

LAND USE COMMISSION

STATE OF HAWAI'I

Proceedings held on 12-7-17

Commencing at 8:36 a.m.

Maui Arts & Cultural Center

Alexa Higashi Meeting Room

One Cameron Way

Kahului, Maui, Hawai'i 96732-1137

I. HEARING AND ACTION

A15-798 Waikapu Properties LLC, et al. (Maui)

To consider Petition to Amend the Agricultural Land Use District Boundaries into the Rural Land Use District for certain lands situated at Waikapu, District of Wailuku, Island and County of Maui, State of Hawai'i, consisting of 92.394 acres and 57.454 acres, and to Amend the Agricultural Land Use District Boundaries into the Urban Land Use District for certain lands situated at Waikapu, District of Wailuku, Island and County of Maui, State of Hawai'i, consisting of 236.326 acres, 53.775 acres, and 45.054 acres.

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 COMMISSIONERS:

3 ARNOLD WONG, Chair  
4 NANCY CABRAL, Vice Chair  
5 JONATHAN SCHEUER, Vice Chair  
6 AARON MAHI  
7 EDWIN ACZON

8 DIANE ERICKSON, ESQ.  
9 Deputy Attorney General

10 STAFF:

11 DAN ORODENKER, Executive Officer  
12 RILEY K. HAKODA, Chief Clerk/Planner  
13 SCOTT A.K. DERRICKSON, AICP

14 DAWN APUNA, ESQ.  
15 LEO ASUNCION, Planning Director  
16 LORRAINE MAKI, Planner  
17 Office of State Planning

18 WILLIAM HOPPER, ESQ.  
19 Deputy Corporation Counsel  
20 WILLIAM SPENCE, Director  
21 TARA FURUKAWA, Senior Planner

22 JAMES W. GEIGER, ESQ.  
23 PAUL MANCINI, ESQ.  
24 Attorneys for Waikapu Properties, LLC  
25

1 INDEX

2	PETITIONER WITNESSES:	PAGE
3	Barry Neal	
4	Direct Examination	5
5	John Garretson	
6	Direct Examination	10
7	Daniel Lum	
8	Direct Examination	15
9	Cross-Examination/County	24
10	Cross-Examination/OP	26
11	Continued Cross-Examination/OP	37
12	Albert Boyce	
13	Direct Examination	38
14	Cross-Examination/County	43
15	Cross-Examination/OP	44
16	Redirect Examination	48
17	Netai Basu	
18	Redirect Examination	49
19	Recross-Examination/County	51
20	COUNTY OF MAUI WITNESSES:	
21	William Spence	
22	Direct Examination	54
23	Cross-Examination/Petitioner	63
24	David Goode	
25	Direct Examination	65
26	Cross-Examination/Petitioner	68
27	STATE OFFICE OF PLANNING WITNESSES:	
28	Leo Asuncion	
29	Direct Examination	69
30	Cross-Examination/Petitioner	76
31	Petitioner's Exhibits received into the record	
32	Exhibit 45	9
33	Exhibit 46	13
34	Exhibit 48	23
35	Exhibit 49	42
36	Exhibit 50	53

1 CHAIRPERSON WONG: Good morning. This is a  
2 continuation on Waikapu Properties from yesterday.

3 Anyway, just wanted to say that we have  
4 quorum, but I just wanted to note for the record that  
5 Commissioner Mahi, Commissioner Cabral, Aczon,  
6 Scheuer and myself is here present for this hearing  
7 this morning, so we do have quorum.

8 Commissioner Ohigashi is ill, and also  
9 Commissioner Okuda had to do some personal errands,  
10 court date. Didn't want to say court.

11 But anyway, Mr. Geiger, do you have your  
12 next witness, please?

13 MR. GEIGER: I do. And I don't know if you  
14 want to have appearances for today or not.

15 CHAIRPERSON WONG: How many do you have?

16 MR. GEIGER: I have four witnesses.

17 James Geiger on behalf of the Applicant.  
18 With me is Mike Atherton, the representative, and  
19 Paul Mancini.

20 MR. HOPPER: Michael Hopper with  
21 Corporation Counsel representing Maui County  
22 Department of Planning. Wil Spence, Planning  
23 Director will be joining me as well as David Goode.  
24 He's here now.

25 MS. APUNA: Good morning, Dawn Apuna,

1 Deputy Attorney General. With me today is Lorraine  
2 Maki and Leo Asuncion, Director.

3 MR. GEIGER: With that, Chair, we will call  
4 Barry Neal as our next witness.

5 CHAIRPERSON WONG: Thank you.

6 May I swear you in, sir?

7 THE WITNESS: Yes.

8 CHAIRPERSON WONG: Do you swear or affirm  
9 that the testimony you're about to give is the truth?

10 THE WITNESS: Yes, I do.

11 CHAIRPERSON WONG: Can you please state  
12 your name for the record?

13 THE WITNESS: Barry Neal.

14 BARRY NEAL

15 Was called as a witness by and on behalf of the  
16 Petitioner, was sworn to tell the truth, was examined  
17 and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. GEIGER:

20 Q Good morning, Gary.

21 What is your area of expertise?

22 A I'm a meteorologist, and I specialize in  
23 air quality.

24 Q How are you familiar with the Waikapu  
25 Country Town Project?

1           A       During the latter part of 2016 I was  
2       contracted to provide an air quality study for the  
3       project.

4           Q       Did you prepare an air quality study?

5           A       Yes. That was completed December 2016.

6           Q       Did you also prepare written direct  
7       testimony for this matter?

8           A       Yes, I did.

9           Q       I'm going to hand you what is, I hope, your  
10      written testimony.

11          A       Yes, this is it.

12          Q       Does your signature appear on the last  
13      page?

14          A       Yes, it does.

15          Q       Do you have any modifications, corrections,  
16      or additions that you need to make to your testimony?

17          A       No, I do not.

18          Q       As with the other witnesses, I don't want  
19      you to read your testimony to the Commissioners, but  
20      please direct your comments to them as to the areas  
21      within your study that you think would be helpful to  
22      them in making their determination?

23          A       I'll summarize briefly.

24                   As I mentioned during the latter part of  
25      2016 I prepared an air quality study for the subject

1 property. And part of that study involved looking  
2 first at existing air quality conditions based on  
3 available data, which is fairly limited for Maui.

4 But based on that information, it appears  
5 likely that existing conditions meet all the state  
6 and national ambient air quality standards; and more  
7 than likely air quality has improved recently since  
8 sugarcane cultivation ended.

9 If the project is given the necessary  
10 approvals to proceed, there will likely -- or there  
11 could be some short-term impacts primarily from  
12 fugitive dust during the project construction phases.  
13 And there are methods available to mitigate this.  
14 Primarily this is done through watering of active  
15 work areas on a regular basis.

16 After project construction, we looked at  
17 the potential long-term impacts from project-related  
18 motor vehicle traffic, and this is done using a  
19 computer or computer models.

20 Based on this analysis, in which we were  
21 looking at carbon monoxide concentrations, it was  
22 found that the present carbon monoxide concentrations  
23 within the project area are well within the state and  
24 federal national ambient air quality standards.

25 After looking at the existing conditions,

1 we went onto look at conditions in the year 2026,  
2 which is when the project is expected to be completed  
3 and fully occupied.

4 In 2026 without the project, it was  
5 predicted that carbon monoxide concentrations would  
6 actually decrease, that is improve, despite  
7 unexpected increase in traffic. And this is because  
8 going forward in time, the emissions from traffic  
9 generally go down because of the retirement of older  
10 vehicles, which tend to emit a lot more tailpipe  
11 emission than new vehicles.

12 So in the year 2026 without the project,  
13 again, probably air quality conditions will improve  
14 somewhat.

15 Then we went on to look at the year 2026  
16 with the project, and this analysis showed that there  
17 would only be minimal impact or no impact compared to  
18 without the project.

19 Due to the negligible impact that the  
20 project would have on these long-term effects from  
21 motor vehicles, implementing long-term mitigation  
22 measures is probably unnecessary and unwarranted.

23 Another potential air quality issue for  
24 this project is nuisance odor from the project, water  
25 reclamation facility, and the commitment has been



1 made by the designers of this facility to keep  
2 concentration of any odorous compounds below the odor  
3 threshold at the facility boundary. Thus, offsite  
4 odor nuisance is not expected to be an issue.

5 In sum, based on my experience and on my  
6 analysis of this project, some short-term impacts in  
7 air quality due to fugitive dust emissions may occur  
8 during construction phases of the project, and those  
9 can mitigated to a large extent. Any long-term  
10 impacts should be negligible.

11 That concludes my summary.

12 MR. GEIGER: Thank you very much.

13 We would offer in as Exhibit 46 Mr. Neal's  
14 written testimony.

15 CHAIRPERSON WONG: Not 45.

16 MR. GEIGER: 45, I apologize.

17 CHAIRPERSON WONG: County, objections?

18 MR. HOPPER: No.

19 MS. APUNA: No.

20 CHAIRPERSON WONG: Commissioners, any  
21 objections?

22 Exhibit 45 is moved into the record.

23 (Petitioner's Exhibit 45 was received into  
24 the record.)

25 MR. GEIGER: With that, we have no further

1 questions.

2 CHAIRPERSON WONG: County, any questions?

3 MR. HOPPER: Nope.

4 MS. APUNA: No.

5 CHAIRPERSON WONG: Commissioners, any  
6 questions? No questions. Mr. Geiger, any redirect?

7 MR. GEIGER: No redirect. Thank you very  
8 much.

9 We would call our next witness John  
10 Garretson.

11 CHAIRPERSON WONG: May I swear you in?

12 Do you swear or affirm that the testimony  
13 you're about to give is the truth?

14 THE WITNESS: Yes.

15 CHAIRPERSON WONG: Thank you. Please state  
16 your name.

17 THE WITNESS: John Robert Garretson.

18 JOHN GARRETSON

19 Was called as a witness by and on behalf of the  
20 Petitioner, was sworn to tell the truth, was examined  
21 and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. GEIGER:

24 Q John, what is your background area of  
25 expertise?

1 A Acoustics.

2 Q Will there be some noise matters?

3 A Yes.

4 Q How are you familiar with the Waikapu  
5 Country Town Project?

6 A In 2014 my firm was hired to do an  
7 environmental noise assessment on the project.

8 Q What is your firm's name?

9 A D.L. Adams Associates.

10 Q Did you prepare such a report?

11 A Yes.

12 Q Did you also prepare direct written  
13 testimony for this matter?

14 A Yes.

15 Q I'm going to hand you what should be your  
16 direct written testimony. Can you confirm that's the  
17 direct written testimony that has been submitted?

18 A It is.

19 Q Does your signature appear on the last  
20 page?

21 A It does.

22 Q Do you have any additions, corrections or  
23 modifications that you would like to make to your  
24 direct written testimony?

25 A No.

1           Q       And as with the other witnesses, please  
2       don't read your direct written testimony, but tell  
3       the Commissioners what you believe is important from  
4       your area of expertise to their decision-making.

5           A       My firm studied the existing environmental  
6       noise ambient levels of the location, and then  
7       projected the future of noise levels from the  
8       development to increase of traffic on that, and the  
9       wastewater facility in the area, and the analysis  
10      shows that unnegligible increase in noise levels  
11      expected that would not be perceptible from increase  
12      in traffic on the existing highway from the project,  
13      and a 60-foot setback would be required to meet the  
14      HUD guidelines and the HUD required levels for  
15      residential application from the highway to meet the  
16      65 dba noise limits from that.

17                   And the wastewater treatment plant is not  
18      expected to produce any noise impact to the  
19      development itself, or the surrounding areas. And a  
20      noise level increase is expected from the  
21      development, but only due to the existing ambient  
22      levels being so low, no development being there, so  
23      no over all impact is expected long-term from the  
24      development; short-term is expected to provide impact  
25      and a noise permit would be most likely required.

1           Q       And that's for the construction equipment,  
2 correct?

3           A       Correct, construction equipment,  
4 construction noise only.

5           Q       Thank you.

6                   We would offer Mr. Garretson's direct  
7 testimony as Exhibit 46, I hope.

8           CHAIRPERSON WONG:   That's correct.   County,  
9 do you have any objection?

10           MR. HOPPER:   No objection.

11           CHAIRPERSON WONG:   OP?

12           MS. APUNA:   No objection.

13           CHAIRPERSON WONG:   Commissioners, any  
14 objection?   No.   Exhibit 46 is entered into the  
15 record.

16                   (Petitioner's Exhibit 46 was received into  
17 the record.)

18           MR. GEIGER:   We have no further questions.

19           CHAIRPERSON WONG:   County.

20           MR. HOPPER:   No questions, Mr. Chair.

21           CHAIRPERSON WONG:   OP.

22           MS. APUNA:   No questions.

23           CHAIRPERSON WONG:   Commissioners, any  
24 questions?   Commissioner Scheuer.

25           VICE CHAIR SCHEUER:   Your expertise is in

1 sound?

2 THE WITNESS: Yes, sound and noise control.

3 VICE CHAIR SCHEUER: Do you know the  
4 traditional meaning of Waikapu?

5 THE WITNESS: I do not.

6 VICE CHAIR SCHEUER: You should look it up.

7 COMMISSIONER MAHI: The sound of the water.  
8 The sound of the water, "pu-u-u".

9 VICE CHAIR CABRAL: Sound.

10 CHAIRPERSON WONG: I have one question.

11 During the construction phase, when you  
12 have to get a noise permit, do you foresee using also  
13 barriers for noise reduction or no noise reduction?

14 THE WITNESS: There is no actual  
15 requirement for a maximum noise level for the zoning.  
16 Once you go past the noise limits of the area, the  
17 permit is all that is required.

18 So during the application for the permit,  
19 the contractor may apply for the means and method  
20 that they use, or that they predict that they will  
21 use, or expect to use, and it may be required to get  
22 the permit, but there is no actual requirement for  
23 that.

24 So that would really be part of the  
25 application process for the permit.

1 CHAIRPERSON WONG: Thank you.

2 Any redirect?

3 MR. GEIGER: No redirect.

4 CHAIRPERSON WONG: Thank you, sir. Next  
5 witness, please.

6 MR. GEIGER: We will call Dan Lum.

7 CHAIRPERSON WONG: Good morning, sir. May  
8 I swear you in?

9 THE WITNESS: Pardon?

10 CHAIRPERSON WONG: Do you swear or affirm  
11 that the testimony that you're about to give is the  
12 truth?

13 THE WITNESS: I do.

14 CHAIRPERSON WONG: May you please state  
15 your name for the record.

16 THE WITNESS: Daniel Lum.

17 CHAIRPERSON WONG: Mr. Geiger.

18 DANIEL LUM

19 Was called as a witness by and on behalf of the  
20 Petitioner, was sworn to tell the truth, was examined  
21 and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. GEIGER:

24 Q Good morning, Dan. What is your background  
25 or area of expertise?

1           A       I'm a professional hydrologist and  
2 geologist.

3           Q       And how are you familiar with the Waikapu  
4 Country Town Project?

5           A       I was engaged by the developer to assess  
6 the existing wells that they had drilled, a total of  
7 six.

8           Q       Did you prepare a report concerning your  
9 work?

10          A       Yes, I did.

11          Q       Did you also prepare direct written  
12 testimony for this matter?

13          A       Yes, I did.

14          Q       I'm going to hand you your direct written  
15 testimony. Can you confirm that that's the testimony  
16 that you prepared?

17          A       Yes, it is.

18          Q       Is that your signature on the lags page?

19          A       Yes, it is.

20          Q       Do you have any additions, corrections or  
21 modifications you need to make to it?

22          A       No, I do not.

23          Q       As with the other witnesses, please don't  
24 read your testimony, but tell the Commissioners the  
25 items within your area of expertise that you think is



1 important for their decision-making process?

2 A Thank you.

3 I was engaged, as I said, to assess the  
4 sustainable capacity of the wells that they had pumps  
5 in. And if you would look -- if I might -- at the  
6 time I was engaged in 2016, they had completed,  
7 drilled six wells.

8 The blue Wells 1, 2 and 3 are potable water  
9 wells, and they were pump tested for ten days.  
10 Normally the State Water Commission requires only  
11 four days of pump testing, but we decided to do ten  
12 days continuously pumping 24/7 around-the-clock.

13 I would like to give a background on these  
14 wells. The blue wells here (indicating) are in the  
15 Wailuku basalt aquifer, represented by this rugged  
16 terrain here (indicating).

17 And these Wells 3, 4, 5 and 6, are in  
18 alluvial deposits, and we refer to them as alluvial  
19 wells. All the wells are potable quality, but the  
20 alluvial wells -- I won't get into -- static reading  
21 is potable, but you have to understand that there's  
22 basic geologic difference.

23 For municipal potable water supply, the  
24 basalt aquifer is preferred, and is used by the  
25 counties. They do not like to go into the alluvial

1 deposits.

2 In Honolulu it's called "camp rock". Those  
3 of you who are familiar with the Kapolei area, Ewa  
4 Plain, it's all caprock formation, sedimentary  
5 formation. And the Pearl Harbor Aquifer is up toward  
6 the central area.

7 We have the same situation here. This is  
8 the Wailuku basalt aquifer (indicating), and this  
9 area down here is the alluvial aquifer (indicating).

10 Now, we put data loggers, which are tiny  
11 computers down hole in the wells, all six wells, to  
12 monitor the water levels. And then we monitored in  
13 the pumping wells, the pumping rate, the chlorides  
14 and the electrical conductivity of the water, which  
15 relates to salinity.

16 And in the alluvial wells, we put three  
17 data loggers here (indicating) to monitor the water  
18 levels -- excuse me -- yeah, monitor the water  
19 levels. But we did not monitor the chlorides because  
20 you couldn't sample it.

21 As I said, this is an alluvial aquifer.  
22 You see this yellow well over here (indicating), I  
23 was involved in that for the Department of Land and  
24 Natural Resources in 1974. We drilled a well a  
25 thousand feet deep, and we found that we did not

1 reach the basalt aquifer. That alluvial deposit  
2 which I call slope wash, which is eroded material  
3 from the interior mountain areas, is fully to  
4 moderately permeable. You get gravel layers in  
5 there. You get sand layers. You get clay layers.

6 And we were attempting to drill for the  
7 county a water well, municipal supply, but we didn't  
8 hit the basalt aquifer.

9 What that demonstrates is that throughout  
10 this whole region, based on my experience, all the  
11 way up to Waihe'e and Kahakuloa, you have this  
12 caprock alluvial formation. And the county does not  
13 rely on it as a reliable source of potable water.

14 What we found out with the ten days of  
15 testing, we graphed all the data, we presented the  
16 graphs in the report, and it's all in here, but  
17 essentially Well 1 is the best well. It has a head  
18 or water level above sea level of eight-and-a-half  
19 feet. And the chlorides were stable at 41 to  
20 47 parts per million.

21 Now, that compares with the arbitrary limit  
22 for chlorides of 250 milligrams per liter. Here in  
23 Hawai'i, generate many people, can taste a 170 parts  
24 of milligrams per liter, and so 41 to 47 is a very  
25 fresh source of water.

1 Well 2 has a head of 15 feet above sea  
2 level, and that's a real thick aquifer. It had -- it  
3 was pumped at 1.07 million gallons a day, whereas  
4 Well 1 was pumped at 1.4 million gallons a day. And  
5 Well 3 -- I didn't complete that, it had -- I'm  
6 sorry.

7 Wells 1 and 2 had a rapid recovery. These  
8 two wells are comparable to any well in the Honolulu  
9 and Pearl Harbor aquifer, very permeable basalt  
10 aquifer, and very freshwater protected by caprock  
11 formation.

12 Now, Well 3 was drilled downslope of 1, the  
13 best well, and it had salinity that rose. It rose  
14 from during the ten days of testing, it rose from --  
15 let's see, 25 milligrams to 109 milligrams per liter.  
16 And if you were to draw a graph and extend it out, it  
17 would reach upwards of over 200 milligrams per liter  
18 approaching the arbitrary limit of 250 milligrams per  
19 liter.

20 The well, however, recovered reasonably  
21 well, so it's moderately permeable alluvium, whereas  
22 the water is potable, it is not a reliable source for  
23 potable use, especially municipal use.

24 Now, we were concerned about the water  
25 quality, because pineapple and agricultural use over

1 the lands were done in the past. So we meticulously  
2 sampled the water for measuring the water quality as  
3 required by the Department of Health and the EPA, and  
4 we found that all the pesticides and contaminants  
5 were nondetectable. So those three wells have no  
6 contamination from the pesticides or other organic  
7 constituents.

8 The inorganic analysis also were well  
9 within the maximum contaminate level. In other  
10 words, the three wells meet all State and Federal  
11 water quality standards for affordable water sources.

12 As I said, and I would like to just  
13 conclude, there is a distinction between basalt, the  
14 basalt Wells 1 and 2, and 3, 4, 5 and 6, and they  
15 were not pumped because there were no -- I mean, 4, 5  
16 and 6 were not pumped because there were no pumps in  
17 those wells.

18 Well 3, although alluvial well, produced  
19 potable water, but it is not reliable in the sense  
20 that the chlorides continue to rise during those ten  
21 days. And it is significant that it rose from 25,  
22 which is very fresh, it went all the way in up in ten  
23 days to 109 milligrams per liter.

24 As I said, and would like to conclude, that  
25 if you project the graph, it would reach over

1 200 milligrams per liter in time.

2 Q Just a couple follow ups, Dan.

3 What you're telling us about Well 3 is that  
4 if it was pumped on a continual basis, as would be  
5 necessary, for example, for potable use, that you  
6 would expect that the water quality would decrease so  
7 that you couldn't pump it on continues basis?

8 A Yes. Water quality would decrease in the  
9 sense that salinity would rise.

10 Q And then I want to talk to you a little bit  
11 about the alluvial wells.

12 You mentioned that there was sand and other  
13 materials. What impact does that have? Why is that  
14 important that there's other things there?

15 A Well, the caprock wells are subject to  
16 contamination by the use of the land above. Whereas  
17 the basalt aquifer is up in the mountains, and it's  
18 on pristine and it's generally not subject to  
19 contamination.

20 Q So the alluvial wells, which would be 4 and  
21 5 in particular, you would be subject to  
22 contamination from surface activities, and as I  
23 understand it, also subject to increased salt levels?

24 A Yes, definitely. Yes, surface  
25 contamination and potential saltwater intrusion, we

1 see that in Well 3, so 4 and 5 is more seaward, if  
2 you well, toward the isthmus, and it definitely -- if  
3 you were to test it, my guess is that it might be  
4 more subject to saltwater intrusion, contamination.

5 Q We would offer in Mr. Lum's written  
6 testimony as Exhibit 47 -- 48, thank you. My  
7 numbering is all off, I apologize.

8 CHAIRPERSON WONG: County, do you have any  
9 objection?

10 MR. HOPPER: No, Mr. Chair.

11 MS. APUNA: No objection.

12 CHAIRPERSON WONG: Commissioners, any  
13 objection to the Exhibit 48? Exhibit 48 is moved  
14 into the record.

15 (Petitioner's Exhibit 48 was received into  
16 the record.)

17 MR. GEIGER: Thank you very much. We would  
18 pass the witness.

19 CHAIRPERSON WONG: I just wanted to confirm  
20 that the picture that Mr. Lum --

21 MR. GEIGER: Let me correct that. I had it  
22 on my list and forgot to ask you.

23 Q The slide that we're showing on the screen,  
24 that is in your report, correct?

25 A Yes, it is.

1           Q       Could you tell us what figure number that  
2 is for the record?

3           A       That is Figure 1.

4           Q       In your report. Thank you very much.

5           CHAIRPERSON WONG: Thank you. County,  
6 questions?

7           MR. HOPPER: Thank you.

8                   CROSS-EXAMINATION

9 BY MR. HOPPER:

10          Q       Mr. Lum, just briefly. On page 5 of your  
11 filed written testimony under the water availability  
12 --

13          A       That's not in my report.

14          MR. GEIGER: In your testimony.

15          Q       (By Mr. Hopper): Direct testimony, I'm  
16 sorry. Should have made sure I was referring to  
17 that. This is just to confirm the numbers in your  
18 report.

19          A       Again, what line?

20          Q       Page 5 under water availability, basically  
21 lines 3 through 6 at this point.

22                   It states that the estimated potable water  
23 use demand for the project is .683 million gallons  
24 per day broken down as .348 million gallons per day  
25 for Phase I and .335 million gallons per day for



1 Phase II.

2 A Yes, that was from report by others, yes.

3 Q And then the remainder of that paragraph  
4 you state that the sustainable yield for the Waikapu  
5 Aquifer System has been established at 3.0 million  
6 gallons per day sustainable yield.

7 A Yes, sustainable yield of 3 million gallons  
8 per day is established by the State Water Commission.

9 Q And then you go on in that paragraph to  
10 state that the pumping capacity of Wells 1 and 2 is  
11 2.4 million gallons per day?

12 A Yes, that's correct.

13 Q And given these numbers, essentially you're  
14 stating here that you believe that the Wells 1 and 2  
15 have more than enough sustainable yield in order to  
16 meet the demands for this project?

17 A That is correct. Based on the ten days of  
18 pumping, we assessed that the Well 1 has sustainable  
19 pumping capacity of 1.4 million gallons a day; and  
20 that of Well 2, 1.0 million gallons per day. So that  
21 adds up to 2.4.

22 Q And also given the sustainable yield of the  
23 aquifer, you believe that there's adequate  
24 sustainable yield in the Waikapu Aquifer System to  
25 meet the demands of the project?

1           A       Yes. And that's because, in the study the  
2 pumping test graphs, it's very similar to the best we  
3 got, and we all look to Honolulu and Pearl Harbor,  
4 yes, it's in that class.

5           Q       Thank you very much. I have no further  
6 questions for the witness.

7                   CHAIRPERSON WONG: OP?

8                               CROSS-EXAMINATION

9 BY MS. APUNA:

10          Q       Thank you, Mr. Lum, for your testimony. I  
11 have a couple of questions.

12                   First can you tell us anything about the  
13 instream flows of Waikapu Stream?

14          A       We didn't -- my work did not involve  
15 surface water. But I can tell you that in Well 6, in  
16 orange, the developer, based on my suggestion, that  
17 is it would be used only for monitoring purposes  
18 because we can hear water cascading into the well.  
19 It's not cased right at the moment, so we think that  
20 that well, based on the water levels that we  
21 monitored during the test, probably is influenced by  
22 surface water.

23                   So it would not be used. Only for  
24 monitoring purposes in the future.

25          Q       Thank you.

1           And then do you know if the wells will be  
2 dedicated to the County?

3           A       Well, the developer normally works with the  
4 County. Normally a developer wants to not be in the  
5 business of developing water, so their first choice  
6 is to work with the County, and that's between them.  
7 I don't get involved in that.

8           Q       Thank you.

9           CHAIRPERSON WONG: Commissioners, do you  
10 have any questions before Commissioner Scheuer?

11          VICE CHAIR CABRAL: Yes, before my fellow  
12 commissioner, because he knows so much more than I.  
13 I have a simple question I think.

14               In my reading, you're looking at as needing  
15 960 gallons of water a day. That seems like a lot of  
16 water to me, because I know what 20,000 gallons look  
17 like. I have a catchment tank that I drink out of  
18 that has 20,000 gallons in it.

19               So if you constantly -- and you're going to  
20 be having surface water I understand too and you're  
21 going to be using nonpotable water, reclaimed through  
22 your treatment plant.

23               But if you're taking such -- over the  
24 course of years and years you're going to be taking  
25 huge amounts of water from the well systems also, how

1 fast does it replenish these aquifers underneath in  
2 comparison as to how fast you take them out? Do we  
3 know that, or is there any concern? Where does the  
4 future take all of this water?

5 THE WITNESS: Yes. This all has to do with  
6 sustainable yield established by the Water  
7 Commission. And I was working for the Water  
8 Commission at one time. I retired from the  
9 Department of Land and Natural Resources. But we  
10 established the sustainable yield, when I was working  
11 for them, throughout the state.

12 And we studied the aquifer. And basically  
13 what we do is estimate the rainfall, the recharge,  
14 evaporation and everything and come up with a figure.  
15 This is back and forth among colleagues at public  
16 hearings.

17 So for the Waikapu Aquifer System, which is  
18 one of four aquifer systems within the Wailuku  
19 hydrologic sector. It has the Waikapu Aquifer System  
20 has a sustained yield of 3.0 million gallons a day.

21 To the best of the Commission's ability,  
22 they believe that it is that. And I think that the  
23 test that we did goes a long ways toward  
24 corroborating that. Thank you.

25 VICE CHAIR CABRAL: Well, that's a lot of

1 water. Thank you.

2 THE WITNESS: That is a lot of water.

3 CHAIRPERSON WONG: Vice Chair Scheuer,  
4 please.

5 VICE CHAIR SCHEUER: Aloha. How are you  
6 this morning?

7 THE WITNESS: Good morning.

8 VICE CHAIR SCHEUER: I have a few questions  
9 for you.

10 To start off with, in your written  
11 testimony, in your written direct testimony and TODAY  
12 YOU described a basalt aquifer and alluvial aquifer,  
13 but also refer to the Waikapu Aquifer.

14 Now, the Waikapu Aquifer, I'm trying to  
15 clarify my understanding, the management unit by the  
16 Water Commission, they don't manage with any  
17 distinction between whether a well is drawing into a  
18 basalt or alluvial; is that correct?

19 THE WITNESS: Yes, that figure --  
20 addressing specifically the Waikapu Aquifer System,  
21 they did not identify the alluvial or the basalt as a  
22 whole.

23 But when they draw the line of the Waikapu  
24 Aquifer System area, it embraces all the potential  
25 recharge, which is the interior part, the rainfall is

1 primary source of recharge, and then they arbitrarily  
2 drew the line, as best I can make out, along the  
3 highway, the old highway.

4 VICE CHAIR SCHEUER: These are not  
5 management units. These have nothing do with  
6 sustainable yield, or how much can ultimately be  
7 pumped from the aquifer. You refer to a basalt  
8 aquifer and alluvial aquifer. These are not legal or  
9 management terms.

10 THE WITNESS: No, not so far as the Water  
11 Commission is concerned.

12 VICE CHAIR SCHEUER: You said that normal  
13 practice for the Water Commission was to run a  
14 four-day pump test. By chance did you mean a five  
15 day pump test?

16 THE WITNESS: No, four days unless they  
17 modified it. I wrote the regulation way back when.

18 VICE CHAIR SCHEUER: I believe it's five  
19 now.

20 THE WITNESS: I'm sorry.

21 VICE CHAIR SCHEUER: Regarding pump tests,  
22 are pump tests designed to determine whether there's  
23 effect on a stream nearby?

24 THE WITNESS: No. That's a special type of  
25 test. You have to have monitor wells.

1           VICE CHAIR SCHEUER:  When you ran these  
2 pump tests, did you run the test on Wells 1, 2 and 3  
3 simultaneously?

4           THE WITNESS:  Yes.  I'm sorry I didn't  
5 point that out.  Yes, pumped simultaneously.

6           VICE CHAIR SCHEUER:  All three were pumping  
7 actually at an amount exceeding the sustainable yield  
8 according to your report.

9           THE WITNESS:  Yeah, right, 3 point.

10          VICE CHAIR SCHEUER:  Did you monitor water  
11 levels in Wells 4, 5 and 6 during that time?

12          THE WITNESS:  Yes.

13          VICE CHAIR SCHEUER:  What were your  
14 findings?

15          THE WITNESS:  It showed pretty much to be  
16 independent of the -- I couldn't see any affect of  
17 the drawdown curve in the pumping wells in being  
18 impressed upon the alluvial wells.

19          VICE CHAIR SCHEUER:  But again, those  
20 pumping tests are not actually designed to observe  
21 that, correct?

22          THE WITNESS:  In that sense, when I said  
23 it's not designed to check the surface water  
24 influence, no.  But if you -- if there's a connection  
25 between the alluvial wells and the basalt wells, it

1 might show up. It might show up in ten days.

2 VICE CHAIR SCHEUER: Do you know what the  
3 travel time might be for water if it was flowing  
4 generally mauka-makai in this area to travel between  
5 an area under influence of Well 2 to Well 6?

6 THE WITNESS: No. You to would have to  
7 establish a number of wells to actually establish a  
8 contour map, and only then can you determine the  
9 hydraulic gradient.

10 VICE CHAIR SCHEUER: So there's nothing in  
11 your study that could speak to the potential  
12 influence of a maximum pumping of these wells?

13 There is nothing from your tests that can  
14 point to whether or not there would be an affect on  
15 stream flows in Waikapu Stream from a maximum pumping  
16 of Wells 1 and 2 and 3?

17 THE WITNESS: I would address your  
18 question, answer your question this way. Waikapu  
19 Stream is elevated. And if you look at the profile  
20 and you draw a typical cross-section to there, you  
21 have Waikapu Stream, it's elevated, you know, goes up  
22 hundreds of feet. And if you look at the basal,  
23 basalt aquifer, it's only 15 feet at the most.

24 So geologically, hydrologically, based on  
25 my experience, I would not suspect in the least any



1 affect of pumping those three wells, having an  
2 influence or affect on Waikapu Stream?

3 VICE CHAIR SCHEUER: At the upper levels of  
4 Waikapu Stream?

5 THE WITNESS: Even down through the caprock  
6 area. Once the stream is going through the caprock  
7 area, it is generally considered to be fully to  
8 moderately permeable.

9 So it's not a gaining stream, but what we  
10 call a losing stream. The stream is losing water as  
11 it traverses the terrain.

12 VICE CHAIR SCHEUER: Under existing  
13 pumping?

14 THE WITNESS: Yeah. When you get into dike  
15 areas, especially Honolulu we know that we studied  
16 that well. Water in the streams -- the streams on  
17 the Windward side of Oahu are gaining streams. There  
18 are dike waters at elevated, at higher elevations  
19 it's actually pouring water, discharging water into  
20 the stream. Yes, when you pumping that dike water,  
21 you will affect the stream.

22 VICE CHAIR SCHEUER: And this is the  
23 general case, for instance, the Wailuku River, a  
24 gaining stream mauka of Wailuku and it's a losing  
25 stream --

1           THE WITNESS:   Yes.   In the upper reaches it  
2   would be gaining, and in the lower reaches it would  
3   be losing.   And basalt wells are generally in the  
4   losing section.

5           VICE CHAIR SCHEUER:   But there was  
6   nothing -- again, to go back to my question --  
7   nothing in your tests that could determine the  
8   relationship of well pumping to affect on the  
9   streamflow?

10          THE WITNESS:   No.

11          VICE CHAIR SCHEUER:   They were not designed  
12   for that?

13          THE WITNESS:   No.

14          VICE CHAIR SCHEUER:   And sustainable yield,  
15   which you express some familiarity with, that also  
16   does not explicitly take into account the  
17   relationship between groundwater and surface water;  
18   is that correct?

19          THE WITNESS:   Not in every instance, but in  
20   general, yes.

21          VICE CHAIR SCHEUER:   Does the sustainable  
22   yield for Waikapu Aquifer take into account the  
23   relationship between groundwater availability and  
24   surface water flows?

25          THE WITNESS:   I don't think it does.   I

1 can't speak for the Water Commission, but I don't  
2 think it does.

3 VICE CHAIR SCHEUER: So to say that pumping  
4 at a certain level is below sustainable yield,  
5 doesn't necessarily protect any influence of  
6 groundwater on surface water flows?

7 THE WITNESS: There's no determination of  
8 that at all.

9 VICE CHAIR SCHEUER: The model is silent as  
10 to that?

11 THE WITNESS: Right.

12 VICE CHAIR SCHEUER: You pumped these three  
13 wells, Wells 1, 2 and 3 at a very, very high rate.  
14 In fact, almost above the rate of the overall demand  
15 of this development.

16 THE WITNESS: Yes.

17 VICE CHAIR SCHEUER: Would one normally, in  
18 the operation of a well field pump 24/7, pump wells  
19 at 24/7.

20 THE WITNESS: No, standard municipal  
21 standard is 16 hours per 24 hours.

22 VICE CHAIR SCHEUER: Do you have an idea if  
23 Well 3 pumped in combination with Well 1 and 2 in a  
24 more normal scenario would be as dramatically  
25 affected by chlorides as it was during the pump test?

1 I can repeat the question.

2 THE WITNESS: Repeat your question.

3 VICE CHAIR SCHEUER: So the pump test was  
4 maximum pumping over ten days over three wells  
5 simultaneously, and you noticed the chloride drawdown  
6 on Well 3, which led to your determination that it  
7 might not be a reliable source of municipal potable  
8 water.

9 However, if you were actually operating  
10 Wells 1 and 2, and 3 together as a suite of wells  
11 with some redundancy in it, and not pumping them  
12 24/7, isn't there a possibility that Well 3 could  
13 actually be a reliable source of potable water in  
14 combination with Wells 1 and 2?

15 THE WITNESS: Certainly if it was used as a  
16 standby source. The municipal -- county's always  
17 have standby wells. They're just idle. In an  
18 emergency they will pump it, but generally it's not  
19 counted in the sustainable yield or the discharge  
20 from the aquifer.

21 VICE CHAIR SCHEUER: But it's available as  
22 a potential potable source of water?

23 THE WITNESS: Sure, just like using natural  
24 groundwater as a reservoir.

25 VICE CHAIR SCHEUER: And is Well No. 3

1 planned to be connected to the nonpotable system?

2 THE WITNESS: I have no knowledge of that.  
3 That's between the developer and the county.

4 VICE CHAIR SCHEUER: Mr. Geiger, is there a  
5 witness who can speak to that issue?

6 MR. GEIGER: Yes, Mr. Boyce will speak to  
7 that.

8 VICE CHAIR SCHEUER: I think I'm done.  
9 Thank you.

10 CHAIRPERSON WONG: Commissioners, is there  
11 any other questions? Any redirect, Mr. Geiger?

12 MR. GEIGER: I'm going to not redirect,  
13 thank you.

14 CHAIRPERSON WONG: Thank you.

15 MS. APUNA: Can we ask one more question?

16 CHAIRPERSON WONG: Please, OP.

17 CONTINUED CROSS-EXAMINATION

18 BY MS. APUNA:

19 Q We're just curious as to what other  
20 developments use Waikapu Aquifer, if you're aware?

21 A The basalt aquifer, none that I know of?

22 Q Okay, thank you.

23 CHAIRPERSON WONG: Thank you. Next  
24 witness, please.

25 MR. GEIGER: We would call Albert Boyce.

1 CHAIRPERSON WONG: May I swear you in,  
2 please?

3 THE WITNESS: Yes.

4 CHAIRPERSON WONG: Do you a swear or affirm  
5 that the testimony you're about to give is the truth?

6 THE WITNESS: I do.

7 CHAIRPERSON WONG: Please state your name.

8 THE WITNESS: My name is Albert Boyce.

9 CHAIRPERSON WONG: Thank you, Mr. Geiger.

10 ALBERT BOYCE

11 Was called as a witness by and on behalf of the  
12 Petitioner, was sworn to tell the truth, was examined  
13 and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. GEIGER:

16 Q Good morning, Albert.

17 A Good morning.

18 Q You are one of the members of the  
19 Applicants, correct?

20 A That is correct.

21 Q And you provided testimony concerning the  
22 financial aspects, correct?

23 A That is correct.

24 Q Did you prepare written testimony in this  
25 matter?

1           A       Yes, I did.

2           Q       I'm going to hand you what we will  
3 hopefully mark as Exhibit 49, which will be your  
4 direct written testimony.

5                   Is that your written testimony?

6           A       Yes, it is.

7           Q       Is that your signature on the last page?

8           A       Yes, it is.

9           Q       Have you got any corrections, modifications  
10 or additions to your written testimony since you  
11 signed it several weeks ago?

12          A       No, I don't.

13          Q       Albert, as with the other witnesses, I  
14 don't want you to read, but I want you to go ahead  
15 and provide the Commissioners the information you  
16 think is necessary for their decision-making process.

17          A       Sure.

18                   My family and I have been a partner with  
19 Mike Atherton since the late 1980s. And since the  
20 mid-1990s I've been directly involved with him in the  
21 development of single family, multi-family real  
22 estate, where basic business model is we entitled the  
23 land, and then we, through construction financing,  
24 finance the lots, do the engineering, finish the  
25 lots, and ultimately market, sell and construct the

1 homes.

2 So for the past 20 years I have a lot of  
3 experience as far as working with banks to provide  
4 construction financing for a project to see it  
5 through from the start to the finish.

6 So basically that's our intent here as I've  
7 heard other people testify yesterday, seen the  
8 project from the start to finish, that's our intent.  
9 That's what we do. That's what we do in the City of  
10 Mantica.

11 We have been fortunate, as far as I know  
12 some of the questions yesterday on the financials of  
13 the LLC, our partners have been fortunate through our  
14 strength. We've developed real estate prior to the  
15 economic meltdown in 2008. We survived the economic  
16 meltdown in 2008. We've continue financing and  
17 constructing real estate since then.

18 So we have numerous banking relationships.  
19 We understand what it takes to get financing. And we  
20 have developed relationships here on Maui through our  
21 operation and ownership of NTP and Millhouse  
22 Restaurant.

23 And so I see that business model continuing  
24 on for the development of Waikapu Country Town.

25 That's sort of reflects my comments as far



1 as the testimony, written testimony.

2 Q Thank you. I want to follow up on some  
3 questions.

4 There have been some questions concerning  
5 the plans as far as the wells and which ones might be  
6 used for nonpotable sources.

7 Can you address those questions?

8 A We've had conversations with the County of  
9 Maui as far as, you know, following Dan's ten-day  
10 pump test, and the conversations have been  
11 preliminary, but thus far, the County and their  
12 Engineering Department has made it pretty clear that  
13 they like Wells 1 and 2, and they don't view Well No.  
14 3 as a viable potable water well.

15 Whether or not they would perceive it, I  
16 guess as Dan talked about, being a standby well or  
17 not, I'm not sure. But other wells in the alluvial  
18 aquifer are nonpotable.

19 We've talked to them as far as dual-water  
20 system. So one thing that catches my eye as far as  
21 numbers being thrown around as far as the amount of  
22 water that the project consumes on a daily basis, the  
23 County's attitude, as far as measuring that  
24 consumption for a non-dual system was 600 gallons per  
25 day. And they've represented to us in writing that

1 if we do a dual-water system, they would view the  
2 consumption as 350 gallons per day single family,  
3 250 gallons per day multi-family. So that's a  
4 dramatic reduction.

5 It's notable for the sustainability of the  
6 project versus non-dual water system.

7 Q Maybe you should explain that a little bit  
8 more. Why do you think it's more sustainable?

9 A Well, I think ultimately the demand, the  
10 overall water demand for the project will be that  
11 much less, where we're not consuming, you know, full  
12 100 percent potable water to supply all the needs of  
13 the project.

14 Q Hopefully that will answer the  
15 Commissioner's question, but I'm sure if it doesn't,  
16 he will go ahead and ask you.

17 With that we would offer in Mr. Boyce's  
18 testimony as Exhibit 49.

19 CHAIRPERSON WONG: County, any objections?

20 MR. HOPPER: No objection.

21 CHAIRPERSON WONG: OP?

22 MS. APUNA: No objection.

23 CHAIRPERSON WONG: Commissioners, any  
24 objection? No objections. Exhibit 49 is entered.

25 (Petitioner's Exhibit 49 was received into

1 evidence.)

2 MR. GEIGER: Thank you.

3 Q I did have one other area, just to make  
4 sure there's no confusion.

5 As I understand it, the Applicants are  
6 agreeable to entering into memorandums of  
7 understanding or memorandums of agreement with the  
8 State Department of Transportation and/or the County.

9 So that the cost, pro rata cost of the  
10 improvements needed to address any traffic impacts  
11 would be borne by the developer as opposed to paying  
12 for the entire amount of the improvements; is that  
13 correct?

14 A Yes.

15 Q No further questions.

16 CHAIRPERSON WONG: County.

17 CROSS-EXAMINATION

18 BY MR. HOPPER:

19 Q Just a few questions.

20 It's your understanding at this stage with  
21 respect to Wells 1, 2, 3 you talked about  
22 discussions, but there has been no actual dedication  
23 of the wells to the County at this point?

24 A There's been no dedication, correct.

25 Q Is your understanding that the Maui County

1 Council would have to accept those wells in order to  
2 complete the acceptance process?

3 A Yes.

4 Q At this stage in the event that wouldn't  
5 happen, you are prepared to operate those wells as a  
6 private system to service the project?

7 A Absolutely.

8 Q I think that's all the questions I have.  
9 Thank you very much.

10 CHAIRPERSON WONG: OP, cross-examination?

11 MS. APUNA: I have a few questions.

12 CROSS-EXAMINATION

13 BY MS. APUNA:

14 Q First of all, has the surface water use for  
15 Waikapu Stream ended except for use by cattle?

16 A Correct. I believe the agreement in the  
17 proceedings was that our farmers would vacate by the  
18 end of this calendar year, and I believe Kumu Farms,  
19 who was the last farmer, has vacated. And Robert  
20 Pahia, who was here yesterday, he's already moved  
21 across the highway.

22 Q And then are you agreeable to a MOA with  
23 the Airports Division of DOT with regard to some of  
24 their concerns that impact the project?

25 A Sure. We recognize flight path, and we

1 don't want any conflict with Department of  
2 Transportation.

3 Q Thank you.

4 CHAIRPERSON WONG: Commissioners, any  
5 questions? Commissioner Scheuer.

6 VICE CHAIR SCHEUER: Aloha.

7 THE WITNESS: Aloha.

8 VICE CHAIR SCHEUER: Thank you for being  
9 here.

10 So the question I think I was trying to get  
11 at, Well 3, do you plan to attach Well 3 to the  
12 nonpotable portion of the dual use system.

13 THE WITNESS: I would think if we needed  
14 that capacity for nonpotable, yeah. I would think it  
15 could definitely be nonpotable.

16 In other words, we have invested a fair  
17 amount of money, so I can't envision it being plugged  
18 and abandoned. Whether it's used by the County --  
19 ultimately if we strike an agreement with the County  
20 and they say they only want to use it for one  
21 purpose, we use it for that purpose.

22 Otherwise, as far as the dual-water  
23 system -- the needs of the dual-water system are  
24 obviously much less than the potable needs. So  
25 between that and two other wells --

1           VICE CHAIR SCHEUER: I'm just trying to  
2 understand what are the water sources for the  
3 dual-water system for nonpotable portion?

4           THE WITNESS: Nonpotable portion, you would  
5 have potentially Well No. 3, potentially obviously  
6 Wells 4 and 5. We're also working on acquiring the  
7 subsurface water rights across the street for the TMK  
8 that's in Kahului Aquifer.

9           So that would be -- I think Dan would  
10 probably testify even higher salinity nonpotable, so  
11 that would be another potential source.

12          VICE CHAIR SCHEUER: What do you mean by  
13 acquiring the water rights?

14          THE WITNESS: Currently we have the water  
15 rights for the mauka side of the project, and we  
16 don't have the water rights for the makai side of the  
17 project.

18          VICE CHAIR SCHEUER: I guess I'm confused  
19 how that jibes with Hawai'i Water Law in terms of  
20 owning water rights.

21          So you said Well 3, and then potentially  
22 Wells 4 and 5 for nonpotable?

23          THE WITNESS: Alluvial, correct.

24          VICE CHAIR SCHEUER: Did you do pump tests  
25 on Wells 4 and 5?

1           THE WITNESS: I think Mr. Lum testified as  
2 far as what he did as far as monitoring them during  
3 the pump test.

4           VICE CHAIR SCHEUER: So we don't know what  
5 the sustainable yields might be? Not sustainable  
6 yield in the aquifer sense, but from pumping test  
7 sustainable yield for Wells 4 and 5?

8           THE WITNESS: I don't have anything to add  
9 other than what Mr. Lum said.

10          VICE CHAIR SCHEUER: Do you know what the  
11 demand is in the nonpotable portion of the dual  
12 system?

13          THE WITNESS: Nonpotable portion, I could  
14 derive that based on the overall demand and the  
15 smaller percentage of it, yeah. I would think it's  
16 spelled out in the FEIS.

17          VICE CHAIR SCHEUER: Mr. Geiger, if you  
18 have a reference to it, that would be great. All I'm  
19 trying to get at is understanding, in particular,  
20 given the long-standing concerns over surface water  
21 in this areas, the relationship between any ground  
22 pumping and surface water concerns.

23                 Thank you very much.

24          CHAIRPERSON WONG: Commissioners, any other  
25 questions? Redirect?

## REDIRECT EXAMINATION

BY MR. GEIGER:

Q Let me see if I can help a little bit here.

When you said you could derive it from a calculation, you're talking about taking the 650 and subtracting out whatever the County would allow for the nonpotable --

A Correct.

Q -- so if it was 650 and 350, it would be a 300 gallon per unit for nonpotable?

A Differential.

Q I don't know if that answers your question, but that's what he was getting to.

CHAIRPERSON WONG: Anybody else?

MR. GEIGER: No further questions.

CHAIRPERSON WONG: Thank you. Next witness, please.

MR. GEIGER: Thank you, Albert.

At this time we would like to recall Netai Basu for a clarification. And I believe I've already talked to the County and OP, and I don't believe they have any opposition.

CHAIRPERSON WONG: Please. I just be want to remind you you're still under oath. All the testimony is still affirming that you're stating the



1 truth to your testimony. Just wanted to reconfirm  
2 that you're still under oath.

3 THE WITNESS: I'll reaffirm my testimony is  
4 to the best of my ability accurate.

5 NETAI BASU

6 Having been previously called as a witness on behalf  
7 of the Petitioner, was still under oath and was  
8 examined and testified as follows:

9 MR. GEIGER: Just for the record, if we  
10 could make sure that the County and OP have no  
11 objection to recalling Mr. Basu.

12 MR. HOPPER: No objection.

13 MS. APUNA: No objection.

14 CHAIRPERSON WONG: Commissioners, do you  
15 have any objections? Please continue.

16 MR. GEIGER: Thank you very much.

17 REDIRECT EXAMINATION

18 BY MR. GEIGER:

19 Q Mr. Basu, there was some question as to  
20 clarity of your testimony yesterday, so I want you to  
21 focus specifically on your testimony concerning the  
22 project's responsibility for the traffic  
23 improvements.

24 So could you go through that for us again  
25 and just make sure we're all on the same page?

1           A       I welcome the chance to do this. Thank  
2 you, Jim.

3                   I know the EIS identified a range of  
4 off-site traffic mitigations to fully achieve the  
5 desired level of service D, both with and without the  
6 Waialae bypass in place.

7                   We made a calculation of the project's fair  
8 share contribution or pro rata contribution, that's  
9 documented in the EIS. And on the basis of that,  
10 identified the a.m. peak hour contribution, and the  
11 p.m. peak hour contribution, and showed the higher of  
12 those two as the project's share.

13                   There were a few locations, one or two  
14 which we identified 100 percent contribution to the  
15 project, because the addition of project traffic  
16 would cause that to fall to ALISH E or F even without  
17 the addition of background traffic.

18                   So those are identified as 100 percent  
19 share even though they were slightly higher than the  
20 specific pro rata share.

21                   On the basis of that, we identified a  
22 recommended set of mitigations to be made by the  
23 project and in lieu of a proportional share of  
24 everything else.

25                   It's been our experience that the agencies

1 have in the past, through the MOA, MOU process, come  
2 to an agreement on specifically what the pro rata  
3 share would turn into in terms of 100 percent  
4 improvements. That is rather than get a portion of  
5 many improvements, the project would be responsible  
6 for fully implementing certain ones.

7 So pro rata share, this is an important  
8 aspect of my testimony which may have been  
9 misunderstood yesterday.

10 Q And so bottom line is that the project  
11 would be responsible for the impacts it did, but it  
12 wouldn't be responsible for the impacts of other  
13 projects; is that correct?

14 A That's a concise way of putting it.

15 And as I began my testimony yesterday, the  
16 overall impact is the effect of the existing traffic  
17 plus other project traffic plus this, altogether. So  
18 it's a share of that growth, which is attributable to  
19 this project.

20 Q Thank you.

21 CHAIRPERSON WONG: County?

22 RECROSS EXAMINATION

23 BY MR. HOPPER:

24 Q So to clarify, while you set out some  
25 proposed contributions from the project, the final

1 amounts you would anticipate being agreed upon in a  
2 type of MOU or agreement with the County for County  
3 roadways, and the State for State roadways; is that  
4 generally correct?

5 A That is correct.

6 Q Thank you. I have no further questions.

7 CHAIRPERSON WONG: OP.

8 MS. APUNA: No questions.

9 CHAIRPERSON WONG: Commissioners, any other  
10 questions on this? Thank you.

11 MR. GEIGER: No redirect.

12 We have no other witnesses, but as a matter  
13 of housekeeping, I believe that during Mr.  
14 Pellegrino's testimony, one of the two graphs that we  
15 displayed had not been identified as being somewhere  
16 in the record.

17 I believe it exists somewhere, but rather  
18 than trying to dig and find it, I have prepared a  
19 document which we will attach as Exhibit 50, which I  
20 have copies for Commission and staff, which I'll  
21 provide. And we will also provide this to County and  
22 OP, and we would ask that that be introduced.

23 CHAIRPERSON WONG: County, any objections?

24 MR. HOPPER: No objection as long as we're  
25 you'll all getting copies.

1 CHAIRPERSON WONG: OP?

2 MS. APUNA: No objection.

3 CHAIRPERSON WONG: Commissioners, any  
4 objections? Okay, Exhibit 50 is put into the record.

5 (Petitioner's Exhibit 50 was received into  
6 evidence.)

7 Mr. Geiger, no other --

8 MR. GEIGER: No other witnesses.

9 CHAIRPERSON WONG: We will take a  
10 five-minute break, and then we'll start with the  
11 County.

12 (Recess taken.)

13 CHAIRPERSON WONG: We're back on record.

14 Mr. Hopper, proceed with your first  
15 witness.

16 MR. HOPPER: Thank you, Mr. Chair. Our  
17 first witness will be Planning Director William  
18 Spence.

19 CHAIRPERSON WONG: Director, may I swear  
20 you in?

21 Do you swear or affirm that the testimony  
22 you're about to give is the truth?

23 THE WITNESS: I do. My name is William  
24 Spence. I'm the Planning Director for Maui County.

25 CHAIRPERSON WONG: Please proceed.

1 WILLIAM SPENCE

2 Was called as a witness by and on behalf of the  
3 County of Maui, was sworn to tell the truth, was  
4 examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. HOPPER:

7 Q Do you have a copy of your written direct  
8 testimony that was submitted as County's Exhibit 3?

9 A Yes, I do.

10 Q Do you have anything that you wish to  
11 correct with respect to that testimony?

12 A Yes, I do.

13 Q Would you please describe the correction  
14 you would like to make?

15 A On page 4, the very first paragraph under  
16 heading of "land use", starting with the third  
17 sentence saying "consequently".

18 Basically it says the Applicant has already  
19 submitted applications for changes in zoning and a  
20 community plan amendment, and that is not the case.

21 I think at the time this was written, we  
22 had anticipated that would be submitted by the time  
23 we reached the Land Use Commission, and that has not  
24 occurred.

25 What this should say: Consequently the

1 Applicant will submit to the County of Maui  
2 applications for the Community Plan Amendment, change  
3 in zoning and project district.

4 The next sentence should be stricken. That  
5 sentence says: The CIZ and CPA and PD applications  
6 are currently held in abeyance by the County, et  
7 cetera. That sentence is not applicable at all.

8 Q It's essentially correct in the record that  
9 additional entitlements required after a District  
10 Boundary Amendment have not yet been submitted?

11 A That is correct.

12 Q There were some discussion in earlier  
13 testimony about the document known as the Maui Island  
14 Plan and its in evidence in this case.

15 Could you briefly describe what is the Maui  
16 Island Plan?

17 A The Maui Island Plan is a part of Maui  
18 County's General Plan. The complete General Plan is  
19 made up of a number of documents starting with the  
20 Countywide Policy Plan. There is also Maui Island --  
21 excuse me -- we refer to as MIP, Maui Island Plan  
22 that's supposed to be a document covering the entire  
23 Island of Maui. That is our most recent planning  
24 document adopted at the end of 2012, and that goes  
25 into considerable detail of how development is

1       supposed to take place on Maui.

2               It contains growth boundaries of various  
3 types saying that when the county does grow, where  
4 that growth should occur. And growth should not  
5 occur outside of those particular boundaries.

6               And I can go into more detail on that in a  
7 minute.

8               We also have nine community plans of  
9 Lana'i, Molokai, West Maui, South Maui, Central,  
10 which this project is located in, Makawao, Pukalani,  
11 Kula, Paia, Haiku, Hana and Kaho'olawe.

12              So each one of those plans also takes a  
13 separate planning effort, and they are intended to  
14 provide detail for growth and policies and to  
15 identify the character, preserving the character of  
16 those particular community plan areas.

17           Q       Those community plans are periodically  
18 updated through an update process in the Maui County  
19 Code, correct?

20           A       Yes.

21           Q       After the adoption of the Maui Island Plan,  
22 not everyone of the community plans has gone through  
23 that update process, correct?

24           A       That's correct. We've done Lana'i. We're  
25 getting close to adopting Molokai. And West Maui is



1 currently on the table.

2 Q So while the -- could you describe this  
3 project, whether or not this project is set forth in  
4 the Maui Island Plan?

5 A Yes, it is, in quite some detail.

6 Q If you could please describe the manner in  
7 which it is set forth.

8 A During the -- as said, the Maui Island Plan  
9 is our latest planning document, and it sets forth  
10 these growth boundaries, where growth should occur.  
11 If we're going to grow, we should grow within these  
12 boundaries and not outside them.

13 Quite a number of projects have their own,  
14 what we refer to as stories, and this particular  
15 project has its own story within the plan. On page  
16 8-23 of the plan, under the heading of Planned Growth  
17 Area Rational, it says: Keeping in the Wailuku  
18 Tropical Plantation as its town core, this area will  
19 become a self-sufficient small town with a mix of  
20 single family and multi-family housing units in a  
21 walkable community that includes affordable housing,  
22 in close proximity to Wailuku's employment centers,  
23 schools, parks, police and fire facilities, transit  
24 infrastructure, wastewater, water, supply resources  
25 and other infrastructure should be developed

1 efficiently in coordination with the neighboring  
2 developments including Maui Lani, Kehalani, Pu'unani  
3 and Waiale. The Waikapu Tropical Plantation Town  
4 planned growth area is located on directed map growth  
5 No. C3 along with the following table.

6 And I'll just say -- it gives some numbers  
7 on how many acres, et cetera. This particular  
8 project is within two different growth boundaries,  
9 one is a small town growth boundary, the other one is  
10 within a rural growth boundary.

11 The small town -- these boundaries are to  
12 denote a certain character, desired character of a  
13 development. For instance, the way this project is  
14 being proposed, it's a fairly dense community with a  
15 lot of desired characteristics such as walkability,  
16 putting commercial in within a walking distance of  
17 the residents, having a mix of housing types  
18 integrated within each other. The bike paths,  
19 transit opportunities, et cetera.

20 And this is more reflective of some of  
21 Maui's small towns like Makawao or Paia. So this is  
22 denoting that kind of character.

23 It is an Urban -- for the purposes of the  
24 State Land Use Commission, there would be the small  
25 town boundary would be an Urban designation. For

1 Maui County purposes, you know, we're looking for the  
2 sort of character.

3 The Rural growth boundary, the -- we have a  
4 couple towns in Maui that are even smaller that have  
5 very limited services, Keokea, Waiakoa, those kinds  
6 of places. Again, that denotes an even smaller town  
7 character.

8 But for the purposes of this project, the  
9 Rural boundary would certainly fit the Rural District  
10 classification.

11 Q So the designation of this project within  
12 the small town and rural growth boundaries is  
13 consistent with what is being proposed in the  
14 District Boundary Application, in your opinion?

15 A Yes, it is.

16 Q You submitted your written testimony.  
17 Could you please summarize your written testimony?  
18 Any additional points you would like to make than  
19 what you've already stated regarding the Maui Island  
20 Plan?

21 A The County is in favor of this project,  
22 strongly in favor. Not only does it follow the  
23 growth rational within our planning document, these  
24 are the kinds of things, the way that this is being  
25 designed is what we're looking for in growth for Maui

1 County.

2 If I can insert my personal thoughts in  
3 this. One of my personal mantras is we should be  
4 building communities not just subdivisions. I think  
5 that's something that has been lacking in our  
6 planning processes over decades now.

7 Being able to integrate these different  
8 land uses together in different densities and  
9 different housing types, certainly goes along with  
10 more current planning thought. Kind of a newer term  
11 in our little planning world is "complete  
12 communities", or "new urbanism", or an older term  
13 would be "neo traditionalism".

14 Really what it is, is a throwback to the  
15 much more practical form of planning the way the  
16 towns used to be designed.

17 So this is going back to a time where you  
18 had complete communities. And my hope is that the  
19 development of this will foster a sense of community  
20 rather than just a subdivision.

21 Q Thank you.

22 You said that the county is in favor, or  
23 Department of Planning is in favor of the project.  
24 Are there any conditions that the County has  
25 recommended on the approval?

1           A       Yes. We have -- I forget how many  
2 conditions. I will say I did crosscheck with the  
3 Applicant's proposed Findings of Fact, Conclusions of  
4 Law, and Decision and Order, and they have touched on  
5 everyone of our proposed conditions.

6                   I have not examined the wording exactly,  
7 but they've already covered the basis on it.

8           Q       So would you anticipate being able to come  
9 to agreement on the conditions in the Decision and  
10 Order being prepared?

11          A       Absolutely.

12          Q       Just briefly, could you describe the  
13 additional entitlements, if any, that would be  
14 required by this project should the District Boundary  
15 Amendment be approved?

16          A       There are two primary entitlements  
17 required. One will be to amend the Wailuku-Kahului  
18 Community Plan. That's an older planning document.  
19 It was adopted in 2002, and I would say -- because  
20 Commissioner Cabral previously kind of alluded to  
21 what's this conflict.

22                   Any time you adopt a planning document, a  
23 long range plan, you're going to incur some kinds of  
24 conflict with what is here now. Your plan is saying  
25 where do we want to go? Where are we going to grow?

1     What are our new policies, et cetera.

2             This newer document creates conflicts with  
3     the older document. And until the older document is  
4     updated through our regular planning process, there  
5     are going to be these inherent conflicts.

6             So in the meantime the Applicant will be  
7     applying to amend the community plan so that there  
8     are no conflicts.

9             Same thing with the zoning. I understand  
10    they're going to apply for Project District Zoning,  
11    which is an individualized zoning for particular  
12    project. We have a number of them on Maui. They  
13    will specify different land uses, size, lot sizes,  
14    densities, et cetera. And once that zoning is  
15    adopted, then there will be some additional  
16    administrative review through the Planning Commission  
17    and through the Planning Department.

18            Q     And then should -- there's a notation in  
19    your testimony, I think, if there is a private  
20    wastewater system constructed.

21                    Would that require a State special permit  
22    for that facility if it's on agricultural land?

23            A     Yes, it would.

24            Q     So that could be another protection for  
25    entitlement?

1           A       Yes, and that would be adopted through the  
2 Maui Planning Commission.

3           Q       If the area is under 15 acres?

4           A       Correct, that's what I understand. It  
5 would be less than that.

6           Q       Thank you. I don't have any other  
7 questions for the witness at this time.

8           CHAIRPERSON WONG: Mr. Geiger.

9           MR. GEIGER: Just briefly.

10                   CROSS-EXAMINATION

11 BY MR. GEIGER:

12           Q       Are you familiar with the County's Water  
13 Use and Development Plan?

14           A       Not really.

15           Q       Do you have a familiarity on how often that  
16 plan is updated?

17           A       No.

18           Q       I'll direct it to somebody else.

19           A       My apologies, I don't.

20           Q       No further questions.

21           CHAIRPERSON WONG: OP.

22           MS. APUNA: No questions.

23           CHAIRPERSON WONG: Commissioners, any  
24 questions? Commissioner Cabral.

25           VICE CHAIR CABRAL: Back to my subject of

1 conflict. Based on the fact that the County is  
2 endorsing this, and the fact that it's in agreement  
3 or compliance with the overall plan, the fact that  
4 there is that modification or adjustment that needs  
5 to be taken to the more specific area plan, and the  
6 fact that we have no people here showing up to object  
7 to this, are you fairly confident that all of these  
8 plans will be agreeable, and that this project will  
9 not be in conflict with the local community?

10 THE WITNESS: I'm quite confident it will  
11 go through our processes fairly swiftly and with  
12 minimal objections.

13 VICE CHAIR CABRAL: Thank you very much.

14 CHAIRPERSON WONG: Any other questions?

15 THE WITNESS: I'm waiting for Commissioner  
16 Scheuer.

17 VICE CHAIR SCHEUER: I'm happy to ask you  
18 about Mr. Geiger's question about the Water Use and  
19 Development Plan. (Laughter) No, nothing. Thank you.

20 CHAIRPERSON WONG: Any redirect?

21 MR. HOPPER: No. Mr. Chair.

22 CHAIRPERSON WONG: Next witness.

23 MR. HOPPER: We listed David Goode. We  
24 asked parties -- we wanted him to address a couple  
25 issues with respect to traffic.



1 CHAIRPERSON WONG: Mr. Geiger, any  
2 objection?

3 MR. GEIGER: No.

4 CHAIRPERSON WONG: OP?

5 MS. APUNA: No objection.

6 CHAIRPERSON WONG: Okay, Commissioners?  
7 Okay.

8 MR. HOPPER: Call Public Works Director,  
9 David Goode.

10 CHAIRPERSON WONG: Do you swear or affirm  
11 that the testimony you're about to give is the truth?

12 THE WITNESS: Yes, I do.

13 CHAIRPERSON WONG: Please state your name  
14 for the record.

15 THE WITNESS: David Goode.

16 CHAIRPERSON WONG: Thank you. Please  
17 proceed.

18 DAVID GOODE  
19 Was called as a witness by and on behalf of the  
20 County of Maui, was sworn to tell the truth, was  
21 examined and testified as follows:

22 DIRECT EXAMINATION

23 MR. HOPPER: We provided a CV for Director  
24 Goode, but he's now provided written direct  
25 testimony.

1           Q       I wanted to basically familiarize you with  
2 how long -- are you currently the Public Works  
3 Director of the County of Maui?

4           A       Yes, I am.

5           Q       How long have you been in that position?

6           A       This time around since 2011. Previously I  
7 was the Deputy and Director from 1994 to 2002.

8           Q       And in the course of your duties as the  
9 Public Works Director, are you generally familiar  
10 with the Waikapu Country Town Project?

11          A       Yes, I am.

12          Q       As part of the discussions regarding that  
13 project, have you discussed a document known as a  
14 Master Roadway Agreement with the developer of the  
15 project?

16          A       Yes, we have.

17          Q       Could you briefly describe what you  
18 anticipate being in that document and the current  
19 status of the review of that document?

20          A       The Master Roadway Agreement is a document  
21 between developer of the project and the County of  
22 Maui, in this case, as to when certain road  
23 improvements in the project would be built and by  
24 whom.

25                   As an example, we have a Master Roadway

1 Agreement with Maui Lani, which is also Project  
2 District, as I understand, this project being  
3 proposed today. Maui Lani sits between Kahului and  
4 Wailuku. Therefore, there's interregional traffic  
5 that just happens to go through Maui Lani. So some  
6 of the traffic in Maui Lani is related to the  
7 development of Maui Lani, and other is just regional  
8 traffic going through.

9 Master Roadway Work recognizes this and  
10 seeks certain improvements to be done in the project  
11 and to be tied to certain modules or areas within  
12 that project. And it also sets out what is a  
13 reasonable pro rata share for each improvement.

14 Q Thank you. And then you're also familiar  
15 with the discussions regarding the proposed Waiale  
16 bypass road?

17 A Yes.

18 Q And in your opinion -- there's been some  
19 discussion on whether or not the roadway will be  
20 built and when. In your opinion, do you believe that  
21 at some point in time this roadway will be  
22 constructed?

23 A I do believe that.

24 Q Do you believe that that's an important  
25 improvement for this area of Central Maui?

1           A       It is. It's like a spine road within this  
2 area that has been identified for growth. Maui  
3 Island Plan shows not only this project but  
4 surrounding areas to be developed. So this road is  
5 important for that overall region.

6           Q       Thank you. I have no further questions.

7           CHAIRPERSON WONG: Mr. Geiger.

8           MR. GEIGER: Short follow up on that.

9                   CROSS-EXAMINATION

10          BY MR. GEIGER:

11          Q       You know presently of no impediments to the  
12 construction of the Waiale bypass, correct?

13          A       Other than money.

14          Q       Beyond the funding, you're not aware of any  
15 limitation?

16          A       No. In fact, when the County acquired  
17 100 acres directly below Waikapu Town there is an  
18 easement set aside for an 80-acre easement -- not  
19 80 -- 8-foot wide easement that has to be dedicated  
20 to County of Maui upon demand. So we don't have any  
21 other endeavors.

22          Q       Thank you. No further questions.

23          CHAIRPERSON WONG: OP.

24          MS. APUNA: No questions.

25          CHAIRPERSON WONG: Commissioners, any

1 questions? No questions. Any redirect?

2 MR. HOPPER: No, Mr. Chair. County has no  
3 further witnesses.

4 CHAIRPERSON WONG: Thank you, sir.

5 OP, do you have -- your turn.

6 MS. APUNA: OP calls to the stand Director  
7 Leo Asuncion.

8 CHAIRPERSON WONG: I just wanted to remind  
9 you you're still under oath from yesterday.

10 THE WITNESS: Yes, thank you.

11 CHAIRPERSON WONG: Please proceed.

12 MS. APUNA: Thank you, Chair.

13 LEO ASUNCION

14 Was previously called as a witness by and on behalf  
15 of the State Office of Planning, was previously sworn  
16 to tell the truth, was examined and testified as  
17 follows:

18 DIRECT EXAMINATION

19 BY MS. APUNA:

20 Q Can you please state your title, position  
21 and background at OP?

22 A Sure. Currently the Director of Office of  
23 Planning, making me the State's Planning Director. I  
24 did have the office coming up on six years now. The  
25 first two-and-a-half years as the Coastal Zone

1 Manager for the State, and then in mid-2014 until  
2 now, being the Acting Director and then the Director  
3 under the Ige administration.

4 Q Are you familiar with the Petition?

5 A Yes, I am.

6 Q What standards does OP specifically apply  
7 in evaluating a District Boundary Amendment Petition?

8 A Typically the Office of Planning, we review  
9 these District Boundary Amendments really based on  
10 the standards provided by Hawai'i Revised Statute  
11 Section 205-17 and also HAR 15-15.

12 Q Under Section 205-17 HRS, did OP  
13 specifically consider the expense to which the  
14 proposed reclassification conforms to the policies,  
15 priority guidelines and the Hawaii State Plan and  
16 County Plan and appropriate district standards and  
17 impacts of areas of State concern?

18 A Yes.

19 Q Can you please summarize OP's assessment of  
20 the Petition's conformity with decision-making  
21 criteria for Distinct Boundary Amendment?

22 A We looked at both Urban District standards  
23 as well as the Rural District standards.

24 So in looking at standards for Urban  
25 District, the Petition Area is adjacent to existing

1 Urban development, and the basic services are  
2 adequate in the general area.

3 In meeting the standards for the Rural  
4 District, the Petition Area is well-suited for low  
5 density residential uses, for diversified agriculture  
6 uses and also for small farming.

7 Looking at the total as well, the total  
8 Petition as well, we feel that with appropriate  
9 mitigation, and those will manifest themselves in  
10 conditions, the proposed reclassification is  
11 generally consistent with the Hawaii State Plan and  
12 the State Coastal Zone Management objectives and  
13 policies, and notwithstanding the pending of  
14 amendments to the Wailuku-Kahului Community Plan, the  
15 project is consistent with the Maui Island Plan as  
16 Director Spence just described.

17 With regard to the areas of State concern,  
18 the project contributes favorably to the creation of  
19 jobs and also educational opportunities. And also  
20 looking at our housing needs as well throughout the  
21 State, and especially for the Island of Maui and the  
22 County of Maui.

23 While the reclassification -- I think I  
24 touched upon this yesterday -- while the  
25 reclassification displaces agricultural land, the

1     Petitioner is generously dedicating the bulk of the  
2     remainder of the land area that Mr. Atherton owns for  
3     agriculture in perpetuity. I think that's the key  
4     item that we need to not forget that in the tradeoff  
5     and all of that, and we want -- it's a balance  
6     between all of our needs.

7             So I think the Petitioner in this case is  
8     doing something that is unique. I think it was  
9     described yesterday by one of the witnesses as a  
10    unique thing about this petition.

11            Q     And based on input from the various State  
12    agencies and OP's review, what are some of the  
13    mitigation measures recommended by OP for this  
14    reclassification?

15            A     There are a number of areas that I call  
16    areas of State concern. One of which is -- and I've  
17    kind of listed them and kind of put them in  
18    categories, if you will, and these are found in our  
19    testimony as well as proposed conditions.

20                   Stormwater and drainage, that we would like  
21    to see the Petitioner maintain existing drainage  
22    pattern, implement applicable best management  
23    practices to minimize infiltration and runoff, reduce  
24    the potential for soil erosion, and groundwater  
25    pollution and formulate dust control measures.



1           In regards to wastewater, we would like the  
2           Petitioner to fund and construct adequate wastewater  
3           source, storage and transmission facilities to  
4           accommodate proposed uses in each phase of the  
5           project.

6           In terms of air quality, we would ask the  
7           Petitioner to participate in an air quality  
8           monitoring program as required by the State  
9           Department of Health.

10          In terms of energy and environmental,  
11          Petitioner -- we would like to see the Petitioner  
12          implement measures to promote energy conservation,  
13          sustainable design and environmental stewardship.

14          Touching upon transportation, and there's  
15          two areas here as far as aviation and the airports  
16          that we would like the Petitioner and any subsequent  
17          owners should be notified and disclose to all  
18          perspective developers and purchasers and lessees of  
19          the potential adverse impacts of aircraft activity at  
20          and from Kahului Airport.

21          Petitioner should enter into a Memorandum  
22          of Agreement with the Department of Transportation  
23          prior to final subdivision approval of the initial  
24          project phase to address hazard impacts to aircraft  
25          operations. And we would like to see Petitioner fund

1 and implement a program to control any bird, insect,  
2 pest or wildlife, any hazardous wildlife attractants.

3 In terms of highways and roadways, it's  
4 been discussed previously through other witnesses,  
5 one item that we would like to have Petitioner do is  
6 to submit to the Department of Transportation a  
7 supplemental analysis to evaluate the no-Waiale  
8 bypass alternative. And that the Petitioner work  
9 with the Department of Transportation on a Memorandum  
10 of Agreement for traffic mitigation.

11 Water resources. Again, another item that  
12 we have discussed thoroughly I believe through this  
13 docket and through these proceedings, that the  
14 Petitioner fund and construct adequate water source,  
15 storage, and transmission facilities to accommodate  
16 the proposed project uses.

17 In terms of civil defense, Petitioner, we  
18 would like to see the Petitioner fund and install  
19 three civil defense warning sirens.

20 And for terms of agriculture, submit an  
21 executed copy of an agricultural-conservation  
22 easement to the Land Use Commission; and also to  
23 comply with the right-to-farm provisions found in HRS  
24 section 205-3.5.

25 Looking at archaeological cultural items,

1 we would like to see Petitioner submit a preservation  
2 plan for the irrigation feature and World War II  
3 bunker to the State Historic Preservation Division  
4 prior to any ground disturbing activities.

5 In the event that historical resources are  
6 identified during construction activities, all work  
7 should cease and the State Historic Preservation  
8 Division be informed.

9 Petitioner should provide archaeological  
10 monitoring for all ground disturbing activities.

11 Petitioner should also preserve any  
12 established gathering and access rights of Native  
13 Hawaiians.

14 And lastly, what was discussed yesterday in  
15 Mr. Pellegrino's testimony questioning from the  
16 Office of Planning, that we would like to see his  
17 three recommendations be made a part of the  
18 conditions.

19 And the last thing as far as State  
20 concerns, wildlife and endangered species, in order  
21 to mitigate impacts to endangered species, Petitioner  
22 should shield all exterior lighting, clear dense  
23 vegetation along the periphery only during certain  
24 times of the year, and consult the U.S. Department of  
25 Fish and Wildlife Service for measures regarding the

1 Blackburn Sphinx Moth.

2 Q Thank you.

3 And based on OP's review and evaluation  
4 what is OP's recommendation for the Petition?

5 A We strongly approve this -- we would like  
6 to see strong approval of this Petition with the  
7 conditions that I have discussed prior to this, and  
8 those in our written testimony.

9 MS. APUNA: Mr. Asuncion is open for any  
10 questions.

11 CHAIRPERSON WONG: Mr. Geiger?

12 MR. GEIGER: Thank you first for the strong  
13 approval.

14 CROSS-EXAMINATION

15 BY MR. GEIGER:

16 Q I do have a follow up on your one comment  
17 or one of the comments on traffic.

18 You indicated that you wanted a study of  
19 the no-Waiale bypass. You're familiar that there was  
20 a study done within awhile of the bypass, correct?

21 A That is my understanding. I believe DOT  
22 has not actually looked at that. So they're  
23 interested in that, they saw that, and just to work  
24 with them.

25 Q Okay. So it's more of a -- what you want

1 is an understanding from the Applicant that they will  
2 work with DOT on the study that was previously done?

3 A Correct.

4 Q Thank you.

5 CHAIRPERSON WONG: Mr. Hopper?

6 MR. HOPPER: No questions, Mr. Chair.

7 CHAIRPERSON WONG: Commissioners, any  
8 questions? Commissioner Scheuer.

9 VICE CHAIR SCHEUER: Aloha.

10 THE WITNESS: Aloha.

11 VICE CHAIR SCHEUER: In all of your  
12 proposed conditions -- and excuse me, I think I  
13 missed this -- has anything changed from the written  
14 conditions that you've previously submitted?

15 THE WITNESS: I believe not, but I think  
16 some of it may be more clarifying based on the  
17 proceedings that have gone on.

18 MS. APUNA: That's correct, except for I  
19 think the three conditions that we discussed  
20 yesterday with the cultural expert, those are I think  
21 in addition to what we've already had in our written.

22 VICE CHAIR SCHEUER: Okay. Thank you.

23 CHAIRPERSON WONG: Commissioner Cabral.

24 VICE CHAIR CABRAL: Thank you. I've got a  
25 couple of questions, and I heard you reference it

1 twice in this presentation, and then I interpreted  
2 them two different ways, so I wanted clarification.

3 You talked about protection of native  
4 species and obviously you reference the moth, but one  
5 of the times you said -- I got impression that you  
6 were talking about having the developer be involved  
7 in protection not of those but from them.

8 So I wasn't sure, because I started  
9 picturing -- since I live in the country and I have  
10 wild boars that rototill my yard on a regular basis,  
11 and I live with a million koki frogs, you know the  
12 protection from unwanted things is something I think  
13 about. So I what is wasn't sure, are you thinking  
14 that there should be something to not just protect  
15 our native animals, but have that protection be  
16 protection from other type of animals or insects or  
17 something?

18 THE WITNESS: The dynamic here, if you  
19 will, is between two different -- and it's really  
20 some of it is federal, right. The first one being  
21 the wildlife attractants, that is something that has  
22 been around for awhile, and it's actually a Federal  
23 Aviation Administration circular, which states  
24 basically five miles from the property boundary of an  
25 airport, right, they're going to try to not have

1 these wildlife attractants. Basically what I know  
2 about it, it became evident and more seen around the  
3 nation when the Hudson Bay crash happened, where  
4 there was a bird strike. They had to turn around.  
5 Try to make it back to, I believe Laguardia and  
6 didn't make it back.

7           Similar incident happened here in Hawai'i  
8 where there was a permit granted for of all things  
9 offshore aquaculture farm in proximity within the  
10 five miles of Honolulu International Airport, which  
11 would attract birds. That permit was given. The FAA  
12 came to town and basically told the Airports you need  
13 to remedy that, even though it was another agency  
14 that gave that permit. But they needed to remedy  
15 that, or if they didn't, the consequences would be to  
16 close the airport down.

17           So you could imagine if you close Honolulu  
18 or any of our airports, what impact that would have.

19           So we work with Department of  
20 Transportation Airports Division in creating what we  
21 call "technical assistance memo" informing developers  
22 of this federal circular and the process you need to  
23 go through. So work with Department of  
24 Transportation, if you're creating like even  
25 described like if you're going to have a fountain

1 that might attract birds, to that level.

2 So it's just a process thing. That's one.  
3 Trying to avoid what they call wild like attractants.  
4 That's a federal term and defined by the FAA.

5 Then there is also now the endangered  
6 species to try to protect those they are on the site.  
7 So there's a little bit of a dilemma there, you're  
8 trying to avoid what could be like an endangered  
9 bird, but you may have to endangered bird on your  
10 property that you want to protect.

11 VICE CHAIR CABRAL: So it's understandable  
12 that I was confused. I did hear it in both  
13 directions. Thank you very much. I understand what  
14 you're saying now, I appreciate that.

15 THE WITNESS: That you for giving me the  
16 opportunity. That was one of the newer things that  
17 lot of people don't understand and even  
18 decision-makers how that impacts your  
19 decision-making.

20 VICE CHAIR CABRAL: Thank you.

21 CHAIRPERSON WONG: Any other questions,  
22 Commissioners? Any redirect?

23 MS. APUNA: No.

24 CHAIRPERSON WONG: Thank you, sir.

25 Any other witnesses?



1 MS. APUNA: No, that's it.

2 CHAIRPERSON WONG: I'll give all parties  
3 final closing statements, five minutes each.

4 Mr. Geiger, are you ready or take a break?

5 MR. GEIGER: Why don't we take a short  
6 break.

7 CHAIRPERSON WONG: Okay, let's do a short  
8 break.

9 (Recess taken.)

10 CHAIRPERSON WONG: Mr. Geiger, any closing?

11 MR. GEIGER: Certainly. I just want to  
12 first of all thank the Chair, the Commission and  
13 staff for all of your attention for the past day and  
14 a half.

15 It's been a pleasure for me to appear on  
16 this particular project, because I think it's kind of  
17 unique as opposed to the last one I was in front  
18 of -- and you can ask Dan and Riley about that one,  
19 and Scott and Diane.

20 But at any rate, I want to thank you all  
21 for your attention on this. I'm going to reserve  
22 closing on this, but I do want to just point out for  
23 the next time we appear before you for proposed  
24 Decision and Order, which I hopefully will be  
25 approving this project.

1           You've heard from the public, and they were  
2 all for this project. You heard from the County in  
3 support of this project; and you heard from OP and  
4 they're strongly for the project. And you heard from  
5 the Applicant and all the Applicant's consultants.

6           I think we can all look at this and we  
7 picked the boxes. We met the criteria, and certainly  
8 we think that the District Boundary Amendment  
9 Application for Rural and Urban should be approved.

10           With that I will, as I said, reserve the  
11 remainder of our talks for the next opportunity.  
12 Thank you.

13           CHAIRPERSON WONG: Thank you. County?

14           MR. HOPPER: Thank you. We're also going  
15 to look forward to decision-making meeting and  
16 reserve most of our closing for that time.

17           We would like to thank the Commissioners  
18 for their time and careful consideration. We know  
19 it's an awful lot of work and a lot of documents to  
20 review.

21           The County of Maui has submitted a position  
22 statement and direct testimony in this case in  
23 support of the project with conditions. We  
24 anticipate coming to agreement on the form of  
25 Decision and Order.

1           And, again, we would state we are in  
2           support of the project based on the County's filing  
3           in this case, and would reserve further oral argument  
4           or closing argument on this case for a future date.  
5           Thank you.

6           CHAIRPERSON WONG:   Thank you.   OP?

7           MS. APUNA:   I'll just make my closing  
8           arguments now.   Based on review of the information  
9           provided in the Petition, State and County agency  
10          comments and witness testimony, OP finds that the  
11          proposed reclassifications to the State Land Use  
12          Urban and Rural Districts are consistent with the  
13          standards for determining Urban and Rural boundaries  
14          as set forth in HRS Chapter 205 and HAR Chapter  
15          15-15.

16          OP supports reclassification with  
17          recommended conditions.   This project is a good  
18          example of a complete community that seeks to  
19          integrate with surrounding and larger communities.  
20          Although agricultural lands be lost to Urbanization,  
21          on balance Petitioners are committing to 800-acre  
22          agricultural preserve.

23          For the Commission, while it is never an  
24          easy to decision to reclassify A and B rated lands,  
25          when a Petition is thorough, comprehensive and

1 conscientious like this one, you can feel confident  
2 you have that you the appropriate information to make  
3 a sound and reasonable decision.

4 We thank the Commission for its time and  
5 consideration.

6 CHAIRPERSON WONG: Thank you.

7 Given that the parties completed their  
8 presentations before the Land Use Commission, I  
9 declare the evidentiary portion of this proceeding to  
10 have been completed, subject to the receipt of  
11 various follow-up reports and/or answers that may  
12 have been requested during the course of this  
13 hearing.

14 I direct that the parties draft their  
15 individual proposed Findings of Fact, Conclusions of  
16 Law and Decision and Order based upon the records in  
17 this docket, and serve the same upon each other and  
18 the Commission.

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

24 Please contact Jean McManus, court  
25 reporter, to arrange for copies of today's

1 transcripts. I note for the parties that the  
2 Commission has standard conditions which we would  
3 like the parties to consider in preparing the  
4 proposed orders. A copy of the standard conditions  
5 may be obtained from the Commission staff. I  
6 recommend that the parties consult with Commission  
7 staff early in the process to ensure that the  
8 technical and non-substantive formatting, protocols  
9 observed by the Commission are adhered to.

10 If any of the parties desire to stipulate  
11 to any portion or all of the Findings of Fact,  
12 Conclusions of Law and Decision and Order, they are  
13 encouraged to do so.

14 We originally had intended to require each  
15 party to file its proposed Findings of Fact,  
16 Conclusions of Law and Decision and Order with the  
17 Commission and serve copies to the other parties no  
18 later than the close of business on January 4th.  
19 With comment deadline of January 25th.

20 However, we understand the parties are  
21 discussing and abbreviated had schedule with Mr.  
22 Geiger.

23 Mr. Geiger, can you give us the status on  
24 these discussions?

25 MR. GEIGER: Well, I anticipate that we

1 will be submitting -- we are discussing proposed  
2 findings and conclusions which have previously been  
3 submitted to the parties. We are going to discuss  
4 the wording on those and the conditions, and I would  
5 expect I would be submitting something by  
6 December 20th to the Commission and to the other  
7 parties.

8 CHAIRPERSON WONG: Just make sure you work  
9 with our Executive Officer, please.

10 MR. GEIGER: I will.

11 CHAIRPERSON WONG: If there is no other  
12 items --

13 MR. HOPPER: Mr. Chair, just to clarify  
14 that if a party does not have its own set of findings  
15 and conclusions, that we may be considering filing  
16 responses to the filing by the Petitioner. I think  
17 that's typically done, but I wanted to note that for  
18 the record.

19 CHAIRPERSON WONG: Yes, please.

20 MR. HOPPER: Thank you.

21 CHAIRPERSON WONG: Just inform the  
22 Executive Officer and other parties of the date. Any  
23 other questions or comments?

24 If not, the proceedings on this docket is  
25 closed and we are adjourned. (10:50 a.m. adjournment)

## CERTIFICATE

STATE OF HAWAII                    )  
  ) SS.  
COUNTY OF HONOLULU            )

I, JEAN MARIE McMANUS, do hereby certify:

That on December 7, 2017, at 8:36 a.m., the proceedings contained herein was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision; that the foregoing represents, to the best of my ability, a true and correct copy of the proceedings had in the foregoing matter.

I further certify that I am not of counsel for any of the parties hereto, nor in any way interested in the outcome of the cause named in this caption.

Dated this 7th day of December, 2017, in Honolulu, Hawaii.

/S/ Jean Marie  
JEAN MARIE McMANUS, CSR #156