.

15 A Hopefully that map will be submitted first
16 quarter of 2014.

17 Q Okay. You anticipated the Community Plan
18 Amendment zone change would occur, that approval would
19 occur by December of 2014. And sometime after
20 whenever the approval occurs is that when the map gets
21 submitted?

22 A No. The map will get submitted -- my
23 anticipation here, if everything goes according to the
24 schedule we've talked about, getting through the State
25 Land Use Commission with the District Boundary

1 Amendment by the end of this calendar year, working
2 with the Department of Planning successfully as in the
3 past on an Application that's pretty straight forward,
4 getting to the Commission pretty soon if possible.

5 So maybe the first quarter of 2014 I could
6 be in front of the Maui Planning Commission on the
7 change in zoning and the Community Plan Amendment.

8 Okay. They have to approve both and
9 recommend. They recommend to the Council. At the
10 time I walk out of that meeting with the commission I
11 would like to be able to file a preliminary map.
12 Because I'll have a good sense of what the issues are,
13 and what they're recommending to the Council, if any.

14 Q Do you have a date in which you anticipate
15 the subdivision Application is filed?

16 A No.

17 Q Sometime after the Planning Commission
18 reviews, though, the zone change.

19 A Right.

20 Q I take it the preliminary subdivision
21 approval must occur after the zone change and
22 Community Plan Amendment, correct?

23 A Not necessarily. The reason why I want to
24 submit the map after Planning Commission is, once
25 again, I'll have a good feel on what their concerns

1 are and what the community's concerns are, if any, and
2 what the agency's concerns are. Because the Planning
3 Commission will send the Application out for all the
4 agencies to review again.

5 So I get all these comments back in from
6 DOT, DLNR and whomever. Once I get Planning
7 Commission approval I'll have the conditions that
8 they're recommending to the Council. It will give me
9 good direction.

10 If I submit it before I'm just guessing
11 what the issues are going to be. I want some
12 direction. It doesn't hurt the overall schedule to
13 wait until after the Commission makes their
14 recommendation.

15 Q The original question was: Can you get a
16 preliminary subdivision approval prior to the zone
17 change and Community Plan Amendment approval? I
18 thought your answer was "yes".

19 A Yes you could, but it would be pretty much
20 meaningless.

21 Q Do you think it's likely that you would
22 get?

23 A No.

24 Q So you anticipate getting the preliminary
25 subdivision approval after the zone change and

1 community plan amendments are approved?

2 A By the Planning Commission.

3 Q Oh, but not by the city council.

4 A The county council would make the final
5 determination. The preliminary will be submitted and
6 processed after the Maui Planning Commission hears the
7 Project and makes a recommendation to the Council.

8 Q So do you anticipate that the preliminary
9 subdivision approval occurs before the county
10 council's approval of the zone change and Community
11 Plan Amendment?

12 A Yes.

13 Q Do you have a timeframe in which you
14 believe that will occur?

15 A What will occur?

16 Q The preliminary subdivision approval.

17 A No.

18 Q Since you don't have a timeframe for that I
19 assume you also don't have a timeframe on when final
20 subdivision occurs.

21 A Years. (laughing) No, I don't.

22 Q With respect to construction when it occurs
23 during this land use, various land use processes, you
24 talk about grading may occur, I guess, soon in time to
25 your roadway and utility services how you wanted to

1 time it, is that right?

2 A Correct.

3 Q What do you think in this process the
4 roadway and utility service construction will begin?

5 A It will not begin until after I have civil
6 construction plan approval from the state of Hawai'i
7 and the county of Maui.

8 Q So there will be, other than some grading
9 to process the rock, which will occur near in time to
10 this, are you saying you will not begin any
11 construction until final subdivision approval?

12 A Any site roadway, state highway
13 construction, correct.

14 Q Other than grading and processing of rock
15 is there any other construction activity that will be
16 occurring on the site prior to final subdivision
17 approval?

18 A You might see -- what's the best way to put
19 this? -- final completion of the wells on property but
20 that's about it.

21 Q With respect to Office of Planning's
22 conditions I take it you've had a chance to review
23 them?

24 A Yes.

25 Q Let me first skip OP's Conditions 1 and 4.

1 No. 1 being traffic and No. 4 being the pollution
2 prevention plan. Other than the OP Conditions
3 proposed 1 and 4, do you have concerns with any of the
4 other OP proposed conditions?

5 A I think we're fine.

6 Q Let me just go to No. 4. As proposed by
7 the Office of Planning in its written testimony there
8 is a 4(c) which requires all employees shall be
9 informed to immediately collect and contain any
10 industrial liquid spills.

11 I understand was there language that you
12 wanted to change on that particular condition?

13 A We talked about some changes. I'm okay
14 with the language as proposed.

15 Q Okay. With respect to Condition 1, I take
16 it as discussed with Mr. Giroux, you would want the
17 TIAR accepted at final subdivision approval, correct?

18 A By final subdivision approval.

19 Q And you don't know when the tentative
20 subdivision approval will occur. Let me change this
21 question. When do you anticipate the revised TIAR
22 will be submitted to DOT?

23 A Couple weeks?

24 (general audience chuckling)

25 Q That's what he said. (louder laughing) Can

1 you make it a week? Have you had a chance to look at
2 the Department of Transportation's comments to the
3 Office of Planning which was attached to the Office of
4 Planning's Position Statement?

5 A I may have briefly reviewed those.

6 Q Do you recall the Department of
7 Transportation having three comments, one being
8 something regarding regional improvements that the
9 county should impose?

10 A Can I just take a look at those?

11 Q Sure.

12 A To refresh my memory?

13 Q Sure.

14 A Which slide is this?

15 Q OP Exhibit 1. It's an attachment. OP
16 Exhibit 1.

17 A We're talking about the DOT one, right?

18 Q Yes.

19 A What's the date?

20 Q Attachment D. The last attachment.

21 A Okay. Continuing on.

22 Q The first involved an issue regarding
23 whether the County should impose a condition, is that
24 correct?

25 A Correct.

1 Q Would you agree that doesn't really affect
2 per se the TIAR itself?

3 A I would agree.

4 Q The second involved a trip generation count
5 and the suggestion that the analysis should include a
6 larger acreage, correct?

7 A Correct.

8 Q Is it your understanding Mr. Rowell has
9 done that calculus?

10 A Yes.

11 Q Then the third involved that the Level of
12 Service should reflect whether you've mitigated all
13 transportation impacts with Project and without
14 Project.

15 A Correct.

16 Q Do you know if Mr. Rowell has done that?

17 A I believe he has.

18 Q Okay. So the TIAR analysis, to respond to
19 the Department of Transportation's concerns, would be
20 those that would be it, right? Those are the concerns
21 and they've been addressed by Mr. Rowell, correct?

22 A Yes.

23 Q Is there any reason why you think this,
24 your case, your Project, presents a particularly
25 complicated scenario for review and analysis?

1 A No.

2 Q Other than the timing by which the TIAR
3 should be accepted, do you have any other -- I'm
4 sorry. I forgot one thing. With respect to the
5 timing of the construction improvements you would like
6 those construction improvements to occur -- you're
7 aware the Office of Planning has proposed to you the
8 possibility of having construction improvements occur
9 before the Certificate of Occupancy, the first
10 Certificate of Occupancy?

11 A Yes.

12 Q And that's acceptable to you?

13 A Yes.

14 Q Because it's actually *better* than what the
15 original proposal was, correct?

16 A Correct. (audience laughter) Moving in the
17 right direction.

18 Q In fact the proposal by the Office of
19 Planning to have the timing of the TIAR linked to the
20 approval of the preliminary subdivision application
21 also gives you more time than the original proposal
22 did.

23 A Yes.

24 Q So while you may not agree, it does go in
25 the right direction.

1 A We're going in the right direction.

2 Q How do you plan to meet -- I'm moving
3 subjects, just to let you know the individual
4 wastewater systems and your potable water source. How
5 did you plan to meet the thousand foot restriction on
6 individual wastewater systems?

7 A I had a couple discussions with Stacy, the
8 civil engineer for the Project. He was, I think he
9 did a pretty good job for describing how, for lack of
10 a better term, these systems, the leach fields can be
11 bached, if you will, so that you have one field for
12 multiple parcels, which is a real probability.

13 Also looking at the map with the larger
14 lots we're proposing. It makes it pretty easy to not
15 have an IWS on a larger lot. It can be on an adjacent
16 lot outside the radius with the proper easements
17 guiding who gets what, when and how they maintain it.

18 So I don't -- we have this as a blank
19 slate. I think we can easily design the subdivision
20 with the smaller lots and the larger lots
21 accommodating the radius.

22 Q When I looked at your conceptual plan and
23 sort of, frankly, eyeballed the potential location of
24 the potable water source, it looked like there were
25 several individual lots, smaller lots, that would be

1 included within the 1,000-foot radius. Is that your
2 understanding as well?

3 A Yes.

4 Q And are you suggesting that configuration
5 would change? Or are you suggesting there's some
6 engineering solution?

7 A Well, it could be a combination of both.
8 It could be some reconfiguration of the lots. It
9 could be also an engineering solution in terms of
10 delivering the wastewater from the individual lot to
11 an IWS facility offsite, which is an engineering
12 solution.

13 Q And that decision hasn't been made.

14 A No. But whatever decision is made we'll
15 have to comport with the state regulations.

16 MR. YEE: Thank you very much. No further
17 questions.

18 CHAIRMAN HELLER: Ms. Benck, any redirect?

19 MS. BENCK: Yes, thank you.

20 REDIRECT EXAMINATION

21 BY MS. BENCK:

22 Q Mr. Jencks, going back, if we can please,
23 to Director Spence's testimony and Condition No. 5.
24 You should have that in front of you. That's the
25 County's testimony that's in the binder.

1 A Which one is it?

2 Q I think it's County 4? It's a very big,
3 thick testimony over 60 pages. The page that I want
4 to look at is page 62 of 63.

5 A Would you help me find it? I'm not sure
6 where it is. (pause)

7 Q So this is just to go over a little bit
8 what you spoke about with Mr. Giroux just a minute
9 ago. But calling your attention again to Condition 5
10 proposed in Mr. Spence's testimony on page 62. The
11 last sentence of Condition 5 states that "Petitioner
12 shall complete all transportation improvements as
13 recommended in the revised TIAR prior to receiving
14 final subdivision approval from the county of Maui."

15 When Mr. Giroux asked you earlier if other
16 than the change with the timing of the TIAR, were
17 there any other changes that you thought were
18 appropriate to Mr. Spence's testimony and you said
19 "No".

20 I'm bringing your attention to that
21 sentence. And I'm going to ask you the same question:
22 Are you comfortable with that sentence as written?

23 A Yeah, I apologize. The last sentence is
24 not something I can do, I can live with.

25 Q So please offer what Petitioner's

1 alternative language is to address when the
2 improvements will be built.

3 A This ends with the following: "The
4 Petitioner shall complete all transportation
5 improvements as recommended in the accepted revised
6 TIAR prior to receiving final subdivision approval
7 from the county of Maui."

8 So what that means is I have to take all
9 the input from all the agencies; get my civil
10 construction plans drawn up, approved, make
11 \$20 million in infrastructure improvements before I
12 can get a final subdivision map.

13 And I will just tell you today that's
14 highly improbable. If I choose to finance the
15 Project, any lending institution is going to want to
16 know; "Okay. Where are we with subdivision
17 desirability, sales? Do you have any sold lots? Do
18 you have any reserved lots?"

19 It's very difficult to build a project
20 under this premise. Of course in the ideal world it'd
21 be great to have the developer make all the
22 improvements, have the County come out and the State
23 come out and say "It's all complete with your plan.
24 Here's your final map. That's great."

25 But there's a different process that's

1 available to us today. That's called bonding. I get
2 the civil plans approved. If I can provide the County
3 of Maui and prove to the state of Hawai'i that I can
4 bond this through either cash, which I have done in
5 Maui County, a \$20 million cash deposit, I can
6 guarantee these improvements will be done, I will then
7 get a final subdivision map.

8 And with that final map I can then close on
9 sales. I can take the revenue and use that to assist
10 me in either A. Do any improvements. Or B. Funding
11 the Project through a lending institution.

12 So fundamentally it's a much easier road.
13 It facilitates funding and facilitates the process by
14 not having to do these improvements up front. And
15 with a large expenditure of cash for an extended
16 period of time it really affects the bottom line.

17 Q Thank you. So consistent with the
18 responses that you were giving to Mr. Yee a moment ago
19 regarding the Office of Planning's revised Condition
20 1D, that states that "Petitioner will provide and
21 complete all transportation improvements as
22 recommended in the DOT accepted revised TIAR prior to
23 the Certificate of Occupancy for the first building in
24 the subdivision."

25 Does Petitioner represent that that

1 condition it will comply with?

2 A Yes.

3 MS. BENCK: Thank you. I have no further
4 questions.

5 CHAIRMAN HELLER: Commissioners, any
6 questions? Go ahead.

7 COMMISSIONER McDONALD: Actually it's going
8 to the whole acceptance of the TIAR. Based on
9 Mr. Jencks' recommended revisions I just want to be
10 sure the County and the State is okay with that as far
11 as the final Certificate of Occupancy.

12 At that point in time there's going to be a
13 lot of pressure put on the administration if you have
14 a project sitting there unoccupied, waiting for the
15 State DOT's signature on the plan.

16 So I just want to be sure that the County
17 and State would be comfortable with that type of
18 condition language. Go ahead.

19 THE WITNESS: I just want to be, maybe be a
20 little more clear. I'm not suggesting by "occupancy".
21 I'm suggesting by a milestone which is much clearer
22 than that which is final subdivision approval, which
23 is going to predate occupancy by a significant period
24 of time.

25 MR. YEE: I'm sorry. There are two

1 different areas. One is when the TIAR should be
2 accepted.

3 COMMISSIONER McDONALD: Right.

4 MR. YEE: The other is when the traffic
5 improvements should be constructed. So the TIAR is
6 accepted obviously earlier we're proposing than the
7 actual construction.

8 COMMISSIONER McDONALD: So TIAR prior to
9 meet the final subdivision.

10 THE WITNESS: Yes.

11 COMMISSIONER McDONALD: Okay. My mistake.
12 Thank you.

13 MR. YEE: Which is *not* agreeable to the
14 Office of Planning.

15 MR. GIROUX: But agreeable to the County.
16 (audience chuckling)

17 COMMISSIONER McDONALD: I'll let you folks
18 work that out.

19 THE WITNESS: We are moving in the right
20 direction. (Laughter)

21 COMMISSIONER McDONALD: Okay. I got it.
22 Thank you, Charlie.

23 THE WITNESS: You're welcome.

24 CHAIRMAN HELLER: Commissioners? Go ahead.

25 COMMISSIONER INOUE: Thank you,

1 Mr. Jencks. I just wanted to clarify the
2 representations of the Petitioner with regard to M3
3 zoning. First of all, could you restate what you said
4 that might be done having to recycle materials onsite
5 or something like that?

6 THE WITNESS: Certainly. One of the
7 permitted uses in the heavy industrial district -- to
8 be really honest with you, Blanca and I worked very
9 closely with Mr. Spence's department on the
10 formulation of the M3 bill. We had -- prior to this
11 we had M1 and M2. Now we have M1, M2, M3.

12 The idea was to end up with a zoning
13 district that would allow these heavier uses oriented
14 with lighter types of uses which is what this Project
15 is all about.

16 In the M3 district one of the uses is
17 construction recycling material, cement recycling,
18 that type of activity. Right now on Maui a big source
19 of material for Goodfellow Brothers, Incorporated is
20 recycled material.

21 On a construction site they will have
22 export material. they'll take it to their site in
23 Kihei. They will then reprocess that and use it for
24 fill material, for base, for a variety of uses.

25 So the idea here is potentially some day

1 Goodfellow may decide hey, we're going to sell that
2 land in Kihei cause it's got -- it's high value. We
3 need a place to go. We've got 4,000 square feet of
4 trailer space. We have employees. We have equipment.

5 We need a place to put this material on a
6 bed and recycle it. That's exactly what I was
7 describing.

8 COMMISSIONER INOUE: Okay. Thanks. The
9 provision M3 on page 2 of Exhibit 39 about landfill a
10 permitted use. It says, "Landfill" comma "solid waste
11 processing and disposal." That's somewhat related.
12 Let me use Green Building where you bring construction
13 material. You separate it. You dispose it.

14 Are you saying that that's not a permitted
15 use by saying that we will not do a landfill? Or is
16 it just the landfill portion of that?

17 THE WITNESS: It's the landfill portion.
18 It's the landfill portion that triggers a whole
19 'nother review which is dramatically different than
20 what we're talking about today. The other part of that
21 description can be done on a concrete processing
22 table. It could be.

23 COMMISSIONER INOUE: So the Petition is
24 not representing that you will not be doing that type.
25 You may be doing that type of work.

1 THE WITNESS: Maybe processing recycle-able
2 type of material like lumber, drywall, cement,
3 asphalt, that kind of material. I have no intention
4 of doing any landfills on this property right now.

5 COMMISSIONER INOUE: Understood. Because
6 part of that separation you may be disposing a portion
7 of it. So I just want to make absolutely clear what
8 the representation from the Petitioner is on that.

9 And as far as the not permitted uses of the
10 M3 zoning, I just want to make clear that as far as
11 residences go that's covered by 19.25.020 permitted
12 uses basically because it's not one of the permitted
13 uses residences are not allowed?

14 THE WITNESS: That's correct.

15 COMMISSIONER INOUE: Then as far as rental
16 and office spaces that's in 19.25.010 which says those
17 are not permitted uses.

18 THE WITNESS: General office space is not a
19 permitted use.

20 COMMISSIONER INOUE: Okay. Just a little
21 bit different line.

22 THE WITNESS: If I may, however, Lance,
23 office space for your operation is permitted.

24 COMMISSIONER INOUE: Right. I see that in
25 page 3. But that's okay. I had a little bit of

1 concern because as far as retail or indoor display
2 area as accessory uses there's a limit of 20 percent.

3 THE WITNESS: That's correct.

4 COMMISSIONER INOUE: Whereas in the office
5 space there is no such limit.

6 THE WITNESS: Correct.

7 COMMISSIONER INOUE: That's fine. I don't
8 have any question on that.

9 A little bit different line of questioning
10 is on the private water system. Would PUC approval be
11 required and rates and things like that?

12 THE WITNESS: We discussed this question
13 with Tom Nance and he can answer it better than I.
14 But in my understanding it's no.

15 COMMISSIONER INOUE: Is that because you
16 will not be changing any water rates?

17 THE WITNESS: It has to do with, as I
18 recall, with the number of owners, users on the
19 property and the fact that we are not exporting any
20 water offsite.

21 COMMISSIONER INOUE: I see. Okay. I'll
22 raise that question later.

23 THE WITNESS: You're welcome.

24 CHAIRMAN HELLER: Commissioners? Let me
25 repeat a question I asked this morning. Maybe the

1 answer is still "wait for Mr. Nance." With regard to
2 the thousand foot radius surrounding the potable water
3 well, I had asked: Is it simply a matter of
4 notification to adjoining landowners or is any kind of
5 actual consent required for adjacent to landowners?

6 THE WITNESS: My understanding is
7 notification. No consent is required but notification
8 as a part of the permit process. Once again Mr. Nance
9 can better answer that better than me.

10 CHAIRMAN HELLER: Thank you. Anything else
11 for this witness? Thank you.

12 THE WITNESS: You're welcome.

13 CHAIRMAN HELLER: Does that complete your
14 witnesses for today?

15 MS. BENCK: For today, yes.

16 CHAIRMAN HELLER: Mr. Giroux, you're ready
17 to proceed?

18 MR. GIROUX: Thank you, Chair. We have
19 Mr. Spence from the County Planning and Permitting.

20 WILLIAM SPENCE
21 being first duly sworn to tell the truth, was examined
22 and testified as follows:

23 THE WITNESS: I do.

24 CHAIRMAN HELLER: Go ahead.

25 MR. GIROUX: Thank you, Chair. We have

1 submitted Mr. Spence's resumé. And we'd like to have
2 him introduced and accepted as an expert witness in
3 the area of planning.

4 CHAIRMAN HELLER: Any objections?

5 MS. BENCK: No objection.

6 MR. YEE: No objection.

7 CHAIRMAN HELLER: Commissioners, any
8 questions? Accepted as an expert.

9 DIRECT EXAMINATION

10 BY MR. GIROUX:

11 Q Mr. Spence, you did submit your written
12 testimony as County's Exhibit 4.

13 A That's correct.

14 Q Could you summarize it because it is quite
15 lengthy. Just, I guess, the parts that you want to
16 highlight as far as what the County's position is in
17 these proceedings.

18 A You don't want me to go page-by-page?

19 Q Verbatim.

20 A Okay. (Laughter). The County is in
21 support of this Project. This area has been
22 identified and planned for this kind of use for well
23 over a decade.

24 I mean this particular parcel, the reason
25 they're getting a community plan amendment it's

1 actually adjoining a part that had been planned for,
2 you know, the heavier industrial uses, the really
3 obnoxious uses. Where are you going to put this kind
4 of thing?

5 This is the perfect location for it, right
6 next to the drag strip, the motocross track, et
7 cetera, et cetera. It's a pretty isolated location so
8 this is the ideal place to put this kind of thing.

9 It's in the -- when I say it's been planned
10 for this, it's been in the Kihei Community Plan, this
11 area, for well over a decade, probably 15 years for
12 this kind of use. It's gone through a lot of scrutiny
13 with the community, with the county council. So this
14 is a perfect location.

15 With respect to the Maui Island Plan, again
16 that plan reiterates what I just said. This is the
17 location for these kind of obnoxious uses. It's not
18 near residences.

19 We expect there to be no impact to
20 residential or visitor facilities whatsoever. So we
21 are entirely in support of this Project. That was
22 shorter than 60 pages.

23 Q That was pretty short. Mr. Spence, in your
24 comments you had about 11 conditions as far as what
25 you felt would be appropriate for this Project. Can

1 you, I guess, tell the Commission what your thinking
2 is behind these conditions as far as why you feel that
3 they're appropriate?

4 A I think mostly -- and we'll get to the one
5 condition regarding the TIAR.

6 Q We'll isolate that out.

7 A Yes. The more common sense -- when you
8 have this kind of use you still want to -- it's kind
9 of use you still want to protect the environment, et
10 cetera. So they're more common sense kind of proposed
11 conditions.

12 Q You find that they address the impacts that
13 are created by this Project and that they're
14 proportional to those impacts?

15 A I believe so.

16 Q Let's go to No. 5. As far as the
17 discussion we've been having, what is your comment as
18 far as how you would see revising that condition to
19 better meet the needs of this Project?

20 A Okay. So there are two sections to
21 proposed Condition 5. One, the Petitioner requested
22 it be changed from prior to submitting a subdivision
23 application to prior to final subdivision approval.
24 And we're entirely okay with that. Really you think
25 about this. And I'm agreeing with Mr. Jencks'

1 previous testimony.

2 You can't -- you can't even make the
3 determinations of what the impacts are until you
4 actually lay down that subdivision plat and say, "Okay
5 DOT or county of Maui, what do you think?"

6 The analysis goes on when they have
7 something more concrete to look at. They can't just
8 take a conceptual plan and make those final
9 determinations and say: Okay. These are the impacts.
10 This is what we want you to do mitigate those things.
11 The State DOT and the County, we need something much
12 more definitive to look at to make those
13 determinations.

14 So I mean that preliminary subdivision plat
15 map would actually be very helpful to us to finalize
16 those mitigation measures that are necessary.

17 Q Can you address the timing on the
18 recommended improvements pursuant to the TIAR and when
19 those improvements should be or you would like them to
20 be done?

21 A So as a really -- so that's the second part
22 of the condition. You look at just a really practical
23 matter: When does an impact occur? It's after
24 somebody builds a building and they start to occupy
25 and start their operations. That's when traffic

1 occurs.

2 That's when, you know, all the mitigation
3 measures that you've been planning for actually have
4 some meaning. So it really should be prior to
5 Certificate of Occupancy. You're saying all those
6 things are going to be in place. And when the impact
7 occurs that's, you know, that's when they should -- it
8 should be in place.

9 Q Do you have anything else that you want
10 addressed as far as your testimony?

11 A I would offer if there's any clarification
12 needed by the Commission on the process of change in
13 zoning. The change in zoning Community Plan Amendment
14 process, I'm certainly available for that as well.

15 MR. GIROUX: I have no further questions.

16 CHAIRMAN HELLER: Ms. Benck?

17 MS. BENCK: We have no questions for this
18 witness.

19 CHAIRMAN HELLER: Mr. Yee?

20 CROSS-EXAMINATION

21 BY MR. YEE:

22 Q Thank you. Mr. Spence, with respect to the
23 anticipated timing of the approvals, do you think it's
24 likely that the Planning Commission will complete its
25 approval of the Community Plan Amendment and County

1 zoning amendments by the first quarter of 2014?

2 A I'm looking at staff who's holding up two
3 fingers. So probably second quarter of 2014. I'm not
4 sure. I have not personally looked to see if an
5 Application has been filed yet. We are probably
6 waiting for this body to do that. Probably second
7 quarter.

8 Q And the suggestion that the county council
9 would give their approval by December 2014, do you
10 think that's likely to occur as well?

11 A I think that's very possible.

12 Q With respect to the timing of the
13 preliminary subdivision approval, as I understand it
14 then the preliminary subdivisions approval, is that
15 likely to occur before the County's zoning approvals
16 occur?

17 A You can apply for subdivision at virtually
18 any time. You could apply for it tomorrow and you
19 would get a preliminary subdivision approval at that
20 time, within 45 days. That's what our county code
21 says. But as Mr. Jencks points out it's virtually
22 meaningless because you don't know what the Planning
23 Commission is going to recommend to the County
24 Council.

25 And it is really, I mean, and this is

1 through my experience as both a consultant and working
2 as a staff planner and being director, you know, so
3 many things can change with the recommendations by the
4 Planning Commission to the County Council.

5 So you could submit a -- you could get your
6 preliminary subdivision approval pretty early on. But
7 that doesn't help you with a whole lot because a
8 myriad of things can change.

9 I used to caution clients, "Don't do your
10 construction drawings until after the Planning
11 Commission has looked at this. Because they can
12 change all kinds of things."

13 So I would, if I could put on my old
14 consulting hat, my old worn out consulting hat for
15 just a moment I would do exactly what Charlie is
16 saying. I would submit the subdivision, proposed
17 subdivision map after Planning Commission has heard
18 it. And then before the County Council. And the
19 County Council may change their own things, but you
20 have a lot better feel of what's going to take place.

21 Q So then the preliminary subdivision
22 approval, as I understand it, then, wouldn't
23 require -- well, what kind of analysis -- I mean,
24 let's backtrack. The way I'm hearing you say these
25 preliminary subdivision approvals get done almost

1 automatically within 45 days.

2 A Right.

3 Q I take it there's not a lot of
4 discretionary judgment that's being applied at the
5 preliminary subdivision approval stage.

6 A Not being a civil engineer I can't comment
7 on those construction issues. But that preliminary
8 approval is gonna say, "Go get a change in zoning,"
9 you know. "Go get your Community Plan Amendment.
10 Make sure that DOT approves your TIAR."

11 Those are the kinds of things it's gonna
12 say. It's a laundry list. It's a laundry list of
13 things by the different agencies that review it.

14 Q So if the County Department of
15 Transportation said, "I think this is a bad idea
16 because they're not doing the following," the solution
17 in the preliminary subdivision approval process is go
18 get approval from the County Department of
19 Transportation rather than follow the County
20 Department of Transportation's requirements.

21 A Well, just so everybody knows, the County
22 Department of Transportation mostly runs TheBus
23 system.

24 Q I'm sorry. That's right.

25 A We again defer to the state.

1 Q Right. But the Public Works maybe I'm
2 referring to the wrong....

3 A Yeah. Public Works may say, "You know,
4 well, it's already a signalized intersection." So
5 they're not going to say "install a signal." They may
6 say "we think there should be accel or decel lanes.
7 You should have wider shoulders on the road. You
8 should improve the roadway."

9 All the Commissioners have been out there.
10 The roadway definitely needs improvement to handle
11 additional truck traffic. But it's gonna be those
12 kinds of things. I understand Petitioner's already
13 said yes, they're going to do that.

14 Q But I guess my question was if the
15 Department of Public Works had said: "Put in a
16 signal" and the Petitioner was not proposing to put
17 one in, that the preliminary subdivision approval
18 stage would simply say, "Go get some agreement from
19 the Department of Public Works" rather than a specific
20 requirement to put in a traffic signal.

21 A Sometimes there are specific requirements.
22 But all of those comments that come back sometimes
23 there's -- sometimes the comments are just they're
24 TIAR boiler plate comments.

25 I've seen, you know, comments from, like,

1 Department of Water Supply says for a subdivision in
2 Hana that says, "You'll use, you know, low water-using
3 landscaping for your Project." It rains a hundred
4 inches a year out there. Those kinds of things do
5 sometimes get added to the approval letters. And then
6 what you do with those? You go back, you talk to the
7 department, get them to sign off on whatever you can
8 negotiate with them.

9 Q So sometimes it's a substantiative
10 condition. Sometimes it's a generic checklist.

11 A Sometimes.

12 MR. YEE: Okay. Thank you very much.

13 CHAIRMAN HELLER: Any redirect?

14 REDIRECT EXAMINATION

15 BY MR. GIROUX:

16 Q Mr. Spence, was any question asked of you
17 that you would want to expound on at this time?

18 A I don't think so.

19 MR. GIROUX: Okay. I have no further
20 questions.

21 CHAIRMAN HELLER: Commissioners, any
22 questions? Thank you.

23 MR. SPENCE: Thank you, Commissioners.

24 CHAIRMAN HELLER: Do we have further
25 witnesses for today?

1 MR. GIROUX: Not from the County. We're
2 done. Mr. Spence was going to be our only witness.

3 CHAIRMAN HELLER: And your witnesses won't
4 be back until tomorrow?

5 MS. BENCK: Tomorrow morning at 8:00.

6 CHAIRMAN HELLER: Well, then I guess we'll
7 recess a few minutes early and start tomorrow morning.
8 Thank you.

9 (The proceedings were adjourned at 2:45 p.m.)

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C E R T I F I C A T E

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

That I was acting as court reporter in the foregoing LUC matters on the 5th day of September 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 matter.

DATED: This _____ day of _____ 2013

HOLLY M. HACKETT, HI CSR #130, RPR #5910

Certified Shorthand Reporter