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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 a Public Hearing at Maui Arts & Cultural Center, Haynes Meeting Room, One Cameron Way, Kahului, Maui, Hawai'i, commencing at 9:30 a.m. on October 17, 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:

SHELDON BIGA

KYLE CHOCK

RONALD HELLER, CHAIRMAN

LANCE M. INOUE

ERNEST MATSUMURA

CHAD McDONALD

CAROL TORIGOE

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. A13-797 CMBY 201 INVESTMENT LLC (Maui)

For the Petitioner:

JENNIFER BENCK, ESQ.

CHARLES JENCKS

For the County:

JAMES GIROUX, ESQ.

Deputy Corporation Counsel

KURT WOLLENHAUPT

Department of Planning

For the State:

BRYAN YEE, ESQ.

Deputy Attorney General

RODNEY FUNAKOSHI, OP

CHARLENE SHIBUYA

Dept. of Transportation

## A P P E A R A N C E S (cont'd)

Docket No. A10-787 MAUI R&T PARTNERS, LLC

For the Petitioner: CURTIS TABATA, Esq.  
WYETH MATSUBARA, Esq.  
BENJAMIN MATSUBARA, Esq.

For the County: JAMES GIROUX, ESQ.  
Deputy Corporation Counsel  
WILLIAM SPENCE, Planning Director

For the State: BRYAN YEE, ESQ.  
Deputy Attorney General  
RODNEY FUNAKOSHI  
Office of Planning

Also Present: STEVE PERKINS, Project Mgr.

--00--

Docket No. A84-585 MAUI ECONOMIC DEVELOPMENT BOARD,  
INC.

For the Petitioner: CURTIS TABATA, Esq.  
WYETH MATSUBARA, Esq.  
BENJAMIN MATSUBARA, Esq.

For the County: JAMES GIROUX, ESQ.  
Deputy Corporation Counsel  
WILLIAM SPENCE, Planning Director

For the State: BRYAN YEE, ESQ.  
Deputy Attorney General  
RODNEY FUNAKOSHI  
Office of Planning

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1           CHAIRMAN HELLER: Okay. Let's get started.  
2 Call the meeting to order. The first item on the  
3 agenda is the adoption of minutes from our October 4,  
4 2013 meeting.

5           COMMISSIONER CHOCK: Move to approve.

6           CHAIRMAN HELLER: Is there a second?

7           COMMISSIONER McDONALD: Second.

8           CHAIRMAN HELLER: Any discussion? All in  
9 favor?

10           (Commissioners: "Aye".)

11           CHAIRMAN HELLER: Any opposed? The minutes  
12 are approved. The next item is the tentative meeting  
13 schedule. I'll ask our executive officer to brief us.

14           MR. ORODENKER: Thank you, Mr. Chair.  
15 November 7th and 8th is our next scheduled meeting.  
16 That will be on O'ahu for Kuilima Development  
17 Corporation, Defend O'ahu Coalition's renewed Motion  
18 for Issuance of an Order to Show Cause.

19           November 22 is a video conference on all  
20 islands for the adoption of any orders that result  
21 from this hearing.

22           December 12th is currently open. And that  
23 takes us through the end of the year. Our calendar  
24 for next year is dependent upon what occurs with  
25 Kuilima.

1 CHAIRMAN HELLER: Thank you. Next item of  
2 business is Docket No. A13-797 CMBY 2011 Investment,  
3 LLC. What we are going to do this morning is combine  
4 public testimony on the various items on our docket.  
5 As I understand there are several people who want to  
6 testify on one or more of the items on the docket.

7 So for purposes of public testimony we will  
8 hear testimony on all three of A13-797, A10-787 and  
9 A84-585. So when we get to the public testimony and I  
10 ask for people who want to testify, if you're here to  
11 testify about any of those three you should be on the  
12 signup list or raise your hand at the appropriate  
13 time. All right.

14 For A13-797 CMBY 2011 Investment, LLC this  
15 is oral argument and deliberation to amend the Land  
16 Use District Boundary of certain lands situated at  
17 Pulehunui, Wailuku, Island of Maui, State of Hawai'i  
18 consisting of approximately 86.03 acres from the  
19 Agricultural District to the Urban District, TMK Nos.  
20 3-8-008:019. Will the parties identify themselves for  
21 the record.

22 MS. BENCK: Good morning, Chair,  
23 Commissioners. This is Jennifer Benck representing  
24 Petitioner CMBY 2011 Investment, LLC. And with me to  
25 my right is Mr. Charlie Jencks who is the Petitioner's

1 representative.

2 CHAIRMAN HELLER: Thank you.

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

6 MR. YEE: Good morning. Deputy Attorney  
7 General Bryan Yee on behalf of the Office of Planning.  
8 With me is Rodney Funakoshi from the Office of  
9 Planning. Just to inform the Commission, I anticipate  
10 Charlene Shibuya from the Department of Transportation  
11 will be present. When she comes we have a seat  
12 available for her.

13 I do anticipate a procedural question if  
14 now might be a good time to ask.

15 CHAIRMAN HELLER: Go ahead.

16 MR. YEE: With respect to the public  
17 witnesses I think normally, not that I anticipate  
18 asking any questions, but if you were going to have  
19 witnesses testify about both cases, I suppose  
20 technically we should be allowing -- or you may want  
21 to consider allowing Petitioner for the other case to  
22 be present and ask questions or waive questions if  
23 they so choose.

24 CHAIRMAN HELLER: Is someone present for  
25 the Petitioner in A10-787?

1 MR. TABATA: Yes. We are present.

2 CHAIRMAN HELLER: Just for the record would  
3 you state your name.

4 MR. TABATA: Attorneys Curtis Tabata, Wyeth  
5 Matsubara and Benjamin Matsubara for the Petitioner  
6 Maui R&T.

7 CHAIRMAN HELLER: Okay. When we get to the  
8 point of any questions regarding public testimony, if  
9 you want to ask questions you can let me know and  
10 we'll give you the chance.

11 MR. TABATA: Thank you.

12 CHAIRMAN HELLER: And as far as A84-585 is  
13 anyone present for the Petitioner?

14 MR. TABATA: Curtis Tabata for the record  
15 also appearing for that Petitioner.

16 CHAIRMAN HELLER: Thank you. Let me update  
17 the record with respect to A13-797. On September 6,  
18 2013 the Commission closed the evidentiary portion of  
19 the proceedings.

20 Between September 20 and October 10, 2013  
21 the parties timely filed their respective proposed  
22 findings of fact, conclusions of law, and decisions  
23 and orders and their respective comments, responses,  
24 joinders, stipulations, objections and replies with  
25 the Commission.



1           On September 27, 2013 the Commission  
2 received correspondence from A&B Properties and the  
3 Office of the Mayor of Maui County.

4           On October 9, 2013 the Commission mailed  
5 the October 17, 2013 Agenda Notice to the parties and  
6 to the statewide and Maui mailing lists.

7           Let me briefly run over our procedure for  
8 today. First, I will call for those desiring to  
9 provide public testimony for this docket to identify  
10 themselves. All such individuals will be called in  
11 turn to our witness box where they will be sworn in  
12 prior to their testimony.

13           Second, we will allow each party no more  
14 than 15 minutes to present oral argument in support of  
15 its proposed Decision and Order and/or its exceptions  
16 to those proposed by the other parties.

17           The Petitioner may reserve a portion of  
18 this time for rebuttal. At the conclusion of oral  
19 argument and after questions from the Commissioners  
20 and the answers thereto, the Commission will conduct  
21 formal deliberation on this matter. I also note for  
22 the parties and the public that from time to time we  
23 may call for short breaks.

24           Are there any questions on the procedure  
25 for today? Hearing none, before I call on public

1 witnesses let me remind you that all public testimony  
2 from previous hearings has been transcribed and is  
3 already part of the record. For those that are  
4 testifying again the Commission would appreciate if  
5 you would confine your testimony to any new  
6 information. A 3-minute time limit will be imposed  
7 for all those testifying. At this time do we have  
8 people signed up for public testimony?

9 MR. ORODENKER: Yes, Mr. Chair. We have  
10 Don Couch for A13-797 as well as the other dockets.  
11 Following him we have Randy Piltz.

12 CHAIRMAN HELLER: Thank you. Let me note  
13 because we're combining testimony on 2 or 3 dockets at  
14 the same time, we may not be really strict about the  
15 3-minute time limit, but would appreciate it if you  
16 can keep your testimony brief. Please take a seat.

17 COUNCILMEMBER DON COUCH  
18 being first duly sworn to tell the truth, was examined  
19 and testified as follows:

20 THE WITNESS: Yes.

21 CHAIRMAN HELLER: Please state your name  
22 and address then proceed.

23 THE WITNESS: My name is councilmember Don  
24 Couch, 200 High Street, Wailuku, Hawai'i. Aloha,  
25 Mr. Chair Heller and Members of the Land Use

1 Commission. Thank you for the opportunity to provide  
2 testimony in support of the Decision and Order drafted  
3 by Maui R&T Partners, LLC and agreed to by the county  
4 of Maui Planning Department. Residents of my district  
5 and Maui County as a whole have long supported the  
6 growth and development of Maui Research and Technology  
7 Park. The park has been an important economic  
8 development tool with a growing number of employees in  
9 a variety of technical fields.

10 I support the Master Plan concept with its  
11 variety work space facility options for knowledge  
12 industry workers along with amenities and housing  
13 close enough to walk or bike to.

14 The cutting edge of planning for employment  
15 centers is to locate housing, services and amenities  
16 in close proximity, i.e. walking distance to  
17 workplaces for employment centers in R&T parks. The  
18 Association of University Research Parks refers to  
19 this concept as a community of innovation. R&T parks  
20 around the country are moving towards this model  
21 including Research Triangle Park in North Carolina.

22 I also fully support the Park's proposed  
23 form-based code and its mixed-use development plan.  
24 Both concepts are integral components of the Maui  
25 Island Plan. I would urge the Commission to carefully

1 consider the economic implications of placing  
2 conditions on the Project that will stall growth in  
3 the park. I recommend that the Commission adopt the  
4 Petitioner's Decision and Order as written by Maui R&T  
5 Park Partners, LLC and as agreed to by the county of  
6 Maui.

7           And the reason I'm asking on both of this  
8 is we ran across -- we at the council ran across  
9 yesterday a decision and order that you folks made  
10 that required a Traffic Impact Analysis Report to be  
11 accepted by the state Department of Transportation  
12 before we could do our change in zoning.

13           There had been some issues with the TIAR.  
14 And the state Department of Transportation said they  
15 would be there at our meeting to clear up those  
16 issues. They weren't. So now we have to postpone our  
17 decision.

18           We feel that a lot of the traffic analysis  
19 is something that the County Council is very familiar  
20 with because we're there on the ground all the time.  
21 So we feel that we should be able to make that  
22 decision as to whether or not to grant zoning and then  
23 place -- we usually place conditions on that change in  
24 zoning to deal with the traffic and the TIAR prior to  
25 final subdivision.

1           So this project -- this project we had  
2 yesterday was pushed back for another month or 2 which  
3 of course we all know it's the economic -- if we're in  
4 the process of holding onto land without being able to  
5 develop it it costs carrying costs.

6           So we're asking that the council be the  
7 ones to be able to -- or at least I'm asking. I'm not  
8 speaking on behalf of the Maui County Council. I'm  
9 just saying what we ran into yesterday as a matter of  
10 fact. So that applies to this CMBY Project as well.  
11 It's my understanding that this is a condition you've  
12 thrown in there.

13           By the way, I want to thank you very much  
14 for all the conditions you put in and the one we had  
15 yesterday which was the Waiko Road industrial complex.  
16 I don't know if you remember that or not but --  
17 because we didn't have to put any conditions. We  
18 usually put about 10 conditions on, but all the  
19 conditions that we would put on you guys already did.

20           So you're saving the citizens of Maui a  
21 little bit of time, but we appreciate all the work you  
22 do and would ask that we deal with the TIAR or at  
23 least allow us to move forward in regards to our  
24 change in zoning process. Thank you.

25           CHAIRMAN HELLER: Thank you. Parties, are

1 there any questions?

2 MS. BENCK: No questions.

3 MR. YEE: Chair?

4 CHAIRMAN HELLER: Yes.

5 CROSS-EXAMINATION

6 BY MR. YEE:

7 Q May I ask what's the name of the case that  
8 you were referring to yesterday?

9 A We call it the Waiko Light Industrial.  
10 There was a Waiko Light Industrial portion and a  
11 commercial portion split.

12 Q This was the industrial portion?

13 A It was both.

14 Q And your understanding is the Department of  
15 Transportation had not yet accepted the TIAR.

16 A They had some questions. Then they had  
17 indicated to the Applicant that everything was ready  
18 to go. The Applicant came to us and said, "Okay. We  
19 got -- the DOT was okay with everything. They're  
20 going to meet with us and come to our council meeting  
21 and tell you what their concerns were what, you know,  
22 to move forward."

23 And they never showed. On the day of our  
24 meeting, which was yesterday, they sent an e-mail  
25 saying, "Oh, we can't come and here are some things

1 that we want to deal with." So that was kind of -- I  
2 don't know. It set it back a little bit because we  
3 normally don't schedule stuff until everything's all  
4 lined up in a row.

5 Q Do you happen to know was it represented to  
6 you that the TIAR had been accepted?

7 A It was represented to us that the  
8 department would come in and tell us their concerns  
9 then. I don't see that -- I haven't seen an accepted  
10 TIAR. They just say they have no concerns or limited  
11 concerns.

12 We got neither. The old one, yes, they  
13 said, "We object," or "Strongly object to." And the  
14 Applicant submitted a new TIAR. We didn't get any  
15 comments except for on the day of saying, "Well, we're  
16 not ready yet. We'll do it in November."

17 Q And do you know when the revised TIAR had  
18 been submitted in that case?

19 A Sometime in September.

20 Q Of this year?

21 A This year, yeah.

22 Q So the Department of Transportation had a  
23 revised TIAR in September of 2014?

24 A 13.

25 Q I'm sorry. 2013.

1           A       Yes.

2                   MR. YEE: Thank you. Nothing further.

3                   MR. GIROUX: Chair, I have a couple  
4 questions.

5                   CHAIRMAN HELLER: Go ahead.

6                               CROSS-EXAMINATION

7 BY MR. GIROUX:

8           Q       Mr. Couch, as a councilmember, are you  
9 aware of, like, the different lapses of time or the  
10 timing that could occur between the Land Use  
11 Commission Decision and Order and then a change in  
12 zoning? Is your experience as a councilmember could  
13 you give us some insight into that?

14          A       Typically we like to have that happen  
15 first, the Land Use Commission, because we don't want  
16 any problems. But there is sometimes a significant  
17 amount of time between the two. Sometimes it depends  
18 if we can get -- because of Sunshine Law you guys well  
19 know Sunshine Law requirements and whatnot and  
20 noticing requirements there's always a delay.

21          Q       And as far as their experience within the  
22 county, do you -- can you give us some insight as to  
23 the delay between zoning and final subdivision?

24          A       Oh, gosh. That could be a number of years.  
25 Could possibly be a number of years because a lot of



1 this stuff that we impose as well as the Land Use  
2 Commission imposes as well.

3 Q And as your experience as a councilmember  
4 are you familiar with creating conditions of zoning?

5 A Oh, yeah.

6 Q As far as projects?

7 A Yes.

8 Q And as far as the conditions of zoning  
9 affecting traffic, can you give us some examples of  
10 what are some of those conditions and what they would  
11 look like?

12 (Planning Director Spence is now present)

13 A Well, we would typically say, you know,  
14 based on the TIAR we feel that, for instance, I  
15 believe for Wailea 670 Honuaula there was a  
16 requirement that the Applicant widen Pi'ilani Highway  
17 prior to moving forward with their next step. And so  
18 we would do something like that. I believe that was  
19 our condition as opposed to the LUC's condition.

20 Q There's also opportunities to put on fair  
21 share type of --

22 A Oh, yeah. We, we can assess and often do  
23 assess an assessment fee for either parks or traffic  
24 to say: Look, we know you can't do the whole thing  
25 yourself but pay your fair share.

1           We typically will do that if nothing is  
2 being done, but you bet.

3           Q       And what about improvements pursuant to the  
4 satisfaction of Public Works?

5           MR. YEE: I'm sorry. We're going to raise  
6 an objection at this point. The county and the  
7 parties have had opportunity to present witnesses in  
8 their case. And the evidentiary portion is closed. I  
9 certainly don't deny the councilmember's right to come  
10 and testify as a public witness about any matter he  
11 wants to testify about.

12           But at this point the county is pursuing  
13 areas that are not covered by the public testimony as  
14 instead simply creating a new set of evidentiary  
15 information which they should have submitted during  
16 the case in chief.

17           CHAIRMAN HELLER: I'm inclined to give the  
18 county a little bit of latitude since this is public  
19 testimony and he's free to go into basically anything  
20 he wants as a public witness. But, Mr. Giroux, in  
21 terms of questioning, if you could kind of get this  
22 wrapped up I would appreciate it.

23           MR. GIROUX: Thank you, Chair. It's just  
24 that he stole my closing argument. (audience  
25 laughter) So I have no further questions. Thank

1 you.

2 CHAIRMAN HELLER: Mr. Tabata, did you have  
3 any questions for this witness?

4 MR. TABATA: No questions, Mr. Chair.

5 CHAIRMAN HELLER: Okay. Thank you.  
6 Commissioners, any questions? Thank you, sir.

7 THE WITNESS: Thank you for your time.

8 CHAIRMAN HELLER: Who else do we have?

9 MR. ORODENKER: We have Randy Piltz signed  
10 up to testify on A13-797 and A10-787 followed by  
11 Jeanne Skog to testify on A10-787.

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

15 THE WITNESS: I do.

16 CHAIRMAN HELLER: Please state your name  
17 and address and then proceed.

18 THE WITNESS: My name is Randy Piltz. I  
19 reside at 376 West Waiko Road, Wailuku, Hawai'i. I'm  
20 here to testify on behalf of all these subjects before  
21 us. Most importantly these projects that are coming  
22 before you will bring jobs to the construction  
23 industry.

24 I was involved in the construction industry  
25 since 1973. And I was also a planning commissioner

1 for the county of Maui, also a commissioner at the  
2 LUC. I now have a job with the county of Maui taking  
3 care of the permit process.

4           And one of the things that we had in the  
5 county is we did not have a process that could let  
6 projects move ahead. Knowing this, in the last year  
7 if you looked at the BID Magazine, Building Industry  
8 Digest, the number of jobs coming through the island  
9 of Maui being approved for construction has been nil  
10 or none at all, state, county and private.

11           I'm concerned what happens to those of us  
12 that live here on Maui that have to earn a living.  
13 Unless we have projects like this, for instance -- the  
14 heavy industrial project that you have -- they will be  
15 building and providing space for new places to start  
16 their businesses.

17           And why are they doing that? Because we  
18 don't have enough heavy industrial areas or any at all  
19 right now. Even light industrial is not available.

20           So these are the things that we have to do  
21 and have to allow to happen. If we don't do that  
22 we're going to go in the drain. And right now we've  
23 been in a drain for the last three years. I ask that  
24 each and every one of you consider these particular  
25 projects that are before you and let that happen.

1           Look at the items that are before you and  
2 make sure that those that are coming before you, the  
3 developers have their T's crossed on dot their I's and  
4 let it pass. We need these.

5           I implore your efforts. I congratulate all  
6 of you for taking the time out of your private lives  
7 to provide time for this Commission. It is very  
8 important that your job affects us here on Maui.  
9 Thank you.

10           CHAIRMAN HELLER: Parties, any questions?

11           MS. BENCK: No questions.

12           MR. GIROUX: No questions.

13           MR. YEE: No questions.

14           CHAIRMAN HELLER: Mr. Tabata?

15           MR. TABATA: No questions.

16           CHAIRMAN HELLER: Thank you, sir.

17 Commissioners, any questions? Thank you.

18           MR. ORODENKER: We have Jeannie Skog  
19 followed by Dick Mayer.

20                       JEANNIE SKOG  
21 being first duly sworn to tell the truth, was examined  
22 and testified as follows:

23           THE WITNESS: Yes, I do. Thank you.

24           CHAIRMAN HELLER: Please state your name  
25 and address and then go ahead.

1           THE WITNESS: I'm Jeannie Skog with Maui  
2 Economic Development Board. We are at 1305 North  
3 Holopono Street in the R&T Park. First of all I want  
4 to say that my Chair, Wes Low, was going to be here  
5 today but he was called to O'ahu. So I'm delivering  
6 this on his behalf.

7           Thank you very much for this opportunity to  
8 share some additional thoughts with you about the Maui  
9 R&T Park Petition. MEDB'S Board of Directors made up  
10 of 32 members from largely the business community, but  
11 also the county and community organizations, evaluated  
12 the update of the Master Plan. We passed a resolution  
13 in support of the update.

14           (Commissioner Biga now present)

15           We understand what your role is in this  
16 matter. But as you go through the process we hope  
17 that you will factor in the point that the R&T Park is  
18 really part of an overall plan or diversification in  
19 Maui County that's been very, very much community  
20 based. It was born out of a community process and  
21 reaffirmed most recently through the update of the  
22 County's General Plan.

23           The community plans are still in process,  
24 in that process, but so far it's been made a part of  
25 the General Plan. The overall plan for

1 diversification includes drawing business -- or  
2 growing business here, utilizing tools such as  
3 incubation and building local capacity.

4           Senator Inouye certainly had a lot to do  
5 with some of the activities in the park. But really  
6 what happened is his investment in the park really  
7 invested in building capacity in the park whether it  
8 was in programs or in building capacity of the  
9 workforce there.

10           And today that those businesses that have  
11 built that capacity are very competitive on their own  
12 post the earmark era and our winning competitive  
13 awards because of his initial investment.

14           The strategies also included growing a  
15 workforce that can fuel the companies that are here.  
16 That's about growing it, meaning from K to 12 but also  
17 including what the UHMC is doing or bringing back  
18 kama'aina who want to live on Maui.

19           I also want to emphasize that this is not a  
20 new concept what is captured in the update of the  
21 plan. I've been with Maui Economic Development Board  
22 since 1984. I can tell you that when MEDB was serving  
23 as managing partner we already recognized the  
24 importance of mixed-use in the park for the economic  
25 viability of the park.

1           We obviously still want the emphasis on  
2 knowledge-based industries as we now call it, but the  
3 other amenities we felt were crucial to the long-term  
4 viability. That's certainly bearing out in what life  
5 is like in the park even now.

6           It really is a special kind of community  
7 that's being created up there. We feel that the  
8 update of the plan will just enhance that and make it  
9 even more attractive to attract other diversifying  
10 activities to Maui and the park.

11           CHAIRMAN HELLER: Thank you. Parties, any  
12 questions?

13           MS. BENCK: No questions.

14           MR. GIROUX: No questions.

15           MR. YEE: No questions.

16           CHAIRMAN HELLER: Mr. Tabata?

17           MR. TABATA: No questions.

18           CHAIRMAN HELLER: Commissioners, any  
19 questions? Thank you.

20           THE WITNESS: You're welcome.

21           MR. ORODENKER: Our final testifier signed  
22 up is Dick Mayer.

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



1 THE WITNESS: I do.

2 CHAIRMAN HELLER: Please state your name  
3 and address and then go ahead.

4 THE WITNESS: My name is Richard Mayer,  
5 better known as Dick Mayer. I live at 1111 Lower Kimo  
6 Drive in Kula, Maui. I gave out to you a spreadsheet.  
7 Let me first make it clear. I'm not opposed to the  
8 redesignation of this land.

9 What I am interested in, though, are  
10 conditions that you may or may not set on that  
11 Project. I was also a member of the GPAC and was vice  
12 chair of that GPAC with the advisory committee on the  
13 Maui Island Plan as was Jeanne Scog was a member as  
14 well.

15 When we looked at this project, this area,  
16 we did not know that residential units were being  
17 planned in the area. So we made up boundaries for the  
18 Maui Island Plan, growth boundaries, including this  
19 when we thought it was going to be an industrial area.

20 Never was it put forth to us that there  
21 would be housing units on the property as well as  
22 2 million square feet, plus a hotel on this property  
23 as is indicated in the EIS.

24 The conditions I'm concerned about are  
25 there's some statements in there about the traffic and

1 mention made of a mauka alignment mauka of this whole  
2 Project, that would run north/south parallel to the  
3 present Pi'ilani Highway inland, about a mile, 2 miles  
4 inland.

5           The problem with that is that each of the  
6 segments of that highway would be dependent on a  
7 particular developer. And even though you put  
8 conditions on this Project, and I will hope you do put  
9 a condition on it, that that mauka alignment be put  
10 within their property, this segment will have no  
11 meaning until all of the segments are put in.  
12 Otherwise it will be just a short stretch of highway  
13 without a connection north or south. All of it has to  
14 be put in.

15           As far as I know the DOT, State DOT has no  
16 funds, federal funds are listed in terms of projects  
17 for many, many other projects around the island that  
18 seem to have higher priority. So this is a very  
19 unlikely scenario to get built.

20           So relying on that highway as a traffic  
21 reliever up Pi'ilani Highway is a question mark. I  
22 passed out this list. It's something I put together  
23 to the best of my ability having sat on GPAC, listened  
24 to many presentations by the various developers. And  
25 it gives you a list of all the projects that would be

1 impacting Pi'ilani Highway.

2 I'm hoping that you will put a requirement,  
3 a condition-- strengthen the conditions on this  
4 Project to say that the intersections and the segments  
5 on that highway be improved at a certain point in  
6 time, not as the conditions they use the dates 2024,  
7 2034, certain things, but rather than, let's say, 20  
8 percent of the housing units are built this much must  
9 be done when 50 percent all of it must be done so that  
10 you are ahead of the curve rather than having to build  
11 after everything gets built.

12 The same thing with the 2 million square  
13 feet of office space and commercial, that a percentage  
14 be put on rather a year, so if they delay it for 30  
15 years or 10 years it will be done when it's needed.  
16 And I think that's very important.

17 The other one is with regard to water.  
18 They talked about putting in a treatment plant there  
19 and presumably a well for some of the potable water  
20 they will need for the Project. But they are not  
21 alone. As you see here there are many, many, other  
22 projects.

23 And many of these projects have stated, for  
24 example, Wailea 670 has said they will be putting in  
25 their own water system. Makena Resort also will be

1 having to provide water. That's all coming out of the  
2 same aquifer.

3 That aquifer is listed by the state as  
4 around 11 million gallons per day capacity. That's  
5 the maximum so it would be a percentage less than  
6 that. Already there's dozens of wells all over Kihei  
7 with small developers and some larger ones who are  
8 taking water out of that aquifer. No one is totally  
9 up with the overall amount of water coming up.

10 So I think it's very critical that when you  
11 look at this Project you look at it in the context of  
12 all the other projects.

13 And is there going to be enough water for  
14 the Project? If this Project gets it will that deny  
15 other projects from getting it?

16 Somehow a much better water study for that  
17 whole South Maui area, slopes of Maui, needs to be  
18 done. And a condition needs to be put in there. We  
19 often look at traffic because that's somethin' people  
20 visibly see. But the water under the ground there,  
21 which this area is relying on, is not infinite.

22 Right now the area in Kihei gets its water  
23 from Waihe'e, I'ao Valley. And that water supply is  
24 going to be needed in Central Maui because there's  
25 6,000 units being planned in and around Waikapu,

1 Kahului-Wailuku area in the Maui Island Plan.

2 I thank you. So I'm looking really for  
3 conditions that this be done properly because there  
4 are enormous projects already planned all up and down  
5 Pi'ilani Highway which is already a substandard  
6 highway. And we've talked about that. And I've  
7 talked to you before when we talked about the Pi'ilani  
8 Promenade Project. Thank you very much.

9 CHAIRMAN HELLER: Parties, questions?

10 MS. BENCK: Yes, Chair. One question.

11 CHAIRMAN HELLER: Go ahead.

12 CROSS-EXAMINATION

13 BY MS. BENCK:

14 Q Mr. Mayer, just to confirm. Was your  
15 testimony in any way related to the CMBY Industrial  
16 project? Or was that testimony related solely to the  
17 Maui R&T Park?

18 A It was meant to be for both, discussing the  
19 same overall project, the R&T Park area. And I think  
20 the comments go to both of those projects.

21 Q The comments about Pi'ilani Highway relate  
22 to the CMBY project?

23 A I misunderstood. CMBY. Which one is  
24 that, please?

25 Q It's a heavy industrial project.

1           A       No, it does not apply to the heavy  
2 industrial.

3           Q       Thank you.

4           A       The two items on your agenda with regard to  
5 the R&T Park, MEDB one as well as the R&T Park itself,  
6 those are two items on the agenda. It refers only to  
7 those two, not the industrial area.

8           MS. BENCK: Thank you.

9           CHAIRMAN HELLER: Maybe for the record we  
10 should identify those as Dockets A10-787 and A84-585.

11          THE WITNESS: Correct.

12          CHAIRMAN HELLER: Anything further?  
13 County?

14          MR. GIROUX: I have no questions.

15          MR. YEE: No questions.

16          CHAIRMAN HELLER: Mr. Tabata?

17          MR. TABATA: Yes, Mr. Chair. Thank you.

18          CHAIRMAN HELLER: Please come forward and  
19 use the microphone.

20                   CROSS-EXAMINATION

21 BY MR. TABATA:

22          Q       Mr. Mayer, you mentioned about the mauka  
23 collector road, correct? And that there are other  
24 projects that would be necessary to come online in  
25 order for this mauka collector road to be completed?

1           A       Correct.

2           Q       And you mentioned the scenario where the  
3 other projects are not built, correct?

4           A       If they're not built.

5           Q       If they're not built. Now, if they're *not*  
6 built isn't it also correct that they would not then  
7 contribute to the traffic situation?

8           A       They would contribute to the traffic  
9 situation perhaps depending on how they're built, if  
10 they don't go all the way up the hill. They may  
11 contribute to Pi'ilani traffic problems and,  
12 therefore, that's one of the justifications for  
13 needing the mauka highway is because Pi'ilani would be  
14 overloaded.

15          Q       So you're concerned about a situation where  
16 they build everything except their roadway.

17          A       Except their roadway, correct.

18          Q       Now, when you talk about the availability  
19 of water you mentioned that the sustainable yield for  
20 the Kamaole aquifer is 11 mgd, correct?

21          A       That's correct.

22          Q       Are you aware that the current draw is only  
23 5 mgd, that there's 6 mgd remaining today?

24          A       I understand that's approximately correct.  
25 I don't have the exact numbers but I believe that's

1 about right.

2 MR. TABATA: Thank you very much.

3 CHAIRMAN HELLER: Commissioners, any  
4 questions?

5 THE WITNESS: Let me just clarify that  
6 answer with one sentence. That is there are other  
7 projects already with intentions to drill outside of  
8 this Project that may get us closer to that  
9 11 million.

10 CHAIRMAN HELLER: Thank you.  
11 Commissioners, any questions? Thank you, sir.

12 THE WITNESS: Thank you.

13 CHAIRMAN HELLER: We have nobody else  
14 signed up then.

15 MR. ORODENKER: No, there's no one else  
16 signed up.

17 CHAIRMAN HELLER: Is there anyone else  
18 present in the room who wishes to give public  
19 testimony? Yes, please come forward.

20 CALIB WILSTED  
21 being first duly sworn to tell the truth, was examined  
22 and testified as follows:

23 THE WITNESS: My testimony will be the  
24 truth.

25 CHAIRMAN HELLER: Please state your name



1 and address then go ahead.

2 THE WITNESS: My name is Calib Wilsted. My  
3 address is 726 Alulike Street. My testimony is on  
4 behalf of the zone changing up of the Maui Tech Park  
5 for Kihei Charter High School.

6 A little background is I'm 16 years old. I  
7 go to the Kihei Charter High School. And the zone  
8 changing would really help with the permits. We want  
9 to be able to build the school so that it's more like  
10 Lahaina. The current rules set forth is we have to  
11 build 30 foot away from the sidewalk.

12 But what we want to try to do is we want to  
13 try and build the school so it's up to the sidewalk so  
14 we have all our land in the back that we can use for  
15 experimenting. Our school is a tech school. So what  
16 we use is science, technology, engineering. And the  
17 space would really be available and helpful to us that  
18 we can use.

19 Currently we are situated in an industrial  
20 area just above Blacky's Pit Stop. In this area we  
21 don't really have the space needed to go outside so we  
22 gotta use the inside or we use vans to go all over  
23 Maui to do our experiments.

24 But being arranged in the tech park and  
25 turning into a small community would really help us

1 with our internships, creating small businesses, and  
2 overall just giving our high school better access.

3 Other than that we've done many great  
4 things. We've done service projects all over Kalono  
5 Park. We've done -- we've actually helped out with  
6 the invasive species at Haleakala Park. We've helped  
7 calculate and categorize plants over in I'ao Valley,  
8 just some helpful things that we've helped out with  
9 the community. So changing the zoning again would  
10 really help.

11 I'm here with all my fellow classmates and  
12 friends in the seating that you can see. We support  
13 the building get passed. Other than that doing this  
14 would really help too with the projects we have in  
15 future too. Other than that thank you for your time.  
16 Any questions?

17 CHAIRMAN HELLER: Parties, questions?  
18 Commissioners?

19 COMMISSIONER BIGA: I have one. Thank you  
20 for being here and with your classmates. How much in  
21 your school -- how much kids you have in the school?

22 THE WITNESS: We have about --

23 COMMISSIONER BIGA: Estimate.

24 THE WITNESS: I'd like to say about over  
25 200. The reason being is because we have a larger

1 school. But considering the space we have, a lot of  
2 people confuse us with a private school but we are a  
3 public school. Anyone can get in. It's just with  
4 fire safety and protocol we can only accept a certain  
5 amount of kids in. So it's more like a lottery to get  
6 in.

7 COMMISSIONER BIGA: Thank you.

8 THE WITNESS: No problem. Anyone else? So  
9 how's your day goin'? (audience laughter)

10 CHAIRMAN HELLER: Thank you. Is there  
11 anyone else in the room who wishes to provide public  
12 testimony? Come forward, please.

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

16 THE WITNESS: Yes, I do.

17 CHAIRMAN HELLER: Please state your name  
18 and address, then go ahead.

19 THE WITNESS: My name is Gene Zarro. And  
20 my business address is 300 Ohukai Road, No. 209 Kihei.  
21 I am currently the CEO of South Maui Learning Ohana  
22 which is a property owner up at the tech park. And I  
23 am also on the board of the Kihei Charter School.

24 And I've spoken to you before, but I would  
25 like to just reiterate. We have now had our loan

1 approved by the USDA. We're ready to move forward.  
2 It was very important to us that when we designed this  
3 building we are able to design it under the new  
4 requirements or the new conditions that we are -- that  
5 the Maui Research and Tech Park Partners are asking  
6 for.

7           Like you heard from Calib who spoke very  
8 well, we would like to utilize the Smart Growth  
9 concept. We would like to create a street scape. We  
10 would like to be able to put all the extra space,  
11 consolidate it in one area behind this corner so that  
12 it would be, one, be safer for the students but also  
13 it would not cause a fracturing of the land use.

14           Also the height requirements could be  
15 better. It would be better for us if the height  
16 requirement was a little higher so that we could put  
17 our solar array on the roof but in the form of a  
18 pavilion.

19           You see the way they shade parking lots now  
20 with UV. We've spoken to our LEED architect. LEED  
21 L-E-E-D. And he said it's more important that you put  
22 that solar array on the roof looking like a pavilion  
23 so that it also shades the building.

24           Doing that would get us past the current  
25 height requirement. So those are just the physical

1 plant issues. Getting our school into a permanent,  
2 stable environment, meaning we would have ownership of  
3 the property as opposed to being subject to the whims  
4 of a landlord, it would be important for us to be  
5 there.

6           Being in the center of a small town is very  
7 conducive to the opportunities for our students and  
8 the learning environment for our students.

9           Calib was right. We have a little more  
10 than 200 students. We have about 250 students in the  
11 high school. We would love to serve a few more  
12 students because it's really a heartbreak to have kids  
13 on a waiting list.

14           The waiting list, like he said very  
15 clearly, is strictly because of fire and safety  
16 protocols. You can't put too many kids in a building.

17           So with all of that said I think it's very  
18 important that the Maui Research and Tech Park step  
19 into the 21st century, provide the community that we  
20 need a good example. We need a good example of a  
21 working 21st Century community, things we've all  
22 talked about.

23           These are people that are willing to do it.  
24 We are a partner there. We already own the property.  
25 We're going to be there. We would love to be in a

1 SMART community as opposed to a high tech industrial  
2 area, as opposed to the current industrial area we're  
3 in. Thank you.

4 CHAIRMAN HELLER: Thank you. Parties, any  
5 questions?

6 MS. BENCK: No questions.

7 MR. GIROUX: No questions.

8 MR. YEE: No questions.

9 CHAIRMAN HELLER: Mr. Tabata?  
10 Commissioners, any questions?

11 MR. ZARROW: I want to thank all our  
12 students for coming. Why don't you just wave your  
13 hands. Show 'em who you are.

14 CHAIRMAN HELLER: Is there anyone else  
15 present in the room who wishes to provide public  
16 testimony? (no response) All right. Thank you.  
17 We've concluded with public testimony? Oh, I'm sorry.  
18 There was one more hand? Okay. Come forward, please.

19 CONNER JONES  
20 being first duly sworn to tell the truth, was examined  
21 and testified as follows:

22 THE WITNESS: I do, sir.

23 CHAIRMAN HELLER: Please state your name  
24 and address and then go ahead.

25 THE WITNESS: All right. My name is Conner

1 Jones. I live on 605 Makawao Avenue, Makawao, Maui.  
2 The previous speakers -- I do go to Kihei Charter  
3 School. I'm speaking on behalf of that. The previous  
4 speakers did a very good job at explaining our  
5 situation.

6 I simply wanted to come up here and paint  
7 the picture in your minds to kind of stress what Kihei  
8 Charter is and why we could use the space.

9 I'm 15 years old. I've gone to the school  
10 for about four years now. And like they said the  
11 unfortunate part is we are a public school but we do  
12 have a raffle because we don't have enough space for  
13 that many kids.

14 And I've seen -- I've seen good kids want  
15 to get into the school because we are a good school,  
16 and be denied the privilege, denied what they could  
17 have become.

18 I also wish to say that we are expanding  
19 rapidly. When I first started there were maybe a  
20 hundred kids in the high school. Over the 4 years we  
21 have just gotten that many more.

22 Unfortunately in the space we have in an  
23 industrial park there's a lot of noises. There's a  
24 lot of distractions. We're in between an auto  
25 restoration place. There's all sorts of the noises

1 going on.

2 In a small town it would be a lot more  
3 quiet. We'd have a lot more focus. We would be at  
4 the liberty of having a private area, not at the whims  
5 of other people driving through. Our traffic  
6 situation, we have to deal with other people going to  
7 other places. It's not only restricting on us but on  
8 them as well.

9 On top of that I'd like to say because we  
10 don't have so much room we don't have room for  
11 activities such as experiments. But also because of  
12 that we've become less of a sports-focused school. I  
13 realize we are a STEM school: Science, technology  
14 engineering, math. I love it. It's one of the best  
15 things about the school.

16 But if we were to have more land we could  
17 do more things, and we could offer a wider range of  
18 things to more kids and become a bigger part of this  
19 island. Thank you.

20 CHAIRMAN HELLER: Parties, any questions?  
21 Commissioners, any questions? Thank you.

22 THE WITNESS: Thank you, sir.

23 CHAIRMAN HELLER: That concludes our public  
24 testimony. And I'd like to thank all of our students  
25 in particular for coming in today. We appreciate your



1 participation. Also appreciate the patience of the  
2 parties as we went through combined testimony on these  
3 matters. Are you ready to proceed with oral  
4 arguments?

5 MS. BENCK: Yes, Chairman.

6 CHAIRMAN HELLER: (addressing the reporter)  
7 You're okay?

8 THE REPORTER: Whew. Yes. (audience  
9 laughter)

10 CHAIRMAN HELLER: Let's proceed with the  
11 Petitioner, Ms. Benck.

12 MS. BENCK: So out of 15 minutes if I may  
13 reserve 7 for rebuttal?

14 CHAIRMAN HELLER: Great.

15 MS. BENCK: And about 8 minutes for the  
16 initial argument. And I'll start now.

17 CHAIRMAN HELLER: Okay. Go ahead.

18 MS. BENCK: And although I am on the clock  
19 and I know it's ticking and I want to keep this short  
20 and sweet. I also want to take a minute upfront not  
21 only to acknowledge the Commissioners but also to  
22 acknowledge the agency, the executive officer and the  
23 LUC staff. I think I have a very specific reason for  
24 wanting to do that.

25 Early on when we filed this Petition, you

1 know, it takes some time for the staff to look it  
2 over, make sure it's sound, and that it meets all the  
3 criteria.

4           And the staff and executive officer got  
5 ahold of me and they said: Basically you've served  
6 everybody you need to serve but we see that there's a  
7 drainage ditch on the survey map. Let's make sure  
8 that that's not going on somebody else's property,  
9 that somebody isn't relying on that.

10           So we went ahead and mailed out big, fat  
11 packets of the Petition to surrounding property owners  
12 in addition to the people who had a recorded property  
13 interest in the property, just to make sure to take  
14 that extra step that everybody around us knew full  
15 well that this Project was going forward and was  
16 before the Commission.

17           And I think that was a great step because  
18 as a result of that, and I think also as a result of  
19 the good and hard work that CMBY did before we filed  
20 the Petition through the county and through the EA  
21 process, I'm pleased to say that the only public  
22 testimony that was offered in *this* docket was really  
23 very positive public testimony.

24           And our neighbor came, HC&S came and  
25 supported the Project and confirmed that, in fact,

1 that ditch is not in operation and nobody is relying  
2 on it. We are very, very pleased that today we also  
3 had testimony in support from a County Councilman and  
4 also from Mr. Randy Piltz, and also the letters that  
5 came in from the Office of the Mayor and again from  
6 our neighbors giving that assurance.

7 So I think that extra step in the front was  
8 a terrific move and I'm really happy that we did it.  
9 So thanks to the staff and EO for recommending that.

10 So moving into the argument, you well know  
11 the law that you're here to administer is the Land Use  
12 Law Chapter 205. And you know that under 205-4 we  
13 must prove to you with a preponderance of the evidence  
14 that we have met the criteria for a District Boundary  
15 Amendment in this case from the Agricultural District  
16 to the Urban District.

17 There's a few aspects of that, yeah I know  
18 that you're familiar with it, one of them is that  
19 we're not violating section 3 of Chapter 205 which is  
20 the section related to Important Agricultural Lands.

21 You've heard from our experts. Not only  
22 are these lands not Important Agricultural Lands  
23 they're *terrible* agricultural lands. It is the lowest  
24 rating E quality soils. Clearly reclassifying to the  
25 Urban District would not violate that. In fact that

1 kind of crumby soil probably helps explain the  
2 checkered history of this property. I'll put it that  
3 way.

4           And by "checkered history" I mean World War  
5 II it was used as part of a Naval Air Force site,  
6 after which it was used as a piggery, an unpermitted  
7 scrap metal kinda junk yard. And this has not been  
8 land that was in active agriculture because the soil  
9 is just no good.

10           So we're clearly not violating any sort of  
11 IAL or agricultural conditions that this Commission  
12 should be concerned with.

13           The other two key sections of the law that  
14 you administer is making sure that we're not violating  
15 205-16 which is: Is the Project consistent with the  
16 Hawai'i State Plan? Bryan Yee and the Office of  
17 Planning, clearly experts in that area, but I think we  
18 put on a good case. I hope the Commission agrees that  
19 we put on a good case regarding the Hawai'i State  
20 Plan.

21           I'll bring your attention to just one  
22 aspect of that plan which is the need for economic  
23 growth, economic development and particularly on  
24 neighbor islands. To that point -- and again I'm sure  
25 the Office of Planning can expound on this -- but you

1 heard from our economic and fiscal expert who  
2 explained that during the infrastructure development  
3 stage of this Project, which is the stage that the  
4 Petitioner is charged with completing, there's going  
5 to be revenues of about \$8 million a year going in to  
6 build out the Project. That's...just....here...on...  
7 Maui.

8 Off-island revenues are going to be just  
9 under \$6 million a year. And then indirect Maui  
10 revenues are going to be over \$4 million a year.

11 So it's almost \$11 million a year of money  
12 going in in the economy, growing the economy during  
13 the 3-year buildout because that's about how long  
14 Petitioner anticipates completing the Project.

15 Jobs. Going to wind up with about a total  
16 of about 82 jobs, new jobs a year during the buildout,  
17 32 direct, 33 indirect. That's on Maui alone. Then  
18 offisland 17 jobs generated during that buildup  
19 period. That's just the initial first few years.

20 When we get into the individual lot  
21 construction and the work that goes on there, we're  
22 looking at about \$17 and-a-half million a year in  
23 revenues, economic growth, development coming from  
24 that, jobs during again the lot buildout phase. The  
25 Petitioner's gone. This is the longer phase of the

1 Project.

2 We've got about 180 new jobs a year, 180  
3 jobs a year based on that kind of work. So I think on  
4 that aspect alone the Project is clearly consistent  
5 with the Hawai'i State Plan.

6 Moving on to now the final aspect under 205  
7 that I think is the Commission's real interest today,  
8 is: How does this Project comply with the Urban  
9 District standards?

10 And how does this Project meet the various  
11 tests under 205-17 which is your decision-making  
12 criteria?

13 Again, I believe that we demonstrated both  
14 through the testimony that we filed, through the  
15 testimony you heard from our land use planner Glenn  
16 Tadaki, and also from the county of Maui and the  
17 planning director himself that this Project absolutely  
18 meets the criteria for Urban District standards.

19 Although it is not surrounded by urban  
20 land, it is surrounded by things like a cement quarry.  
21 It is surrounded by things like a motor-cross track.  
22 This is not sensitive land uses that are around us.

23 So putting a project like a heavy  
24 industrial project that Petitioner has got proposed  
25 here makes sense. The Petitioner represents

1 unequivocally that there'll be no residential  
2 development in the this Project. It is meant for  
3 purely industrial use. It's the right place to do it.

4           There's been no opposition from the  
5 community. It's been fully assessed in an EA, and we  
6 believe and we hope that we can move forward on this  
7 basis.

8           In terms of what kind of impacts or what  
9 kind of demands this Project will put on  
10 infrastructure, you heard from our experts that we're  
11 in charge of and responsible for building our own  
12 water system.

13           No cost to the county on that. We are also  
14 going to be -- the Project will use individual  
15 wastewater systems for each of the lots.

16           You heard that was individual wastewater  
17 systems and the potable water system will all be  
18 governed by a set of CC&R's that will dictate what  
19 kind of criteria those systems must meet.

20           Those CC&R's conditions are found in our  
21 proposed Decision and Order. Those conditions were a,  
22 I would say, collaborative process somewhat between  
23 Petitioner and the Office of Planning and the County.  
24 They can talk more about that if they care to.

25           But the Department of Health issues and our

1 conditions to deal with the fact that this is an  
2 industrial Project are things that Petitioner is  
3 completely in agreement on.

4           You heard from Mike Dega. Again, one of  
5 your charges is what effects, if any, might this  
6 Project have on traditional and customary rights.  
7 What kind of archaeological resources could be  
8 affected by development of this Project. And what you  
9 heard is nothing.

10           This Project has no history. There's no  
11 finds on this Project that indicated any kind of  
12 traditional or customary practices right now or really  
13 any time in the past. So I believe that we've covered  
14 that adequately.

15           The final point I'll come to before I move  
16 on and save for rebuttal is one of the criteria that  
17 the Commission looks at is: How does this fit with  
18 the zoning? How does this fit with the County Plan?  
19 Again, this is -- not to steal James Giroux's thunder  
20 on this aspect too -- but you heard from the county.

21           The Maui Island Plan was just completed  
22 last year. This Project is clearly within the Urban  
23 Growth Boundaries. It is designated by the county for  
24 this kind of development.

25           Not only is it within the Urban Growth



1 Boundaries, it's also in a specific planned growth  
2 area that the county and the people of the county  
3 identified for industrial kind of uses. So it's the  
4 right place not only in Petitioner's mind but also as  
5 demonstrated by the County.

6 And, finally, the county zoning law that  
7 passed, which was ordinance 3977, that just got  
8 enacted in 2012, that's the M-3 restricted industrial  
9 district. That's what this Petitioner is seeking a  
10 rezoning to.

11 It clearly states that it is meant for  
12 heavy industrial uses, not the kind of heavy  
13 industrial uses that you saw on the way out to the  
14 site visit where property is zoned for industrial, but  
15 in fact being used by more (audience member coughing  
16 over speaker) industrial.

17 This Project, the sort of revenues and the  
18 sort of jobs we're talking about are based on this  
19 Project being built as a heavy industrial project and  
20 getting zoned under the M-3 restricted industrial  
21 district.

22 So with that I believe we sincerely hope  
23 that the Commission believes we met the criteria. And  
24 I'll reserve the rest for rebuttal. Thank you.

25 CHAIRMAN HELLER: Thank you. Mr. Giroux?

1           MR. GIROUX: Thank you, Chair. I'll keep  
2 it short. As far as the Department of Planning goes  
3 we strongly support the Petition to amend the District  
4 Boundary Amendment in this area.

5           As was stated it's clearly within our  
6 long-range planning. And it's also the right place  
7 for the right activity. So all I can say is we  
8 strongly support the Petition.

9           As far as the county is concerned we'll see  
10 this Project again during our zoning process. And  
11 also we'll be seeing it during our subdivision  
12 process. We're confident that we can take care of any  
13 remaining issues and impacts.

14           Just to try to tackle the elephant in the  
15 room as far as the proposed findings of fact findings  
16 of fact and conclusions of law, I think the major  
17 debate or battle going on right now is with what is  
18 the timing of the acceptance of the TIARs.

19           It's the county's position that we really  
20 have to look at how these types of projects come on  
21 the books, can stay on the books and how they move  
22 through the system.

23           It's hard enough going through the multiple  
24 layers of entitlements and trying to please multiple  
25 agencies all at the same time possibly with

1 conflicting needs and resources.

2 But the concern right now I think is the  
3 way that the TIAR is being basically required, if you  
4 look at the state's, you know, proposal, that they  
5 want to require it before the Applicant even applies  
6 for a preliminary subdivision or tentative  
7 subdivision.

8 This tentative subdivision process I think  
9 has to be clearly understood within the county  
10 process. Because at any time somebody can come in and  
11 put in an Application for a tentative subdivision.

12 At that point it's the county that is  
13 alerted and alerts the Applicant that here's all the  
14 110 things you're gonna need to do before you get  
15 final subdivision. There is a lot.

16 Anybody who's ever tried to subdivide  
17 anything on Maui will tell you that it is a nightmare,  
18 but it is because that process is the final, you know,  
19 take by the government to look into possible impacts.  
20 But it's not at the preliminary subdivision that these  
21 impacts are evidentiary.

22 It's near when you're looking at final  
23 subdivision that all of the impacts are clear, because  
24 some projects haven't even gone through zoning yet.  
25 Some projects may be affected by other projects that

1 are hitting the ground before or soon after their  
2 project.

3           So the discussions that have to be made  
4 with the state are basically a moving target. But to  
5 not allow the Applicant to even step on first base to  
6 get the Project moving without that TIAR accepted --  
7 and we don't know how the state is going to accept  
8 it -- we don't feel is a fair process for the  
9 Applicant.

10           We would like the Commission to really look  
11 at where is the timing for that acceptance of the TIAR  
12 that will be most effective. At the county level,  
13 yeah, we'd like to see a TIAR during our zoning  
14 deliberations.

15           But, again, as you heard from Mr. Spence  
16 you can have your land use change at the state level  
17 and a few years can go by, more than a few years can  
18 go by. Traffic changes, agreements need to be  
19 renegotiated.

20           In the meantime you can still have your  
21 preliminary subdivision checklist and be working on  
22 it. After you get through zoning then there's another  
23 huge possibility that your Project may not get up and  
24 running in reaching final subdivision. It could be  
25 years. It could be many years.

1 But it's during that process that continued  
2 negotiations have to be made with the state as far as  
3 what are the impacts of your Project on these  
4 roadways.

5 During our zoning phase is when we put  
6 conditions on the Applicant that the Council can see  
7 from the ground level. That if there's any changes or  
8 any impacts to roads or highways you have to deal with  
9 the state.

10 You're not going to get your Project done  
11 without the state signing off on that, an agreement.  
12 It's the Memorandum of Agreement that seals the deal.

13 It's not whether or not you submit your  
14 TIAR. It's not whether or not you receive a TIAR.  
15 It's not whether or not you approve a TIAR. It's that  
16 Memorandum of Agreement. And that's gonna be done  
17 during the acquisition of your final subdivision.

18 So we really want the state to look at that  
19 because it does affect the ability for people who have  
20 put in an enormous amount of effort to get to this  
21 stage to just go forward just one more step.

22 They still gotta get through zoning. They  
23 still gotta get through subdivision. They still  
24 gotta, you know, building permits. Maui County wants  
25 that infrastructure to be completed concurrently with

1 the impact.

2 And the impact is gonna happen when they  
3 get their CO. As long as that happens Maui County is  
4 gonna be happy about the process.

5 But Maui County is not going to be happy  
6 watching a developer sit there waiting, watching his  
7 finances disappear, watching a project go into the  
8 tank and then wondering why does he even have  
9 entitlements if he can't move forward. And that's  
10 what Maui County doesn't wanna see.

11 Because at this point in time in this  
12 economy we need to see these projects hit the road,  
13 get their entitlements and start moving dirt.

14 So that's our plea to this Commission is  
15 let the County look at this TIAR situation. Let us  
16 decide the timing of are we going to zone?

17 Are we happy with that TIAR that's on the  
18 table? Do we want it to be, you know, worked on more?

19 Because we will need that. We will need  
20 the TIAR to make sure that we can adequately put  
21 impact conditions that correlate with those impacts.

22 But even when we do that there could be  
23 future changes that are going to need to be addressed.  
24 And that's going to be done during the MOU. So that's  
25 me on my soap box. You'll probably hear it at the

1 next project too. But we do strongly support this  
2 Petition.

3 CHAIRMAN HELLER: Thank you. Mr. Yee.

4 MR. YEE: Thank you. The Office of  
5 Planning also strongly supports the reclassification  
6 in this case. It's a good Project. The location is a  
7 good one for a heavy industrial Project. There's  
8 actually agreement on the vast majority of the  
9 findings of fact and most of the conditions.

10 Given the limitation in time the bulk of my  
11 time is, frankly, going to be spent where the  
12 differences lie. If you had listened -- I'm sure you  
13 did -- to the Petitioner's closing argument, there's  
14 nothing she said that I disagree with. Everything she  
15 talked about are issues that the Office of Planning is  
16 in agreement with.

17 I am sure what I'm going to talk about is  
18 going to be what's in her rebuttal. Because this is  
19 where we disagree. But I don't want to leave you the  
20 impression that our disagreement is in any way an  
21 indication that we have a disagreement with the  
22 underlying question of reclassification.

23 The Office of Planning supports the  
24 reclassification in this case. I'm going to be a  
25 little detailed just because it's my only opportunity

1 and because your staff may need to look at this. But  
2 I first want to go sequentially through their reply to  
3 the Office of Planning's comments.

4 The first is findings of fact Findings of  
5 Fact 138 and 139. This deals with the U.S. Fish and  
6 Wildlife and their concerns, expression of their  
7 concerns.

8 Petitioner suggested revisions be made  
9 essentially to make sure that the findings don't say  
10 that there are problems. That the findings of fact  
11 only say that the U.S. Fish and Wildlife has these  
12 concerns. And that's fine with the Office of  
13 Planning. We're willing to accept there may be  
14 differences of opinion.

15 And we didn't want to bind the Petitioner  
16 in their discussions with the U.S. Fish and Wildlife  
17 to particular findings by the LUC regarding what  
18 mitigation would be required or what impacts were  
19 specifically going to occur in this case.

20 But by that same token the Office of  
21 Planning then objects to their new proposed Finding of  
22 Fact 139 in which they propose to specifically find  
23 that this Project will not have an impact on the Nene.

24 As we said there's a dispute. There's  
25 anticipated discussions between Petitioner and U.S.



1 Fish and Wildlife. And the Office of Planning does  
2 not want to give the Petitioner the opportunity to  
3 argue to the Fish and Wildlife, "No, we're not going  
4 to do anything because the *LUC* found that there are no  
5 impacts to the Nene."

6 So while we acknowledge that this may be  
7 Petitioner's position, we don't want a specific  
8 finding *that* there are no impacts because this will be  
9 the subject of discussions with U.S. Fish and  
10 Wildlife.

11 So we have no objection to their revisions  
12 to Finding of Fact 138, but we oppose the inclusion of  
13 the new Finding of Fact 139.

14 With respect to Findings of Fact 245 to  
15 247, this deals with the exhibits that they submitted  
16 in their reply dealing with notice to neighbor  
17 landowners of the potential for a potable water  
18 source, and then the prohibition against then building  
19 subsequently any individual wastewater systems within  
20 a thousand feet.

21 First, the exhibits were never admitted  
22 into evidence. So you can't consider them. Although  
23 I do want to point out I'm not ascribing any ill  
24 intent or ill motive or any bad action on the part of  
25 the Petitioner. But I have to raise this because the

1 Office of Planning comes to me after the hearing is  
2 over.

3 And they'll say, "Well, you know, why don't  
4 we submit a letter from the Department of  
5 Transportation?" Or, "Why don't we have someone from  
6 the state go and submit a public testimony?"

7 And what I generally tell them is: After  
8 the close of evidence -- maybe during the hearing we  
9 could ask to submit additional evidence -- but after  
10 the close of hearing I don't think it's appropriate  
11 that we try to supplement the record.

12 We had our opportunity. We had our chance.  
13 We made our case. We're done with our case. We need  
14 to put an end to this process. We can't sort of  
15 continually keep going on and on. That was actually  
16 part of the reason why I objected to some of the  
17 questions from the County today.

18 So I tell the Office of Planning this.  
19 That, "No, you can't submit new letters from the  
20 Department of Transportation." Then the Office of  
21 Planning gets this reply from the Petitioner  
22 containing these new exhibits.

23 And so the Office of Planning looks to me  
24 and says, "Well, Petitioner submitted these new  
25 exhibits. Why can't we?"

1           So to be consistent with my client, again I  
2 acknowledge that there's no ill-motive on the part of  
3 the Petitioner. I have to object to the admission of  
4 these exhibits or the consideration of them, and  
5 therefore also the findings of fact that were based on  
6 those exhibits.

7           We also note that although they're  
8 proposing in Condition 3 regarding the notice to  
9 restrict the notice just to DLNR. DHHL is actually  
10 also within 300 feet of the perimeter.

11           Now, they're not within 300 feet of the  
12 north side perimeter. But they are within 300 feet of  
13 the southern side. And we don't know for sure where  
14 the potable water source is located. They think it'll  
15 be north but they're not sure.

16           So basically the Office of Planning would  
17 ask that Condition 3 revert back to OP's original  
18 proposal, which is notify any landowner within a  
19 thousand feet that you're gonna be putting in a  
20 potable water source. There aren't that many  
21 landowners. We don't think it's a very big imposition  
22 on the Petitioner.

23           So that's our argument on Findings of Fact  
24 245 through 247 and the proposed revision to Condition  
25 No. 3.

1           With respect to Findings of Fact 222  
2 through 229 and Condition 1 relating to the acceptance  
3 of the TIAR. First, this is late. They were supposed  
4 to submit their findings of fact as part of their  
5 original proposed finding of facts and conclusions of  
6 law. These findings -- they were supposed to submit  
7 it then not in their reply, not after our opportunity  
8 to comment has passed.

9           Second, more substantively we note that  
10 they quote extensively from Mr. Funakoshi's testimony  
11 were based, several of their findings of fact on that.  
12 And we wanted to note that Mr. Funakoshi only  
13 testified, well, just in his experience this is what  
14 happened.

15           He didn't purport to testify that in the  
16 entire realm of land use cases he knows whether or not  
17 TIARs are a non-issue. He was just referring to his  
18 personal experience.

19           Let me take a moment, by the way, now to  
20 talk about Councilman Couch's public testimony. It  
21 was certainly news to me. I wasn't aware of it so we  
22 tried to find out some information. And, frankly, it  
23 was a subject that I was concerned about.

24           Although it's technically not evidence I'm  
25 sure you're going to be thinking about it. So I

1 wanted to find out as much information I can to the  
2 extent that I could of about what went on.

3           What I do know is that the Land Use  
4 Commission in May of 2013 issued a D&O. And in the  
5 D&O it said the TIAR should be accepted prior to zone  
6 change approval.

7           The city council -- county council had a  
8 land use committee hearing apparently yesterday in  
9 which they delayed because they could not get DOT  
10 input.

11           First, let me know the land use *committee*  
12 hearing did not have to be delayed because of the LUC  
13 condition. The land use committee does not issue the  
14 final subdivision approval. So they could have moved  
15 forward. So there was nothing about the order itself  
16 that stopped that process from going forward.

17           But probably more importantly for you, that  
18 in September, I understand it was September 20th the  
19 revised TIAR was submitted. And then in October we  
20 understand that there was a meeting with the  
21 Petitioners.

22           And they were told you wouldn't get a  
23 comment by October 16. But the committee met anyway.  
24 So there was apparently some miscommunication where  
25 the county believed that DOT was ready to give

1 comments.

2 And the DOT had told the Petitioner, at  
3 least they believed they told the Petitioner, "No,  
4 we're not going to be ready with comments." And that  
5 would be entirely consistent with the timing of the  
6 Revised TIAR.

7 The Revised TIAR came in less than a month  
8 before the committee hearing. So to anticipate or to  
9 assume that DOT is going to be completed with their  
10 analysis of the Revised TIAR in less than 30 days is  
11 unrealistic.

12 The Applicant, frankly, should have  
13 submitted a TIAR earlier if that was their schedule.  
14 They submitted it late. They didn't give DOT enough  
15 time to review and accept. But even without that the  
16 council could have continued their hearing.

17 Nothing about the LUC condition prevented  
18 the LUC -- I'm sorry, prevented the Land Use Committee  
19 at the county level from moving forward with the zone  
20 change application.

21 But moving back to, I guess, the rest of  
22 the argument. Much of the argument in this case --  
23 well, I was going to say much of the argument revolved  
24 around whether DOT issues acceptance letters.

25 The county for, frankly, the first time in

1 the pleadings, has raised the issue of, "Oh, oughta  
2 defer to the county and let them decide when the TIAR  
3 should be accepted."

4 That's not a correct criteria under the  
5 statute. The statutory criteria for you in evaluating  
6 these issues is to look at what is the impact on state  
7 facilities and then to impose conditions that address  
8 that question.

9 The Traffic Impact Analysis Report deals  
10 with the impact to state facilities. So if you simply  
11 defer to the county, in our view you're not  
12 accomplishing the statutory criteria or meeting the  
13 statutory criteria to address the impact on state  
14 facilities by simply deferring to the county on this  
15 question.

16 The county also argued that, well, the  
17 preliminary or tentative subdivision approval is too  
18 early, really it's a zoning change. Normally zone  
19 change is where -- normally zone change occurs first.  
20 That's been our experience.

21 In this case apparently it's going to go  
22 second. That's not where the real dispute lies. The  
23 real dispute is not between preliminary subdivision  
24 approval and zone change approval.

25 The real dispute lies between whether it

1 should be *final* subdivision approval which Councilman  
2 Couch said could be years after zone change. And  
3 that's basically too late for the Office of Planning.

4 The purpose of a Traffic Impact Analysis  
5 Report is to analyze the impacts. By the time you get  
6 to your final subdivision approval you're looking at  
7 the particular mitigation.

8 So you're already looking -- so if you  
9 don't have a requirement to review the TIAR, to accept  
10 the TIAR, then by the time you get to final  
11 subdivision approval certainly you're looking at  
12 construction plans and you're trying to decide: Well,  
13 am I going to sign off on this particular width of the  
14 lane, this particular length of the storage lane?

15 You're looking at those particular levels  
16 of detail. You're looking at the particular  
17 mitigation, not looking at the impacts per se.

18 The purpose of the TIAR is to analyze those  
19 impacts first before you get to all the mitigation,  
20 the specifics of the mitigation, figure out what the  
21 impacts are. Then proceed to the more general  
22 mitigation and then go to the design of the actual  
23 construction.

24 So if you wait 'til your final subdivision  
25 approval, that's just too late because by that point



1 you're looking at their construction plans already.

2 You've already decided what the mitigations are.

3           And if the Department of Transportation  
4 disagrees then significant changes happen. You have  
5 to redo your construction plans, completely revamp  
6 what you were originally proposing.

7           So at *final* subdivision approval in our  
8 view is simply too late for the TIAR acceptance. We  
9 do want to note we did take a look at prior cases.  
10 And quite honestly the prior cases we've looked at  
11 have sort of gone a gamut of different deadlines.

12           Since 2010 in Kula Ridge and Forest City  
13 there was no requirement for a TIAR acceptance at all,  
14 just wasn't any.

15           Now, in Forest City I think they were  
16 further along. And they were looking at mitigation.  
17 And in Kula Ridge I think there were no particular  
18 state impacts in that case.

19           In Koa Ridge and Wai'ale the TIAR  
20 acceptance deadline was final subdivision approval.  
21 Although, again, in Koa Ridge there was a principled  
22 agreement on the mitigation.

23           So they had also sort of moved past the  
24 discussion of what are the impacts and how they moved  
25 on to what are the specific mitigations that should be

1 required.

2 But in any case -- but in other cases in  
3 Ho'opili, for example, the TIAR had to be accepted  
4 prior to zone change Application. So, you know, you  
5 couldn't even start the zone change process until you  
6 got that TIAR acceptance.

7 In Kihei High School, more recently, the  
8 Department of Transportation condition was a TIAR is  
9 accepted prior to an executed contract for Phase 1  
10 design.

11 And as you may remember they were looking  
12 at a design/build contract. So the idea was make sure  
13 whoever wins the bid knows what they're supposed to be  
14 designing and building.

15 So that was the concept in Kihei. And as I  
16 said, in Waiko the LUC decision was TIAR acceptance  
17 and zone change approval.

18 So when we look at these prior cases what  
19 we have to ask with respect to the Petitioner's  
20 argument in terms of, well, they don't know of any  
21 examples of DOT TIAR acceptances, is well what was the  
22 deadline requirement?

23 If there is no deadline requirement -- if  
24 there is no requirement for an acceptance you wouldn't  
25 expect that the Department of Transportation would

1 issue a letter.

2           If the deadline was final subdivision  
3 approval then at that point everybody is looking at  
4 the construction plans. What's the point of looking  
5 at the TIAR at that point? So sort of these -- if you  
6 look at the evidence, the evidence is simply: "Well,  
7 I don't know of" or "I can't give you an example of a  
8 TIAR acceptance."

9           But if there was no requirement, and,  
10 frankly, in many of the older cases there aren't any.

11           Or if there are any it's final subdivision  
12 approval. Then you wouldn't expect to find a TIAR  
13 acceptance letter from the DOT.

14           Finally, this particular case we wanted to  
15 say there's no reason to think that there's going to  
16 be a problem because, as we understand it -- well, the  
17 Petitioner testified that it can be done in 2 weeks.

18           I understand they did submit the revised  
19 TIAR last week to the Department of Transportation.  
20 They're looking at preliminarily subdivision approval  
21 9 months -- sorry, preliminary subdivision approval in  
22 9 months and zone change in one year.

23           So if you may recall the particular  
24 revisions recommended by the Department of  
25 Transportation were very simple, and the proposed

1 mitigation was very straight forward. So there's  
2 nothing particularly complicated about this case.

3 And so if you're looking at 9 months or one  
4 year, depending which particular trigger you're  
5 looking at, the fact that the TIAR, they're not  
6 waiting until one month before the hearing before they  
7 submit the Revised TIAR.

8 There's no reason to think that this is  
9 going to be a problem in this case where the  
10 Department of Transportation has asked for a deadline  
11 of preliminary subdivision approval, has asked for an  
12 earlier deadline.

13 There's no reason to think that they're  
14 going to delay their acceptance or fail to issue the  
15 TIAR, in a manner which prevents the county from  
16 proceeding on a timely basis with this Project.

17 So we think these fears are speculative.  
18 We believe that the Office of Planning's proposed  
19 condition should be adopted. With that I'm happy to  
20 answer any questions.

21 CHAIRMAN HELLER: Let's take a short break  
22 for the benefit of our reporter and those that need to  
23 use the facilities. Then we'll have a vote when we  
24 come back. About 5 minutes.

25 (Recess was held 10:45-11:00).

1           CHAIRMAN HELLER: (gavel) Okay. Let's go  
2 back on the record. I think we are ready for rebuttal  
3 by the Petitioner.

4           MS. BENCK: Thank you, Chairman. Again,  
5 I'll express Petitioner's thanks to both the County  
6 and to the Office of Planning. We are appreciative of  
7 what was really overwhelming support, I believe, that  
8 was expressed by the County and really by the Office  
9 of Planning with those few limited exceptions.

10           With that I'm going to address, as Bryan  
11 predicted I would, some of the issues that he raised  
12 in his argument.

13           With respect to the finding of fact related  
14 to Nene, that's the finding of fact Bryan objected to,  
15 Petitioner's 139. That's fine. Petitioner is willing  
16 to give on that. We have that finding of fact removed  
17 from our proposed D&O.

18           I do want to address Mr. Yee's comments on  
19 our new proposed Findings of Fact 245 to 247 only to  
20 say those weren't submitted as exhibits. That's  
21 public testimony. And we're citing to public  
22 testimony which I believe would be subject to judicial  
23 notice.

24           So those letters were not additional  
25 exhibits filed by Petitioner. They were public

1 testimony letters. Because we monitor what is  
2 submitted to the Commission, we knew they came in and  
3 we cited them in our response.

4 That said, if having those conditions in  
5 the Decision and Order are in any way objectionable to  
6 this Commission, then those findings of fact can  
7 disappear. I just wanted to correct the way that  
8 those findings were characterized.

9 And then going to Mr. Yee's comments about  
10 the notification of surrounding property owners. And  
11 he correctly pointed out that Petitioner had made some  
12 slight modification to Office of Planning's originally  
13 suggested condition, that we have really no  
14 substantive dispute with whatsoever which is that,  
15 yes, we will notify surrounding property owners that  
16 we're going to have potable wells.

17 And that as we heard during the hearing  
18 that that will then mean that there will be  
19 limitations on the ability of those surrounding  
20 property owners to have certain kinds of Wastewater  
21 Treatment Plants or injection wells.

22 We've got no problem with doing the  
23 notification. It was really almost a concern or for  
24 efficiency that we had tailored that condition to  
25 indicate, the State because that's the only

1 surrounding property owner who hadn't actually  
2 submitted written testimony saying, "Hey, we know  
3 about the potable wells and we don't care."

4           So we find the condition that was proposed  
5 by the Office of Planning completely acceptable with  
6 one request. The condition that Office of Planning  
7 submitted didn't specify, I believe, surrounding  
8 property owners within a thousand feet or 500 feet or  
9 something. But I believe Mr. Yee did say something  
10 like that during his argument.

11           So whatever the number is, I imagine it  
12 will be reasonable in the Commission's discretion.  
13 The Petitioner will accept it. We just don't know  
14 what number it is that the Commission wants to put in.

15           Mr. Yee said during argument something like  
16 a thousand feet. I believe the condition that the  
17 Office actually proposed didn't have any, any  
18 description of it to the surrounding property owners.  
19 So we just ask for clarification on that so that we  
20 can be sure to comply with it.

21           Finally, I'll go to the discussion about  
22 traffic. I do want to point out with absolutely full  
23 respect to Mr. Yee, but his characterization that we  
24 should have put these additional findings in our  
25 original proposed D&O.

1           Petitioner takes exception to that because  
2 the purpose of the document that we filed, this second  
3 document we filed, was to respond to the Office of  
4 Planning's comments on our D&O.

5           So we filed a D&O. We didn't bog it down  
6 with a lot of facts about the traffic testimony or the  
7 TIAR testimony. And Office of Planning got it. Had  
8 limited but important substantive comments. And  
9 included in that had findings about the proper time to  
10 accept the TIAR.

11           In response we said: Oh, okay. If we're  
12 going to have that in there then we better respond to  
13 it and add these other findings to more fully describe  
14 what happened at the hearing.

15           And, finally, on that not only did we cite  
16 to Mr. Funakoshi's testimony on what, and when, and  
17 how and if the DOT ever actually accepted the TIAR,  
18 but we did also make reference to the quite extensive  
19 and expert testimony given by Director Spence.

20           With all that said, and in the spirit of  
21 cooperation, and in the spirit of a Petitioner who  
22 really wants to get moving on this Project and see  
23 this Project built, during the break that we just had  
24 the Petitioner said to me that: The Office of  
25 Planning's proposed Condition 1A, which says -- I'll



1 read the relevant part, "The Petitioner shall obtain  
2 acceptance of the revised TIAR from the DOT prior to  
3 Petitioner receiving preliminary subdivision approval  
4 from the county of Maui." That Petitioner is willing  
5 to accept that condition.

6 So I believe that with that, Petitioner,  
7 the County and the Office of Planning are in unanimous  
8 support of the conditions. And if there are any  
9 questions I'm happy to answer them.

10 CHAIRMAN HELLER: Commissioners, any  
11 questions?

12 COMMISSIONER INOUE: Okay. With what  
13 Jennifer just mentioned and maybe these questions are  
14 not necessarily applicable. But I do want to know a  
15 little bit about the county process. Forgive me. I'm  
16 gonna mix this docket and the next docket a lot. But  
17 anyway my question is: Who are parties to the  
18 preliminary subdivision approval, final subdivision  
19 approval and zoning?

20 I mean I'm used to the LUC hearings. We  
21 have parties now. How does the process work? That's  
22 the first question.

23 I'll ask the second question too, which  
24 comes first? I think I heard Bryan saying zoning came  
25 first, then the subdivision. In another docket it's

1 subdivision approval that came first and zoning. So  
2 I'm just trying to understand how the process works.

3 MR. GIROUX: I can take a stab at it but  
4 it's pretty perfunctory. Just as far as the first  
5 question about who's a quote, unquote "party," for  
6 your zoning it's a legislative act. There's really  
7 no -- it's just the person who is trying to get the  
8 zoning Application through the Council.

9 For a charter, Maui County, basically you  
10 do the Application and it has to go through the  
11 council, but then it goes back to the planning  
12 commission for comments, then goes back up to Council  
13 again and goes through the committee and Council  
14 processes first and second reading.

15 During that process there's an ability for  
16 the public to actually file a protest prior to the  
17 first public hearing during the planning commission  
18 phase. Then that protest would basically just trigger  
19 what we call the super majority requirement of a vote  
20 to pass that ordinance.

21 So there's public participation. There's  
22 testimony at all of the hearings required by Sunshine  
23 Law. But there's not really a party outside of the  
24 Applicant. The Applicant has to carry all the burden  
25 of the meeting the zoning requirements.

1           COMMISSIONER INOUE: I see. What about  
2 for the subdivision process?

3           MR. GIROUX: That one is more of a mystery  
4 to me. (audience laughter). But my understanding, my  
5 limited understanding, is that you can actually go  
6 into the planning department at pretty much any phase  
7 of your project and ask for a tentative subdivision.

8           At that point you would be given a long  
9 list of things that you would have to do. And if your  
10 community plan wasn't in order or consistent, then  
11 you would have to get a community plan amendment which  
12 is a legislative act.

13           And if your zoning wasn't correct for what  
14 you want to do, you would not get zoning. And then  
15 there's those other hundreds of things that you need  
16 to comply with before you would be able to move to  
17 your final subdivision. But you're not going to move  
18 forward if zoning is a requirement for consistency.

19           The other hangup, slow down, would be that  
20 if you're in the Special Management Area. To try to  
21 get your subdivision and your SMA permit  
22 simultaneously we've gone through various iterations  
23 with the *Leslie Case*, changes to 205A. And I'm not  
24 sure if we've completely hammered that out. But it's  
25 because of the county's tentative subdivision process

1 that's created this kind of grey area in the process.

2 MR. YEE: Can I just respond briefly to  
3 clarify my comment? I think what I said is our  
4 experience is most developers will go to zone change  
5 first, then go to subdivision, not that they have to  
6 go one to the other.

7 So I was just commenting in this particular  
8 case they're apparently going to preliminary  
9 subdivision approval first and then finishing up.

10 And then the zone change approval is likely  
11 to occur after the preliminary subdivision approval in  
12 this particular case. It's just our experience has  
13 been different. And so I was just trying to explain  
14 why we picked those particular deadlines.

15 COMMISSIONER INOUE: Okay. If I were --  
16 the part I'm most interested is the final subdivision  
17 approval cannot go without zoning approval. Zoning is  
18 one of the things; is that correct?

19 MR. GIROUX: That is correct. There's --  
20 there's a requirement of consistency. That requires a  
21 consistency between your State Land Use designation,  
22 your Community Plan, your General Plan, and your  
23 zoning. So they all have to be in line before you can  
24 actually go forward with subdivision.

25 MR. YEE: I think part of the issue is that

1 when you do your final subdivision you create your  
2 density. That has to meet your zone. So if you're in  
3 Ag and you've got all these little small lots, you're  
4 not meeting your density requirement. So it would  
5 violate the zone -- zoning, your zone at that point.

6 COMMISSIONER INOUE: Okay. Thanks. This  
7 question to Bryan. Does the DOT get informed of this  
8 process? Do you get involved?

9 MR. YEE: It is often that the county will  
10 ask for the Department of Transportation's input  
11 simply for the information. So in the absence of a  
12 particular requirement, there's no requirement that  
13 the Department of Transportation participate.

14 So, in other words, they're not a party to  
15 the -- maybe I'm not addressing your concern, but  
16 they're not a party to the case. They're not sort of  
17 required to be there, but they're generally a relevant  
18 agency that has information that is, I think,  
19 informative for the county.

20 COMMISSIONER INOUE: Right. So do you  
21 know --

22 MR. YEE: Did I misstate something? Okay.  
23 I'm sorry.

24 MR. SPENCE: Will Spence for the county.  
25 Let me back up a little bit. When somebody wants to

1   subdivide their land, they go and they present a  
2   preliminary plat to the department of public works.  
3   They're the lead agency, the county agency on that  
4   subdivision. Not the planning department.

5               The public works will circulate that  
6   proposed subdivision to many different agencies:  
7   Planning Department, Water Department, other divisions  
8   within public works, wastewater. We will send copies  
9   to DOT for their review and comment. They may have --  
10   DOT is not just informational.

11              They will come back with substantive  
12   comments as will all these agencies that say "Hey, you  
13   have to do a TIAR. You have to do these roadway  
14   improvements," those kinds of things. And each agency  
15   has their comments on what they want to see in the  
16   subdivision.

17              All those comments are all gathered back  
18   with Public Works. And Public Works issues a letter  
19   to the subdivider saying, "You know, this is the big  
20   laundry list of things that need to be done in order  
21   for you to subdivide your land."

22              I don't think all subdivisions go to DOT,  
23   but certainly something like this, what's before this  
24   Commission today, would because it potentially affects  
25   a state facility. So I'm not familiar with what their

1 comments particularly were.

2 But they're gonna review, they have or will  
3 review a preliminary draft of that subdivision and  
4 come back with comments and say, "Mr. Jencks, you have  
5 to do this," or "you have to do that before we'll come  
6 to agreement on this subdivision."

7 And Charley's more familiar with what those  
8 comments are. But we take very seriously, as the  
9 County we take very seriously whatever the comments  
10 DOT has. It's not just for informational purposes at  
11 all.

12 MR. YEE: I'm sorry. Just so that I can be  
13 clear. I appreciate the clarification. When I said  
14 "informative" or "for information" I did not mean to  
15 imply they were not giving recommendations or requests  
16 to the County.

17 I just meant to differentiate from they  
18 don't have an approval power in this. And they don't  
19 have, you know, something beyond giving those comments  
20 or recommendations to the County. They're not a  
21 party, for example.

22 COMMISSIONER INOUE: So if the County  
23 determines that state facilities or transportation  
24 facilities will be affected. they will notify DOT. Is  
25 that true for preliminary subdivision Application as

1 well as the final preliminary?

2 MR. SPENCE: At preliminary we send -- the  
3 County -- I wish David Goode was here -- who is the  
4 director of Public Works -- the County sends that  
5 preliminary subdivision map to all these different  
6 departments. All those different departments then  
7 comment back to Public Works.

8 So something like this, a 2-lot Ag  
9 subdivision in the middle of Haiku, no need. But  
10 something where we're going to have industrial traffic  
11 going onto a state facility, most definitely that we  
12 would send that to DOT. So they would receive the  
13 very beginning part of that subdivision map.

14 COMMISSIONER INOUE: Okay. Bryan, has the  
15 DOT, if you know, had any misgivings about not being  
16 informed when it was important for the DOT to be  
17 informed in the County subdivision approval process?

18 MS. SHIBUYA: Typically noticed in the  
19 subdivision process the Public Works Department,  
20 they're pretty good assessing which applications  
21 affect our facilities. And they do route it to DOT  
22 for comments.

23 MR. YEE: For the record this is  
24 Ms. Charlene Shibuya from the Department of  
25 Transportation.



1           COMMISSIONER INOUE: Thank you. And one  
2 last question in this line. If the TIAR, revised  
3 TIAR, is not acted on, approved, what have you, in the  
4 preliminary subdivision stage, what can the developer  
5 do with just the preliminary subdivision approval?  
6 Can they proceed with construction? I guess it's to  
7 Jennifer.

8           MS. BENCK: No. Commissioner Inouye, no we  
9 cannot. So we would have our hands tied waiting to  
10 get that acceptance, knowing full well that from the  
11 point of preliminary subdivision approval to the point  
12 of final subdivision approval the actual layout and  
13 the specific requirements may change.

14           Nevertheless, with this condition that  
15 we're agreeing to from a preliminary subdivision  
16 approval we cannot start construction.

17           COMMISSIONER INOUE: From what I  
18 understand in the arguments in the testimony you  
19 could, however, proceed with final plans, drawing  
20 roadways and things like that, getting a final  
21 subdivision approval.

22           MS. BENCK: That's correct. I believe  
23 Mr. Spence brought this up during his testimony back  
24 in September. It's very much at the Applicant's risk  
25 because it's quite expensive to do construction plans

1 and do that kind of engineering construction plan  
2 work.

3 But if you prepare a final map based on,  
4 you know, at that stage of the game based on an  
5 accepted TIAR, things could change between that point  
6 and the final subdivision approval.

7 And, therefore, all those construction  
8 plans are kind of for not because DOT and the County  
9 can still say, "Please make this change. Please make  
10 that change."

11 Just to sort of maybe address something  
12 that you were bringing up a little earlier, there's  
13 one condition that I think is responsive to what  
14 you're saying that we have all agreed to right from  
15 the get-go, which is in this case no matter what we're  
16 gonna provide and complete all the transportation  
17 improvements that are recommended in the DOT accepted  
18 revised TIAR.

19 So we're absolutely going to do that before  
20 we get a certificate of occupancy.

21 So in *this* case with that condition we've  
22 got to get the DOT absolutely, positively. Even if  
23 that wasn't part of the normal County process, we  
24 would have to get that approval and do those  
25 improvements before we could start having people

1 occupy the property.

2 COMMISSIONER INOUE: So it would behoove  
3 the Petitioner-developer of any kind to get that TIAR  
4 approved early, if I'm understanding it correct.

5 MS. BENCK: Well, yes and no. Yes, because  
6 we're agreeing to a condition like we said 5 minutes  
7 ago. We're agreeing now to a condition that's going  
8 to tie our hands until we get that approval. So we  
9 better do whatever we gotta do to get that approval.

10 But in a different scenario, and I think a  
11 more appropriate scenario, hurrying to get DOT final  
12 acceptance on a TIAR is premature when you have yet to  
13 complete the County process.

14 Because during the rezoning Councilmen may  
15 say, "Please add this condition. Please do this.  
16 Please do that." And that can cause some little  
17 tweaks to your project which would then really  
18 necessitate a revision to that accepted TIAR.

19 All that said, we're not backing away from  
20 our willingness to accept that condition. But in the  
21 sort of appropriate flow of development it's very  
22 premature to get an accepted TIAR when you haven't  
23 gone further into the entitlements process.

24 COMMISSIONER INOUE: Okay. Thanks on that  
25 particular line of questioning. I have one more, if I

1 may, Chair.

2 CHAIRMAN HELLER: Okay. Before you move to  
3 a different line of questioning let me just say  
4 Commissioner Inouye indicated that his question may  
5 relate to other dockets that we're going to be  
6 addressing. Mr. Tabata, I will give you the chance to  
7 respond to this question now if you want to.

8 MR. TABATA: Yes. Thank you, Mr. Chair.  
9 Thank you. I think it's important to make clear that  
10 with these projects where you're hooking up to the  
11 state highways you need DOT's approval in order to do  
12 that hookup.

13 So basically throughout your Project life  
14 until you get your building permit you are constantly  
15 in discussions with DOT.

16 They ask you -- they will ask you if  
17 there's a need for an updated TIAR. And then you will  
18 need to respond to them accordingly and produce an  
19 updated TIAR.

20 And just as Bryan mentioned, it's at final  
21 subdivision approval where you get your construction  
22 drawings. And that's when you know your densities.  
23 Once you know your densities, then you know what your  
24 impacts are going to be, your specific impacts for  
25 your specific roadways. At that point they may very

1 well ask for changes.

2           So it's at that point where they will feel  
3 comfortable, basically, accepting your TIAR. Now, is  
4 it good for the developer to get an accepted TIAR  
5 early, like at zoning? Yes. It would be nice if you  
6 could.

7           The problem is that you don't have  
8 information to satisfy DOT. If we could get it now we  
9 would say "Yes, please. I'll take it now. Thank  
10 you". But that will never happen. There's just not  
11 enough information. They don't know the densities  
12 yet.

13           So that's why you create these deadlines  
14 and what they end up being is road blocks. It's  
15 almost impossible to surmount where we're going to  
16 have to anticipate what's going to happen at zoning,  
17 at preliminary, at final, come up with our drawings up  
18 front and then try to satisfy them. But then things  
19 change throughout the process at zoning preliminary as  
20 time changes.

21           As you're waiting for their approval the  
22 surrounding environment changes. Their needs change.  
23 It never ends. But to protect the public you cannot  
24 get that access to the state highways without DOT's  
25 approval. They can withhold it and the public remains

1 protected. You need to satisfy them up to that final  
2 end stage.

3 That's why we're requesting in our docket  
4 that we be required to obtain TIAR acceptance at final  
5 subdivision approval where the densities will then be  
6 known.

7 COMMISSIONER INOUE: Chair, may I ask a  
8 question on the second docket since he's up here? How  
9 long does it take -- and I'm pretty sure the answer is  
10 "it depends". But how long does it take to get that  
11 revised TIAR in? 'Cause that's key, right? You gotta  
12 get it in in order for DOT.

13 MR. TABATA: Absolutely. It depends on the  
14 scope of work what you anticipate. As far as the  
15 acceptance it depends on how long it takes DOT to  
16 review it. They're an extremely busy agency. And  
17 their workload is such that it may take them months to  
18 complete the review and make a decision on it.

19 And when we speak of a singular revised  
20 TIAR I would just like to say that I've seen projects  
21 where you have multiple revised TIARs. In fact I've  
22 seen proposed conditions from the State where they  
23 request a revised TIAR every five years. Those types  
24 of proposals we've opposed because it's arbitrary. We  
25 may be producing one every five years and it's not

1 appropriate. There's no need for it. When they need  
2 it they ask for it. We *must* respond.

3 COMMISSIONER INOUE: I should have limited  
4 it to your particular docket itself. Has the revised  
5 TIAR gone in yet?

6 MR. TABATA: No. No. We just basically  
7 completed one. And we will eventually be working on  
8 it. We will need continual discussions with DOT.

9 COMMISSIONER INOUE: So that's why, I  
10 guess, I'm asking how much longer is it going to take  
11 for you to submit that revised TIAR in your docket?

12 MR. TABATA: It's hard to say. It may not  
13 be in time for zone change approval, which is already  
14 pending.

15 COMMISSIONER INOUE: I'm not looking  
16 for -- I'm saying is it gonna take 30 days, 60 days?  
17 I'm not tryin' to tie it to an event.

18 MR. TABATA: Right. It depends on what the  
19 changes are required. The traffic engineer would need  
20 to weigh in on how long it would take to get the  
21 additional counts if necessary, the calculations. So  
22 for me it's hard to say, but it does take some time.

23 COMMISSIONER INOUE: Okay. Until -- I  
24 guess I'm getting to understand that you're in  
25 constant discussion with the DOT during this process

1 of revising a TIAR.

2 MR. TABATA: Yes. It behooves us to do so  
3 because eventually we'll need to hook up to the state  
4 highway. If they're not happy with what we're giving  
5 them we're not gonna get it.

6 COMMISSIONER INOUE: Okay. Maybe I'll ask  
7 some more later on that docket, but I'm done as far as  
8 that line of questioning.

9 CHAIRMAN HELLER: Okay. Going back to the  
10 present docket. Commissioners, any other questions?

11 COMMISSIONER INOUE: I do, but let  
12 somebody else go.

13 CHAIRMAN HELLER: Commissioner McDonald.

14 COMMISSIONER McDONALD: Just a quick  
15 clarification. When you folks go in -- when a  
16 developer goes in for preliminary subdivision like  
17 Mr. Spence mentioned, that gets distributed to all the  
18 different agencies, branches of county, state  
19 government that may have an interest in the  
20 subdivision.

21 Isn't it possible for the County to issue a  
22 at tentative approval -- a tentative approval of the  
23 preliminary with certain conditions or that the  
24 developer needs to follow up on?

25 MS. BENCK: Yes.



1           COMMISSIONER McDONALD: So what I heard was  
2 the Petitioner is willing to accept the State DOT's  
3 condition regarding an accepted TIAR prior to  
4 tentative subdivision approval.

5           MR. JENCKS: Correct.

6           COMMISSIONER McDONALD: Okay.

7           COMMISSIONER INOUE: Okay. This is on  
8 this pet peeve of mine. I just wanted to make sure  
9 the record is clear as far as Petitioner's voluntarily  
10 indicating that they will do no landfill without  
11 approval -- coming in for approval. And my little  
12 concern is the way the findings of facts are written.

13           So what I'm concerned is the Exhibit 39  
14 which is the M-3 zoning which Mr. Jencks did point out  
15 during the testimony. It does say there on page 2 I  
16 believe that landfill -- one of the items that's  
17 allowed in this M-3 zoning is "landfill, solid waste  
18 processing and disposal."

19           So in my mind I'm thinking two different  
20 scenarios. One is a particular company or person  
21 wanting to do solid waste processing and disposal. In  
22 one case one person may want to do it, do the  
23 processing on the property.

24           However as far as what they do with the --  
25 let me call it "good stuff" recyclable material, and

1 the bad stuff which is to be disposed of would be  
2 disposed offsite. That's one kind of a business.

3 The other one would be the same thing  
4 except what is done with the bad stuff is a landfill  
5 right there in the property. So I want to make sure  
6 what the Petitioner is saying is that they will not  
7 dispose of anything as a landfill in the property.

8 In other words, the first business you want  
9 to be able to do. The second one not before coming to  
10 the Commission again for an amendment.

11 MR. JENCKS: That's correct.

12 COMMISSIONER INOUE: So would you have any  
13 objections to staff writing your findings of fact, I  
14 think it's 70 and 71 to make it clear? I basically  
15 want to make sure that the words in the zoning code is  
16 stated in the findings of fact and that what you  
17 are -- I'm actually trying to protect the Petitioner  
18 from later possible objections for doing the first one  
19 where you are not going to be using the land -- the  
20 property as a landfill.

21 MS. BENCK: Yes, the Petitioner is saying  
22 in my ear, "That's fine." And I don't know what those  
23 amendments to proposed Findings of Fact 70 and 71  
24 would be. But absolutely Petitioner represented and  
25 stand by the property will not be used as a landfill

1 without some further procedure before this Commission.  
2 So that the first scenario you described is a scenario  
3 that could happen here. The second scenario is not.

4 COMMISSIONER INOUE: Okay. Let me read  
5 something that I'm thinking of putting in. That is to  
6 combine the two to say just one finding of fact  
7 combining 70 and 71 to say: The Maui County Chapter  
8 19.25 M3 restricted industrial district includes as  
9 one of its permitted uses quote: "Landfill, solid  
10 waste processing and disposal," unquote.

11 Nevertheless the Petitioner represented the  
12 Petition Area will not be used as a landfill, quote  
13 "landfill" even though it is a permitted use within  
14 the M3 district unless the Petitioner seeks approval  
15 of the Commission pursuant to a motion to amend or  
16 such other procedure.

17 However, Petitioner represented the  
18 Petition Area may still be used for, quote, "solid  
19 waste processing and disposal on it," unquote, as  
20 permitted within the M3 district.

21 MS. BENCK: That captures it perfectly.

22 MR. JENCKS: Yes.

23 MS. BENCK: Petitioner has no objection to  
24 that.

25 COMMISSIONER INOUE: Okay. Thank you.

1           CHAIRMAN HELLER: Commissioners, anything  
2 else? Other questions? All right. The Commission  
3 will now conduct formal deliberations concerning  
4 whether to grant the Petition in whole or in part or  
5 deny the Petition.

6           If the Commission decides to grant the  
7 Petition in whole or in part it needs to determine  
8 what Conditions of Approval to impose.

9           I would note for the parties and the public  
10 that during the Commission's deliberations we will not  
11 entertain additional input from the parties or the  
12 public unless those individuals are specifically asked  
13 to do so. If called upon I would ask that any  
14 comments be limited to the specific question.

15           The Commission held hearings on the merits  
16 of this Petition on September 5th and 6th, 2013. And  
17 oral argument has been concluded today.

18           Commissioners, let me confirm that each of  
19 you have reviewed the record and read the transcripts  
20 for any meeting that you may have missed and are  
21 prepared to deliberate on the subject docket.

22           When I call your name please signify with  
23 either an aye or nay that you're prepared to  
24 deliberate on this matter. Commissioner Biga?

25           COMMISSIONER BIGA: Aye.

1 CHAIRMAN HELLER: Commissioner Chock?

2 COMMISSIONER CHOCK: Yes.

3 CHAIRMAN HELLER: Commissioner Inouye?

4 COMMISSIONER INOUE: Aye.

5 CHAIRMAN HELLER: Commissioner Matsumura?

6 COMMISSIONER MATSUMURA: Aye.

7 CHAIRMAN HELLER: Commissioner McDonald?

8 COMMISSIONER McDONALD: Aye.

9 CHAIRMAN HELLER: Commissioner Torigoe?

10 COMMISSIONER TORIGOE: Aye.

11 CHAIRMAN HELLER: The Chair is also  
12 prepared to deliberate on this matter.

13 The goal today is to determine by way of  
14 motion the Commission's decision on whether to grant  
15 in whole or in part the request to reclassify the  
16 subject property or to deny the Petition.

17 If a decision is reached today, based upon  
18 the Commission's guidance, staff will be directed to  
19 draft appropriate Findings of Fact, Conclusions of Law  
20 and Decision and Order reflecting the Commission's  
21 decision. Commissioners, what is your pleasure on  
22 this matter? Commissioner Biga.

23 COMMISSIONER BIGA: Mr. Chair, I move to  
24 accept the zoning change on Docket A13-797 CMBY.

25 CHAIRMAN HELLER: And does your motion

1 include any specifics as to the conditions?

2 COMMISSIONER BIGA: As Commissioner Lance  
3 specified in the conditions to be part of that.

4 CHAIRMAN HELLER: Thank you. Is there a  
5 second?

6 COMMISSIONER McDONALD: I'll second that,  
7 Chair. And just for the record the conditions are as  
8 proposed -- or as amended by Office of Planning  
9 specifically regarding Condition No. 1, 1A. I'd also  
10 like to include that the Petitioner's Finding of Fact  
11 No. 139 is excluded.

12 And amend Petitioner's Condition No. 3  
13 second sentence to read "Petitioner shall also provide  
14 notice to surrounding landowners regarding the  
15 required separation distance for individual wastewater  
16 systems from proposed drinking water source."

17 The Findings of Fact No. 222 through 229,  
18 and 245 to 247 as recommended or as proposed to be  
19 excluded by the Office of Planning. I would like to  
20 include 'em into the record.

21 CHAIRMAN HELLER: Okay. Is that...

22 COMMISSIONER McDONALD: I think that covers  
23 it.

24 CHAIRMAN HELLER: Commissioner Biga, is  
25 that acceptable?

1 COMMISSIONER BIGA: Acceptable.

2 CHAIRMAN HELLER: Okay. We have a motion  
3 and a second. Any discussion?

4 COMMISSIONER INOUE: I do have one little  
5 tweak because I think the Petitioner requested a  
6 little bit of clarification about the notice  
7 requirement. Right now the way Commissioner McDonald  
8 put it just says "surrounding landowners". And I  
9 think they wanted a little bit more guidance.

10 So I'm wondering if it's -- if we want to  
11 add "surrounding landowners within a thousand feet of  
12 any of the exterior boundary of the property."

13 CHAIRMAN HELLER: Or perhaps just say  
14 "adjacent landowners". Would that solve it?

15 MS. BENCK: Yes, "adjacent landowners"  
16 would be acceptable.

17 CHAIRMAN HELLER: There's nobody who is not  
18 actually adjacent who would be affected, is that  
19 correct?

20 COMMISSIONER INOUE: Mr. Chair, my concern  
21 is that landowners change sometimes. So I have no  
22 idea whether big landowners would become a small one.  
23 So if it's okay with you it's all right because that's  
24 the way it says "the surrounding or adjacent  
25 landowners". But that could be -- there could be one

1 that's not touching the property that's outside of  
2 that. I'm sure you're gonna notify them.

3 COMMISSIONER McDONALD: Commissioner  
4 Inouye, this is specific to the individual wastewater  
5 system in relation to the potable wells. So my  
6 understanding is whenever a landowner proposes to  
7 install an IWS, individual wastewater system, he needs  
8 to go through the process of DOH who is the regulatory  
9 authority for IWS systems.

10 And as part of that process drinking water  
11 wells, well sources needs to be identified as part of  
12 the Application process. So I think there is  
13 coverage as far as specific requirements for adjacent  
14 landowners or those that propose to install IWS  
15 systems on their individual properties to cover it. So  
16 I think there is coverage as far as identification of  
17 potable well sources in addition to the IWS systems.

18 COMMISSIONER INOUE: Okay. Thank you.  
19 Actually I just wanted to make sure Petitioner is  
20 fine with the way it was proposed without any further  
21 guidance about how far away.

22 MS. BENCK: Yes.

23 CHAIRMAN HELLER: Are we changing the word  
24 "surrounding" to "adjacent"? Is that okay?

25 MR. YEE: Chair? Could I -- a brief



1 comment?

2 CHAIRMAN HELLER: Yes.

3 MR. YEE: DHHL is not adjacent to the  
4 Petition Area, but it is within a thousand feet of the  
5 border. Now, again they're not on the north side.  
6 They're on the south side. But they are not adjacent  
7 but within a thousand feet.

8 CHAIRMAN HELLER: Thank you. That answers  
9 the question I was trying to find out about.

10 COMMISSIONER INOUE: That was my concern.  
11 If you just say "adjacent" it could mean -- but as  
12 Commissioner McDonald says if the process works the  
13 way it is without any further requirement I have no  
14 problem with it.

15 CHAIRMAN HELLER: Ms. Benck, does that  
16 resolve your concern about the use of the term  
17 "surrounding"?

18 MS. BENCK: Yes, it does. So the  
19 Commission's condition will be that we will need to  
20 notify adjacent landowners of this required  
21 separation.

22 CHAIRMAN HELLER: Well, I think we just  
23 concluded that the word "adjacent" doesn't work  
24 because DHHL is within the thousand feet, but is not  
25 adjacent.

1 MS. BENCK: Correct. And then the process,  
2 the DOH-regulated process would provide that notice.  
3 Petitioner is more than willing to right now commit to  
4 providing notice to those within the thousand feet  
5 surrounding the property.

6 My only issue in bringing that up during  
7 rebuttal is just to get clarification. It's adjacent  
8 plus DHHL, or a thousand feet or whatever is this  
9 Commission's pleasure, we don't object to. We just  
10 want to make sure that we knew what you wanted us to  
11 do.

12 CHAIRMAN HELLER: Okay. Commissioner  
13 McDonald, it was your motion.

14 COMMISSIONER McDONALD: My preference is  
15 not to put a specific number.

16 MS. BENCK: Okay.

17 COMMISSIONER McDONALD: I'm okay with  
18 "surrounding landowners" and not specific to adjacent  
19 meaning abutting properties. Because that radius may  
20 extend beyond the adjacent properties. So my  
21 preference is to keep the surrounding landowners. And  
22 the process of the DOH and the development of IWS  
23 systems will take care of the necessary coverage or  
24 clearances from potable well sources in relation to  
25 the IWS system.

1 MS. BENCK: That's entirely acceptable.

2 COMMISSIONER INOUE: I wanted -- Bryan was  
3 just chomping at the bit to say something.

4 MR. YEE: You know, people have planes to  
5 catch so I won't say anything. (laughter)

6 COMMISSIONER INOUE: So how we draw the  
7 change I was suggesting basically the Commission's  
8 representations.

9 CHAIRMAN HELLER: So is there further  
10 discussion on the motion?

11 COMMISSIONER McDONALD: Not from me.

12 CHAIRMAN HELLER: Dan, maybe you should  
13 state the motion and call the role.

14 MR. ORODENKER: Thank you, Mr. Chair. With  
15 Commissioner McDonald's assistance the motion is to  
16 approve the Petition with amendments to Petitioner's  
17 proposed Findings of Facts, Conclusions of Law,  
18 Decision and Order filed with the Commission on  
19 October 10, 2013.

20 Petitioner's Findings of Fact 222 to 229  
21 are included. And Petitioner's Findings of Fact 245  
22 to 247 are included. Petitioner's Finding of Fact 139  
23 is excluded. We are amending Petitioner's Condition  
24 1A and replacing it with OP Condition 1A.

25 And amend Petitioner's No. 3 second

1 sentence to read: "Petitioner shall also provide  
2 notice to surrounding landowners regarding the  
3 required separation distance for individual wastewater  
4 systems from the proposed drinking water source" and  
5 Commissioner Inouye's Amendment to Findings of Fact 70  
6 and 71.

7 CHAIRMAN HELLER: It will be amended as  
8 read into the record by Commissioner Inouye.

9 MS. BENCK: I'm sorry, but I believe,  
10 Mr. Orodenger, you referred to the Petitioner's  
11 proposed Findings of Fact that was filed on  
12 October 3rd. I think that actually the document that  
13 we're --

14 MR. ORODENER: October 10th.

15 MS. BENCK: Then my mistake. It is the  
16 October 10th. Thank you.

17 MR. ORODENER: Commissioner Biga?

18 COMMISSIONER BIGA: Yes.

19 MR. ORODENER: Commissioner McDonald?

20 COMMISSIONER McDONALD: Yes.

21 MR. ORODENER: Commissioner Inouye?

22 COMMISSIONER INOUE: Yes.

23 MR. ORODENER: Commissioner Matsumura?

24 COMMISSIONER MATSUMURA: Yes.

25 MR. ORODENER: Commissioner Torigoe?

1 COMMISSIONER TORIGOE: Yes.

2 MR. ORODENKER: Commissioner Chock?

3 COMMISSIONER CHOCK: Yes.

4 MR. ORODENKER: Chair Heller?

5 CHAIRMAN HELLER: Yes.

6 MR. ORODENKER: Thank you, Mr. Chair. The  
7 motion carries 7 votes to none unanimously.

8 CHAIRMAN HELLER: Thank you. In view of  
9 the schedule I think we're going to try to press on  
10 and get done if we can today. So we'll take a 5  
11 minute break just to rearrange the parties and get set  
12 up and then proceed with the next docket.

13 MS. BENCK: Thank you very much,  
14 Commissioners.

15 (Recess was held. 11:45 to 12:00)

16

17 xxxx

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25 CHAIRMAN HELLER: (gavel) Okay. Let's get

1 started again. The next item on the agenda is A10-787  
2 Maui R&T Partners. This is oral argument and  
3 deliberation on Docket No. A10-787, Maui R&T Partners  
4 LLC, to amend the land use district boundary of  
5 certain lands situated at Kihei, Island of Maui, State  
6 of Hawai'i consisting of 253.05 acres from the  
7 Agricultural District to the Urban District, Tax Map  
8 Key No.(2) 2-2-024:016 and 017 and 2-2-002-0084  
9 portions. Will the parties please identify themselves  
10 for the record.

11 MR. TABATA: Good afternoon, Chair, Members  
12 of the Commission. Curtis Tabata, Wyeth Matsubara and  
13 Benjamin Matsubara appearing on behalf of Petitioner  
14 Maui R&T Partners, LLC. Also present to my right is  
15 Steve Perkins, the project manager for the tech park.

16 CHAIRMAN HELLER: Thank you.

17 MR. GIROUX: Good afternoon, Chair. James  
18 Giroux, deputy corporation counsel representing the  
19 Department of Planning. With me is the Director  
20 William Spence.

21 MR. YEE: Good morning. Deputy Attorney  
22 General Bryan Yee on behalf of the Office of Planning.  
23 With me is Charlene Shibuya from the State Department  
24 of Transportation. And joining me shortly will be  
25 Mr. Funakoshi from the Office of Planning.

1           CHAIRMAN HELLER: Thank you. Let me update  
2 the recent record in this docket. On August 8, 2013  
3 the Commission closed the evidentiary portion of the  
4 proceedings.

5           Between September 3 and October 3, 2013 the  
6 parties timely filed their respective proposed  
7 findings of fact, conclusions of law and decisions and  
8 orders and their respective comments, responses,  
9 joinders, stipulations, objections and replies with  
10 the Commission.

11           On October 9, 2013 the Commission mailed  
12 the October 17, 2013 agenda notice to the parties and  
13 to the statewide and Maui mailing lists.

14           Let me briefly run over our procedure for  
15 today. We have already held public testimony on this  
16 docket. The Chair will allow each party no more than  
17 15 minutes to present oral argument in support of its  
18 proposed Decision and Order and/or its exceptions to  
19 those proposed by the other parties. The Petitioner  
20 may reserve a portion of this time for rebuttal.

21           At the conclusion of oral argument and  
22 after questions from Commissioners and the answers  
23 thereto, the Commission will conduct formal  
24 deliberation on this matter. We may also take short  
25 breaks from time to time. Are there any questions on

1 our procedure for today? Hearing none, we've already  
2 called on public witnesses. So is the Petitioner  
3 ready to proceed?

4 MR. TABATA: Petitioner's ready.

5 CHAIRMAN HELLER: Go ahead, please.

6 MR. TABATA: Thank you. I'm going to move  
7 along as quickly as possible. Whatever time I don't  
8 use up then that will be reserved for my rebuttal.  
9 Petitioner's requesting that the Land Use Commission  
10 reclassify approximately 257 acres of land in Kihei  
11 from the Agricultural District to the Urban District  
12 for the development of the Maui Research and  
13 Technology Park Master Plan update.

14 The Project we're proposing is made up of  
15 2 land components. The first component is comprised  
16 of approximately 150 acres that is currently in the  
17 Urban District. Second component is the 253 acres of  
18 this docket.

19 The existing tech park is comprised of 5  
20 buildings totaling approximately 180,000 square feet.  
21 It generates an estimated 100 to \$150 million a year  
22 in revenue and costs approximately \$60 million to  
23 build. The existing tech park employs approximately  
24 400 people and over 20 companies.

25 The proposed Project is comprised of both



1 land components and seeks to create a mixed use  
2 development that will stimulate investment by offering  
3 a more attractive community while maintaining the  
4 tech park's focus on creating high-paying jobs by  
5 increasing employment opportunities and protecting the  
6 availability of lands for employment.

7           To make the tech park more attractive the  
8 Project proposes to include diversified land uses  
9 including residential and commercial uses in addition  
10 to the employment.

11           The combination of these 3 uses would  
12 create a symbiotic relationship between the  
13 employment, residential and commercial components  
14 where all 3 uses would work together to attract more  
15 investment.

16           Now, to increase the employment  
17 opportunities we are moving from a focus on high  
18 technology to knowledge industries. The idea is to  
19 create a strategy that would provide opportunities to  
20 small, medium and large businesses in a larger scope  
21 of industries, but still focus on high-paying jobs.

22           To ensure that the Project will maintain  
23 its mission to create high-paying jobs, the Project  
24 will limit the number of residential units and limit  
25 the amount of retail merchandising within the Project.

1 So for the entire 403 acres of the Project there will  
2 be no more than 1,250 residential units, and no more  
3 than 100,000 square feet of retail general  
4 merchandising.

5 For the sake of comparison a typical Longs  
6 Drugs Store in Hawai'i is approximately 25,000 square  
7 feet. These limitations are specific representations  
8 to the Commission that would be enforceable under the  
9 Commission's standard conditions.

10 These limitations are intended to guarantee  
11 the Project does not end up being predominantly  
12 residential or retail merchandising. The details of  
13 the Project are contained in our Exhibit 11-O which is  
14 a draft Chapter 19.33A which would be proposed as an  
15 ordinance to the Maui County Code.

16 And Petitioner's Exhibit 11Q is a  
17 development code which would be proposed as the design  
18 guidelines for the Project which would be enacted by  
19 future Association of Owners pursuant to the draft  
20 ordinance.

21 The draft ordinance provides for 6  
22 districts: employment, campus, mixed use, residential,  
23 civic and open space. Locations of these districts  
24 are shown in what we call the controlling plan which  
25 is a part of Exhibit 11Q. The controlling plan breaks

1 up the districts by colors. (diagrams on easels  
2 shown) So the north is to the left. And to the right  
3 is south.

4 Now, the employment district is shown in  
5 dark purple on the controlling plan. This is the  
6 heart of the Project which is directly accessed  
7 through Lipoa Parkway, the main entrance, currently  
8 the only entrance into the Project.

9 The focus of the employment district is  
10 what we call knowledge industry. These uses include  
11 highly skilled workers in professional, scientific and  
12 technical services.

13 The employment district also includes  
14 incidental supporting uses including retail,  
15 residential, service and civic uses.

16 The residential uses and employment  
17 district are limited to what we call flex space which  
18 is housing for the live/work buildings that are  
19 combining residential, commercial and light industrial  
20 uses. These residential units would count towards the  
21 1,250 unit cap.

22 Also included are housing for educational  
23 institutions within the employment district. Now, the  
24 retail merchandising within the employment district  
25 would be limited to a maximum store size of

1 10,000 square feet. You will not have any stores  
2 within the employment district that will be over  
3 10,000 square feet.

4 The lot sizes within the employment  
5 district range from approximately 1 to 21 acres  
6 providing buyers with a variety of sizes for different  
7 sized businesses.

8 The campus district is shown in light  
9 purple to the south, the right side of the controlling  
10 plan. The campus district is intended to accommodate  
11 users requiring large contiguous parcels of land and  
12 allows for the same uses as those in the employment  
13 district.

14 The large campus lots are approximately 32  
15 and 35 acres. The mixed use district is shown in  
16 orange. The mixed use district is a flexible area  
17 containing space for incubating businesses along with  
18 supporting uses including residential, retail, civic  
19 and schools.

20 The allowed uses in a mixed-use district  
21 are similar to the employment district and also  
22 include gas stations and low income and senior housing  
23 which would be operated by either governmental or  
24 non-profit organization.

25 Within the mixed-use district the retail

1 merchandising would be limited to stores with a  
2 maximum size of 20,000 square feet. The residential  
3 district shown in the controlling plan in yellow, and  
4 it allows for the largest concentration of residential  
5 uses, but it also includes a mix of retail, live, work  
6 and civic uses.

7           Those uses would include single-family,  
8 multi-family, eating establishments, greenhouses, home  
9 occupations and retail merchandising.

10           Now, retail merchandising in the  
11 residential district would be limited to stores with a  
12 maximum size of 5,000 square feet.

13           Also included on the controlling plan is  
14 the civic district and open space and park district  
15 where your civic district would have your governmental  
16 offices, police and fire stations.

17           Open space district shown in green. Civic  
18 in blue. Open space districts would have your parks,  
19 drainage and natural vegetation.

20           The economic benefits of the Project  
21 include approximately \$1.39 billion in capital  
22 investment. During the 19-year buildout the Project  
23 is expected to generate approximately \$2.7 billion in  
24 wages paid for construction and the operation of the  
25 Project.

1           After full buildout the Project is expected  
2 to support approximately 5,800 permanent jobs onsite  
3 with an annual payroll of \$217,000,000. And an  
4 additional 1,400 offsite workers with approximately  
5 \$68 million in yearly wages.

6           Net tax benefit to the County is projected  
7 at \$25 million during construction and \$21 million  
8 annually after full buildout. Net tax benefit to the  
9 state is projected at \$466 million during construction  
10 and \$57 million annually after full buildout.

11           The Project will not have any significant  
12 impact on agriculture. The Project soils are rated  
13 E with the Land Study Bureau and are not considered  
14 suitable for cultivation.

15           Our faunal and botanical surveys indicate  
16 that there are no federal endangered or threatened  
17 species on the property.

18           Our Archaeological Inventory Survey  
19 disclosed a total of 5 sites, 2 modified outcroppings,  
20 1 boundary wall, 1 L-shaped military training feature  
21 and location mounds.

22           The State Historic Preservation Division  
23 agreed with our recommendation to informally preserve  
24 the boundary wall with an orange protective fence and  
25 no other action is required.

1           The Cultural Impact Assessment indicated  
2 that there are visible cultural resources. And the  
3 oral history interviews did not reveal any known  
4 gathering places or any access concerns.

5           The conclusion is that the Project will not  
6 impact cultural resources on the property or within  
7 its immediate vicinity as required by the State  
8 Constitution.

9           The water requirements for the Project will  
10 include .8 million gallons per day or mgd of drinking  
11 water and .37 million gallons per day of irrigation  
12 water. Irrigation water would be supplied from R1  
13 treated wastewater.

14           Drinking water would be either supplied by  
15 the County's system or Petitioner will develop its own  
16 water system by utilizing groundwater from the Kamaole  
17 aquifer using reverse osmosis to desalinate the  
18 brackish water.

19           Reverse osmosis has been used in Hawai'i  
20 for over the past 10 years. It is a proven  
21 technology. Given the low salt content in the aquifer  
22 it was estimated that the operating cost will be  
23 approximately \$5 per thousand gallons which is  
24 competitive with the County's water rates which range  
25 from \$2 to \$5 per thousand gallons.

1           The Petitioner is committed to building the  
2 reverse osmosis plant if necessary if County water is  
3 not available.

4           As stated in our Traffic Impact Analysis  
5 Report, the TIAR, the Petitioner will mitigate traffic  
6 impacts by building roadway improvements along  
7 Pi'ilani Highway. And to show this I'm going to refer  
8 to Petitioner's Exhibit 24, our second poster board.

9           I'm going to orient the exhibit sides,  
10 north points upward, it's easier for me. This is  
11 not -- I think it was said earlier that you're not  
12 allowed to defer your responsibilities to the County.  
13 This is not deferral.

14           We are proposing this. If the County  
15 approves it and if the DOT approves it we will build  
16 these improvements. These improvements are located at  
17 these black circles.

18           At the north what we'll have is we'll have  
19 a new connection from the Project, from Ho'okena  
20 Street onto Pi'ilani Highway. What this will be, this  
21 will be a new connection with a right/in, right/out.

22           Moving south at the intersection of Pi'ikea  
23 Avenue and Pi'ilani Highway what we'll do is we'll  
24 create a second left-turn lane on eastbound Pi'ikea up  
25 onto northbound Pi'ilani Highway. That will create a



1 total of 2 left-turn lanes.

2 Now, moving down to the main entrance,  
3 Lipoa Parkway. This will receive, if approved, major  
4 improvements including a second left-turn lane on  
5 southbound Pi'ilani going onto eastbound Lipoa Parkway  
6 going this direction. So we'll have 2 left-turn lanes  
7 on Pi'ilani going into the Project.

8 Also what we'll do is we'll widen the  
9 intersection so that we'll have an additional lane  
10 flowing in both ways along Lipoa Parkway.

11 Currently the intersection we have a  
12 dedicated right-turn lane and a combined through lane  
13 and left-turn lane in both directions. So with the 2  
14 extra lanes we will have dedicated left-turn lanes,  
15 dedicated through lanes and dedicated right-turn lanes  
16 going in both directions.

17 In addition to that we'll create -- we'll  
18 build a crosswalk on the north leg of Pi'ilani Highway  
19 to facilitate our pedestrian traffic and retime our  
20 signal lights to allow for the protected left-turn  
21 lanes. Those 3 improvements, they're currently  
22 planned for Phase 1 of the Project.

23 And for Phase 2 we will build a third  
24 access to the Project south on the southern end of the  
25 Project at the site of the old Welakahao Road. That

1 will be for the second phase.

2 In addition, there are regional roadway  
3 improvements that are anticipated that include the  
4 Lipoa Drive extension, also known as the makai  
5 connector road, to be in place by year 2024, and the  
6 mauka connector road to be in place by year 2034.  
7 These will service the Kihei region to supplement  
8 Pi'ilani Highway and South Kihei Road to facilitate  
9 north and south-flowing traffic.

10 These regional collector roads are included  
11 in the Maui Island Plan. The County anticipates  
12 approval of approximately \$1.8 million in year 2016  
13 for the design of the makai collector and  
14 approximately 12 to \$15 million in year 2018 for the  
15 construction of the makai collector.

16 Also the County will be conducting a study  
17 of South Maui to identify the concerns including the  
18 makai collector road. The competing conditions  
19 between the Petitioner and DOT I believe have already  
20 been discussed. I don't really have anything more to  
21 add that has been said.

22 We do believe that the acceptance of a TIAR  
23 should not be required at the zone change approval.  
24 It should be pushed back to a time where the Project  
25 details will then be available which is at final

1 subdivision approval.

2           An incremental plan was prepared to comply  
3 with the Commission's rules because our Project is  
4 anticipated to take more than 10 years to complete.  
5 The rules provide, however, that the Commission may  
6 reclassify the entire property if it so chooses.

7           The original docket for the tech park  
8 Docket No. A84-585 was incrementally approved in 1985.  
9 But the project that was conceived 30 years ago is  
10 very different from the project being proposed today.

11           Back in 1984 the tech park was designed to  
12 provide a single offering with minimum 2-acre lots  
13 with large setbacks and parking surrounding the  
14 buildings for light industrial technology use.

15           That is the tech park you see today. Under  
16 the prior concept location within the tech park didn't  
17 affect the type of real estate offering. It was one  
18 size fits all. Back then incremental approval made  
19 sense because you could build a project in a linear  
20 fashion. You could start at Lipoa Parkway and then  
21 radiate outwards.

22           Today the proposed Project is mixed use.  
23 And the different project areas contain different use  
24 districts. So depending on what type of product a  
25 buyer wants to purchase determines the location where

1 the buyer will need to be placed within the tech park.

2 Large employment lots and large campus lots  
3 are located in the second increment. These lots  
4 appeal to a limited market and typically require a  
5 longer time-frame to find buyers.

6 It is critical that these large lots be  
7 available and marketable as soon as possible along  
8 with the smaller lots so that all options are  
9 available to interested buyers.

10 On the other hand, incremental approval  
11 would prohibit development of the larger lots until  
12 the first increment is completed. The Commission's  
13 rules require completion of the first increment before  
14 qualifying to reclassify the second increment.

15 So even if there was a buyer interested in  
16 purchasing a lot now, with incremental approval we  
17 would not be able to proceed with reclassifying the  
18 second increment until the first increment is  
19 substantially completed.

20 Now, Rodney Funakoshi from the Office of  
21 Planning mentioned an important consideration that the  
22 tech park had already accomplished the most difficult  
23 part of any community Master Plan, which is the  
24 creation of an employment base.

25 We are proud to say that the tech park

1 currently employs approximately 400 people.  
2 Unfortunately the existing Master Plan can't be  
3 improved upon. As a result we have only been able to  
4 develop approximately 10 percent of our land area.

5 The proposed Project has been planned and  
6 revised to maximize its potential to utilize the land  
7 in question to generate the greatest number of  
8 high-paying jobs possible by creating the kind of  
9 community where people will be drawn to, a place where  
10 they can work and live.

11 We'd like to thank all who have supported  
12 our Project. And we would like to thank the parties,  
13 the Commission and the Commission staff for your time  
14 and consideration. Thank you. If there's any  
15 additional time I'd like to reserve that for rebuttal.

16 CHAIRMAN HELLER: Mr. Giroux.

17 MR. GIROUX: Thank you, Chair. I'm going  
18 to keep it short. The Department of Planning strongly  
19 supports this land use reclassification and the  
20 amendment to the old classification. The Department  
21 sees this as an exciting future for Maui, the  
22 flexibility that we see within the possibility of  
23 using form-based zoning.

24 It's going to create a product that's  
25 really going to drive the future, I think, for other

1 projects on the island and probably in Hawai'i.

2 So the Department strongly encourages this  
3 reclassification. And it is within our long-range  
4 planning. And it is an appropriate Project in an  
5 appropriate place. So that's all we have to say.

6 CHAIRMAN HELLER: Thank you. Mr. Yee.

7 MR. YEE: The Office of Planning is also in  
8 support of this request for reclassification. You  
9 know, I know it always seems like we're talking  
10 negatively about projects. It's only because I have  
11 limited time, and you get bored hearing me wax  
12 euphoric about what a wonderful Project this is.

13 So having said that I'll proceed to all the  
14 disagreements we've got. They're actually -- some of  
15 them are fairly minor but I just want to address them  
16 specifically.

17 The first is proposed finding of fact 138A  
18 involving noise standards. The Office of Planning  
19 proposed to include a finding of fact recognizing that  
20 the Petitioner's consultant made a determination that  
21 the setback was far enough that none of the Federal or  
22 State noise standard would be violated because of the  
23 Project.

24 Then Petitioner objected to that inclusion  
25 of the finding of fact. But this was an important

1 finding for the Office of Planning.

2           You may remember we had a proposed  
3 condition about noise and traffic. And we withdrew  
4 that condition because their consultant said, "No,  
5 there's going to be no violation."

6           So it was important for us to have this  
7 proposed condition -- this proposed finding of fact in  
8 the Decision and Order. And, you know, if they're  
9 willing to stand by the conclusion then we're sort of  
10 concerned about why we withdrew our condition.

11           They argue that the information isn't  
12 relevant because the noise, it's just a noise  
13 standard. It's not a requirement that they have to  
14 follow. And that is true that it's a standard, not a  
15 requirement for Petitioner, but this noise standard  
16 impacts state highways.

17           And one of the requirements you have, as I  
18 said before, is to examine what are the impacts of a  
19 proposed project upon state facilities. So the fact  
20 that there is not an impact because of the noise  
21 standard is not going to be violated is one of the  
22 concerns we had. So we wanted to make sure that was  
23 specifically recognized in the findings of fact.

24           I'm going to defer some of my later  
25 arguments about the timing of the TIAR and rather

1 address some of the specific concerns they expressed  
2 regarding some of our traffic, proposed traffic  
3 finding of facts.

4 Finding of fact 166 says the mauka  
5 collector road is not included in the STIP as it is  
6 not anticipated to be necessary for many years. We  
7 recommended that be deleted. The reason we  
8 recommended that is because the STIP only  
9 determines -- or only addresses issues of funding, not  
10 necessarily the need for the mitigation.

11 So what you can look at the STIP for is  
12 what's likely to be funded in the near future not  
13 what's likely to be needed in the near future. That's  
14 two completely separate issues.

15 So when they're using the STIP to say,  
16 "Well, if it's not in the STIP then it's not needed in  
17 the next few years," we think that's incorrect so we  
18 propose that Finding of Fact 166 be deleted.

19 OP had proposed Findings of Fact 177F and G  
20 which referenced the Maui Island Plan. And they --  
21 we're willing to delete that reference to Maui Island  
22 Plan. That is whether or not the collector roads are  
23 identified in that Maui Island Plan. So we're happy  
24 to delete that statement.

25 Furthermore, in Finding of Fact 177, F and



1 G, OP's proposed condition, Petitioner specifically  
2 objected to those portions which talked about DOT's  
3 recommendations for regional improvements; that they  
4 be operational before final subdivision approval.

5 And I want to note two things. First, the  
6 findings of fact is noting what the recommendation is.  
7 It is not -- we've not specifically included that the  
8 Project -- that these regional improvements be  
9 completed in the conditions.

10 We only noted that this is a recommendation  
11 from the Department of Transportation which is true.  
12 That is the recommendation of the Department of  
13 Transportation. And it is a concern.

14 The reason it's a concern is because under  
15 the TIAR submitted by the Petitioner, by the time  
16 Phase 1 is completed without those regional  
17 improvements the intersections are at F. It's  
18 unacceptable.

19 Now, at some point before then I suppose  
20 there may be a period of time in which the  
21 intersections are acceptable. But the TIAR does not  
22 tell us when.

23 So it might be sometime during the  
24 construction of phase 1 that the regional improvements  
25 are needed, but we can't tell from the TIAR. It only

1 tells us by the end of Phase 1 -- that's the only time  
2 period they analyzed -- by the end of Phase 1 without  
3 the regional improvements the intersections are  
4 problematic, are going to be at Level of Service F.

5           So in the conditions themselves we don't  
6 say, "Get the regional improvements done before final  
7 subdivision approval." We say, "Have an MOA which  
8 sets out a timetable to make sure that the mitigations  
9 are concurrent with construction."

10           So it allows for the Petitioner to then go  
11 back, revise their TIAR, analyze when those regional  
12 improvements are going to be needed, and then include  
13 that in the discussions on the MOA to be approved.

14           That's essentially why the concern exists  
15 and why we've included that concern in the findings of  
16 fact, but not specifically include that as a condition  
17 per se recognizing there may be future work to be  
18 done.

19           Petitioner also objected in Finding of Fact  
20 177 F and G about our reference to the STIP. Again  
21 that the finding of fact only said this is a DOT  
22 concern, does not make a finding that the LUC made a  
23 particular finding or made a particular determination.  
24 And as we discussed, the STIP discusses funding, not  
25 need.

1           So the absence of the regional improvement  
2 from the STIP does not tell us that the regional  
3 improvements are not going to be needed. It just  
4 tells us there's not currently money in the near term  
5 for their construction.

6           More generally I wanted to note that the  
7 Office of Planning recommended additional Findings of  
8 Fact 177A through J regarding transportation because  
9 we felt this reflected the complete record. We did  
10 not recommend wholesale changes or deletions to  
11 Petitioner's proposed transportation findings. We  
12 simply want to add several.

13           Now, we did recommend a deletion of Finding  
14 of Fact 177 and a revision of Finding of Fact 175.  
15 That does reflect a difference of opinion regarding  
16 the timing of the TIAR acceptance. But other than  
17 that we didn't go wholesale through their findings and  
18 recommend all of them be deleted.

19           Instead we said: No. Let's at least get a  
20 complete record to note what the Department of  
21 Transportation's recommendations are, for example.

22           Petitioner objected. Petitioner doesn't  
23 even want those recommendations to be included among  
24 the findings of fact.

25           The Office of Planning believes that the

1 D&O should reflect the entire record not just one  
2 party's side of it. So regardless of how we're coming  
3 out eventually on the conditions, we think the Office  
4 of Planning's findings of fact should be given serious  
5 consideration for inclusion.

6 With respect to, I guess the bigger  
7 question, which is Condition 1. With respect to the  
8 timing of the TIAR acceptance, clearly we have a  
9 disagreement. Petitioner basically argues: Well,  
10 we'll have greater certainty about the Project as the  
11 process moves along.

12 So don't have the TIAR accepted until the  
13 final subdivisions approval when we know for sure  
14 exactly what's going to be built.

15 And to some extent Petitioner's correct.  
16 The projects acquire greater definition, become more  
17 concrete further down the process. But the Department  
18 of Transportation testified, Ms. Shibuya testified,  
19 that there's sufficient information at this stage of  
20 zone change approval to accept or not accept a TIAR.  
21 Things can happen.

22 Things can change. Revised TIARs might  
23 become necessary. But isn't it better to have that  
24 information available at the time of zone change  
25 approval, final zone change approval to know? Here

1 are the impacts. Here's the analysis. The Department  
2 of Transportation agrees and has accepted the TIAR.

3 It will be better, as Commissioner Inouye  
4 had indicated. It's actually better if the Petitioner  
5 knows ahead of time here are the probable -- here are  
6 the impacts. Here are the improvements. Here are the  
7 mitigations so they know they can plan.

8 It's better, frankly, I think, for the  
9 County to know, to have more information from the  
10 State Department of Transportation about what is, at  
11 least what the Department of Transportation's  
12 viewpoint is on the impacts from the Project-proposed  
13 mitigation.

14 So, again, things can change. A County,  
15 you know, Commissioner may say, "No. I completely  
16 disagree. Cut the density in half." And a revised  
17 TIAR could be necessary. But in many other cases the  
18 county council will be making a decision based upon  
19 the proposal submitted by the Petitioner.

20 And they should know what the Department of  
21 Transportation's view is. And they should -- it'd be  
22 better if they had, if they knew that the TIAR  
23 submitted by the Applicant was or was not accepted by  
24 DOT.

25 I argued some of this before so I'm not

1 going to go into it in depth. But as I said  
2 acceptance at the final subdivision stage is just too  
3 late because at that point you're not really looking  
4 at the impacts. You're looking at the mitigation  
5 already. And you're looking at the construction  
6 plans.

7           So, really, the TIAR should be used as a  
8 planning document. That should be done earlier in the  
9 process, at least earlier than final subdivision  
10 approval. And that I also went through some of the  
11 prior cases the LUC has gone through.

12           I've recognized there are different --  
13 there're different requirements in different cases. I  
14 also talk about Waiko, what happened in that case, how  
15 that was a case in which the Applicant submitted the  
16 revised TIAR less than a month before the committee  
17 hearing. But, nevertheless, the committee could have  
18 moved forward with their hearing.

19           Nothing in the LUC condition prevented them  
20 from doing so. It was the committee hearing, not the  
21 full county council that was approving the final zone  
22 change.

23           I also wanted to note a couple of other  
24 points which is densities are often determined or  
25 often presupposed at the zone change approval, at

1 least sufficiently for the TIAR. It's not, may not be  
2 absolute.

3 But at the zone change approval the  
4 Department of Transportation testified that they think  
5 there's enough information about density, and the  
6 rest, for the Petitioner to make a reasonable  
7 estimate, and for the TIAR then to be drafted to  
8 anticipate based upon that -- based upon that estimate  
9 what the impacts are going to be.

10 Finally, Petitioner also argued that, well,  
11 you can't get access without DOT approval, meaning  
12 access to Pi'ilani. So the suggestion was it doesn't  
13 really matter what you do in this condition. It  
14 shouldn't be that big a deal. Just make it a final  
15 subdivision approval because the Department of  
16 Transportation still has to grant final access.

17 But the Office of Planning's view is but  
18 that's not a basis for the Land Use Commission to  
19 ignore the question. It's a statutory criteria. You  
20 still have to look at it. The fact that Petitioner  
21 might have to do it regardless of the LUC condition  
22 isn't relevant to your analysis of the transportation  
23 issues.

24 One more point on this particular issue is  
25 we've had questions arise in prior cases about how

1 much information do you need in the TIAR. You may  
2 remember the Ho'opili and Koa Ridge cases. The  
3 intervenors were arguing, "No. You should have the  
4 TIAR accepted before you make a decision. If you  
5 don't have an accepted TIAR how do you know what the  
6 impacts are going to be to state facilities?"

7           The Office of Planning basically disagreed  
8 saying: "Well, no. We're not going to go that far.  
9 We think you need some level of certainty." So the  
10 Department of Transportation has testified in cases  
11 about if there's sufficient information; that we're  
12 comfortable moving forward we think the following  
13 revision should be changed.

14           And they list what the revision should be  
15 and what their concerns are. But despite these  
16 concerns we think you can move forward because there's  
17 enough information.

18           If you take some of what Petitioner is  
19 saying sort of to its logical conclusion, they're sort  
20 of saying in a sense on the one hand, "Yes, I've got  
21 enough information for you to make a decision, *but* I  
22 don't have enough information for -- because  
23 everything could change at any time. So don't have a  
24 TIAR accepted 'til final subdivision approval.

25           There's clearly a tension between those two



1 requirements. Either you have enough information to  
2 make a decision now, in which case you should have had  
3 enough information in your TIAR, which is included as  
4 part of the EIS which you accepted, to then have  
5 enough information to submit to the Department of  
6 Transportation.

7           So to argue that there's not enough  
8 information available now conflicts, I guess, with  
9 that necessary argument that we have enough  
10 information for you to make a decision, just not  
11 enough for DOT to make a decision.

12           Then the last issue involves OP's proposed  
13 conditions 4B, 4C, and 4D. 4B and 4C as you may  
14 recall deal with the requirement for: The Petitioner  
15 should fund and construct improvements required to  
16 mitigate local and direct impacts.

17           4C says you pay your fair share of regional  
18 improvements.

19           4D involves payment for access rights to  
20 Pi'ilani for fair market value.

21           Now, Petitioner is saying they don't want  
22 any of those because this would, this would hinder  
23 their ability to negotiate with the Department of  
24 Transportation on the MOA. The Office of Planning has  
25 a significant concern especially with their

1 disagreement with 4B and 4C.

2 4B says you pay for you -- you fund and  
3 construct to mitigate your local direct impact. And  
4 4C just says: Fair share for regional improvements.  
5 What about this do you want to be able to negotiate  
6 with the Department of Transportation?

7 Do you want to argue -- I mean what they  
8 seem to be saying is: I want to be able to argue to  
9 the Department of Transportation that I should not  
10 have to put in all the mitigation for all my local  
11 direct impacts.

12 And I should not have to pay for my  
13 fair-share of the regional improvements. That they  
14 want to be able to negotiate with the Department of  
15 Transportation on this very general and very, very  
16 standard requirement in almost every LUC case we've  
17 got.

18 So the desire to exclude 4B and 4C in our  
19 minds is illogical and inconsistent with the history  
20 of the LUC's decisions.

21 Now, 4D is involving the access rights.  
22 And there the Department of Transportation basically  
23 testified Pi'ilani Highway was built with federal and  
24 state monies, taxpayer monies. Pursuant to the  
25 federal government the state is expected to be

1 recouping the fair market value of the access rights  
2 which they give to private parties so that private  
3 parties don't sort of benefit off of or get a free  
4 ride off of the taxpayer.

5           So we hope the LUC would support the DOT's  
6 efforts to ensure that private developers, you know,  
7 basically don't get a benefit from the taxpayers and  
8 pay their fair share. And that's it. Thank you.

9           CHAIRMAN HELLER: Petitioner, any rebuttal?  
10 I note you did kind of used up your 15 minutes, but  
11 I'll allow you a minute or 2 if you want to make a  
12 brief rebuttal.

13           MR. TABATA: Thank you very much. Finding  
14 of Fact No. 138 Noise. We can live with that.  
15 Finding of Fact 166. Again the STIP does concern  
16 funding but it's only limited to short-term projects.  
17 So if you have a project that goes out 10 years, 20  
18 years it is impossible for that Project to show up in  
19 the STIP. So to criticize these regional improvements  
20 for not being within that STIP doesn't make sense.

21           It cannot be that for any reason because  
22 they're long-term projects. DOT's Findings of Fact  
23 177A through J, F and G, it's clear that they're just  
24 recommendations. Then okay, we can live with that.  
25 These are not conditions. They're just what *they*

1 believe. Then that's fine. Okay.

2 Condition 1. Okay. Going back to the  
3 acceptance of the TIAR. It's not when -- it's not the  
4 requirement that a revised TIAR be done. The issue is  
5 when is it -- when are we, the Petitioner, going to be  
6 required to get it accepted by DOT? That's something  
7 that's totally out of our control except for the part  
8 where we actually prepared the TIAR, the revised  
9 draft.

10 Now, we're not saying we don't want to give  
11 DOT any information until final subdivision. No. In  
12 a normal course they ask for updates. They ask for  
13 revisions. And they're prepared. We do what they  
14 ask, and if we don't we run the risk of not being able  
15 to hook up to their state highways. So it's incumbent  
16 upon us. It's normal practice to basically do what  
17 they want.

18 Now, for them to say that we're saying it's  
19 not a big deal it's -- it *is* a big deal. We are  
20 taking this seriously. We are proposing, the  
21 Petitioner is proposing a condition that would require  
22 us to get DOT's approval for final subdivision.

23 Can we do that? I hope so. But we know  
24 we're not going to get away with nothing. We know it  
25 is a big deal. And we know that the Commission cannot

1 defer its responsibility.

2           So we are proposing that condition. We're  
3 going to put that on us. And if they don't accept it  
4 we don't get final subdivision approval. Then we're  
5 stuck, and we spent all this money and all this time  
6 for nothing. But we are willing to make this proposal  
7 and to put ourselves on the line.

8           As far as Condition 4B and C, these were  
9 previously handled within the MOA. What we propose is  
10 a condition that says: The MOA *shall* include but not  
11 be limited to the following terms and conditions:

12           No. 1. The accepted TIAR shall be  
13 incorporated into the MOA by reference.

14           2. Petitioner's responsibility for funding  
15 construction, implementation of improvements and  
16 mitigation.

17           3. A schedule of agreed to improvements  
18 and schedule for future TIAR updates and revisions.

19           4. Development of the Project shall be  
20 consistent with the TIAR.

21           5. Any fees or in-kind contribution that  
22 is roughly proportional to any indirect or secondary  
23 impacts caused by the Project, that's our fair-share.

24           So we're not saying we're trying to get out  
25 of these responsibilities. No. We're saying we want

1 to have the ability to negotiate these things -- and  
2 they have to be addressed in this MOA. If we don't  
3 address them in the MOA then we're not fulfilling this  
4 condition.

5 So we're not trying to escape anything.  
6 This is what was done in the past when we did the  
7 Wai'ale Project. This is the exact same condition.  
8 That's why we're using it.

9 We don't want to get in a situation were  
10 they say, DOT says, "Oh, the Land Use Commission says  
11 you gotta agree to our determination of fair-share."  
12 I mean if it comes to that, you know, that's not, you  
13 know, that's not appropriate.

14 What we want to do we want to do it as has  
15 been done in the past and negotiate these things we're  
16 proposing that we may be required to negotiate. Thank  
17 you.

18 CHAIRMAN HELLER: Commissioners, any  
19 questions?

20 COMMISSIONER INOUE: Thank you, Chair  
21 Heller. Let me be blunt. When can the Petitioner  
22 commit to submitting the initial revised TIAR being  
23 requested by DOT? I know you've said that it can  
24 change along the way. I'm talking about the initial  
25 TIAR.

1 MR. TABATA: Okay. We have already  
2 submitted a revised TIAR to DOT's comments. That's  
3 attached to the Final EIS. Is that the TIAR you're  
4 referring to, Commissioner?

5 MR. YEE: I think, Commissioner, what  
6 you're asking is after their latest TIAR the  
7 Department of Transportation made comments asking and  
8 concerns about the TIAR and asking that that TIAR be  
9 revised. I think what you're asking is when is the  
10 next iteration of the TIAR.

11 COMMISSIONER INOUE: Yes.

12 MR. TABATA: Okay. We can do it in 6  
13 months, Commissioner. That's without talking to our  
14 traffic engineer. But I understand you need an  
15 answer. But we're ready to say 6 months to do a  
16 revised TIAR.

17 COMMISSIONER INOUE: So my question to OP  
18 is is that fine with you or your client?

19 MR. YEE: We've tied the acceptance of the  
20 TIAR to part of the process rather than to a time  
21 period because it allows the developer to then time  
22 their involvement in the County process to when  
23 they're ready with the TIAR.

24 So our concern is not when they submit  
25 except to the extent that they submit, you know, late.

1 That it's so close to a deadline. I guess the  
2 question would be when do they anticipate final zone  
3 change.

4 I mean if final zone change -- they're  
5 expecting final zone change in 6 months, then, no, the  
6 TIAR is going to be too late to be submitted. I know  
7 the answer. I'm just trying to explain.

8 The concern for the Department of  
9 Transportation would be it's up to you when you submit  
10 the TIAR to us, but understand if there's a deadline  
11 that you get it submitted by, let's say zone change  
12 approval, then you have to, you have to time your zone  
13 change process to when you're ready with the TIAR.  
14 'Cause it's not-- we're not proposing, like, for  
15 example, one year from now getting acceptance of the  
16 TIAR.

17 COMMISSIONER INOUE: Right. These are  
18 proposed deadlines. You can always do it earlier  
19 than what the deadlines are.

20 MR. YEE: Sure.

21 COMMISSIONER INOUE: My understanding is  
22 as far as the Petitioner's interest, it behooves you  
23 to get this in right away so you can get your zoning  
24 or subdivision approval and all that. So, and I heard  
25 you, Curtis, about the fact that you submit something



1 it changes, you talk. So, Bryan, if they commit to 6  
2 months it behooves them to do it earlier, right? Am I  
3 wrong?

4 MR. TABATA: We can revise it. We can  
5 submit it in 6 months. I'm assuming we can. I hope  
6 we can. Will they accept it? I can almost guaranty  
7 they won't. I'll be blunt. They won't accept it. I  
8 mean they're going to wait until they see the drawings  
9 done from whatever it happens. That normally happens  
10 at final subdivision approval. They just won't accept  
11 it. I mean that's my prediction for the future.  
12 That's why these deadlines.

13 They create these barriers. We may have to  
14 come back for a Motion to Amend later saying: Please  
15 amend this condition because they won't accept the  
16 TIAR at the zone change stage if you applied OP's  
17 condition.

18 And that could take years from now until we  
19 finally just throw up our hands and say, "It isn't  
20 gonna happen. We have to go back to the Land Use  
21 Commission 'cause this condition is insurmountable."  
22 That's a real problem with this condition. We have no  
23 control over what they do, DOT.

24 MR. YEE: Could I just briefly comment,  
25 Commissioner?

1 COMMISSIONER INOUE: Yeah.

2 MR. YEE: In response. I can't tell you  
3 when it will be accepted because I don't know the  
4 quality of the TIAR. With respect to when you can  
5 expect a response from the Department of  
6 Transportation, in other words, I think that the  
7 Department of Transportation certainly should be able  
8 to provide a response within 6 months.

9 If it takes them 6 months to draft it, we  
10 should be able to get a response within probably less.  
11 But probably 3 months actually. But one of our other  
12 thoughts is we listed what the concerns are. It's  
13 internal capture rates. It's in our findings of fact.

14 So we've listed what those particular  
15 concerns are. So it didn't look to us to be so  
16 difficult to do that you couldn't do it correctly.

17 But if they do not do it correctly, if they  
18 just send us a TIAR saying, "We disagree. We don't  
19 think we should have to change our internal capture  
20 rates," the DOT can still give a response within 3  
21 months saying, "No, you're wrong."

22 But that doesn't necessarily mean the TIAR  
23 gets accepted. I don't see that as being the DOT's  
24 fault.

25 COMMISSIONER INOUE: Here's what I'm

1 trying to get an understanding of. Why is OP so  
2 concerned about the deadline? If they don't get your  
3 approval they're not gonna get a subdivision at all.  
4 They can't do anything, right?

5 MR. YEE: Well, they're not going to get  
6 their final subdivision.

7 COMMISSIONER INOUE: Yeah. Until they get  
8 the final. So it's the end date. They can't do  
9 anything. Of if they're doing plans according to  
10 something that DOT doesn't agree with that's their  
11 risk, right? So I'm trying to get an understanding  
12 why is OP so concerned about the end date.

13 I'm more concerned for you, actually, that  
14 you get the stuff in and start talking. And end date  
15 they got to hurry up because if they don't their  
16 development doesn't go. That's my understanding of  
17 the process.

18 MR. YEE: Our concern about just having a  
19 submittal date is the quality of the TIAR submitted.  
20 You can have a submittal date that they need, but  
21 it's a terrible TIAR. That doesn't help anyone. So  
22 that's the reason why the submittal date in and of  
23 itself is not sufficient for us.

24 With respect to why, why are we so  
25 concerned about a deadline, couple things, maybe a

1 couple three things. One is, frankly, if there's no  
2 deadline it gets put to the bottom of the pile. If  
3 DOT has no particular obligation to get this done on  
4 time the likelihood is they're not going to get it  
5 done on time.

6 But you have a requirement, especially the  
7 requirement they're asking for and it gets moved up.  
8 We think it's a better thing. We think it's better to  
9 have that information for everyone including, in our  
10 opinion, the County may have a different one. But in  
11 our opinion it's better the County and the Petitioner  
12 have that information earlier in the process. And we  
13 think it's better for the process to have that  
14 planning document done before you go too far down the  
15 line.

16 COMMISSIONER INOUE: Right. I'm not  
17 suggesting that we put deadlines all over the place.  
18 I'm just saying that the real critical thing is that  
19 they can't do anything until they get the DOT  
20 approval.

21 And if they don't submit the Application or  
22 the revised TIAR in a good form and there's a constant  
23 dialogue they can't proceed. So it's really on them.

24 The only concern I have for DOT is that  
25 they are given that document so close to the

1 subdivision approval, final one, that you don't have  
2 time to review it. So that's why I was talking about  
3 when can you submit. But then it could be not very  
4 good. So you gotta go through the process and all  
5 that. But that's the Petitioner's risk.

6 The longer it takes for them to get it  
7 approved and get it through the DOT the longer their  
8 subdivision doesn't go. That's my understanding.

9 MR. YEE: Frankly, it's not that simple for  
10 DOT. If you've got a project that's ready to go,  
11 you've got construction plans drawn and you get your  
12 TIAR submitted, and you're looking at it. You're  
13 thinking: It's not really the TIAR I would want. The  
14 level of information is not high enough. There's more  
15 uncertainty that I think ought to be improved.

16 There's a lot of pressure to accept it  
17 anyway because nobody wants to stop a project. I mean  
18 nobody wants to be the guy who's responsible for  
19 stopping development. At least not at Department of  
20 Transportation. It's an awful lot of pressure if you  
21 wait that long.

22 COMMISSIONER INOUE: Okay. I have a  
23 different line of questioning.

24 COMMISSIONER McDONALD: Maybe County can  
25 interject on this. Talking about final subdivision

1 versus tentative approval of the subdivision, right?  
2 It's a 2-step process. Correct. Final subdivision  
3 approval won't come into play until No. 1, the Project  
4 is fully bonded or the improvements have been  
5 constructed, right? Correct?

6 MR. SPENCE: Go back to the big laundry  
7 list of things: Bonding, improvements may be part of  
8 that. Getting a zoning change may be a part of that  
9 laundry list.

10 So it's like you get a tentative approval  
11 or preliminary approval, whatever you want to call it,  
12 you don't have final -- you can't turn dirt until  
13 that, until your bond's in place, until you get your  
14 zoning change which may change the Project until, of  
15 course, this Commission rules, until DOT is satisfied  
16 with the TIAR or however the condition ends up going.

17 So it is a 2-step process. But basically  
18 when you get that preliminary or that tentative you  
19 can't do a whole lot until you complete that entire  
20 laundry list, whatever improvements you bond the  
21 improvements, whatever the case may be. But until  
22 those things, that laundry list is completed then you  
23 can actually start construction.

24 Does that answer the question?

25 COMMISSIONER McDONALD: You can actually

1 start construction prior to final subdivision  
2 approval, is that correct?

3 MR. SPENCE: You can do certain things like  
4 when the Commission went to the site visit for the  
5 previous docket, you know. You can drill a well.  
6 That's something independent of this Commission. You  
7 can clear out rubbish.

8 There's a lot of things you can do just  
9 with the existing state district or the, existing  
10 County zoning.

11 But to actually make the improvements for  
12 the specific Project it's hard to proceed on much of  
13 anything until you have that final subdivision  
14 approval.

15 COMMISSIONER McDONALD: Okay.

16 CHAIRMAN HELLER: Commissioner Inouye.

17 COMMISSIONER INOUE: Thank you, Chair.

18 Mr. Tabata, you mentioned something about the Phase 2  
19 light purple area is larger lots?

20 MR. TABATA: Correct. That's our campus  
21 district. And, yes, those are the large lots.  
22 There's 2 of them and they're numbered. So with the  
23 campus district is the light purple over here.  
24 There's 2 of them. And the smaller one I believe is  
25 32 and the bigger one 35 acres.

1           Then also in Increment 2 you have these  
2 employment district lots that are also large. I  
3 believe they're 15 to 20 acres.

4           COMMISSIONER INOUE: I guess there's some  
5 lines there that I can't see from here.

6 (Mr. Tabata moving diagram closer to Commissioner  
7 Inouye.)

8           COMMISSIONER INOUE: Okay. Just glancing  
9 through your Exhibit 11-0, which is basically your  
10 proposal, there's no restriction as far as the Phase 1  
11 portion, the dark purple area? Restriction on the  
12 size?

13           You have it drawn out on small lots. Is  
14 there a restriction that you can't -- if somebody  
15 wanted a large lot you can't combine it?

16           MR. TABATA: I suppose it could be changed.  
17 But we're going to run a risk. We're telling you  
18 these are the lots, these are the sizes, these are  
19 the offerings. What we're trying to do is convince  
20 the Commission that we're genuine. We're for real.  
21 We're giving you all these details.

22           It's a 2-bladed sword of course. If we  
23 don't develop this as we're saying we could be running  
24 into problems later. But we're trying our best. Sure  
25 they could change. But we run the risk.



1           COMMISSIONER INOUE: Okay. I think the  
2 testimony has been that this new concept, this  
3 form-based code, this -- anyway this new concept is  
4 something that, quite frankly, I like. Don't get me  
5 wrong. I'm questioning. My question shouldn't be  
6 interpreted as saying, "shouldn't be like this." I  
7 like the idea.

8           However, when I looked at, read through  
9 Exhibit 11-0 everything in there basically says  
10 "liberally construed..."

11           MR. TABATA: I think I understand the  
12 concern. As a lawyer you see where you could massage  
13 it. But that's where the restrictions come in. I  
14 think in general the concern that regulators have is  
15 that a developer may not put as much energy into job  
16 generation into creating high paying jobs.

17           What if they do all residential? What if  
18 they do all retail? Right? Then you'll have these  
19 terrible impacts and you won't have these job  
20 creations like the developer promised. That's why we  
21 are specifically putting on ourselves these controls:  
22 No more than 1,250 units wherever they may appear on  
23 these 400 acres. That's it. Not more than 100,000  
24 square feet of retail merchandising. No more.

25           COMMISSIONER INOUE: That was another

1 detailed question I had. But the 100,000 square feet  
2 where does it say in your exhibits?

3 MR. TABATA: It's in the development code.  
4 What page is it on? It's in there. In addition to  
5 that I'm saying it right now, these words right now:  
6 It's the developer. It's the Petitioner's  
7 representation. It's on the record. Holly has taken  
8 it down.

9 COMMISSIONER INOUE: Let me just tell you  
10 where I'm a little bit concerned. I think every  
11 Commissioner here has a different picture of what this  
12 whole development is going to look like based on this  
13 form-based code. We have a picture in our minds.

14 But it's so flexible, which I'm not  
15 against. Don't get me wrong. I'm not against the  
16 flexibility. I'm just concerned that when the  
17 development finally gets put on and lots are sold and,  
18 you know, whatever you folks end up doing with this  
19 flexibility, it may be completely different from mine  
20 or anyone of the other Commissioners.

21 MR. TABATA: That's a good question. To  
22 save time I crossed out some of my closing argument.  
23 One of them is where we give examples of knowledge  
24 industry. This is a permitted use.

25 Examples include advertising, architectural

1 engineering, biotechnology, computer sciences,  
2 education, energy research, development,  
3 pharmaceutical. It's those types of industries we're  
4 focused on.

5 Now, when you limit retail that's where you  
6 put a cap and you put a limit on basically low-paying  
7 jobs. I wish that wasn't the case but that's  
8 basically the reality.

9 So if you put a cap on retail no more than  
10 100,000. 100,000 square feet for a hundred acres is  
11 not much. It's not much at all. I mean a Wal-Mart is  
12 about 200,000 square feet.

13 So there's no way you're gonna have any big  
14 boxes here. You're not gonna have any shopping malls  
15 here. That's not possible. There's only enough space  
16 to support the rest of everything. The rest of  
17 everything is going to have to be employment. There's  
18 just no other choice.

19 That's, you know, in order to give us the  
20 flexibility to be able to put people where they ought  
21 to be, we've had to rely on these controls so that you  
22 have the assurance that we are, we will remain focused  
23 on creating high paying jobs in the knowledge  
24 industry.

25 COMMISSIONER INOUE: Right. And I have no

1 reason to question the intent. That hundred thousand  
2 square feet -- I forget. I was trying to flip  
3 through --

4 MR. TABATA: It's on page 66 of Exhibit Q.

5 COMMISSIONER INOUE: Okay. I'll take your  
6 word for it. My question is in this flexible Maui  
7 code that's being proposed, it talks about small  
8 retail shops as part of the -- I forget whether it was  
9 the residential district -- is that included in the  
10 100,000 square feet?

11 MR. TABATA: Yes. Absolutely.

12 COMMISSIONER INOUE: That's all I had,  
13 thank you very much.

14 CHAIRMAN HELLER: Commissioners, other  
15 questions? The Commission will now conduct formal  
16 deliberations concerning whether to grant the Petition  
17 either in whole or in part or deny the Petition.

18 If the Commission decides to grant the  
19 Petition in whole or in part it needs to determine  
20 what conditions of approval to impose.

21 I'd note for the parties and the public  
22 that during the Commission's deliberations we will not  
23 entertain additional input from the parties or the  
24 public unless those individuals or entities are  
25 specifically requested to do so by the Chair. If

1 called upon we ask that any comments be limited to the  
2 specific question at hand.

3 The Commission held hearings on the merits  
4 of this Petition on July 25-26 and August 8, 2013.  
5 And oral argument has been concluded today.

6 Commissioners, let me confirm that each of  
7 you have reviewed the record and read the transcripts  
8 for any meetings that you may have missed and are  
9 prepared to deliberate on the subject docket.

10 When I call your name please signify with  
11 either an aye or nay that you're prepared to  
12 deliberate on this matter. Commissioner Biga?

13 COMMISSIONER BIGA: Yes.

14 CHAIRMAN HELLER: Commissioner Chock?

15 COMMISSIONER CHOCK: Yes.

16 CHAIRMAN HELLER: Commissioner Inouye?

17 COMMISSIONER INOUE: Yes.

18 CHAIRMAN HELLER: Commissioner Matsumura?

19 COMMISSIONER MATSUMURA: Yes.

20 CHAIRMAN HELLER: Commissioner McDonald?

21 COMMISSIONER McDONALD: Yes.

22 CHAIRMAN HELLER: Commissioner Torigoe?

23 COMMISSIONER TORIGOE: Yes.

24 CHAIRMAN HELLER: And the Chair is also  
25 prepared to deliberate. The goal today is determine

1 by way of motion the Commission's decision on whether  
2 to grant in whole or in part Petitioner's request to  
3 reclassify the subject property or to deny the  
4 Petition.

5 If a decision is reached today, and based  
6 upon the Commission's guidance, staff will be directed  
7 to draft appropriate findings of fact, conclusions of  
8 law and decision and order reflecting the Commission's  
9 decision. Commissioners, what is your pleasure on  
10 this matter?

11 COMMISSIONER BIGA: Mr. Chair, I move to  
12 accept this rezoning A10-787 Maui R&T Partners, LLC.

13 CHAIRMAN HELLER: Is there a second?

14 COMMISSIONER CHOCK: Second.

15 CHAIRMAN HELLER: Any discussion?

16 COMMISSIONER INOUE: I would like to  
17 offer -- I'm going to stick my neck out -- I would  
18 like to offer an amendment to Commissioner Biga's  
19 motion. I would like to have it amended to have it  
20 approved as incremental districting, which is allowed  
21 by Rules 15-15-78.

22 Let me tell you, you probably heard some of  
23 my concerns about what -- this is one of the first, if  
24 not the first in the state where this form-based code  
25 is being used. I like the idea. But I'm concerned

1 that it may not be what is being represented by the  
2 Petitioner.

3           It is clear from Exhibit -- (pause) I'm  
4 sorry it's a phasing plan that shows it's a Phase 1  
5 and Phase 2, that indicates that Phase 1 will be  
6 completed in roughly ten years, 2024 Phase 2. 2034,  
7 that's beyond 10 years.

8           I'm suggesting that we approve at least the  
9 first phase and according to the rules I'm not sure  
10 how to put it. At the same time the Commission shall  
11 indicate the approval of the future redistricting that  
12 is Phase 2, but that at some point in time there would  
13 be a requirement to come in for approval on Phase 2.  
14 I'm just offering that as an amendment.

15           CHAIRMAN HELLER: We have a motion and we  
16 have a proposed amendment. Is there a second on the  
17 amendment?

18           COMMISSIONER MATSUMURA: Second.

19           CHAIRMAN HELLER: Discussion as to the  
20 amendment amending it to do approval in increments or  
21 phases? Any other comments? Questions, concerns?  
22 Let's vote then on the amendment to the main motion.  
23 So this is a yes or no on the amendment without  
24 deciding at this point whether the main motion is  
25 being granted or not.

1           Everybody clear on the question? This is  
2 just to amend the motion to make it approval in  
3 increments. Dan, call the roll.

4           MR. ORODENKER: Thank you, Mr. Chair.  
5 Commissioner Inouye?

6           COMMISSIONER INOUE: Yes.

7           MR. ORODENKER: Commissioner Matsumura?

8           COMMISSIONER MATSUMURA: Yes.

9           MR. ORODENKER: Commissioner Biga?

10          COMMISSIONER BIGA: Yes.

11          MR. ORODENKER: Commissioner Torigoe?

12          COMMISSIONER TORIGOE: Yes.

13          MR. ORODENKER: Commissioner McDonald?

14          COMMISSIONER McDONALD: No.

15          MR. ORODENKER: Commissioner Chock?

16          COMMISSIONER CHOCK: No.

17          MR. ORODENKER: Chair Heller?

18          CHAIRMAN HELLER: No.

19          MR. ORODENKER: Mr. Chair, the vote was 4  
20 in support of the amendment, 3 opposed.

21          CHAIRMAN HELLER: So we have a majority  
22 vote with a quorum present.

23          MS. ERICKSON: You have 4 in favor so you  
24 haven't sufficient votes to pass the amendment.

25          CHAIRMAN HELLER: The amendment fails and



1 the main motion remains on the table. Now, is there  
2 further discussion on the main motion? Let me toss  
3 out a suggestion that perhaps we need a little  
4 clarification on the conditions. Is there any further  
5 discussion on motions?

6 COMMISSIONER McDONALD: I think the  
7 condition you're referring to, Chairperson Heller, is  
8 specific to Condition No. 4 with regards to the  
9 acceptance of the TIAR.

10 I understand both parties' arguments  
11 regarding timing, but I would like to propose that the  
12 motion include the Condition 4 as proposed by the  
13 Petitioner: Acceptance of the TIAR prior to final  
14 subdivision approval.

15 In addition, I guess we gotta get into the  
16 record the Findings of Fact No. 138A regarding noise  
17 as proposed by Office of Planning to be included. I  
18 guess to make things easier, OP's proposed revisions  
19 to the findings of fact, I want to put that, include  
20 that in the D&O.

21 CHAIRMAN HELLER: So all of OP's proposed  
22 revisions would be incorporated into the Decision and  
23 Order except for the specific condition on the TIAR.

24 COMMISSIONER McDONALD: That's correct.

25 CHAIRMAN HELLER: Is everyone clear on the

1 motion? Is there a second?

2 COMMISSIONER BIGA: Second.

3 CHAIRMAN HELLER: Is there any discussion  
4 on the Motion to Amend to clarify the conditions?  
5 Let's call the vote on the Motion to Amend. Again  
6 this is not the main motion. This is the Motion to  
7 Amend as set forth in the conditions and the revisions  
8 to the findings of fact.

9 MR. ORODENKER: Commissioner McDonald?

10 COMMISSIONER McDONALD: Yes.

11 MR. ORODENKER: Commissioner Biga?

12 COMMISSIONER BIGA: Yes.

13 MR. ORODENKER: Commissioner Matsumura?

14 COMMISSIONER MATSUMURA: Yes.

15 MR. ORODENKER: Commissioner Torigoe?

16 COMMISSIONER TORIGOE: Yes.

17 MR. ORODENKER: Commissioner Chock?

18 COMMISSIONER CHOCK: Yes.

19 MR. ORODENKER: Commissioner Inouye?

20 COMMISSIONER INOUE: Yes.

21 MR. ORODENKER: Chair Heller?

22 CHAIRMAN HELLER: Yes.

23 MR. ORODENKER: Mr. Chair, the motion  
24 carries unanimously.

25 CHAIRMAN HELLER: Thank you. So now we're

1 back to the main motion which has been clarified. Is  
2 there any further discussion?

3 COMMISSIONER INOUE: Chair Heller, could I  
4 ask for an executive session for just a couple of  
5 minutes before we call the vote?

6 CHAIRMAN HELLER: Sure. Okay. We may need  
7 to check on some of our travel arrangements too.

8 MR. HAKODA: Commissioner Chock has to  
9 leave.

10 CHAIRMAN HELLER: All in favor of an  
11 executive session?

12 COMMISSIONERS VOTING: "Aye".

13 CHAIRMAN HELLER: Any opposed? (no  
14 responses) Okay.

15 (Executive session was held 1:15 to 1:20)

16 CHAIRMAN HELLER: Okay. Let's go back on  
17 the record. Commissioner McDonald, you had something  
18 to add?

19 COMMISSIONER McDONALD: I just wanted to  
20 make a quick statement. I understand where OP is  
21 coming from with regards to the acceptance of the  
22 TIAR. However, I also understand that it would be at  
23 the Petitioner's risk to do any type of construction  
24 prior to the acceptance because they don't have the  
25 acceptance of the TIAR.

1           So, you know, the Petitioner would run a  
2 risk of doing any type of work, any type of  
3 construction prior to DOT acceptance as a state  
4 authority. So I just want to make that statement that  
5 I do understand where you're coming from.

6           But I also understand the Petitioner will  
7 run the risk of taking the Project too far without the  
8 acceptance of the DOT.

9           CHAIRMAN HELLER: Anything further on the  
10 main motion? Then we're ready to call the vote.

11           MR. ORODENKER: Thank you, Mr. Chair. The  
12 motion is to grant the Petition and adopt OP's  
13 suggested findings of fact and conditions with the  
14 exception of Condition No. 4 which would be as  
15 proposed by the Petitioner. Commissioner Biga?

16           COMMISSIONER BIGA: Yes.

17           MR. ORODENKER: Commissioner Chock?

18           COMMISSIONER CHOCK: Yes.

19           MR. ORODENKER: Commissioner Matsumura?

20           COMMISSIONER MATSUMURA: Yes.

21           MR. ORODENKER: Commissioner Torigoe?

22           COMMISSIONER TORIGOE: Yes.

23           MR. ORODENKER: Commissioner McDonald?

24           COMMISSIONER McDONALD: Yes.

25           MR. ORODENKER: Commissioner Inouye?

1           COMMISSIONER INOUE: Mr. Chair, before I  
2 cast the vote I wanted to make a comment first. I  
3 just want to let everybody know, the parties know,  
4 that this is a very important Project. And I think  
5 it's necessary to have this Project go.

6           You've heard my concerns about the wide  
7 openness of the code. I'm willing to forego that.  
8 Just wanted to implore the parties to use that  
9 latitude for the right purposes. So I'm going to be  
10 voting yes with reservations about that. So I do not  
11 want to stop this Project. It's a good Project.

12           CHAIRMAN HELLER: Thank you.

13           MR. ORODENKER: Chair Heller?

14           CHAIRMAN HELLER: Yes.

15           MR. ORODENKER: Mr. Chair, the vote carries  
16 unanimously.

17           CHAIRMAN HELLER: Thank you. Anything  
18 further on this docket? We do have on the agenda  
19 A84-585 Maui Economic Development Board. We'll try to  
20 do that very quickly. Parties are the same, correct?

21           MR. TABATA: That's correct.

22           CHAIRMAN HELLER: I do need to update the  
23 record. On July 25th the Commission considered Docket  
24 No. A84-585 Maui Economic Development Board Inc.'s  
25 Motion to Consolidate Hearing with Docket No. A10-787

1 issued the order granting that motion on July 31,  
2 2013. Also on July 25th the Commission deferred  
3 hearing Docket No. A84-585's Motion for Order Amending  
4 the Amended Findings of Fact, Conclusions of Law and  
5 Decision and Order filed February 25, 1986 until  
6 completion of the hearing on the consolidated case.

7 On September 24, 2013 the Commission  
8 received County of Maui's Planning Department Joinder  
9 in Petitioner's Proposed Findings of Fact, Conclusions  
10 of Law and Decision and Order.

11 On September 25, 2013 the Commission  
12 received OP's comments and objections to Petitioner's  
13 Proposed Findings of Fact, Conclusions of Law and  
14 Decision and Order.

15 On October 9, 2013 the Commission mailed  
16 the October 17, 2013 agenda notice to the parties and  
17 the statewide mailing lists. We have previously gone  
18 over the procedures and we've previously heard from  
19 public witnesses.

20 So at this point if the parties have any  
21 argument they wish to add you can do so briefly. And  
22 I would encourage briefness. Petitioner?

23 MR. TABATA: Thank you, Mr. Chair. This is  
24 our Motion to Amend. I'd like to make a modification  
25 that we change our position and accept OP's findings

1 of fact which would make it consistent with what the  
2 Commission just voted on. I believe that's the case  
3 because, yes, it's the same Proposed Findings of Fact.  
4 Bryan can correct me if I'm wrong.

5 CHAIRMAN HELLER: Okay. Thank you.  
6 County?

7 MR. GIROUX: We'll rest on the pleadings.  
8 We're just going to add that we strongly support the  
9 motion.

10 MR. YEE: OP rests on our pleadings in  
11 support.

12 CHAIRMAN HELLER: I'm sorry, Mr. Matsubara.  
13 I suppose I should ask if you have any rebuttal.

14 MR. TABATA: No, no rebuttal thank you.  
15 (audience laughter)

16 CHAIRMAN HELLER: Commissioners, anything  
17 else at this point? Commissioners, what is your  
18 pleasure?

19 COMMISSIONER McDONALD: In the matter of  
20 Docket No. A84-585 I move to approve the Motion for  
21 Order Amending the Amended Findings of Fact,  
22 Conclusions of Law and Decision and Order filed on  
23 February 25th, 1986 subject to the conditions of  
24 Docket No. A10-787 which includes the LUC's standard  
25 conditions.

1 CHAIRMAN HELLER: And would that include  
2 the basic format of the OP's proposed version?

3 COMMISSIONER McDONALD: Yes, that would.  
4 Thank you.

5 COMMISSIONER BIGA: Second.

6 CHAIRMAN HELLER: Any discussion? Seeing  
7 none let's call the vote.

8 MR. ORODENKER: Thank you, Mr. Chair. The  
9 motion is to grant the Motion for Order Amending  
10 Docket No. A84-585 subject to conditions of Docket No.  
11 A10-787 including the LUC standard conditions.  
12 Commissioner McDonald?

13 COMMISSIONER McDONALD: Yes.

14 MR. ORODENKER: Commissioner Biga?

15 COMMISSIONER BIGA: Yes.

16 MR. ORODENKER: Commissioner Matsumura?

17 COMMISSIONER MATSUMURA: Yes.

18 MR. ORODENKER: Commissioner Torigoe?

19 COMMISSIONER TORIGOE: Yes.

20 MR. ORODENKER: Commissioner Chock?

21 COMMISSIONER CHOCK: Yes.

22 MR. ORODENKER: Commissioner Inouye?

23 COMMISSIONER INOUE: Yes.

24 MR. ORODENKER: Chair Heller?

25 CHAIRMAN HELLER: Yes.



1 MR. ORODENKER: Mr. Chairman, the motion  
2 carries unanimously.

3 CHAIRMAN HELLER: Thank you. Anything  
4 further on this docket? Is there a motion to adjourn?

5 COMMISSIONER BIGA: So moved.

6 (The proceedings were adjourned at 1:25 p.m.)  
7

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C E R T I F I C A T E

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2  
3 I, HOLLY HACKETT, CSR, RPR, in and for the  
4 State of Hawai'i, do hereby certify;

5 That I was acting as court reporter in the  
6 foregoing LUC matters on the 17th day of October 2013;

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

10 That the foregoing represents, to the best  
11 of my ability, a true and correct transcript of the  
12 proceedings had in the foregoing matters.

13  
14 DATED: This \_\_\_\_\_ day of \_\_\_\_\_ 2013  
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18 \_\_\_\_\_

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