

LAND USE COMMISSION
STATE OF HAWAI'I
Hearing held on March 10, 2021
Commencing at 9:00 a.m

Held via ZOOM by Interactive Conference Technology

I. Call to Order

II. Adoption of Minutes

III. Tentative Meeting Schedule

IV. ACTION

A11-791 HG Kaua'i Joint Venture LLC-HoKua Place
(Kaua'i)

Petition to Amend the Land Use District
Boundary of Certain Lands Situated at Kapa'a,
Island of Kaua'i, State of Hawai'i, Consisting
of 97 Acres from the Agriculture to the Urban
District, Tax Map Key No. (4) 4-3-003:Por 001

VI. RECESS

Before: Jean Marie McManus, Hawaii CSR #156

1 APPEARANCES:

2 JONATHAN LIKEKE SCHEUER, Chair (Oahu)
3 NANCY CABRAL, Vice Chair (Big Island)
4 EDMUND ACZON (Oahu)
5 GARY OKUDA (Oahu)
6 LEE OHIGASHI (Maui)
7 ARNOLD WONG (Oahu)
8 DAWN CHANG (Oahu)
9 DAN GIOVANNI (Kauai)

10 STAFF:

11 WILLIAM WYNHOFF, ESQ.
12 JULIE CHINA, ESQ.
13 Deputy Attorneys General
14
15 DANIEL ORODENKER, Executive Officer
16 RILEY K. HAKODA, Chief Clerk
17 SCOTT DERRICKSON, Chief Planner
18 NATASHA A. QUINONES, Program Specialist
19
20 BRYAN YEE, ESQ.
21 Deputy Attorney General
22 RODNEY FUNAKOSHI, Planning Program Administrator
23 State Office of Planning
24 State of Hawaii
25
26 CHRIS DONAHOE, ESQ.
27 Kaua'i Corporation Counsel
28 JODI HIGUCHI SAYEGUSA, Kaua'i Planning Dept.
29 County of Kaua'i
30
31 WILLIAM YUEN, ESQ.
32 JANNA AHU, ESQ.
33 For Petitioner A11-791
34 HG Kaua'i Joint Venture LLC
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1 CHAIRPERSON SCHEUER: Aloha mai kakou,
2 good morning.

3 This is the March 10th, 2021 Land Use
4 Commission Meeting and it is being held using
5 interactive conference technology linking
6 videoconferencing participants and other interested
7 individuals of the public via the ZOOM internet
8 conferencing program to comply with State and County
9 official operational directives during the COVID-19
10 pandemic. Members of the public are viewing the
11 meeting via the ZOOM webinar platform.

12 For all meeting participants, I would like
13 to stress to everyone the importance of speaking
14 slowly, clearly, and directly into your microphone.
15 Before speaking, please state your name and identify
16 yourself for the record. Also please be aware that
17 all meeting participants are being recorded on the
18 digital record of this ZOOM meeting. Your continued
19 participation is your implied consent to be part of
20 the public record of this event. If you do not wish
21 to be part of the public record, please exit this
22 meeting now.

23 This ZOOM conferencing technology allows
24 the Parties and each participating Commissioner
25 individual remote access to the meeting proceedings

1 via their personal digital devices. Also please note
2 that due to matters entirely outside of our control,
3 occasional disruptions to connectivity may occur for
4 one or ore members of the meeting at any given time.
5 If such disruptions occur, please let us know and be
6 patient as we try to restore the audio/visual signals
7 to effectively conduct business during the pandemic.

8 For members of the public participating via
9 telephone, please use the *6 function to mute and
10 then *6 to unmute. Use *9 to virtually raise your
11 hand and then *9 to virtually lower your hand.

12 My name is Jonathan Likeke Scheuer, and I
13 currently have the honor of serving as the Land Use
14 Commission Chair. Along with me, Commissioners
15 Aczon, Chang, Okuda, Wong, our LUC Executive Officer
16 Daniel Orodener, our Chief Planner Scott Derrickson,
17 our Chief Clerk Riley Hakoda, Deputy Attorney General
18 Bill Wynhoff, our Program Specialist, Natasha
19 Quinones, and our Court Reporter Jean McManus are all
20 on Oahu.

21 Commissioner Cabral is on Hawaii Island,
22 Commissioner Ohigashi is on Maui, and Commissioner
23 Dan Giovanni is on Kauai.

24 We currently have eight seated
25 Commissioners of a possible nine.

1 For those attendees who are coming into
2 this meeting for the first time, and this is perhaps
3 your first LUC meeting, before I go to our first
4 order of business, I'll share very briefly about the
5 LUC. We are currently eight members, but up to nine
6 member commissioners. We are all volunteers. We are
7 appointed by the Governor of the State of Hawaii and
8 confirmed by the State Senate.

9 Which means if you don't like what we do,
10 you often have a chance to testify against us if we
11 are up for reconfirmation. You also have a chance to
12 volunteer and ask to be appointed to the seat as
13 well.

14 We do this as volunteers in our attempts to
15 make Hawaii be a better place.

16 With that, our first order of business is
17 the adoption of the February 24th, 2021 minutes. Mr.
18 Hakoda, CHIEF PLANNER, any written testimony
19 submitted on adoption of the minutes?

20 CHIEF CLERK: Chair, this is Riley.
21 There's been no submitted testimony for the minutes,
22 and I apologize (indecipherable) I'll try not to let
23 it happen too often.

24 CHAIRPERSON SCHEUER: That's fine. It's a
25 lot of work.

1 Are there any members of the public who
2 wish to testify on the adoption of the minutes from
3 our February 24th meeting? If so, use the
4 raise-your-hand function in the ZOOM attendee meeting
5 or *9 if you're calling in by phone.

6 And again, this is solely on adoption of
7 the minutes. There will be public testimony on the
8 main docket. Seeing none.

9 Is there any comments or questions or a
10 Motion to Adopt?

11 COMMISSIONER WONG: Chair, Commissioner
12 Wong.

13 CHAIRPERSON SCHEUER: Commissioner Wong.

14 COMMISSIONER WONG: I move for adoption.

15 CHAIRPERSON SCHEUER: Okay. Commissioner
16 Cabral.

17 VICE CHAIR CABRAL: I'll second that
18 motion.

19 CHAIRPERSON SCHEUER: A motion has been
20 made and seconded. Any discussion? If not, I ask
21 all my Commissioners to vote in favor by saying "aye"
22 and raise your hand. All in favor? Is anyone
23 opposed. Seeing none, the minutes are adopted.

24 Our next agenda item is our tentative
25 meeting schedule, Mr. Orodener.

1 EXECUTIVE OFFICER: Before I get started on
2 the meeting schedule, I would like to note and thank
3 Ariana for returning to help us. Staff has been
4 overwhelmed and we are borrowing Ariana with
5 permission from the Hawaii Tourism Authority for
6 several weeks to try and catch up on our workload and
7 resolve in particular the backlog that we have on
8 notice with regard to the IAL, the City and County of
9 Honolulu IAL submittal. And we really appreciate her
10 assistance. And she agreed to do it despite having
11 worked here before, so there's something to be said
12 for that.

13 CHAIRPERSON SCHEUER: Thank you, Dan.

14 EXECUTIVE OFFICER: With regard to the
15 schedule, tomorrow we will be here once -- let me
16 start off by saying, it is assumed that all these
17 meetings will be by ZOOM unless otherwise noticed.

18 We will be here tomorrow again to discuss
19 this matter, HoKua Place A11-791, assuming we are not
20 completed today.

21 On March 24th, we will have Barry Trust
22 closing arguments and a continuation once again of
23 this matter A11-791.

24 On March 25th we will also have set aside
25 for discussions on the HoKua Place matter.

1 On April 14th, we will be hearing -- having
2 a hearing to adopt the order of the Barry Trust
3 matter, and we will also begin deliberations on
4 DR21-71 Maui filing by Jim Geiger for declaratory
5 ruling.

6 Also have, assuming we have time, for Kula
7 Ridge status report. If we do not complete those
8 matters on the 14th, they will be heard on the 15th
9 as well.

10 April 28th we will have hearing on the
11 Kamalani Motion to extend time. And if we complete
12 that in time, we will begin proceedings on the Oahu
13 City and County of Oahu Honolulu IAL submittal.

14 The 29th is also set aside for IAL.

15 On May 12th we have tentatively scheduled
16 Pohakea matter, special permit, Maui, and also the
17 Important Agricultural Lands matter if time permits.

18 That same schedule is set for the 13th of
19 May.

20 On May 26 we will begin hearings on the
21 West Oahu Solar Special Permit on Oahu matter, and
22 also if there are any remaining issues to be taken up
23 with the Important Agricultural Lands submittal.

24 That will -- same agenda will be scheduled
25 for the 27th.

1 On June 9th we will take up the Kula Ridge
2 matter, Maui Order to Show Cause, and on Maui that is
3 an Order to Show Cause.

4 On the 10th we will have continuation of
5 that hearing as well as the HoKua Place matter, if
6 necessary.

7 The 23rd of June is set aside for HoKua
8 Place, if necessary. That brings us to July.

9 We will caution the Commissioners that we
10 have a lot of things happening, so keep your schedule
11 open.

12 CHAIRPERSON SCHEUER: Thank you, Mr.
13 Orodanker.

14 Commissioners, are there any questions for
15 Mr. Orodanker on our schedule? Seeing none.

16 Our next agenda item is an action regarding
17 Docket A11-791 HG Kauai Joint Venture, LLC-HoKua
18 Place (Kaua'i)'s Petition to Amend the Land Use
19 District Boundary of Certain Lands Situated at
20 Kapa'a, Island of Kaua'i, State of Hawai'i,
21 Consisting of 97 Acres from the Agriculture and Rural
22 District to the Urban District, Tax Map Key No.
23 (4)4-3-03 Lot 3, a portion thereof.

24 Will the parties please identify yourselves
25 for the record beginning with Petitioner?

1 MR. YUEN: William Yuen and Janna Ahu on
2 behalf of the Petitioner. With us is our client
3 representative Jake Bracken.

4 CHAIRPERSON SCHEUER: County of Kauai.

5 MR. DONAHOE: Deputy County Attorney Chris
6 DONAHOE on behalf of the County of Kaua'i. Also
7 present is Jodi Higuchi Sayegusa.

8 CHAIRPERSON SCHEUER: Office of Planning.

9 MR. YEE: Good morning, Deputy Attorney
10 General Bryan Yee on behalf of Office of Planning.
11 With me is Rodney Funakoshi from the Office of
12 Planning.

13 CHAIRPERSON SCHEUER: Intervenor's counsel.

14 MS. ISAKI: Good morning, Commissioners,
15 Bianchi Isaki and Lance Collins for Intervenors and
16 Liko-O-Kalani Martin is here as well. Thank you.

17 CHAIRPERSON SCHEUER: Before we go further,
18 let me update the record.

19 On January 6th, 2021, the Commission met
20 via ZOOM virtual conference technology to consider
21 Intervenor's Motion to Continue Contested Case
22 hearing dates, Intervenor's Motion for Leave to File
23 Response to Applicant's Motion for Protective Order
24 and Applicant's Motion for Protective Order. Also on
25 the same date, the Commission received Intervenors

1 Memorandum in Opposition to Applicant's Motion for
2 Protective Order.

3 On January 22, 2021, the Commission
4 received Petitioner HG Kauai Joint Ventures' Witness
5 and Exhibit Lists.

6 On January 25th, the Commission received
7 the County of Kaua'i's Witness and Exhibit Lists;
8 OP Witness and Exhibit lists.

9 And the Intervenor's Witness and Exhibit
10 Lists.

11 On February 5th, the Commission received
12 the Community Coalition Kauai's public testimony.

13 On February 9th, 2021 until recently, the
14 Commission has received, and I believe at last
15 count -- I will give you the exact number -- as of
16 earlier this morning 158 public written testimonies
17 that I believe have been posted to the LUC website.

18 On February 10th, 2021, the Commission
19 received:

20 Petitioner's electronic copy of Exhibits 10
21 through 33.

22 County of Kaua'i's Written Testimony in
23 Support of the Petitioner; Amended Witness
24 List; Amended Exhibit List as well as
25 Exhibits A through E.

1 OP's Testimony for Partial Approval of
2 Petition with Conditions, OP Exhibits 1,
3 2A, 2B, 3-10 and OP's Amended Exhibit List.
4 Intervenor's Exhibit and Witness Lists,
5 Exhibits I-1 to I-10.

6 On February 16th, the Commission received
7 hard copies of the Petitioner's Exhibits.

8 On February 17, the Commission received
9 Intervenor's Rebuttal Exhibit List and Exhibits I-111
10 to I-123.

11 On February 18th, the Commission received
12 Petitioner's Exhibit List, Rebuttal Exhibits 34-37.

13 The 24th of February we received duplicates
14 of copies of Petitioner's Exhibits 32 and 33.

15 On March 1st the Commission mailed the
16 March 10th and 11th, 2021 LUC meeting agenda to the
17 Parties, Statewide and Kauai mail and email lists.

18 March 3rd the Commission received the
19 Office of Planning's Second Amended List of Exhibits,
20 Our First Amended List of Witnesses, Exhibits 11
21 through 16 and the Certificate of Service.

22 And finally, March 8th, the Commission
23 received Intervenor's Request for Judicial Notice of
24 Exhibit I-124, which are the Kapa'a-Wailua
25 Development Plan maps.

1 Now, let me describe our procedures for
2 today for this docket.

3 First, with the assistance of the Chief
4 Clerk, because I'm not finding the correct link on
5 our website, I will recognize all the written public
6 testimony submitted in this matter identifying the
7 person or organization who submitted the testimony.

8 Next, I will call for those individuals who
9 have preregistered to provide testimony for this
10 docket. And this is going to be the same procedure
11 for anybody, whether you're preregistered or not, to
12 provide testimony, so pay attention.

13 You're going to be brought in from being an
14 attendee in the ZOOM meeting to being a panelist.
15 When that happens, you have to enable your audio and
16 video. I will then swear you in, and I will give
17 you -- you have to state your name and your address
18 for the record, and then you have two minutes to
19 testify. Or you can stand on your written testimony
20 if you wish to do so.

21 Following your oral testimony, please --
22 sorry.

23 Commissioner Chang?

24 COMMISSIONER CHANG: I'm sorry, Mr. Chair.
25 I didn't intend to disrupt your instructions. I did

1 want to make a disclosure at the appropriate time.

2 CHAIRPERSON SCHEUER: Thank you. I will
3 call for disclosures.

4 So when you're brought in, you'll have to
5 enable your audio and video. You're then going to be
6 sworn in. State your name and address for the
7 record. You're going to have two minutes. You're
8 then subject to questioning from all of the parties
9 and the Commissioners. So the Petitioner, the County
10 of Kauai, Office of Planning, Intervenor as well as
11 the Commissioners themselves.

12 After that you'll be moved back to being an
13 attendee and I'll call for the next witness.

14 We will go through people preregistered
15 first, then I'll call for anybody who is not
16 preregistered who wishes to testify.

17 Again, if you are calling in by phone, use
18 *9 to raise your hand and *9 to lower it, and *6 to
19 ask to be unmuted.

20 When we're done with all the written
21 testimony, the people who preregistered as well as
22 people who wish to testify who have not
23 preregistered, we will close the public testimony
24 portion of the proceedings. We will then give an
25 opportunity for the parties to submit exhibits into

1 the record; and following the admission of exhibits
2 into the record, the Petitioner will first present
3 their case. Followed by the Petitioner's
4 presentation, it will be the County of Kauai, Office
5 of Planning, and then Intervenor Liko Martin.

6 From time to time, approximately every 50
7 minutes I will call for a ten-minute break so we can
8 stretch our legs, stretch our bodies and be fresh and
9 available for doing our business for this hearing.

10 Are there any questions on our procedures
11 today, beginning with Mr. Yuen?

12 MR. YUEN: No questions.

13 CHAIRPERSON SCHEUER: County?

14 MR. DONAHOE: No questions, Chair. Thank
15 you.

16 CHAIRPERSON SCHEUER: OP?

17 MR. YEE: No questions, thank you.

18 CHAIRPERSON SCHEUER: And Intervenor?

19 MS. ISAKI: No questions. Thank you.

20 CHAIRPERSON SCHEUER: I will now recognize
21 the written testimony submitted on this matter
22 identifying the person or organization submitting the
23 testimony. Give me one moment to pull that up.

24 The computer is slow to respond, so please
25 be patient with me. There we go.

1 Mr. Orodenker, are we beginning with the
2 public testimony submitted on what date?

3 EXECUTIVE OFFICER: Mr. Chair, I would
4 recommend starting with the oldest testimony,
5 February 15th -- 5th. Actually we have public
6 testimony going back to January 3rd.

7 CHAIRPERSON SCHEUER: Sorry, everyone. The
8 question is that we call on some of those on our
9 January --

10 COMMISSIONER OKUDA: Chair, this is Gary
11 Okuda.

12 EXECUTIVE OFFICER: Mr. Chair, he's
13 confirming February 5th is where we begin.

14 CHAIRPERSON SCHEUER: Okay, Commissioner
15 Okuda.

16 COMMISSIONER OKUDA: Thank you, Mr. Chair.
17 May I suggest that if there are any
18 disclosures it be done now.

19 CHAIRPERSON SCHEUER: Thank you. That's
20 what I'm going to do.

21 Commissioners, beginning with Commissioner
22 Chang, any disclosures to make?

23 COMMISSIONER CHANG: Thank you, Mr. Chair.
24 Yes.

25 In reviewing the -- actually the

1 Intervenor's witness statements, there's a reference
2 to a lawsuit involving -- and I worked on a project
3 back in 2017 involving the Kapa'ia Cane Haul Road
4 Draft Environmental Assessment. I have no idea if
5 there's a connection to this case or not, or this
6 project or not, but I did want to disclose that.

7 I am no longer involved in that project.
8 This was a Draft EIS on behalf of County of Kauai. I
9 do not believe that my previous work will affect my
10 ability to be fair and impartial on this matter,
11 however, I did want to disclose that.

12 CHAIRPERSON SCHEUER: Thank you,
13 Commissioner Chang, for that disclosure. I'm going
14 to ask all the parties if they object to Commissioner
15 Chang's continued participation beginning with
16 Petitioner?

17 MR. YUEN: No objection.

18 CHAIRPERSON SCHEUER: Mr. Donahoe?

19 MR. DONAHOE: No objection.

20 MR. YEE: No objection.

21 MS. ISAKI: No objection.

22 CHAIRPERSON SCHEUER: Commissioners, are
23 there other disclosures to make?

24 I will note for the record I have
25 previously disclosed a previous working relationship

1 and potential future business relationship with
2 counsel for the Intervenor, and the parties have not
3 objected to that.

4 Let's now go onto public testimony, if
5 there is no other disclosures.

6 We're going to begin, the community book
7 transmittal letter was sent, a book of public
8 testimony from Joe -- I will slaughter the last
9 name -- Niezgodzki, which had -- was transmitting
10 various comments from the community.

11 Testimony was submitted -- forgive me for
12 being slow -- Jonathan McRoberts. This is a
13 retransmittal -- excuse me -- retransmittal I believe
14 from the previous testifier of testimony in
15 opposition to the EA. So it's previously been
16 considered. So there's a bundle of previous
17 testimony on it.

18 I'm going to move on to Laura Michelle.

19 Written public testimony on February 26th
20 from L. Osterer.

21 On the 27th from Mira Walker.

22 On the 28th from Laurie Quatro; Gabriela
23 Taylor; and Kenneth Wood.

24 On March 1st from Judy Emmett.

25 On March 2nd from Robert Zelkovsky; Amanda

1 Niles; Melissa Ornellas; Barbara Penn; Joseph Kohn;
2 Becca Chopra; Denise Woods; Diana Ware; and Gil
3 Jones; Regina Floyd; John and Lucy Witech; Lisa
4 Hennessy; Tina Taniguchi; Maile Ressurrection; Brett
5 Woods; Greg Yost; Rexann Dubiel Shanahan; Kahaka
6 Patolo; Philip Kitamura.

7 On the 3rd of March we also received
8 testimony from Phillip Kitamura; Valerie Weiss; Susan
9 Stayton; Janice Palma-Glennie; Barbara Barry;
10 Patricia Blair; Dan Freund; Eliel Starbright; Javed
11 Maksood; Meredith Buck; Chef Danny Balogh; Roger
12 Harris.

13 On the 4th we received testimony from
14 Lurline Bettencort; Lori Potter; Lisa Parker; Patrick
15 Owens; Claire Ortega; Marj Dente; Angeline Zhou.

16 On the 5th we received testimony from Larry
17 Gray; Buffy Sainte-Marie; Carol Beardmore; Jane
18 Sezak; Judah Freed; April Lee; Troy Johnston.

19 On the 6th we received testimony from Bev
20 Fagan; Abbey Holmes; Anita Kellehe; K. Kent; Cherie
21 Kinchloe; Margery Freeman; Jan Pappas; Fern
22 Merle-Jones; Carl J. Berg; David Dinner; Sarah Randa;
23 Stephanie Blakemore; Hollis Dana; Leah Oliver; Jenica
24 Springer; Lucinda Robertson; Joan Levy; Lucas Ross;
25 Fred Dente; Larry Heller; Ray Catalina; Beth Kauwe.

1 On the 7th we received testimony from
2 Melelani LLanes; Olivia Ling; Audrey Lee; Leslie
3 Larsen; Woddy Simmons; Lucas and Soulei; Sherry
4 Pollock; JaNee Dominique; Barbara Essman; Lorraine
5 Newman; Deborah Cecil; Laurel Birt Brower; Maria
6 Walker; Noreen Dougherty.

7 On the 8th we received testimony from
8 Charles Cecil; Eden Peart; Noreen Dougherty; Dennis
9 O'Shea; Norma Jean Hall; Jessica Kuzmier; Nanea Lo;
10 Katrina Raphael; Chloe Cornforth; Kawena Ventura;
11 Stephen Johnson; Andrea Cotter; Andrea Slevin; Bill
12 Parker; Laura Ramirez; Patricia Fallbeck; Chambrie
13 Keale; Elisha Sanchez; Dorothy and Richar Perry; Judy
14 Pattee; Cristel Zaguillan; Michael Goodwin; Jenifer
15 H. Higginbotham; Allison Lewis; Bonnie P. Bator; Tira
16 Ann Kauai; Karen Cole; Hope Kallai; Tara Ishiki; Ti
17 Gomes; Strylen Telles-Kelekoma; Nihi Jo Asquith;
18 Faith Blalock; Maggi Quinlan; Doug Shannon; Jessica
19 Drent; Jane Campos; Kanaaani Ornellas; Susan Wiener.

20 On the 9th, yesterday, we received
21 testimony as of 1:30 P.M. from Laurie Avilla;
22 Sharonodwin; Val Freitas; Tiana Laranio; Lorilani
23 Keohokalolo; Megan Eong; Leticia Elzaurdia; Fern
24 Anuenue Holland; Pua Rossi-Fukino; Koa Young; Barbara
25 Wiedner; Judy Dalton; Petrina Blakely; Kelly

1 Alexander; Anne Frederick; Les Drent; Keali'i
2 Kanahale; Noelani Hochuli; Marion and Robert McHenry;
3 Mikko Kinkki; Elizabeth Reilley; Sarah Irene Fields;
4 Christina Aiu; Kylie Wilson; Melody Pigao; Gordon
5 Peterson; Kent Zarbaugh; Kirra Chase; Laurel Quarton.

6 Apologies to anyone listening if I have
7 mispronounced your name in that extensive list of
8 testimony that people have submitted.

9 Mr. Orodenker or Chief Planner, do we have
10 the list of people preregistered to provide
11 testimony?

12 CHIEF PLANNER: Chair, we aren't doing the
13 preregister for testimony any longer. So it's just
14 raise hand and you let them in.

15 CHAIRPERSON SCHEUER: Thank you for the
16 clarification. Note the correction to the procedures
17 that I mentioned before.

18 With that said, we are going to begin with
19 public testimony. Then I see Les Drent has raised
20 their hand in the meeting. So start to raise your
21 hand either using the *9 function, if you're calling
22 in, or by the ZOOM function and you will be called in
23 order.

24 I'm going to admit Mr. Drent to testify to
25 be a panelist. When you come in, please enable your

1 audio and visual and you get to demonstrate for
2 everybody how this will be done.

3 THE WITNESS: Good afternoon. Can
4 everybody hear me?

5 CHAIRPERSON SCHEUER: We can. I'm going to
6 swear you in.

7 Do you swear or affirm the testimony you're
8 about to give is the truth?

9 THE WITNESS: Yes, I do.

10 CHAIRPERSON SCHEUER: So if you would state
11 your name and address for the record, and share your
12 testimony.

13 Again, given the potential volume, we're
14 asking people to keep it to two minutes and be
15 available for questions.

16 LES DRENT

17 Was called as a witness by and on behalf of the
18 Public, was sworn to tell the truth, was examined and
19 testified as follows:

20 DIRECT EXAMINATION

21 THE WITNESS: My name is Les Drent. We
22 have several farms on the Island of Kaua'i. I've
23 been farming here for 30 years. I own a company
24 called LBD Coffee. We own Blair Estate Coffee Farm,
25 Coffee Times. We also grow tobacco for Kauai Cigar

1 Company is another brand we own. And we also are
2 involved in the corn growing, corn production --

3 COURT REPORTER: Please slow down.

4 THE WITNESS: Yes. Just note I only have
5 two minutes here, so I'm kind of limited here.

6 CHAIRPERSON SCHEUER: You're fine.

7 THE WITNESS: I'm a 30-year farmer here on
8 the Island of Kaua'i, involved in agriculture for
9 three decades, so I've got several value added
10 brands.

11 I look at this HoKua Place. I followed it
12 for years. I was persuaded to try to be supportive
13 of this project, and also supportive of -- for people
14 on this island, but I looked at this project and I
15 said I don't know how this island is going to sustain
16 the amount of traffic that's going to go with this.

17 But I'm a farmer on this island, 30 years.
18 I look at this and I looked at all the restrictions
19 and the regulations that is in place in our business.

20 This island right now, we have a County
21 Council hearing going on to allow Ag retail after the
22 State law was passed in 2012 and every other island
23 has allowed its farmers to sell agricultural products
24 from their land.

25 I've had a distillery permit that was

1 denied by the Liquor Commission here when that land
2 use was allowed on agricultural land. I'm
3 unfortunately posted to a lot of agricultural lands
4 on this island, because that's the way I've been able
5 to grow my businesses on small parcels of land.

6 We also lease land from the ADC. We lease
7 quite a bit of land from Grove Farm, but I know what
8 it's like to have small farms that are situated in
9 the community where there are a lot of people that
10 are not farming.

11 And I look at this project, and I just say
12 "wow" another 100 acres of AG gone. I'm looking at
13 760 family units, multi-family housing units. I look
14 at that and I say --

15 CHAIRPERSON SCHEUER: Summarize.

16 THE WITNESS: 1300, 1400 cars. That is
17 nearly five miles of bumper to bumper cars in
18 addition to the problems we have down there now on
19 that highway.

20 So look, with all that said, I've submitted
21 my written testimony. You can research my
22 credentials. I've been around this business and
23 lived on this island a long time. Raised kids here.

24 I'm opposed to this project, and I think it
25 needs to be in an area where people are able to get

1 to work and function without having to strain the
2 infrastructure any more.

3 Thank you, very much.

4 CHAIRPERSON SCHEUER: Thank you, Mr. Drent.

5 Questions for the witness starting with the
6 Petitioner?

7 MR. YUEN: No questions.

8 CHAIRPERSON SCHEUER: County?

9 MR. DONAHOE: No questions from the County,
10 Chair.

11 CHAIRPERSON SCHEUER: Office of Planning?

12 MR. YEE: No questions.

13 CHAIRPERSON SCHEUER: Intervenor?

14 MS. ISAKI: One be quick question.

15 CROSS-EXAMINATION

16 BY MS. ISAKI:

17 Q Mr. Drent, you said you grow agriculture on
18 small parcels of land. Can you tell us the smallest
19 parcel that you farm?

20 A Yes. We have four parcels on Kawaihau Road
21 located about two miles up from the project, Kapaa
22 Middle School.

23 We have a three-acre coffee farm we've had
24 since 2001. We have a chocolate farm that's two
25 acres on the Kawaihau Road, and we unfortunately had

1 to sell another two-acre parcel where we had an
2 agricultural processing center planned. It took us
3 nearly four years of permitting. We purchased the
4 land, we purchased the building, and ultimately that
5 project was denied by the County Liquor Commission by
6 a vote of four to three, so I have two to three acre
7 farms up here. I have larger parcels, 16 acres in
8 Lihue. We grow on the west side, we grow Koloa.

9 So these are -- it's just our movement
10 around the island, it's just for my guys to be moving
11 trucks and agriculture, it's gotten horrendous over
12 the last 20 years.

13 So we've had small farms located with the
14 agriculturally zoned land, but surrounded by mostly
15 non-farming neighbors.

16 CHAIRPERSON SCHEUER: Thank you.

17 Commissioners, starting with Commissioner
18 Okuda.

19 COMMISSIONER OKUDA: Thank you, Mr. Chair.

20 Thank you, Mr. Drent, for making time to
21 testify.

22 Based on your experience and expertise as a
23 farmer, may I ask you this question.

24 The Petitioner has submitted some
25 documentation or evidence arguing that salt spray and

1 other factors make farming on the subject parcel
2 either impractical or not feasible.

3 Do you have any comment about the
4 feasibility or whether it's practical or not to
5 actually farm on this parcel, or is it basically just
6 land, in that in your expertise, could not be used
7 for agriculture?

8 Thank you, Mr. Chair.

9 THE WITNESS: I did look at the soil report
10 last night. I looked at the soil analysis.
11 Obviously a diversity of soil on that land.

12 Look, there is a lot of crops that you can
13 grow on that land. There's really nothing salt spray
14 that's going to inhibit tobacco growth everywhere I
15 see. (Indecipherable) tobacco growth, even though
16 it's not looked upon favorably. That land can be
17 used for agriculture. Any land out here can be used
18 for agriculture. Sometimes it's better to amend the
19 soil and start with nothing but medium and add to it
20 what you need.

21 But I think really this is speaking to the
22 greater problem of like Agriculture land being
23 converted to Urban use. I'm all for Urban use and
24 more housing, but I just don't know where these jobs
25 are going to come from.

1 I think you're just looking at 1400 cars
2 getting on the road, because I don't see any industry
3 in Kapaa, certainly not agriculture going to support
4 that kind of community.

5 So from my standpoint, yeah, the land can
6 be used for agriculture, whether it will be, whether
7 it can be is a whole other issue.

8 I feel bad for the developer who got the
9 land, but I think what happens here is the old
10 companies wind up harvesting the land rather than
11 crops for development, and I don't want to point
12 fingers at the large landowners here, but I think we
13 have all seen what happened down in Kukuiula, but I
14 think what happens is a lot of this agricultural land
15 is ultimately just harvested for development
16 purposes, and I understand it has to be transition,
17 of course, it can all be used for agriculture and
18 something grown there. Whether you can do it to fit
19 into any scale with the cost of living here and the
20 cost of labor and everything else, (indecipherable)
21 and they're closing down. I don't know if you heard
22 the news, that's 800 acres of agricultural land on
23 the west side. And they had to spend the entire
24 afternoon yesterday watching their employees go
25 through human resources. And they've been wonderful

1 partners for us with their corn production.

2 Whether you can use this land for
3 agriculture, yes, you can grow crops on that land,
4 but can you do it for profit? Whether it's supremely
5 value added product like we grow, I don't think that
6 anything is going to work economically.

7 I've been saying that for years. I think
8 it's unsustainable to be a farmer here, because of
9 cost of land and cost of labor.

10 So what do you do with this land? I just
11 look at what the potential can be for the negative if
12 this land is used for development in that area. It's
13 really what I'm commenting on more, whether or not
14 you can grow crops there which you can, in my mind.

15 CHAIRPERSON SCHEUER: You're on mute,
16 Commissioner Okuda.

17 COMMISSIONER OKUDA: One fast question to
18 complete the record.

19 Mr. Drent, do you have an educational
20 background in agriculture? And if so, if you can
21 give us a short summary of your educational
22 qualification in agriculture?

23 That's my last question, Mr. Chair.

24 CHAIRPERSON SCHEUER: Mr. Drent.

25 THE WITNESS: Sure. To keep the humor in

1 this, my wife is a first generation immigrant to this
2 country. She has worked her way up. She teaches
3 mathematics at Kauai Community College. She likes to
4 joke with me all the time with her high degrees and
5 friends that have Ph.Ds, that here's a guy who's
6 studied his first language in college. So a
7 four-year degree.

8 No, I do not have any formal background in
9 agriculture. But I've been involved with agriculture
10 growing. And I'm pretty much self-taught. I know
11 the agricultural community and I've learned a lot
12 over the years, and I have been able to build up my
13 value agriculture products through just hard work,
14 and learning on my own. Cuba and Nicaragua and the
15 Midwest and here in Hawaii.

16 COMMISSIONER OKUDA: Thank you very much.
17 Thank you, Mr. Chair.

18 CHAIRPERSON SCHEUER: Commissioners, any
19 further questions for this witness? Seeing none.
20 Thank you for taking the time, Mr. Drent. I'm going
21 to move you back into being an attendee.

22 I will admit our next witness Fern Anuenue
23 Holland followed by Bridget Hammerquist. I know Ms.
24 Hammerquist is hosting a number of people without
25 otherwise having computer ZOOM access, so there will

1 be a few people coming under Ms. Hammerquist.

2 First admitting Fern Anuenue Holland. Will
3 you enable your audio and video, please.

4 Do you swear or affirm the testimony you're
5 about to give is the truth?

6 THE WITNESS: I do.

7 CHAIRPERSON SCHEUER: You know the drill,
8 name and address for the record, and then you have
9 two minutes.

10 FERN ANUENUE HOLLAND

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

14 DIRECT EXAMINATION

15 THE WITNESS: Thank you again. My name is
16 Fern Anuenue Holland. I live right up the road from
17 the site in Kapaa. Born and raised in this ahupua'a,
18 and I would like to -- basically I'll just stand on
19 my written testimony in strong opposition to this
20 change in designated land use.

21 As an environmental scientist I have
22 genuine concerns about the access of water including
23 the potential that it would take from DHHL project
24 development (indecipherable) aquifer.

25 I'm also concerned about the sewage and

1 waste treatment facility concerning that it is so
2 overcapacity, and along with the previous testifier,
3 our traffic issues.

4 As somebody who was born and raised in this
5 area, I really drive this every single day. This is
6 a part of my life, and I am really deeply concerned
7 that it will change the entire feeling of Kapaa Town,
8 and basically our lifestyle, country lifestyle, our
9 way of life.

10 I am in strong opposition to the location.
11 And like the previous testifier, I do believe that
12 this land could be used for agriculture. And I just
13 think that it's a really important time to not be
14 changing our land use designation without serious
15 consideration.

16 And I'm very concerned that this area is
17 not only not appropriate for this, but that it will
18 drastically change Kapaa Town forever. I'll leave it
19 at that and stand on my testimony.

20 Thank you very much.

21 CHAIRPERSON SCHEUER: Thank you very much.
22 Please stand by for questions beginning with the
23 Petitioner.

24 MR. YUEN: No questions.

25 CHAIRPERSON SCHEUER: County of Kaua'i.

1 MR. DONAHOE: Thank you, Chair.

2 CROSS-EXAMINATION

3 BY MR. DONAHOE:

4 Q Ms. Anuenue Holland, regarding the issues
5 of water source issues, waste treatment and capacity
6 issues and traffic, do you understand that if the
7 Petition is granted to redistrict, that whatever any
8 of those issues will be addressed and reassessed and
9 re-examined when it goes through the County of Kauai
10 permitting process as well?

11 A I do.

12 MR. DONAHOE: Okay, thank you.

13 THE WITNESS: Thank you.

14 CHAIRPERSON SCHEUER: Office of Planning,
15 Mr. Yee.

16 MR. YEE: No questions, thank you.

17 CHAIRPERSON SCHEUER: Intervenor?

18 MS. ISAKI: No questions, thank you.

19 CHAIRPERSON SCHEUER: Commissioners?
20 Commissioner Chang.

21 COMMISSIONER CHANG: Aloha, Ms. Holland.

22 You say that you have lived on this land,
23 you were born and raised here. Do you have lineal
24 connections?

25 I guess my line of question is going to go

1 to, do you practice or are you aware of any
2 traditional customary practices that may be exercised
3 on this project area?

4 THE WITNESS: I was born and raised here.
5 I do not have lineal descendants from that land. My
6 kumu that I work with, Kumu Kehau, she is connected
7 to the Kapaa and Wailua area very much. I think this
8 specific area along the bypass, I'm not aware of
9 continued practice on that land because it's
10 inaccessible really, much of that area inaccessible.

11 But the larger area, I know that my Kumu
12 has connection to that specific area, yes.

13 COMMISSIONER CHANG: Do you know if your
14 Kumu has been contacted by anyone regarding practices
15 that may occur on this property?

16 THE WITNESS: I am not.

17 COMMISSIONER CHANG: Thank you very much
18 for your testimony.

19 CHAIRPERSON SCHEUER: Thank you very much
20 for your testimony.

21 Commissioners, further questions for Ms.
22 Holland? Commissioner Chang -- oh, sorry,
23 Commissioner Wong.

24 I have like one short memory span.

25 COMMISSIONER WONG: Thank you, Chair.

1 Good morning. I guess the question I have
2 is you have an environmental science degree, is that
3 correct?

4 THE WITNESS: I do.

5 COMMISSIONER WONG: Can you explain what
6 that is for me?

7 THE WITNESS: I have a bachelors of science
8 and I have a triple major, one in marine biology, one
9 in wildlife management, and one in environmental
10 sciences that covers more of it. I'm environmental
11 monitoring, water, sampling, air sampling, project
12 management around environmental control, quality
13 control.

14 COMMISSIONER WONG: Thank you.

15 I have -- do you live close to the Petition
16 Area, correct?

17 THE WITNESS: I live right up the road,
18 yes. Most of my life immediately adjacent about a
19 five-minute walking distance from that site, yes.

20 COMMISSIONER WONG: I was reading I guess
21 the EIS for reference, and just to refresh my memory
22 on this.

23 Do you know of any wetlands in the area?

24 THE WITNESS: There are wetlands in the
25 area, yes. I believe that there was a wetland

1 restoration project done by one of the adjacent
2 landowners, Bette Midler awhile ago. There are some
3 areas that are wetland, yes, and I don't have all of
4 that stuff in front of me.

5 COMMISSIONER WONG: The other question I
6 have is, do you know if any endangered or indigenous
7 flora-fauna in the area?

8 THE WITNESS: There are definitely
9 protected birds species, migratory wetland birds,
10 birds such as the 'alae ke'oke'o, 'alae 'ula
11 (phonetic) that reside in close proximity. I've
12 never done an assessment on that site.

13 Again, not easily accessible. I know
14 surrounding the area, I'm actually working on a
15 similar project just up the road in Wailua that is
16 looking at many different endangered species. It's
17 also clothes proximity to the coast, so I would
18 assume there would be the presence of coastal marine
19 birds, protected marine birds.

20 COMMISSIONER WONG: I'm going a little bit
21 change the subject about the water issues.

22 So do you know of any water sources in the
23 area, if this place becomes a housing area? I mean
24 like wells or something that can tap into?

25 THE WITNESS: I believe that they would be

1 looking to tap into what is considered the Anahola
2 aquifer, and I'm not 100 percent sure of what that --
3 like what the stream name is offhand, because I don't
4 have it in front of me, but there is an unnamed
5 stream that runs through that property that is
6 unnamed, but it's unnamed in the report.

7 And when it comes to the water, I believe
8 they were talking about creating a well, and part of
9 the concern that I have is that there's an existing
10 access for DHHL to some of that land in Anahola for
11 an already approved project, and whether that will
12 impact their ability to take water.

13 COMMISSIONER WONG: Going to the last
14 statement about DHHL land, where is that close to
15 this Petition Area?

16 THE WITNESS: It's not close to the
17 Petition Area, it's more towards Anahola, but it's
18 tapping into the same water source.

19 COMMISSIONER WONG: I would assume when
20 DHHL starts the project, hopefully soon for everyone,
21 traffic will increase also with their project,
22 correct?

23 THE WITNESS: Yes. It won't be in the
24 exact same spot, so it won't be on that bypass road.
25 The road in question is a road that basically just

1 goes through agricultural land outside of town and
2 there's nothing really around there except for small
3 church and ranch land. So not many cars accessing
4 that road outside of those two smaller sites.

5 This road is one lane in each direction.
6 It's extremely dangerous, especially at certain times
7 under high rain, like we're dealing with right now.
8 And it definitely needs to be majorly upgraded.

9 Already it needs to be kind of fixed
10 because it's deteriorating, but definitely to have so
11 many more cars on it, it would need to be redesigned,
12 but the DHHL development that taps into the same
13 water source would not actually be in the same area
14 to affect the traffic.

15 COMMISSIONER WONG: Thanks. Thank you,
16 Chair.

17 CHAIRPERSON SCHEUER: Thanks very much,
18 Commissioner Wong.

19 Commissioners, any further questions for
20 this witness? If not, thank you very much, Ms.
21 Holland, for your time and you're your written and
22 oral testimony.

23 It is 9:49. I'm going to declare a recess.
24 It's now 9:50, so recess until exactly 10:00 o'clock,
25 then we will begin with Bridget Hammerquist and the

1 others who are testifying with her.

2 In recess until 10:00 o'clock.

3 (Recess taken.)

4 CHAIRPERSON SCHEUER: It's 10:02 A.M., we
5 are back on the record. We are calling on a number
6 of people who have assembled with Bridget
7 Hammerquist. I have two Commissioners who wish to
8 note disclosures starting with Commissioner Giovanni
9 followed by Ms. Cabral.

10 COMMISSIONER GIOVANNI: I just want to
11 disclose to all parties that I'm an acquaintance of
12 Ms. Hammerquist. We're members of the same church in
13 Koloa and I have a lot of respect for Ms.
14 Hammerquist. I don't think it will have any bearing
15 on my decision making or activities relative to this
16 Petition.

17 CHAIRPERSON SCHEUER: Ms. Cabral.

18 VICE CHAIR CABRAL: Yes, thank you. I
19 wanted to also note that I know Bridget Hammerquist
20 and know her through my husband. They were
21 classmates in high school here in the Hilo area.

22 So she has been to my house. It's been
23 social not business. And I'm confident it will not
24 affect my ability to make a decision.

25 CHAIRPERSON SCHEUER: I also disclosed Ms.

1 Hammerquist preciously. Ms. Hammerquist and I
2 attended a number of mediation sessions around the
3 Wailua River, Kauai where we were representing
4 different parties.

5 Generally speaking, the nature of knowing a
6 witness is not a disclosure that I would normally ask
7 for objections on, but I'll ask the parties.

8 Any objections to the continued
9 participation of Commissioner Giovanni, Cabral or
10 myself?

11 MR. YUEN: Petitioner has no objections.

12 MR. DONAHOE: County of Kauai has no
13 objections.

14 MR. COLLINS: No questions, Lance Collins.
15 I have a clarification, if possible, to make clear
16 what the Commissioners are saying is that they can be
17 fair and impartial? And I just wanted it to be clear
18 hopefully on the record that that's what they're
19 stating.

20 CHAIRPERSON SCHEUER: Thank you, Mr. Lance.
21 I will restate that as a clarification.

22 Ms. Hammerquist, who will be a witness
23 later in the hearing, will be fair and impartial, for
24 the record, and I have heard no objections from any
25 of the parties. Ms. Hammerquist.

1 MS. HAMMERQUIST: Yes. Thank you.

2 CHAIRPERSON SCHEUER: If I understand, you
3 are not giving testimony right now, but five others
4 are?

5 MS. HAMMERQUIST: That's correct.

6 CHAIRPERSON SCHEUER: Will the first
7 individual please come in front of the camera and we
8 will go through.

9 MS. HAMMERQUIST: It will be Mr. Joseph
10 Kamai.

11 THE WITNESS: Aloha.

12 CHAIRPERSON SCHEUER: I'm going to swear
13 you in first.

14 Do you swear or affirm the testimony you're
15 about to give is the truth?

16 THE WITNESS: So help me God.

17 CHAIRPERSON SCHEUER: Mahalo, thank you.
18 State your name and address for the record and then
19 proceed.

20 JOSEPH KAMAI

21 Was called as a witness by and on behalf of the
22 public, was sworn to tell the truth, was examined and
23 testified as follows:

24 DIRECT EXAMINATION

25 THE WITNESS: Joseph Edward Kekaulike Kamai.

1 5240 Aliomanu Estates. And I came here to speak
2 about the lands because my tutu was the king of the
3 area, kaumuali'i.

4 I know that -- well, I am a cultural
5 gatherer and practitioner. And when they started
6 saying there was nobody actually hunting the grounds,
7 that is false. My nephews still go through there and
8 eradicate, but the reason why you don't hear them
9 because they don't use guns. They use dogs and their
10 knives.

11 And when I'm speaking about practitioner, I
12 go up there to get medicines. When my friends are in
13 need, I go through all the mountains helping to find
14 stuff that they need for their cures.

15 I'm not one of those guys that stand around
16 and let people suffer. I know one of the persons on
17 the board is a good friend of mine, Chris Donahoe, we
18 went to church together. Aloha, Chris.

19 But the whole thing is when they're
20 falsifying evidence, they don't see, they don't hear
21 and they don't understand what it means to people
22 like us. The hard part is, yes, you guys are going
23 to put a lot of traffic where it shouldn't be.

24 Two, also is that they're talking about
25 their Hawaiian (indecipherable) -- those that cross

1 lands that have endangered species. They have the
2 koloa ducks in there. They also have the nenes,
3 'alae 'ula. And how I know? I was one of the people
4 that got chased off the land.

5 Also I have one real strong question. Now,
6 there's sewage will be running through all the same
7 lines that it was from before.

8 Now, when it reached the Cocopalms, if you
9 recall a couple years back, the line blew, and it
10 contaminated all the hotel grounds. Now, what's
11 going to stop that from happening again, adding more
12 feces and everything into that system.

13 They also were doing illegal --

14 CHAIRPERSON SCHEUER: Mr. Kamai, if you
15 could summarize, please.

16 THE WITNESS: Yes. I was just getting
17 ready to. When they didn't have space, they were
18 actually dumping in the fishpond behind Cocopalms
19 Hotel. I know it's illegal, but what do you do about
20 it? How you guys going to correct that, runoff,
21 sewage, everything, you know? You going have to put
22 bigger lines in, because the ones you have right now
23 don't work. Be way too much. And obviously nobody
24 ever thought about that, because I'm looking at the
25 confused faces. Thank you.

1 CHAIRPERSON SCHEUER: Mahalo.

2 I'm going to ask if there's any questions
3 for you Mr. Kamai. I'm sure there will be, starting
4 with Petitioner.

5 MR. YUEN: No questions.

6 CHAIRPERSON SCHEUER: County?

7 MR. DONAHOE: Aloha, Mr. Kamai. No
8 questions by the County.

9 CHAIRPERSON SCHEUER: Office of Planning,
10 Mr. Yee?

11 CROSS-EXAMINATION

12 BY MR. YEE:

13 Q Mr. Kamai, can I ask you two separate
14 issues?

15 Your sons' experience. If I heard you
16 correctly, your sons, I think you said, were hunting;
17 is that right?

18 A Excuse me, not my sons, my nephews.
19 They're the ones actually keeping down the pig
20 population in the area. They have gathering rights
21 and that's what they using.

22 Q And then your experiences gathering small
23 plants, are you familiar with the -- I'm sure you're
24 very familiar with the region. Are you familiar with
25 where the boundaries of the Petition Area are?

1 A Yes, I do. My grandson was at Middle
2 School at the time when I start hearing about it.

3 Q My question is, do you gather on the
4 Petition Area or in the general area?

5 A Actually when I have to go, I go wherever I
6 know the medicine is at.

7 Q And I'm not asking you to locate or
8 identify a specific area. Are those areas that you
9 go to gather medicinal plants, do you know if they're
10 on the Petition Area itself?

11 A Yes, they're upstream.

12 Q Within the Petition Area, is that right?

13 A Yes.

14 Q Thank you. That was my question. I just
15 needed clarification. No further questions.

16 CHAIRPERSON SCHEUER: Thank you, Mr. Yee.
17 Intervenor, Ms. Isaki.

18 CROSS-EXAMINATION

19 BY MS. ISAKI:

20 Q Aloha Mr. Makai. I just have one quick
21 question.

22 For the -- do you have trouble -- do your
23 nephews -- you're able to access the parcel then? It
24 might seem redundant, I just want to make sure that's
25 what you're saying. You're able to get onto the

1 land?

2 A Yes, we can walk it.

3 Q Okay, thank you. That's all.

4 CHAIRPERSON SCHEUER: Thank you, Ms. Isaki.
5 Commissioners, starting with Commissioner
6 Okuda, followed by Commissioner Chang.

7 Mr. Kamai, the Commissioners have some
8 questions for you as well, starting with Commissioner
9 Okuda followed by Commissioner Chang.

10 COMMISSIONER OKUDA: Thank you, for taking
11 time to testify.

12 May I ask you this question?

13 If the Petitioner, their consultants, their
14 lawyers or anyone who you believe was working for
15 them, ever consulted with you about gathering rights
16 or anything with respect to the area that's subject
17 to the Petition?

18 In other words, were you consulted to give
19 your input on any matter?

20 THE WITNESS: My auntie called me, and she
21 said they needed my input.

22 I've been, like I said, I've been doing
23 this for years. I've been here for over 40 years and
24 my job was to actually speak to the people and find
25 out what they needed and the help they need. And

1 this was my kupuna.

2 COMMISSIONER OKUDA: Mr. Kamai, I'm not
3 saying my view of the law is the correct view, I'm
4 not saying that.

5 But in my view, there are certain
6 obligations of people who are going through this
7 process -- when I say "people", I don't mean you or
8 members of the community, but the Applicant to do a
9 certain level of consultation, or asking questions,
10 or input from the community at different stages in
11 the process.

12 So I'm trying to find out whether or not
13 the Applicant has complied with my view, and this is
14 my own personal view, of what some of these
15 requirements are. So it's a rather narrow question.
16 My narrow question is: Did any of the Applicants,
17 like their lawyers, their planning consultants,
18 architects or engineers ever come to talk to you and
19 ask you to tell them about the land, what you do with
20 the land or anything significant regarding the land?

21 THE WITNESS: Straight up and honest, no.

22 COMMISSIONER OKUDA: And just so the record
23 is clear, I don't mean to ask too personal a
24 question, but how many years have you lived in this
25 Kapaa area, total years?

1 THE WITNESS: I've been staying here in
2 this area over six years.

3 COMMISSIONER OKUDA: And you have family
4 that lives in this area?

5 THE WITNESS: Yes, I do.

6 COMMISSIONER OKUDA: And how many years
7 back can you say your family -- and when I say
8 family, however you define it -- go back in this
9 area, how many years?

10 THE WITNESS: Close to 100 years.

11 COMMISSIONER OKUDA: Mr. Kamai, thank you
12 very much for your time and your testimony.

13 Thank you, Mr. Chair. No further
14 questions.

15 CHAIRPERSON SCHEUER: Thank you,
16 Commissioner Okuda. Commissioner Chang.

17 COMMISSIONER CHANG: Aloha, Mr. Kamai,
18 thank you so much. My name is Dawn Chang and I'm one
19 of the Commissioners. I greatly appreciate the fact
20 that you're here today and that you're actually
21 sharing your family's connection to this land. So I
22 want to explore that a little further following up on
23 what Commissioner Okuda was asking.

24 You said your family, they still hunt on
25 this land?

1 THE WITNESS: Yes.

2 COMMISSIONER CHANG: And you also said you
3 gather on this land, you gather medicinal plants for
4 you're their la'au lapa'au; is that correct?

5 THE WITNESS: Yes, I do.

6 COMMISSIONER CHANG: And you also talked
7 about impacts, sewage, you know, the runoffs.

8 Do you gather along the shoreline, like
9 fishing, salt gathering or any kind of activities
10 like that?

11 THE WITNESS: I was born and raised to work
12 both sides of the land, mauka and makai. Yes, I do
13 fish, and yes, I did hunt until I got sick.

14 COMMISSIONER CHANG: And we know that
15 families would gather, as you say, mauka to makai,
16 that they had. So even if the project area is one
17 area, if you go through, if it impacts the ocean or
18 the nearshore waters that may not be part of the
19 Project Area, that still may affect your ability to
20 continue to exercise your medicinal practices?

21 THE WITNESS: Yes.

22 COMMISSIONER CHANG: Mr. Kamai, are you
23 aware of any trails that go through this property?

24 THE WITNESS: Between the ones that me and
25 my boys made, pretty much a lot of the trails that we

1 see.

2 COMMISSIONER CHANG: Were those trails
3 there before you guys made them, or you guys made the
4 trails?

5 THE WITNESS: Well, they were there, some
6 of them still there, but cutoffs, and when you're
7 going after your animals to protect them, you have to
8 make sure you get there quick.

9 COMMISSIONER CHANG: I appreciate that.
10 Because a lot of times we look for old traditional
11 trails, that those trails were used by generations
12 ago families to go gather from mauka to makai. So
13 whenever we find trails on the property, those are
14 really important because they give us an idea of how
15 families may have used that property.

16 THE WITNESS: Yes. There are trails that
17 went through there. And, in fact, if you really go
18 and look through the land, you will see most of them
19 have been marked.

20 COMMISSIONER CHANG: And, Mr. Kamai, are
21 you aware of any kalo that may have grown on this?

22 THE WITNESS: Yes.

23 COMMISSIONER CHANG: And do you know
24 whereabouts on this land?

25 THE WITNESS: I'm not sure, but I'm pretty

1 sure along the streams.

2 COMMISSIONER CHANG: Okay.

3 And, Mr. Kamai, your family, the Kamai
4 family, I suspect long time from this Kapaa area.
5 And so are you, other people in the community, they
6 know that your family is from this area?

7 THE WITNESS: Yes, they do. I come from
8 kaumuali'i.

9 COMMISSIONER CHANG: Okay.

10 So coming from kaumuali'i, you are -- let
11 me ask it this way.

12 As Commissioner Okuda asked if anybody
13 consulted with you, did anybody contact you about
14 asking you the same questions that we're asking you
15 now?

16 THE WITNESS: No, no, not at all.

17 COMMISSIONER CHANG: Okay. But what I hear
18 you telling me, and I don't want to put words in your
19 mouth, but what I hear you telling me is that this
20 area has been used by your family for hunting, for
21 gathering, for access to the makai area, fishing, but
22 that this is an area that your family has
23 traditionally used for many years; is that what
24 you're telling me?

25 THE WITNESS: Yes, I am.

1 COMMISSIONER CHANG: And are you -- how do
2 you believe this project will affect your ability to
3 continue to do those kinds of family practices?

4 THE WITNESS: When they start clearing the
5 land, I know there is quite a few plants that they
6 might take up, not realizing that they are herbs.

7 The other one, runoff, chemicals they use,
8 cleaning their cars, spraying around their grounds.
9 Shouldn't even be done, because you're killing the
10 land and then your -- they have people get cancer.
11 And trust me, I know most of those places that do
12 make the subdivision, they're spraying with Roundup.

13 COMMISSIONER CHANG: That's helpful.

14 Mr. Kamai, do you know of any ohana who may
15 have either iwi kupuna or families buried on this
16 land?

17 THE WITNESS: Yes, I do.

18 COMMISSIONER CHANG: Are you aware of any
19 iwi kupuna that have been discovered on this land?

20 THE WITNESS: When you talking about making
21 the bypass road, my great grandmother was buried
22 there.

23 COMMISSIONER CHANG: And is this bypass
24 road within the Project Area, do you know?

25 THE WITNESS: It's lower, but yes, it's

1 part of the project area, because it's where they
2 want to build their bypass road.

3 COMMISSIONER CHANG: Do you know if family,
4 long time ago kaumuali'i time, that there were many
5 Hawaiian families that lived on this land?

6 THE WITNESS: Yes, there was, because if
7 you go up the trail and you find the lauhala trees,
8 that's an indication that the village was close by.

9 COMMISSIONER CHANG: And I have heard that
10 from many other Hawaiians that where you can find
11 like lauhala trees, many times underneath the lauhala
12 trees iwi kupuna are buried there.

13 THE WITNESS: Yes.

14 COMMISSIONER CHANG: Is that what your
15 family practice, or the people who lived in this
16 area, is that your understanding of how they
17 practiced their family burials?

18 THE WITNESS: Yes, it is.

19 COMMISSIONER CHANG: Do you know of any
20 families that have kuleana lands in this area?

21 THE WITNESS: Our family for one.

22 And plus you got to remember too, the land
23 you trying to take away are actually crown lands.

24 COMMISSIONER CHANG: Mr. Kamai, you have
25 been so very helpful. I really appreciate you coming

1 today, and sharing with us your family's connection
2 to this land.

3 I don't have any other questions for you,
4 but thank you very much.

5 THE WITNESS: Thank you.

6 COMMISSIONER CHANG: A hui hou.

7 CHAIRPERSON SCHEUER: Thank you very much,
8 Commissioner Chang.

9 Commissioners, are there any further
10 questions for this witness? Seeing none, mahalo nui,
11 Mr. Kamai, and we will take the next person who's
12 with you there at Bridget's house.

13 THE WITNESS: Have a good day. Bless you
14 all, mahalo.

15 CHAIRPERSON SCHEUER: Aloha.

16 THE WITNESS: How are you Jonathan?

17 CHAIRPERSON SCHEUER: Very well. The next
18 witness is my friend's auntie, among other things,
19 and well-known Kauai leader. I'm going to swear you
20 in.

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

23 THE WITNESS: Yes, I do.

24 CHAIRPERSON SCHEUER: State your name and
25 address for the record and then proceed, please.

1 PUANANI ROGERS

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

5 DIRECT EXAMINATION

6 THE WITNESS: My name is Puanani Rogers. I
7 live in the ahupua'a of Kealia, the moku of Puna, and
8 (indecipherable). My address is 4702 Maiilihuna
9 Road, which is in the Kapaa ahupua'a where I was born
10 and raised and still live there with my children,
11 grandchildren and great grandchildren. I'm 81 years
12 old, in fact, so this is how long I've lived in Kapaa
13 and born and raised and still here.

14 And, of course, I've seen the many changes
15 that have happened here on Kauai, which is totally
16 not the way that I wish it was, because in my time,
17 growing up, it was very, very different in Kapaa.

18 Little traffic. Lots of our kids kind of
19 were ruling the town, we took over the town. Always
20 at the beach, or always out playing with each other.
21 It was a very close small town kind of atmosphere
22 where we knew everybody and everybody knew us.

23 There was no lack for food. There was no
24 lack for having to rush around because of traffic.
25 There was a very happy childhood, I must say, and I

1 lived in the rural part of Kapaa, not down in the
2 town.

3 So I wanted to talk about the good old
4 days. Take you back a couple 100 years to Kapaa
5 ahupua'a, which by the way, this project is taking a
6 huge part of this ahupua'a. I wonder why our County
7 or State even thinks about selling hundreds and
8 hundreds of acres of land.

9 Why does it have to be so much? Give
10 little bit, but try to keep as many of our open
11 spaces as possible. That's more ahupua'a resource
12 management.

13 And that is what I'm going to base my
14 testimony on, the protection, the preservation, the
15 restoration of our ahupua'a.

16 I wondered if any of you had a chance to
17 take a site visit of this ahupua'a. Okay, I'll take
18 questions later or answers later.

19 I tried to get on the site many times, and
20 was not able to. However, we did our own site visit,
21 and drove around and saw the expanse of this
22 beautiful aina, green lush pastures, perfect for
23 agriculture. And it really, really hurt me, because
24 I couldn't understand why there was so much that they
25 had to take.

1 Why do we have to? We should make a law
2 about limit of how many acres people are allowed to
3 buy or to take.

4 And then I'm also against selling any of
5 our lands. We should only lease lands. The lands
6 not to be sold ever.

7 We can do that. Mahalo, put a moratorium
8 on all sales of Hawaiian lands. Hawaiian lands,
9 State lands, National lands, all State land belong to
10 kaumuali'i in this ahupua'a.

11 And I did research and found out, yes,
12 there were LCAs there, and I believe in those years
13 back then that it was a fully populated area. There
14 were lokis. There were trails. What happened was
15 the plantation came and destroyed it, and put cane
16 fields on that area.

17 That's how come we lose a lot of our house
18 sites. A lot of our heiaus on Kauai were destroyed
19 by plantations. They diverted our water, and they
20 changed the whole balance of our island when they did
21 that.

22 So we've been, of course, trying to make
23 corrections so all the wrongs that have been done to
24 our aina, to our ahupua'a, our resources. The
25 ahupua'a to us is a symbol of sustainability and

1 its --

2 CHAIRPERSON SCHEUER: Auntie Nani, can I
3 ask you to start to --

4 THE WITNESS: All right. Mahalo for this
5 opportunity. I hope what I have presented to you is
6 something that you can understand and not think with
7 your brain but think with your pu'u wai and mana'o
8 when you hear voices like mine asking you, no, do not
9 change the zoning. Keep it Agricultural. I heard
10 another option, a Rural zoning for this area.

11 Mahalo ke Akua, bless all of you. I hope
12 you make pono decisions for us. Be safe, be well.
13 Mahalo nui.

14 CHAIRPERSON SCHEUER: Mahalo. If you would
15 be available for some questions starting with the
16 Petitioner. Mr. Yuen.

17 MR. YUEN: No questions for the Petitioner.

18 CHAIRPERSON SCHEUER: Kauai County.

19 CROSS-EXAMINATION

20 BY MR. DONAHOE:

21 Q Good morning, Ms. Rogers. Thank you for
22 your testimony.

23 Just to clarify, it is your that position
24 there should not be any further development of any
25 kind on Kauai, or just at the project area?

1 A No, I'm not against any development on the
2 area, it depends on what kind of development you're
3 talking about, that's why. I don't mean condos and
4 flushing toilets to destroy our aina with pollution,
5 that kind of development, and it's got to be
6 something that our people are going to benefit.

7 That there has been so many times when
8 development happens, but there is no benefit to the
9 community. In fact, it causes harm to the community.

10 Q So if a development would offer more
11 housing for people who need housing on the island, is
12 that, to you, a benefit to the island or absolutely
13 not?

14 A It will be nice if there were farm people
15 that needed a home there, but I would make sure that
16 their waste disposal is economically friendly to the
17 aina, not being flushed out to the ocean, but
18 somehow, some environmental proper waste disposal.

19 Q Thank you so much. I have no further
20 questions. Thank you.

21 CHAIRPERSON SCHEUER: Mr. Yee.

22 MR. YEE: No questions, thank you.

23 CHAIRPERSON SCHEUER: Ms. Isaki.

24 MS. ISAKI: No questions for Intervenor.

25 Thank you.

1 CHAIRPERSON SCHEUER: Commissioners, are
2 there questions for our witness beginning with
3 Commissioner Dawn Chang.

4 COMMISSIONER CHANG: Hui, aloha nui,
5 Auntie. How are you?

6 THE WITNESS: Aloha, Dawn. Of course I
7 remember you. Do you remember me?

8 COMMISSIONER CHANG: Yes, our paths have
9 crossed when Auntie was -- she has been very active
10 with native Hawaiian burials. And mahalo for your
11 good work, and the ahupua'a work. Mahalo.

12 And I thank you for being here this
13 morning.

14 I do want to ask you a lot of the same kind
15 of questions I asked Mr. Kamai. So you've lived in
16 Kapaa you said long time?

17 THE WITNESS: 81 years.

18 COMMISSIONER CHANG: Mahalo, and Auntie,
19 did your family gather in this project area?

20 THE WITNESS: A'ole. We lived out of town
21 up by the he'iau, by the high school. My dad was not
22 a fisherman, he was a merchant. He owned a store.

23 COMMISSIONER CHANG: Do you know other --
24 I'm sorry, go ahead.

25 THE WITNESS: I have relatives probably

1 that dead. But in my time, by that time it was cane
2 fields up there, yeah, cane fields in the area. We
3 were kept out of these places. There were always
4 gates.

5 We have problems with access to mauka and
6 makai right now, as I speak, and it's one kind of
7 legislation we would like to work on as well, public
8 access.

9 COMMISSIONER CHANG: You also mentioned
10 Land Commission Awards. Are you aware of Land
11 Commission Awards on this property?

12 THE WITNESS: I was told there were three,
13 and also there was a burial there, iwi kupuna, but
14 that was just a report that I saw, you know. It was
15 also a map where things were designated.

16 There might have been a heiau there too,
17 because in my research, I read that Kapaa had 15 to
18 20 heiaus in that ahupua'a, and Wailua.

19 COMMISSIONER CHANG: But did any of your
20 ohana that you know of live in this area, was buried
21 in this area?

22 THE WITNESS: A'ole, a'ole. My kanaka
23 line, my Hawaiian line goes back to Maui. There is
24 where our burials of my kupuna are, except for my
25 grandma and grandpa and my parents are buried here.

1 COMMISSIONER CHANG: Thank you so much,
2 Auntie, you have been so helpful. I really
3 appreciate you coming forward and all your good work
4 for this community.

5 THE WITNESS: Mahalo to you for hard work,
6 mahalo.

7 COMMISSIONER CHANG: Mahalo, a hui hou.

8 CHAIRPERSON SCHEUER: Are there further
9 questions for Ms. Rogers, Commissioners? If not,
10 mahalo nui, Auntie Nani. Nice to see you.

11 Our next witness with Ms. Hammerquist, I
12 believe, is Rhoda Libre -- no, kala mai.

13 (Indecipherable). You can go in whatever order.

14 Are you ready?

15 Do you swear or affirm the testimony you
16 are about to give is the truth?

17 THE WITNESS: So help me God.

18 CHAIRPERSON SCHEUER: State your name and
19 address for the record, then proceed.

20 NOELANI JOSSELIN

21 Was called as a witness by and on behalf of the
22 public, was sworn to tell the truth, was examined and
23 testified as follows:

24 DIRECT EXAMINATION

25 THE WITNESS: Noelani Josselin, and I live

1 at 4549 Kali'i Road and this is in the area of the
2 proposed development, abut to the canal that is on
3 the other side of the highway of this development
4 area. It's all wetlands.

5 CHAIRPERSON SCHEUER: Please proceed.

6 THE WITNESS: I sent in my written
7 testimony, and I stand by that. But I would just
8 like to let you know that I am opposed to the
9 development as it stands, 97 acres of agricultural
10 lands that is being rezoned or designated as Urban
11 zone for HoKua Place.

12 I'm a cultural gatherer, practitioner, and
13 I've also collected water samples for Survival Blue
14 Water Task Force in the Wailua River area for many
15 years. I think that this HoKua Place project would
16 be, in the current existing design, it would not be
17 beneficial to any of the people on Kauai. It would
18 destroy a lot of the native plants that grow in that
19 area.

20 It will also be detrimental to the ocean
21 coastlines all the way from Kapaa all the way to
22 Wailua.

23 Most importantly, that I would like to
24 emphasize in my written testimony is that our sewage,
25 there's no sewage plant for all of these buildings

1 there. You know, 500 -- no, it's 683 condos and 86
2 houses. Where is all the kukae going to go? Are
3 they planning on shooting it across the bypass over
4 the bridge to Wailua? I think that is not really
5 feasible.

6 We need to, you know, at least look at
7 developing a wastewater treatment in the Kapaa area
8 and not take all of this kukae to Wainaina District
9 and have an overloaded County switch system which I
10 can only say it smells really bad when you go to
11 Haleiwa Road.

12 And as brother Joseph said, several years
13 ago there was sewage spills into the Wailua River.
14 This is really important, because my children used to
15 go up there, every day after school they would go up
16 into the Wailua River and paddle.

17 You know, there are so many cultural
18 practices that are still existing today. Fishing
19 along our coastline. Gathering limu, gathering ophi.
20 That is my background.

21 I also come from Maui. My tutu taught me
22 how to look for areas that was clean, and where we
23 could gather. And I have lived in Kapaa in this
24 area, different parts of it, but in this area for
25 over 35 years.

1 My children grew up there. My genealogy
2 goes back to kaumuali'i, so I have deep roots here
3 although I've only lived on the island for 35 years.

4 I think it's really important that we take
5 a look at this wastewater system that this wastewater
6 plant or lack of plant that they have for this area,
7 because it's not a good idea to be sending all this
8 wastewater to the existing water treatment facility.

9 CHAIRPERSON SCHEUER: If I can ask you to
10 summarize, please.

11 THE WITNESS: Okay.

12 You know, I just want you to think about
13 the health of our children, our kupuna who use that
14 area. Many of them have had lots of eye, ear and
15 nose, gastrointestinal from frequenting these areas
16 along the coastline. And I hope you will all think
17 about it and make the best decision for the people of
18 Kauai, and people of this area, and I thank you very
19 much for listening to me and hearing me out.

20 CHAIRPERSON SCHEUER: Mahalo nui for your
21 testimony. Mr. Yuen?

22 MR. YUEN: No questions by Petitioner.

23 CHAIRPERSON SCHEUER: Mr. Donahoe?

24 MR. DONAHOE: No questions from the County.
25 Thank you, Ms. Josselin.

1 CHAIRPERSON SCHEUER: Mr. Yee?

2 MR. YEE: No questions. Thank you.

3 CHAIRPERSON SCHEUER: Ms. Isaki?

4 MS. ISAKI: I have one quick question.

5 CROSS-EXAMINATION

6 BY MS. ISAKI:

7 Q Ms. Josselin, you mention your kids paddle
8 Wailua River. Earlier a testifier talked about a
9 sewage spill at Cocopalms.

10 Do you recall that sewage spill? And do
11 you know if there was any impact on your capability
12 to paddle or --

13 A The Board of Health shutdown the river. It
14 was all over the news. It made headlines. You know,
15 there is constant sewage spills every time there's a
16 flood.

17 I'm not 100 percent, probably Mr. Donahoe
18 can answer this question, but every time there is a
19 lot of rain, that area on Kuhio Highway smells really
20 bad. So I'm going to assume sewage is not being
21 lifted to the wastewater treatment plant across the
22 bridge.

23 These are all secondary cultural impacts,
24 but it does affect the whole area from Wailua all the
25 way to Kapaa, Olohena and all of the wetlands that I

1 lived in back towards the development area.

2 Did I answer your question?

3 Q Yes, you did, thank you.

4 CHAIRPERSON SCHEUER: Commissioners, are
5 there questions for this witness?

6 Commissioner Chang.

7 COMMISSIONER CHANG: Aloha, Ms. Josselin.

8 Thank you so much for your testimony this morning and
9 for coming before us.

10 I wanted to ask you specifically about your
11 cultural gathering. Can you tell me specifically
12 what do you gather from this project area or around
13 the area?

14 THE WITNESS: Around it, like brother
15 Joseph said, you know, I'm a cultural gatherer. I go
16 up there. I harvest mushrooms, herbs. I do a lot of
17 trail site walking. And someone asked earlier about
18 if there is any trails.

19 My backyard is Nono Mountain, and north of
20 Nono is Olohena, and there is a lot of trails back
21 there that I like to go and frequent and check it
22 out.

23 And when you're walking back there, it's
24 part of my meditation and prayers. I try to follow
25 the path of least resistance, which is like you find

1 some old trails, and also find pig trails, and you
2 can tell the difference.

3 And there's a lot of area there that you
4 can, you know, you can visualize how the people
5 lived, and you know, for me it's really important
6 because it's part of my culture, and it's part of me
7 connecting to the ohana that I never really knew.

8 I was born and raised in Hana, Maui, and I
9 never realized the strong connection that I have to
10 Kauai until I started doing genealogy work. And
11 that's when my kupuna's name came up. And that would
12 be kaumuali'i, (indecipherable) my kupuna. So it's
13 very important for me to sight out the land, and I do
14 that a lot with a lot of our we call it, our kupuna
15 control, and we go around and we take and look, and
16 see what is happening to the land, changes and what
17 we can do to make it, you know, heal.

18 COMMISSIONER CHANG: Thank you for that.

19 And you also said you're an ocean person.
20 So you gather along the nearshore waters, because you
21 mentioned limu, but what do you gather?

22 THE WITNESS: Well, years back I was raised
23 by my tutu in Hana, and we gathered everything from
24 the ocean, everything from kala, ha'uke'uke, opihi,
25 lipoa, limu -- you name it. Taught me how to look in

1 the different areas and how far to know the areas
2 that's contaminated. But a different type of kala
3 limu that would grow there.

4 These were the ones that you had to weed
5 out, and certain limus grow in certain areas where
6 there was bacteria contamination, and certain limus,
7 I'm talking about the opala kind in chemical
8 contamination.

9 So if you seen that there was chemical or
10 petroleum contamination in this area, don't pick from
11 there.

12 So we gathered everything. In fact, in the
13 late nineties, early 2000, because we were having
14 problems with our opihi, you know, being on the verge
15 of extinction, I went to Europe and I found areas
16 that there was similar opihi, not the same, with
17 similar algae. And I started importing it here to
18 Hawaii, because I wanted to protect and preserve the
19 opihis that we have.

20 So I don't know, you might be able to go
21 look it up and see in the Star Bulletin, they did an
22 article. There was many articles done on it. You
23 can go Google my name.

24 COMMISSIONER CHANG: I appreciate your name
25 and you're very lucky that your tutu passed a lot of

1 this to you. Do you pass this on as well?

2 THE WITNESS: I only have two mo'opunas,
3 and I do pass on as much as I can to them.

4 COMMISSIONER CHANG: I know Auntie Nani
5 said that the land was in plantation, I guess
6 sugarcane. Prior to that, do you know, because you
7 come back from the kaumuali'i line, do you know if
8 families lived on this land where the project is
9 being proposed?

10 THE WITNESS: From the hikes that I do on
11 the north ridge of Nono Mountain, it's obvious that
12 there has been house sites in that area. In the area
13 that has been destroyed already by plantation, you
14 know, that part you can only find remnants along the
15 streambeds where you'll see like little pockets of
16 kalo that grows along the stream, you know.

17 I mean, it's so contaminated right now,
18 there is, I think, like 400, 300 cesspools in that
19 Wailua mauka area that, you know, that especially we
20 all know that it all drains down into our streams and
21 drains.

22 COMMISSIONER CHANG: Thank you very much.

23 Are you aware of any iwi kupuna that might
24 be in the area?

25 THE WITNESS: In the area that they're

1 talking about doing the bypass, which would be
2 outside of the area that they're considering, but
3 it's directly related. Yes, there is. The
4 (indecipherable) -- line is all within that growth on
5 the bypass that they have been considering to use and
6 develop, so that it could service the area that we're
7 discussing.

8 COMMISSIONER CHANG: Thank you.

9 Were you ever contacted by anybody from the
10 Petitioner, any consultant regarding a cultural
11 impact assessment or any information about your
12 connection to the land, were you contacted by anyone?

13 THE WITNESS: No, not at all. I mean only
14 person contacted me was Auntie Puanani Rogers, and
15 she brought me over to Bridget. I'm concerned
16 because I know kupunas born and raised here on the
17 island, and I watch to make sure we protect quality
18 of life.

19 We don't want to see it degraded. We don't
20 want to see traffic. We don't want to see the water.
21 Right now you're seeing no water for Hawaiians on
22 Hawaiian Home Lands. We live in the wettest island
23 spot in the whole planet. How can there not be water
24 for Hawaiian Homes? They have to go and drill their
25 own wells. I mean, I realize that, you know, okay,

1 we can create a development to bring in people from
2 outside, because we know our people cannot afford it,
3 not based on their wages in the tourism industry. So
4 we need to kind of put our feet down and let the
5 people know, hey, we need to correct and heal the
6 people, and heal the land and restore the people back
7 to the land. These are all crown lands. LCA lands.

8 COMMISSIONER CHANG: And I appreciate that.
9 That's been -- I guess, for purposes of our kuleana
10 as Commissioners, I look at people who are exercising
11 traditional customary practices.

12 Hopefully DHHL, they're going to come
13 forward and they're going to protect their kuleana.
14 But I want to make sure that I get the facts so that
15 that's all part of this record.

16 What I heard you say, I don't want to put
17 words into your mouth. What I heard you say is you
18 gather, you gather mushrooms, herbs, but you do
19 gather from this property.

20 You also talked about trails, that there
21 are trails on this property and outside the property,
22 and even on those trail systems you have noticed
23 evidence of what would be like a house lot, because
24 you've seen kalo by the streams.

25 Then you also talked about gathering into

1 the nearshore waters the limu and opihi and different
2 kinds.

3 So tell me in your words how will this
4 project affect your ability to continue to exercise
5 these practices that we just talked about, how is
6 this project going to affect your ability to continue
7 to do that?

8 THE WITNESS: It's a pretty dense project
9 on 97 acres, and, you know, that with that amount of
10 people concentrated into that area, there's going to
11 be a lot of runoff water that's going to have
12 chemicals in there.

13 This whole area along the Mohikea Canal,
14 Waiakea Canal, Kapaa coastal areas is susceptible to
15 receiving, because it's a canal, it drains everything
16 from this area that we're discussing. And you add
17 more people concentrated to that area, that's going
18 to be more chemicals and -- I mean, when I first
19 moved here, I used to be able to go pick kupee shells
20 and make leis all along that coastline, and you could
21 pick kupee that would come up out of the sand.

22 Now, the hula halaus can't even go there
23 and pick kupee. There is no kupee along the
24 coastline.

25 So it's affecting our traditional practices

1 by having all these, you know, how do I say, it's a
2 very poor design. A very poor design.

3 My background is in design, and I only have
4 associates degree, but there is a thing called feng
5 shui where you work with energy and the energy is
6 totally wrong back there.

7 COMMISSIONER CHANG: I appreciate that.
8 Thank you. I guess for me, I want to know -- what it
9 sounds like -- because how it affects you and your
10 ability to continue to gather.

11 So do you believe it will affect your
12 ability to continue to gather resources?

13 THE WITNESS: Yes, it will. I, mean, it
14 will impact the ability to go makai. The limu is
15 going to be lepo, the opihis, the kupee.

16 I mean, mauka, once they start going after
17 all of the Hawaiian herbs, the la'au lapa'au, which
18 people consider weeds, they're going to go with
19 Roundup And spraying it, because they don't want our
20 herbs growing in their yards.

21 I believe it's going to be a great impact
22 to our culture, because it's -- there's not going to,
23 you know, be the things that we need.

24 COMMISSIONER CHANG: Thank you so much.
25 You have been extremely helpful, and I greatly

1 appreciate your testimony today. You take care.

2 Aloha.

3 THE WITNESS: Aloha.

4 CHAIRPERSON SCHEUER: Thank you,
5 Commissioner Chang.

6 Commissioners, are there further questions
7 for this witness?

8 If you'll indulge me, we're overdue for a
9 break, but hopefully two brief questions and brief
10 responses for the witness.

11 First, I'm going to ask your forbearance to
12 what many consider an obvious question, but I want to
13 make sure the record is clear.

14 You referenced the sewage spill in Wailua,
15 in the area of the Wailua River and Cocopalms that is
16 related to the integrated sewage system for the
17 Kapaa-Wailua area.

18 Is there a particular cultural significance
19 to that area?

20 THE WITNESS: Yes, because all of our
21 children in this area paddle outrigger canoe in the
22 river where the spill occurred. Our children surf
23 out there. They fish, they gather from that area.
24 And if we can not design an area that is going to
25 take care of a treatment sewer system that is going

1 to take care of its own sewage waste, and we're going
2 to have to shoot it all the way across to Wailua, I
3 mean, it's going to create a secondary problem in the
4 Wailua area and it's going to harm our practices in
5 that area also.

6 CHAIRPERSON SCHEUER: To follow up on that,
7 if I may.

8 Are you aware whether the cultural impact
9 analysis done for this project considered those
10 off-site impacts?

11 THE WITNESS: I was not aware.

12 CHAIRPERSON SCHEUER: Then the last thing
13 is, you spoke about using this property walking on
14 trails, for a process of being in observation as well
15 as spiritual contemplation and prayer.

16 Do you have a particular way that you refer
17 to that practice, like a Hawaiian term or --

18 THE WITNESS: Lokahi. I go there for a
19 purpose, and whatever that purpose is, it's personal.
20 And when you're there, you observe. Tutu always
21 taught kanaka ahupua'a, so you don't talk, you only
22 observe. You look at the environment. You see what
23 is going on and you come to your conclusion. And
24 whether it's good or it's bad, you know, I mean,
25 access has been an issue, because I believe this is

1 all crown lands and it belongs to all of us. It is
2 something I feel that needs to be revisited.

3 We need to go back and take a look at LCA
4 and see if, you know, the crown land and actual
5 owners have been asked to testify.

6 CHAIRPERSON SCHEUER: If I may, I just
7 want, for the record, and again, if you feel this
8 question is too obvious, I apologize, but would that
9 practice of huaka'i (phonetic), as you described it,
10 be adversely impacted by this development?

11 THE WITNESS: Absolutely. It's going to
12 change. There's going to be, like I said earlier, a
13 concentrated population in an area, and people are
14 going to want to start going all over the place, and
15 you know, I mean, people that move here, they're not
16 consciously aware of the herbs that we use here. You
17 know, to them that is opala, rubbish, weeds, but for
18 us, you know, this is what we use, this is what tutu
19 grew up and said, you know, take this kanaowa
20 (phonetic), dry it, boil it, use it when you have
21 sore throat. There's so many herbs up there.

22 CHAIRPERSON SCHEUER: Thank you, Ms.
23 Josselin. Thank you very much.

24 THE WITNESS: You're welcome.

25 CHAIRPERSON SCHEUER: Commissioners,

1 anything further for this witness? If not, we have
2 gone a full hour rather than 50 minutes. I'm going
3 to ask for a ten-minute break to 11:10.

4 Thank you very much for your testimony, Ms.
5 Josselin, I appreciate it.

6 We are in recess for ten minutes to 11:10.

7 (Recess taken.)

8 It's 11:12. We are back on the record.
9 Before we start back in with public testimony, I want
10 to do housekeeping.

11 I want to ask the Commissioners their
12 availability to what time this afternoon, and if
13 there's any lunchtime conflict any Commissioners
14 have.

15 Commissioner Wong.

16 COMMISSIONER WONG: Chair, I have to go to
17 another meeting. I have to leave by 3:00 o'clock
18 today.

19 CHAIRPERSON SCHEUER: Commissioners, any
20 other conflict before 3:00 o'clock? Are there any
21 lunchtime conflicts? So we will go to -- we will try
22 to go for another 50 minutes to an hour and go
23 lunchtime 12:00 to 1:00, and a couple more hours
24 before we are having to adjourn for today's hearing.

25 I want to -- one of the witnesses, Ms.

1 Puanani Rogers actually asked a question of us.
2 Normally public witnesses do not ask questions of the
3 Commissioners, rather it goes reverse, but the
4 question was have we conducted a site visit on this.

5 Just to be clear on the record. While it
6 might be possible that in a previous incarnation of
7 this project, a previous LUC visited this property,
8 this LUC has not visited this property. The travel
9 restrictions associated with the pandemic, while
10 normally we do conduct site visits in relationship to
11 large district boundary amendments, we have not done
12 so on this property.

13 So I want to make that clarification for
14 the record. With that, I believe -- is this the last
15 witness at Bridget's place?

16 THE WITNESS: Two more.

17 CHAIRPERSON SCHEUER: Let's start in.

18 Do you swear or affirm the testimony you're
19 about to give is the truth?

20 THE WITNESS: Yes.

21 CHAIRPERSON SCHEUER: State your name and
22 address for the record and try to keep your testimony
23 to two minutes.

24 RHODA LIBRE

25 Was called as a witness by and on behalf of the

1 public, was sworn to tell the truth, was examined and
2 testified as follows:

3 DIRECT EXAMINATION

4 THE WITNESS: My name is Rhoda Libre. My
5 address is 5550 Menehune Road, Waimea, Kauai.

6 CHAIRPERSON SCHEUER: Please continue.

7 THE WITNESS: I've worked on Wailua River.
8 I'm from the west side, and I represent Kauai West
9 Side Watershed Council. I work with them as well as
10 National Tropical Botanical Garden on ahupua'a and
11 watershed issues Aha Moku.

12 I've served on the Marine and Coastal Zone
13 Management, State of Hawaii. I've also worked with
14 President Obama Ocean and Marine Coastal Zone Plan.
15 And I'll keep it short and sweet.

16 I concur with all of my colleagues. And
17 this plan I looked at it, and it looked very
18 inappropriate for that area. We have gone to that
19 area, and it is a significant ahupua'a. I have seen
20 the evidence of huge heiau, and the way the ahupua'a
21 looked is highly significant where any impact of
22 further influx to that area, especially urbanization,
23 will definitely impact my gathering rights.

24 I gather in the shorelines of Kapaa and
25 Wailua. Like I said, I've worked on the river and

1 the river boat for many years, since I was 16 years
2 old, and I continue to work there.

3 As far as I've looked at the ahupua'a, the
4 system, and the impingement is highly inappropriate.
5 I see many violations there. So, as I said, I concur
6 with my colleagues.

7 CHAIRPERSON SCHEUER: Mahalo, Ms. Libre.

8 Any questions for this witness, Mr. Yuen?

9 MR. YUEN: Thank you.

10 CROSS-EXAMINATION

11 BY MR. YUEN:

12 Q I would like to ask the witness where
13 exactly is the heiau that you referred to?

14 A Right in the back of the Middle School
15 going down -- what was that -- the second stream we
16 went to right before the bypass, what is that?
17 Waiakea. Huge, huge, obviously and I can see that
18 the sugarcane industry really did a number on that
19 ahupua'a.

20 I go to church every Sunday since 60 years,
21 60 years old, and my church is in Lavani Street
22 (phonetic), and right in the back of Lavani Street of
23 my church, every Sunday we go crabbing. We get
24 dungeness crabs, 'opae, we get watercress from the
25 stream. Then we go mauka to Ohlohena to gather our

1 la'au laupa'au.

2 I am a la'au laupa'au who lives on the west
3 side of Kauai. We take care of the (indecipherable)
4 and we have the exact same problems there confronting
5 today. That is the reason why I'm here. We have the
6 same problem.

7 Q The heiau that you referred to is located
8 which side of the bypass road?

9 A Mauka by the stream, there is like a little
10 bridge over there.

11 Q Is it adjacent to the stream?

12 A Adjacent to the stream. And as we head in
13 from Kapaa to Wailua, it's on the right-hand side.
14 You cannot miss that.

15 Q Wailua on the right-hand side?

16 A On the right-hand side over there. It's
17 very obvious, very obvious for many years. I have
18 over 55, 56 years of studying ahupua'a from
19 traditional. We hold cultural protocol for the aha
20 moku and, yeah, evidence is pretty clear,
21 irrefutable.

22 Q Thank you. No further questions.

23 A Aloha.

24 CHAIRPERSON SCHEUER: Thank you, Mr. Yuen.
25 Mr. Donahoe?

CROSS-EXAMINATION

1
2 BY MR. DONAHOE:

3 Q Ms. Libre, regards to the heiau, if it fell
4 inside the development area, would you request that,
5 if approved, that the developer work with the State
6 Historic Preservation Division to preserve any of the
7 ancient cultural artifacts that may be found within
8 the development site and before they continue to
9 develop?

10 A 'Ae, that would be prudent, and I do
11 believe that's part of the prerequisites for the
12 State Historic Preservation to be working with the
13 cultural assessors.

14 I am on the list of cultural assessment
15 under the State of Hawaii, along with the Kauai West
16 Side Watershed Council, and that assessment list is
17 under the State of Planning, under the Governor's
18 office. I served under them for like 12 years, so I
19 know the system, as well as DLNR.

20 Q Thank you. I have nothing further.

21 A Aloha.

22 CHAIRPERSON SCHEUER: Thank you.

23 Mr. Yee?

CROSS-EXAMINATION

24
25 BY MR. YEE:

1 Q Thank you.

2 I want to know, were you contacted by
3 anyone regarding this heiau on the property from the
4 Petitioner or Petitioner's consultants?

5 A Not this project, not at this project. As
6 I said, I'm from the Aha Moku, but in prudence they
7 should, you know, contact everyone, because I have
8 family in Kapaa area as well as in Wailua area.

9 Q Were you aware of this project at the time
10 the draft EIS was being sent out?

11 A Yeah. That was awhile back, and in fact, I
12 was there, I forgot what -- 1990, I think. Was
13 that -- when Peter Savio was there? I think he was
14 the original one, and then it went oversize and got
15 too many. But I do believe that they need to do more
16 cultural assessment with tandem with the EIS again.

17 Q Do you know if you were aware of this
18 project moving forward? Do you know if you or anyone
19 else made an attempt to contact the Petitioner or the
20 Petitioner's consultants about the location of this
21 heiau?

22 A I was contacted by Auntie Nani Rogers,
23 otherwise than that, like in the '90s when they first
24 started this conundrum. I thought it was dead in the
25 water already. So with everything going on, I'm so

1 sorry, I lost track of that.

2 We were working on the west side with A & B
3 and PMRF, so kind of busy. But I believe, I can't
4 really say middle ground because it is a significant
5 site, and it is already impinged upon our cultural
6 gathering rights as well as our constitutional rights
7 of native Hawaiians -- not native, but kanaka. So
8 our thing is to make sure that our food supply is
9 safe and that our nurseries, and West Side Water
10 Council and all the ahupua'a, we have our na'aha
11 (phonetic), makini (phonetic), and I'm part of that,
12 and we are exercising our rights as an elder woman of
13 this Aha Moku (indecipherable).

14 Q Thank you for that.

15 The purpose of my question is to have a
16 better understanding of the nature of what Petitioner
17 was aware of.

18 Do you know if Auntie Rogers informed the
19 Petitioners of this heiau?

20 A No, no, not at all.

21 Q Not at all, you don't know or she did not
22 inform them?

23 A According to her, nobody contacted her.
24 And for me, I don't know if -- nobody contacted her
25 and nobody contacted me. We have the Aha Moku and I

1 do believe what we try to do, Ahu Moku of the State,
2 so it would be for the State Land Use as well as all
3 the divisions. So far I'm not sure the Ahu Moku, but
4 it would be prudent.

5 Q Thank you very much. No further questions.

6 CHAIRPERSON SCHEUER: Commissioners, are
7 there questions for Ms. Libre?

8 Kala mai. Intervenor?

9 MS. ISAKI: I have a few hopefully brief
10 questions.

11 CROSS-EXAMINATION

12 BY MS. ISAKI:

13 Q Ms. Libre, I'm the attorney for Liko
14 Martin.

15 Do you feel it's your responsibility to
16 figure out who the Petitioner is when there is
17 changes in ownership to tell people where the heiau
18 is, or that there is a heiau in this area?

19 A Surely, surely, yeah. They should contact
20 us, yeah.

21 Q Thank you.

22 And just -- sorry, on the heiau, you said
23 this area is significant.

24 Does that have anything to do with why a
25 heiau might be in the area, you know, could you say

1 more about what it means that there is a heiau in
2 this area?

3 A It would be identifying religious
4 practices. It would be identifying, like I say,
5 significant areas -- I'll give you an example. You
6 look at your body and look at your kidney, and that's
7 how it is with the kidney. And it needs to -- it
8 detoxes all the water and prepares it to go through
9 the ahupua'a to be cleaned to go to the ocean,
10 because all water must go to the ocean.

11 So that's a complete healthy ahupua'a
12 system. Look at that one there -- like big gall
13 bladder, so blocking the way and it's only going to
14 get worse.

15 Q One more question.

16 Again, on the heiau, are you aware of where
17 the Petition Area is?

18 A Yes. Yes, we did a location site, yes.

19 Q Thank you.

20 And I think you said this, but the heiau is
21 in the Petition Area that we're talking about today?

22 A I do believe it is. Where we went to, and
23 I saw the heiau while the remnants of the rock.
24 Actually I saw on both sides, and on the left there
25 was like a reservoir or, you know, ponding, huge

1 ponding. And obvious rocks still there on the
2 ridges, but you can see someone went down, just wiped
3 out the whole area, but you can see the remnants of
4 the stream and all the tributaries.

5 You know, I'm not sure if they're
6 perennial. I need to take a look at all the
7 hydrological studies, but when you go further to the
8 right where the stream comes, like a little dip there
9 is obviously huge gap. And with the moss and the
10 liken, oh, yeah, definitely remnants.

11 We did an archaeological site with that and
12 we can work with the State Historical Preservation to
13 identify that and further give more information.
14 That should have been done. I think that was done in
15 the late '90s or earlier 2000, got to look back in
16 the papers, but that was awhile back.

17 Q To clarify, you think that some of this
18 information was discussed with the State Historic
19 Preservation Division at some point?

20 A Yeah. Well, looking at it, irrefutable.
21 They can't miss that. It should be in there.

22 Q Sorry, one last question.

23 So you're testifying before this
24 Commission. Do you feel like your -- like the site
25 and any of your practices associated with the site

1 would be preserved by just saying -- telling this
2 Commission just telling SHPD to deal with it and
3 address it, or do you feel like this Commission
4 should look into it?

5 A Yeah, you should. I believe one of your
6 duties is to our cultural practices and in the
7 healthy ahupua'a, yeah.

8 Q Thank you.

9 CHAIRPERSON SCHEUER: Anything further,
10 Intervenor?

11 MS. ISAKI: No.

12 CHAIRPERSON SCHEUER: Commissioners,
13 questions? Commissioner Chang.

14 COMMISSIONER CHANG: Thank you, Mr. Chair.

15 Mahalo, Ms. Libre, for being here and for
16 your testimony.

17 THE WITNESS: Aloha.

18 COMMISSIONER CHANG: I want to follow up on
19 a couple of points that you made.

20 One, like Ms. Isaki was saying, I don't
21 think you have to apologize if you didn't tell the
22 developer or the Petitioner where the heiau is,
23 that's not your kuleana. But it is helpful that you
24 have brought that to our attention because that was
25 not disclosed previously.

1 And I'm sure the Petitioner is going to
2 confirm that the heiau, they will send somebody out
3 to go look. But what I understand, Ms. Libre, is
4 that it's obvious, you can see the remnants of the
5 heiau, and somebody should have known it was there
6 and should have included that in the document.

7 Is that what you're saying?

8 THE WITNESS: Yes.

9 COMMISSIONER CHANG: There was a question
10 about should SHPD be working on this. And I know you
11 said yes, and they do have regulatory
12 responsibilities.

13 But I also wanted to ask you, do you
14 believe that it is the kuleana of families or people
15 who have a connection to that heiau to really be
16 deciding how do we preserve and protect that heiau
17 versus SHPD, do you think that's the ohanas'
18 responsibility or SHPD's responsibility?

19 THE WITNESS: Personally I do believe it's
20 the ohana, personally.

21 COMMISSIONER CHANG: I appreciate that.

22 You say you're a la'au lapa'au. Do you
23 gather on this site?

24 THE WITNESS: Yes, in some areas, I do.

25 COMMISSIONER CHANG: What do you gather if

1 you're comfortable sharing? If you are not, no need
2 to say.

3 THE WITNESS: Yes, I do gather la'au
4 lapa'au in certain areas, yes.

5 COMMISSIONER CHANG: And you gather these
6 resources that are within the project site, is that
7 what you're telling us?

8 THE WITNESS: Within the rim, and within
9 the shared body of water.

10 COMMISSIONER CHANG: And how do you believe
11 your gathering rights will be affected by this
12 project?

13 THE WITNESS: Obviously by the overcapacity
14 already, looking at their planning is overcapacity
15 and still questions of the sewage. I don't really
16 want to be -- you heard everyone, all of my titas and
17 my brother already shared that.

18 If I reiterate every point and can say a
19 little bit more with biological, they need to have a
20 biological assessment as well.

21 COMMISSIONER CHANG: And I appreciate that.

22 You know, for purposes of traditional
23 customary practices, it's really personal. It is
24 your connection to this land, so I greatly appreciate
25 that you're go defer to Aunty Nani and others, but

1 it's really important that I understand your
2 connection to this land.

3 That's part of our responsibility as
4 Commissioners. And under the constitution we need to
5 make sure that we are -- you know, we have and
6 obligation. So it's important that I understand your
7 connection to this land.

8 So you said that you actually do exercise
9 la'au lapa'au on this property?

10 THE WITNESS: 'Ae. Since I was a child
11 from my grandmother and grandfather, from our church
12 on Lalani Road and our Aunty Lehia (phonetic) she
13 comes from Kapaa and she is buried in Kapaa Cemetery,
14 and all the other ohana over there. And I also
15 gather from the river as well and from the forest up
16 there too.

17 COMMISSIONER CHANG: Has anybody affected
18 your access to go and gather these resources now?

19 THE WITNESS: Yes, ma'am. We have lost a
20 lot of access to a lot of our gathering areas, and a
21 lot of places we find quite religious, we do our
22 religious practices there as well, which I cannot
23 share with you, but more so, the food and medicine
24 all along that area from my ohana and our friends
25 which is ohana as well.

1 From the oceans to the rivers, and in some
2 of the underlying rim from that particular property.

3 CHAIRPERSON SCHEUER: Kala mai. One
4 moment. Ms. Isaki, I think you're not muted, so I'm
5 hearing you typing.

6 COMMISSIONER CHANG: So, Ms. Libre, has the
7 Petitioner denied you access to the property to
8 gather?

9 THE WITNESS: If they put that blockade,
10 which I assume they have, then, yes, they have.

11 COMMISSIONER CHANG: And what is the
12 blockade?

13 THE WITNESS: The blockade blocks up the
14 entryway where we can park our cars, and then, you
15 know, traverse through. So now we have to park our
16 cars outside the blockade. But for me with this
17 blockade there, saying it's private property, and I
18 have a right to follow my stream and go into my
19 ancestral lands and gather. I have no inkling to go
20 on private property. But I have a right to keep on
21 gathering, you know, that is our right and that's the
22 only place we go is to follow the stream.

23 Some places are located at rims of
24 mountains, because that's the only place our la'au
25 lapa'au grow and that's where we keep on going, to

1 the same place. All of a sudden it's blocked off by
2 either berme, rocks or blockades.

3 COMMISSIONER CHANG: I really appreciate
4 your testimony, Ms. Libre. It's been very helpful,
5 so mahalo.

6 THE WITNESS: Aloha no, aloha.

7 CHAIRPERSON SCHEUER: Commissioners, are
8 there further questions for this witness?

9 If there is none, I would like to ask Ms.
10 Libre, because you referenced your long association
11 with CHECK submit, I had asked the question of the
12 previous witness, if you could just briefly share
13 with us on the record some of the cultural
14 significant of the Wailua area?

15 THE WITNESS: I worked for Smith
16 Wai'ale'ale Boat Tours, and we give the history of
17 the significance of the river from mauka to makai.

18 On my spare time I give the tours and I
19 explain, you know, the gods and names and areas of
20 the historic areas and very significant for our
21 ali'i.

22 And besides that, I do the biological
23 assessment over there. And there have been many
24 spills from the sitting of the water in that little
25 waterfall by the grotto, and to the spill from four

1 or five times it happened from the grotto above the
2 grotto there is cows, and they have like a holding
3 pond, and they diverted all that holding pond kukae
4 into the river. So along with all of that stuff.

5 So with all of that other stuff it will
6 definitely impact all of that area, and I gather from
7 that area too, the 'opae, o'opu, of course, we got
8 the moi and ama, but favorite one is my sill yeah and
9 pipi hau, and they keep on cutting hau bushes
10 inappropriately. There is no cultural protocol. So
11 I hope I answered your question.

12 CHAIRPERSON SCHEUER: You did. Thank you
13 very much, Ms. Libre.

14 Anything further for this witness? If not,
15 mahalo nui, and we will take the last witness who is
16 at Ms. Hammerquist's house.

17 Aloha. Do you swear or affirm the
18 testimony you're about to give is the truth?

19 THE WITNESS: Yes.

20 CHAIRPERSON SCHEUER: If you would state
21 your name and address for the record.

22 THE WITNESS: My name is Kamai Hasan. I
23 currently reside at 2963 Kualani Place, Koloa,
24 Hawaii.

25 CHAIRPERSON SCHEUER: Again, if you can

1 try -- you can tell already, the questions are
2 extensive, so if you can keep your testimony within
3 two minutes that would be helpful.

4 THE WITNESS: I promise. My testimony is
5 very brief.

6 CHAIRPERSON SCHEUER: Please proceed.

7 KAMAI HASAN

8 Was called as a witness by and on behalf of the
9 public, was sworn to tell the truth, was examined and
10 testified as follows:

11 DIRECT EXAMINATION

12 THE WITNESS: My background is in
13 engineering. Mostly mechanical and civil
14 engineering. I worked for the State of Oregon on
15 bridges. So my testimony stems from when I stayed in
16 Kapaa on Malu Road.

17 And if you're familiar with the site of the
18 projected project, is by the school up there. And
19 there is, down the hill is where Malu Road.

20 So I was staying on Malu Road and on
21 several occasions when it rained measurably, I
22 witnessed flooding and it was severe enough to go
23 over the actual road and block traffic for several
24 hours. And I could actually witness people backing
25 out, couldn't get to their work or whatever.

1 So from my experience in engineering, civil
2 engineering in particular, whenever looking at this
3 project, it's humongous, and that translates into
4 more concrete and more blacktop and that translates
5 into runoff, and the project hasn't even begun, and
6 there is flooding on Malu Road.

7 So from my point of view, it's going to be
8 a lot more runoff, and therefore, more and more
9 flooding on that road. That's basically my
10 testimony.

11 CHAIRPERSON SCHEUER: Perfect, and four
12 seconds to spare, so you were indeed correct. Are
13 there questions for this witness beginning with Mr.
14 Yuen?

15 MR. YUEN: No questions.

16 CHAIRPERSON SCHEUER: Mr. Donahoe?

17 MR. DONAHOE: I have no questions either,
18 Chair. Thank you.

19 CHAIRPERSON SCHEUER: Mr. Yee?

20 MR. YEE: No questions, thank you.

21 CHAIRPERSON SCHEUER: Ms. Isaki?

22 MS. ISAKI: No questions, thank you.

23 CHAIRPERSON SCHEUER: Commissioners,
24 beginning with Commissioner Okuda.

25 COMMISSIONER OKUDA: Thank you very much;

1 and thank you, Mr. Hasan, for testifying.

2 You mentioned a background in mechanical
3 and civil engineering as employment.

4 Can you give first of all your educational
5 background?

6 THE WITNESS: I grew up in Beirut, Lebanon.
7 Graduated as mechanical engineer, and for further
8 education I came to the U.S. and studied civil
9 engineering. I resided most of my stay in the United
10 States, almost 50 years in Oregon, and most of that
11 time I worked for the Oregon State Highway Division
12 on the bridge group. So I have extensive knowledge
13 in pouring concrete and repairing bridges and roads.

14 COMMISSIONER OKUDA: And so what type of
15 degree do you have and from what institution did you
16 receive it?

17 THE WITNESS: In Lebanon it was the AUB
18 University of Beirut and in the U.S. it was Heald
19 Engineering College, and rural community college in
20 Oregon, and Heald Junior College in San Francisco.

21 COMMISSIONER OKUDA: Are you a licensed
22 engineer or not a licensed engineer?

23 THE WITNESS: Yes, I am. I have a degree.

24 COMMISSIONER OKUDA: Were you issued a
25 license from a government entity, like State of

1 Oregon, State of California or State of Hawaii like
2 an engineering license?

3 THE WITNESS: Yes, I have a degree.

4 COMMISSIONER OKUDA: I was asking do you
5 have issued to you a license as a licensed engineer?

6 THE WITNESS: Yes.

7 COMMISSIONER OKUDA: Which government
8 entities have issued a license to you to practice as
9 an engineer?

10 THE WITNESS: State of Oregon.

11 COMMISSIONER OKUDA: When did you receive
12 that license from the State of Oregon?

13 THE WITNESS: You know, I've been retired
14 for seven years, and I would have to say in 1974.

15 COMMISSIONER OKUDA: In your work with the
16 State of Oregon, what department were you employed by
17 State of Oregon?

18 THE WITNESS: On the bridge group, State of
19 Oregon on the bridge group. There is Highway
20 Division and there is a bridge crew division. I
21 assigned the bridge group.

22 COMMISSIONER OKUDA: In your role and
23 employment as an engineer working with the bridge
24 crew, have you seen traffic conditions, roadways and
25 things like that?

1 THE WITNESS: Absolutely.

2 COMMISSIONER OKUDA: This is last question.

3 If you can briefly summarize what your
4 duties were with the bridge group, and to some
5 extent, what type of experience did you receive on
6 the bridge crew that gives you, for lack of a better
7 word, expertise to give the type of testimony you
8 just gave?

9 THE WITNESS: First of all, my background
10 in civil engineering requires building and requires
11 pouring concrete and repair existing structures.

12 And what my testimony was concerned with is
13 the amount of slabs that is going to be poured, and
14 blacktop or driveways and parking lots, and that to
15 me as a civil engineer translates into runoff.

16 The concrete is not going to serve the
17 water or blacktop. So without the creation, before
18 the start of that humongous project, I witnessed
19 flooding. So that, you know, that goes to show that
20 when that project is complete, we're going to have
21 more runoff and more flooding.

22 COMMISSIONER OKUDA: Not necessarily in
23 preparation for your testimony, but at any time did
24 you review either the Draft or Final Environmental
25 Impact Statement or parts of those statements, which

1 have been submitted in this case?

2 THE WITNESS: No, I have not.

3 COMMISSIONER OKUDA: Thank you very much,
4 Mr. Hasan. I appreciate you taking your time to give
5 testimony.

6 CHAIRPERSON SCHEUER: Commissioners,
7 further questions for this witness? Seeing none,
8 thank you very much for your testimony. We
9 appreciate it very much.

10 Just a final check. Ms. Hammerquist,
11 anybody else at your location who is wishing to
12 testify in this matter?

13 MS. HAMMERQUIST: Thank you, Commissioners,
14 Chair, not today. We're waiting for Mr. Martin.

15 CHAIRPERSON SCHEUER: When we get to that,
16 yes. This afternoon is looking optimistic for the
17 Intervenor's case.

18 Thank you very much. I'm going to move
19 your location to be attendee again and I think
20 hopefully we can get through one other person who has
21 been patiently waiting to provide testimony. I'm
22 going to move you to be an attendee.

23 I'm going to be calling in Allen Hoffman to
24 be promoted as a panelist. When you're called in, if
25 you'd enable your audio and video, hopefully you're

1 still with us. There you are.

2 THE WITNESS: Aloha. How's it going?

3 CHAIRPERSON SCHEUER: It's going well. Is
4 it possible for you to stay in a single place for us?

5 THE WITNESS: Yeah, I'm sorry, I just came
6 out of a tree.

7 CHAIRPERSON SCHEUER: Thank you for coming
8 out of the tree. It would be a new record for where
9 we have received LUC testimony from, I have to say.

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

12 THE WITNESS: I do.

13 CHAIRPERSON SCHEUER: State your name for
14 the record and address and then share your testimony
15 with us.

16 ALLEN HOFFMAN

17 Was called as a witness by and on behalf of the
18 public, was sworn to tell the truth, was examined and
19 testified as follows:

20 DIRECT EXAMINATION

21 THE WITNESS: Aloha. My name is Allen
22 Kekala Hoffman, and I'm born and raised in this
23 ahupua'a in Kapaa. I live right up the road my
24 entire life for 29 years.

25 So this area where I'm born and raised, and

1 to me I guess I'm kind of shocked that this is even
2 coming up as an option to urbanize this entire area
3 as for me kind of number of things thinking about are
4 our children.

5 When I was a kid, Kapaa Middle School
6 didn't have the best reputation. We've always been
7 kind of strapped as far as education. That's just
8 one part to me of entire infrastructure lacking for
9 this project, maybe just something that other people
10 haven't touched on.

11 Most of the time I feel like our trust or
12 faith in someone to go forward and do what they say
13 is very important in life, especially with something
14 that can upset such a drastic impact. And I don't --
15 I know that Greg Allen had been listed as a principal
16 person for this, and I understand that he is being
17 sued by the County for running illegal Air A&Bs. As
18 far as rumors, he continues to do so.

19 Also the Kapaa solar voltaic that was built
20 right adjacent to where this development would be
21 built, was built before the permits were actually
22 even issued by Raygun (phonetic) working with
23 (indecipherable) another person that built the solar
24 voltaic, used all the sensitivities (phonetic) in that
25 area, which means that individual homeowners would

1 not even be able to qualify for this.

2 And other things shows me that this is not
3 someone to be trusted. In looking at the EIS, just
4 to reiterate on other parts, I don't have lineal
5 descendents to the area or that kind of children
6 being born and raised there.

7 My understanding always was in talking to
8 families that this property did lie with an area that
9 had burials and heiau, and some other ones were
10 destroyed along the coast, and only thing that is
11 mentioned in the EIS is basically it was used as
12 plantation crops, therefore no cultural impact.

13 And to me they could have easily gotten
14 more of the actual testimony that were here if they
15 really were sincere about representing what is
16 already there.

17 CHAIRPERSON SCHEUER: Ask you to summarize.

18 THE WITNESS: Main concern, this ahupua'a
19 is rather untainted by development, and we still have
20 a chance to restore the ahupua'a and waterways that
21 had been destroyed in the past by sugar. So I just
22 really hope that you consider keeping it as
23 agriculture.

24 CHAIRPERSON SCHEUER: Let me now see if
25 there is questions for you. Mr. Yuen?

1 MR. YUEN: Petitioner has no questions.

2 CHAIRPERSON SCHEUER: Mr. Donahoe?

3 MR. DONAHOE: Thank you, Chair, no
4 questions from County.

5 CHAIRPERSON SCHEUER: Mr. Yee, Office of
6 Planning?

7 MR. YEE: No questions. Thank you.

8 CHAIRPERSON SCHEUER: Ms. Isaki?

9 MS. ISAKI: No, we don't have questions.
10 Thank you for your testimony.

11 CHAIRPERSON SCHEUER: Commissioners,
12 beginning with Commissioner Okuda.

13 COMMISSIONER OKUDA: Thank you very much,
14 Mr. Chair.

15 And thank you, Mr. Hoffman, for taking time
16 from your work to participate in this hearing.

17 Let me ask you this question.

18 One of the arguments, and I might be kind
19 of embellishing it, if you can bear with me, some of
20 the arguments that seems to be made in favor of this
21 project is, hey, this project is for people like you,
22 that this will give needed housing on Kauai in Kapaa,
23 your home town. And so this is for you, and that's
24 why we at the Commission shouldn't stand in the way
25 of providing housing to locals.

1 What response do you have, if any, to that
2 argument? Do you support it, oppose it?

3 THE WITNESS: Honestly, I don't buy it at
4 all. I don't think that this was ever planned for
5 locals or our families. If it was, I believe they
6 would have gone about this much better and looked at
7 actual infrastructure and actual impacts to our local
8 communities in years to come.

9 I see them as just trying to make their
10 money and not thinking about what is going to happen
11 down the road.

12 Also seeing that the investors, you know,
13 this is the only project they have in Kauai, I
14 believe, most of their stuff is international,
15 overseas, China, big deals. This isn't some like
16 local, yeah, being born and raised. It's obviously
17 concerns to build housing. I just really strongly
18 don't see this as being it at all, and I really hope
19 that when we do get there, we can have promise to
20 others types of development that work with honoring
21 the ahupua'a and keeping our watersheds and water
22 clean and preserving plants and animals and gathering
23 rights, and being able to go back to balance of what
24 used to be and what is not.

25 COMMISSIONER OKUDA: Thank you very much

1 for your testimony.

2 CHAIRPERSON SCHEUER: Thank you.

3 Commissioner Giovanni.

4 COMMISSIONER GIOVANNI: Thank you, Chair.

5 Thank you, Mr. Hoffman, for taking the time
6 and making the time to testify today to share your
7 perspectives.

8 I just have one question. Are you aware of
9 any opportunity that was provided to you or others in
10 the community in terms of outreach from the developer
11 or consultants from the developer to hear your points
12 of view about this?

13 THE WITNESS: Honestly, I did not. This is
14 one project even more so than others they've been
15 trying to push through in different forms for a long
16 time, and all the time we're playing catch up to even
17 find out when the meetings are. The only thing I
18 heard of or do know of that is them approaching
19 Hawaiian families to try to give letters in support
20 of the project, but not actually wanting to hear what
21 was there. I believe those people denied their
22 request, but I never heard of any outreach from them.

23 COMMISSIONER GIOVANNI: Thank you very
24 much.

25 CHAIRPERSON SCHEUER: Commissioner Chang.

1 COMMISSIONER CHANG: Aloha, Mr. Hoffman. I
2 just wanted to confirm what I thought you said that
3 you have no lineal descendents to the area.

4 THE WITNESS: No, that's correct.

5 COMMISSIONER CHANG: But you said you heard
6 that there are burials there, is that what you said?

7 THE WITNESS: Yes. That's just what I've
8 heard through families. I know there was LCAs there,
9 burials and heiau. It's not my place, I feel, to
10 share that.

11 I know often that's not even wanted to be
12 shared with certain parties, but that's just what I
13 heard. Don't quote me on anything, but, yeah.

14 COMMISSIONER CHANG: Mahalo. I appreciate
15 your testimony. Thank you.

16 THE WITNESS: Thank you.

17 CHAIRPERSON SCHEUER: Commissioners,
18 anything further for this witness?

19 If you would indulge me. I just, as we
20 navigate through the pandemic -- I think we lost him.

21 All I was going to ask, if he was still
22 with us, whether or not he would have been able to
23 testify had we been in person, as we're remote
24 through the pandemic trying to assess what kinds of
25 hybrid models of our proceedings we might adopt if

1 allowed by law to expand rather than restrict our
2 ability to hear from members of the public.

3 With that said, it is 11:56 A.M., we have
4 35 people who are attendees. If you're desiring to
5 give public testimony on this matter, I'm not sure we
6 are going to be able to make it before lunch, but use
7 the raise-your-hand function on the ZOOM meeting
8 platform to indicate that you're desiring to give
9 public testimony on this matter.

10 I see one. Are there others? If it's a
11 small amount, my intention is to try to see if we can
12 take public oral testimony, then go into lunch break
13 and move on with our proceedings.

14 I am going to admit Ms. Hope Kalae. If you
15 could enable your audio and visual, I will swear you
16 in. We have written testimony on this matter as
17 well.

18 Can you enable your video? Not required,
19 but useful. Now you're on mute, but we can see you.
20 There we go.

21 THE WITNESS: Aloha.

22 CHAIRPERSON SCHEUER: Now we have both.

23 THE WITNESS: I don't think you can hear
24 me.

25 CHAIRPERSON SCHEUER: I need to swear you

1 in if you're here as a witness to give public
2 testimony.

3 THE WITNESS: Well, I would like to
4 testify. I would like to thank my friends for
5 testifying.

6 CHAIRPERSON SCHEUER: Ms. Kalae --

7 THE WITNESS: I can't hear you at all,
8 Jonathan.

9 CHAIRPERSON SCHEUER: I need to swear you
10 in.

11 THE WITNESS: Okay.

12 CHAIRPERSON SCHEUER: Do you swear or
13 affirm the testimony you're about to give is the
14 truth?

15 THE WITNESS: I do.

16 CHAIRPERSON SCHEUER: You have two minutes
17 for testimony. You can us questions, but we are not
18 bound to respond them, but we will gladly accept your
19 testimony.

20 HOPE KALAE

21 Was called as a witness by and on behalf of the
22 public, was sworn to tell the truth, was examined and
23 testified as follows:

24 DIRECT EXAMINATION

25 THE WITNESS: Thank you.

1 Quickly my question is about the existing
2 Wailua NPDES permit for the wastewater treatment
3 plant, and would the increase of the proposed project
4 300,000 gallons of untreated sewage require an
5 alteration to this existing NPDES permit?

6 I couldn't find that addressed. And
7 actually the exhibits, most of them are ten years
8 old. They're stale. And especially the water master
9 plan addresses 50 farm lots, and goat farms, and
10 there is absolutely no way to translate that water
11 master plan to this apartment project of 683
12 apartments.

13 And Kauai doesn't need affordable
14 apartments, it needs affordable housing. None of the
15 86 single-family dwellings are slated to be
16 affordable on this.

17 So the prior permissions were granted for a
18 way different project. You can't comment on a goat
19 farm and translate it to almost 700 apartment
20 buildings. And Waiakea Stream had great importance.
21 Waiapana is noted in this EIS at all. The well is
22 right next to a wetland, and it can have great impact
23 on the underground aquifer.

24 The cultural landscape has been greatly
25 altered from the time of precontact period, and the

1 mo'olelo that have been brought down about the plants
2 that don't exist any more, it was really -- the
3 wetland area was really important and one of the
4 mo'olelo, ku mowena kalakaua o kapaa (phonetic) grass
5 doesn't even exist there any more.

6 CHAIRPERSON SCHEUER: Ms. Kalae --

7 THE WITNESS: -- I have seen the cultural
8 practitioners --

9 CHAIRPERSON SCHEUER: Can you summarize
10 your testimony, please?

11 THE WITNESS: -- testify about cultural
12 practices that are not classified and trespassed
13 behind --

14 CHAIRPERSON SCHEUER: Ms. Kalae, can you
15 please summarize?

16 THE WITNESS: I'm just asking you not to
17 approve this zoning to Urban right now. Rural would
18 be way more appropriate if you're going to change the
19 zoning of this project at all.

20 CHAIRPERSON SCHEUER: Mahalo nui. I'm
21 going to ask you to try and listen if there's any
22 questions. Mr. Yuen?

23 MR. YUEN: Petitioner has no questions.

24 CHAIRPERSON SCHEUER: Thank you. Mr.
25 Donahoe?

1 MR. DONAHOE: Thank you. County has no
2 questions.

3 CHAIRPERSON SCHEUER: Mr. Yee, Office of
4 Planning?

5 MR. YEE: No questions, thank you.

6 CHAIRPERSON SCHEUER: Ms. Isaki,
7 Intervenor?

8 CROSS-EXAMINATION

9 BY MS. ISAKI:

10 Q Ms. Kalae, can you hear?

11 A Yeah.

12 Q Okay good. Just very quick -- okay, you
13 mentioned the wetland is culturally important and you
14 mentioned the ku mowena Kalakaua grass (phonetic); is
15 that correct?

16 A Right.

17 Q And do you know if people collect that
18 grass or gather it?

19 A Well, they did, but I certainly don't think
20 it's any more. It's a wetland rush. There is no
21 more wetland there. In the traditional cultural
22 landscape was a back dune where the pahale of kuleana
23 were located. Then there was a wetland that was
24 brackish to fresh, and the Kalakaua grass, the
25 mo'olelo many people that know what it means blush.

1 That's all I'll say.

2 But I haven't been able to find any, and
3 it's so drastically drained there, but the fact that
4 Waiakea Stream is not named in this EIS, the wetland,
5 there is a brief mapping of it with the well right
6 next to it, but there is no consideration of the
7 impact to this Waiakea wetland.

8 Q One more question on the wetland.

9 Are you saying that the wetland used to be
10 larger or are you talking about --

11 A It used to be quite a large brackish
12 wetland behind the back dunes, and the Waiakea
13 wetland that came down was freshwater adding to this
14 whole back water, back dune system.

15 Q And where is the back dune system if you
16 were looking at a map and you saw Kapaa Middle School
17 directly south or east or --

18 A It would be directly southeast makai in the
19 lowland area. The part that floods.

20 Q Thank you. Thank you. That's all my
21 questions.

22 CHAIRPERSON SCHEUER: Thank you,
23 Intervenor.

24 Commissioners, are there any questions for
25 this witness? Seeing none.

1 Thank you very much, Ms. Kalae, for your
2 testimony.

3 THE WITNESS: Thank you for your time and
4 consideration.

5 CHAIRPERSON SCHEUER: Aloha. I'm going to
6 move Ms. Kalae back to being an attendee. So for
7 attendees in the ZOOM meeting, are there any other
8 individuals who wish to give testimony on this
9 matter? If you wish to do so, you need to use the
10 raise-hand function on ZOOM. Or if you're calling in
11 by phone, press *9.

12 I am seeing nobody raising their hand using
13 the raise-hand function.

14 So Commissioners and parties, it is
15 12:05 P.M., I'm going to recommend we take a
16 40-minute break and resume proceedings at 12 --

17 CHIEF CLERK: Chair, we do have a hand
18 raised.

19 CHAIRPERSON SCHEUER: It came after I
20 stopped looking. Gabriela Taylor.

21 I need to have a sense of how many people
22 who still want to testify. Is there anybody else who
23 is attending the meeting, not a panelist, but
24 watching via ZOOM who wishes to testify in addition
25 to Gabriela Taylor. Ms. Regush. Okay.

1 I'm going to allow briefly Ms. Taylor and
2 Ms. Regush. I'm not going to admit you, just going
3 to ask you if you're available to testify starting at
4 12:45. Ms. Taylor, are you available to testify
5 12:45?

6 You might need to unmute yourself, but I've
7 allowed you to talk. We cannot hear you. You're
8 muted. I'm allowing the same for Ms. Regush, are you
9 available to testify? You need to unmute yourself.

10 MS. REGUSH: Yes, thank you. This is Rayne
11 Regush. I raised my hand to let you know I got a
12 text from Judy Dalton who is reporting her *9 is not
13 working and she had hoped to testify on behalf of
14 Sierra Club.

15 CHAIRPERSON, SCHEUER: I see her logged in,
16 so she wouldn't do *9, just use the raise-your-hand
17 function.

18 MS. TAYLOR: Gabriela Taylor, can you hear
19 me?

20 CHAIRPERSON SCHEUER: We can hear you. Are
21 you available at 12:45?

22 MS. TAYLOR: Yes, I am.

23 CHAIRPERSON SCHEUER: Ms. Regush, I assume
24 Judy Dalton is available as well. My desire is to
25 take a break. We have been going for over an hour.

1 We need to give a break to the parties as well as to
2 our court reporter. So hearing no concerns, it's now
3 12:08. I'm going to seek that we reconvene at
4 1:00 P.M. for proceedings.

5 We will continue with public testimony in
6 this matter. Any concerns from the parties?

7 Mr. Yuen?

8 MR. YUEN: What time are we going to quit
9 today?

10 CHAIRPERSON SCHEUER: 3:00 P.M. We are
11 going to recess until 1:00. Is that okay, Mr. Yuen?

12 MR. YUEN: Yeah.

13 CHAIRPERSON SCHEUER: County?

14 MR. DONAHOE: Fine with me, Chair. Thank
15 you.

16 CHAIRPERSON SCHEUER: Mr. Yee?

17 MR. YEE: No objection.

18 MS. ISAKI: No objection.

19 CHAIRPERSON SCHEUER: We're going to recess
20 until 1:00 P.M., start testimony with Gabriel Taylor,
21 and Ms. Judy Dalton.

22 (Noon recess taken.)

23 CHAIRPERSON SCHEUER: Sitting in for Mr.
24 Wynhoff who had a court appearance is Deputy AG Julie
25 China.

1 It's 1:01. We're on the record.

2 I have admitted Gabriela Taylor in as
3 public testifier. Is it possible for you to enable
4 your video?

5 THE WITNESS: I just press the unmute
6 button?

7 CHAIRPERSON SCHEUER: The unmute is great
8 and we can hear you. There is also a little icon
9 that looks like a camera.

10 THE WITNESS: Okay.

11 CHAIRPERSON SCHEUER: Possibly at the
12 bottom left of your screen.

13 That's okay. If you're comfortable, we
14 will proceed just with oral testimony, but I'm going
15 to ask you to swear or affirm that the testimony
16 you're about to give to is the truth.

17 THE WITNESS: It is.

18 CHAIRPERSON SCHEUER: So if you would state
19 your name and address for the record and then I'll
20 try to keep you to two minutes for your oral
21 testimony, then be available for questions.

22 GABRIELA TAYLOR

23 Was called as a witness by and on behalf of the
24 public, was sworn to tell the truth, was examined and
25 testified as follows:

1 DIRECT EXAMINATION

2 THE WITNESS: My name is Gabriela Taylor,
3 49-year resident and property owner in Kapaa.
4 Writing this testimony with the intention to stop the
5 zoning change for HoKua Place from Agriculture to
6 Urban. Here are the reasons.

7 Water, HoKua Place development dug a well
8 that did not produce water, and the County DOW has
9 not issued a permit to HoKua Place. It's not clear
10 whether the Department of Water can provide water for
11 716-unit development.

12 Currently the County is not issuing
13 building permits on lots of new houses in several
14 areas on the east side, Waipouli Road, for one,
15 because there is a shortage of water, they're not
16 allowing new buildings to be built on that road and
17 other places.

18 So the Kulana Development is right across
19 the road from HoKua Place, hence, they use their own
20 water source and built a huge tank for storage
21 because they couldn't get County water.

22 Number three, aging infrastructure. Sewage
23 contaminated from the Wailua River and ocean. When a
24 sewage bank burst under a car approaching the grid
25 three years ago.

1 Design standards used by the County of
2 Public Works were based on 1973 and 2008 references.
3 The following information was emailed to me from
4 Donna Akuda of Wastewater Management Division.
5 Wastewater Management Division has not provided
6 drawings on how this project would connect to the
7 County sewer system.

8 The County is unaware of how much flow will
9 be produced by HoKua Place and whether the existing
10 sewer system has enough capacity to accommodate the
11 flow.

12 The current wastewater management chief
13 (indecipherable) does not have the information to be
14 able to determine whether HoKua Place can be
15 serviced.

16 The Wailua wastewater plant will have to be
17 moved inland at some point due to rising sea levels.

18 Affordability. Not really, according to
19 Ron Agor, owners condos at HoKua Place will have to
20 pay sizeable maintenance fees each month, perhaps
21 between 700 and 1100.

22 That fee is ongoing unless you sell the
23 condo. Also it's important to note that all of the
24 home prices are quoted with the caveat, quote, "or
25 market value", unquote, which means of course they

1 have an excuse to increase the selling price from
2 that listed in the general plan.

3 Food supply in Kauai. 90 percent of our
4 food is imported. That's why residents have to keep
5 a stash of food and water at home in case of
6 hurricane or other climate disaster.

7 HoKua Place land is zoned Agriculture, a
8 better use of this land would be to grow food rather
9 than houses.

10 CHAIRPERSON SCHEUER: If I can ask you to
11 summarize.

12 THE WITNESS: Yeah, okay.

13 Well, the summary would be that these and
14 other things like the traffic that is slowly coming
15 back to Kauai, you know, is crippling, it's horrible.
16 As soon as the tourists arrive, that will happen.

17 The summary, I think that this should not
18 be passed because of these factors that I just
19 mentioned as well as other ones. Thank you.

20 CHAIRPERSON SCHEUER: Thank you very much
21 for your testimony. If you would just stay with us
22 to see if there's any questions for you, starting
23 with the Petitioner, Mr. Yuen.

24 MR. YUEN: Petitioner has no questions.

25 CHAIRPERSON SCHEUER: County of Kauai,

1 Chris Donahoe.

2 MR. DONAHOE: County has no questions at
3 this time. Thank you.

4 CHAIRPERSON SCHEUER: Bryan Yee, Office of
5 Planning.

6 MR. YEE: No questions, thank you.

7 CHAIRPERSON SCHEUER: Intervenor Bianchi
8 Isaki.

9 MS. ISAKI: No questions.

10 CHAIRPERSON SCHEUER: Commissioners, do we
11 have any questions for Ms. Taylor at this time?

12 Ms. Taylor, you said you're a 49-year
13 resident of the island?

14 THE WITNESS: Yes.

15 CHAIRPERSON SCHEUER: Thank you very much
16 for participating and for your patience in these
17 matters waiting to participate. We really appreciate
18 it.

19 THE WITNESS: You're welcome.

20 CHAIRPERSON SCHEUER: Thank you very much.
21 I'm going to move you back to being an attendee. And
22 I'm going to --

23 CHIEF PLANNER: Excuse me, Chair.

24 CHAIRPERSON SCHEUER: Mr. Derrickson.

25 CHIEF PLANNER: I've been informed that

1 Judy Dalton is available and she is at Rayne Regush's
2 computer.

3 CHAIRPERSON SCHEUER: Okay. I see Judy
4 Dalton at Rayne Regush. Yes, we can see you.

5 THE WITNESS: Aloha Commissioners.

6 CHAIRPERSON SCHEUER: Let me swear you in
7 first.

8 Do you swear or affirm the testimony you're
9 to give is the truth?

10 THE WITNESS: Yes, I do.

11 CHAIRPERSON SCHEUER: If you would state
12 your name and address for the record and then
13 proceed.

14 THE WITNESS: Judy Dalton, 4330 Kauai Beach
15 Drive, Lihue.

16 CHAIRPERSON SCHEUER: Please proceed.

17 JUDY DALTON

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

21 DIRECT EXAMINATION

22 THE WITNESS: Aloha, Commissioners.

23 Our small rural Island of Kauai with its
24 delicate ecosystem is being threatened by
25 overdevelopment and its attendant demands.

1 HoKua Place will be one of the largest
2 housing developments Kauai has ever seen. It would
3 be in the wrong place and with the wrong
4 consequences.

5 The developers contend that at least part
6 of HoKua Place would meet Kauai's current desperate
7 need for affordable housing, and the numbers do not
8 prove that out.

9 The cost of the houses offered when the
10 condo fees are included puts these homes out of reach
11 for most Kauai families in need of housing. Plus
12 there is nothing preventing outside investors from
13 flipping these units for market rate.

14 We support genuinely affordable housing,
15 but this project is not that. The developer has, by
16 their own admission, stated that HoKua Place would
17 generate a total of approximately 1900 vehicle trips
18 per hour during morning and afternoon rush hours.
19 This substantial increase to the already grid-locked
20 Kapaa-Wailua corridor would subject travelers to
21 intolerable bumper to bumper traffic from the north
22 shore of Kapaa to the main centers of commerce. This
23 would also impact emergency services.

24 The sewage plant is failing due to age and
25 nearing capacity. The EPA has recommended that the

1 plant be moved mauka due to impending sea rise and
2 tsunami threat. At least three large resorts are
3 already in the permitting process ahead of HoKua
4 Place.

5 Regarding the storm water runoff, the
6 developer has not provided a drainage plan indicating
7 how additional runoff from all those acres of
8 concrete and asphalt would impact Waiaka'ea Street
9 and adjacent wetlands with the endangered waterbird
10 and nearshore ocean water.

11 HoKua Place would be inappropriate
12 development that our infrastructure just cannot
13 support.

14 CHAIRPERSON SCHEUER: If you can start to
15 summarize.

16 THE WITNESS: We respectfully ask the
17 Commission to keep this land designated as
18 Agriculture and not Urban to preserve the land, its
19 watershed and our rural way of life.

20 Thank you for the opportunity to comment.

21 CHAIRPERSON SCHEUER: Thank you very much
22 for your testimony, as well as for your persistence
23 in working through the technology to be able to
24 participate. We appreciate it.

25 I'm going to ask if there is any questions

1 for you, starting with attorney for the Petitioner,
2 Mr. Yuen?

3 MR. YUEN: Petitioner has no questions.

4 CHAIRPERSON SCHEUER: County of Kauai, Mr.
5 Donahoe?

6 CROSS-EXAMINATION

7 BY MR. DONAHOE:

8 Q Hi, Ms. Dalton, you say that your address
9 is 433 -- was it 5, Kauai Beach --

10 A 4330 Kauai Beach Drive, Lihue.

11 Q Isn't that Kauai Beach Resort?

12 A Yes, Kauai Beach Villas. I've lived there
13 32 years.

14 Q Would you agree that's a large development?

15 A We have, I think, 160 units. Yes, fairly
16 large.

17 Q And you're okay with living at that large
18 development?

19 A Yes, it's fine.

20 Q And then isn't it true, aren't some of the
21 individual rooms there sold out?

22 A Yes, about 50 or 60 percent of it is time
23 share.

24 Q Thank you. I have nothing further. Thank
25 you.

1 CHAIRPERSON SCHEUER: I'm going to note
2 that Mr. Wynhoff is back with us.

3 Questions from the Office of Planning, Mr.
4 Yee?

5 CROSS-EXAMINATION

6 BY MR. YEE:

7 Q Just a simple one to confirm for the record
8 what I think the prior witness said.

9 Ms. Dalton, do you represent an
10 organization in your testimony today?

11 A Yes, Sierra Club Kauai Group, Sierra Club.

12 MR. YEE: Thank you. No further questions.

13 CHAIRPERSON SCHEUER: Ms. Isaki?

14 CROSS-EXAMINATION

15 BY MS. ISAKI:

16 Q Thank you.

17 I have two quick questions. One is follow
18 up to Mr. Yee's question.

19 Have you or any of the Sierra Club members
20 seen any wetland birds to your knowledge on or near
21 the parcel?

22 A Yes, we have. Some of the ones that we
23 have been seeing over there are the koloa duck,
24 Hawaiian gallinule, Hawaiian stilts, Hawaiian coot,
25 and nene.

1 Q And just to clarify, so some of your
2 members or yourself have seen these birds there?

3 A Yes, Bob Nishaka (phonetic) has. He's a
4 hike leader.

5 Q Thank you.

6 Just another quick question. Do you feel
7 like there is a difference between infill development
8 in Lihue, or your development in Lihue and building
9 in Kapaa?

10 A There is no impact really with our
11 150 units, and we're just right there like two
12 minutes from town. And so if you have a development
13 that's at the far end of Kapaa, then that starts
14 affecting everyone from Kapaa to the North Shore and
15 we're just right there next to Kapaa, so there is a
16 huge difference.

17 Q And do you feel like the fact that you live
18 in a developed area, or do you feel like people in --
19 that live in developed areas don't necessarily have
20 anything, have a strong opposition to this particular
21 project?

22 A Say that last part again.

23 Q Sorry, I was formulating the question in my
24 head.

25 Do most people on Kauai live in developed

1 areas?

2 A Well, you mean like HoKua Place? No,
3 there's nothing quite that big, except Princeville.

4 Q And do you know how many acres Princeville
5 is off the top of your head or how many units?

6 A I don't know.

7 Q Thank you.

8 CHAIRPERSON SCHEUER: Thank you.

9 Commissioners, beginning with Commissioner
10 Gary Okuda.

11 COMMISSIONER OKUDA: Thank you very much,
12 Mr. Chair.

13 And thank you very much, Ms. Dalton, for
14 testifying.

15 So again, your testimony is on behalf of
16 the Sierra Club; is that correct?

17 THE WITNESS: That's correct.

18 COMMISSIONER OKUDA: Is it true or not true
19 that there is a need for housing on Kauai?

20 THE WITNESS: Yes, there is a need, but not
21 at this place. And we want affordable housing, and
22 HoKua Place is not affordable.

23 COMMISSIONER OKUDA: But my first question
24 was just whether or not there is a need for housing.

25 THE WITNESS: Yes, there is.

1 COMMISSIONER OKUDA: Now, with respect to
2 affordable housing, do you dispute this argument that
3 is sometimes made that where developers are required
4 to build housing to fall within, you know, the
5 affordable range, and let's not -- you know, whatever
6 that definition might be, you know, many times it's a
7 percentage and things like that. But let's use the
8 word "affordable" generically.

9 Have you heard of that argument that's made
10 to compel developers to build housing within the
11 affordable range, the development will not pencil
12 out?

13 In other words, it's not going to be
14 economically feasible unless the developer is allowed
15 to build the high end housing?

16 THE WITNESS: I'm not too sure how to
17 answer that.

18 COMMISSIONER OKUDA: Okay.

19 So do you have any evidence or testimony to
20 contradict the argument that to have affordable
21 housing built, the developer has to be allowed to
22 build higher end housing so that the development
23 makes a profit?

24 THE WITNESS: I'm not too sure of the
25 numbers. I'm sorry.

1 COMMISSIONER OKUDA: But would you agree,
2 just as a matter of general principle, that if a
3 development does not make a profit, it's just not
4 going to be built? In other words, no profit, no
5 development?

6 THE WITNESS: That stands to reason. I
7 understand where you are coming from. That would
8 stand to reason.

9 COMMISSIONER OKUDA: Some developers say
10 that they need to show the bank, for financing, a
11 profit margin sometimes between ten percent to
12 12 percent, otherwise the bank's underwriting
13 department will not agree to finance the developer.

14 Have you heard anything like that, or have
15 any information to contradict that kind of statement?

16 THE WITNESS: No.

17 COMMISSIONER OKUDA: If a development the
18 size of what we are being asked to approve out in
19 Kapaa were to have to be built -- and I'm not saying
20 it has to be built -- but let's accept that
21 assumption here.

22 If a development of that size to be built
23 to address housing issues on Kauai, where would you
24 place that development? Would you place it in Kapaa
25 or would you place it somewhere else?

1 THE WITNESS: Definitely not in Kapaa, not
2 right in the middle where we are already congested,
3 where you sit in your car for half a minute and then
4 go forward for one car length and sit in your car
5 another half minute, not there.

6 Maybe at the very far end of the island as
7 far as you can go at the far end, but not right in
8 the center, in the middle of where there's already
9 congestion, immense congestion.

10 COMMISSIONER OKUDA: And my final question
11 is just for your comment either individually or as
12 representative of Sierra Club, I want to get your
13 input on this.

14 You know, the State has sent a number of us
15 to various conferences on the mainland to learn about
16 housing, land use planning, and we actually pay
17 attention and attend these classes.

18 And some of the so-called experts say that
19 the goal in planning should be to have your housing
20 near places of employment, or near industry so that
21 it cuts commuter time.

22 I'm not going to say, well, you answer this
23 question this way in this hearing, therefore it
24 guides you in some future hearing. But does
25 development on Kauai, in your view, or based on what

1 you know, based on your involvement with Sierra Club,
2 does it make more sense to have this type of
3 development in Lihue?

4 And I'm not specifically picking the spot,
5 but, for example, across from Wilcox Hospital, does
6 that make more sense?

7 THE WITNESS: In Lihue it definitely makes
8 more sense. That's where most of the people work,
9 and easier for them to walk to work.

10 But a place of this size, it would be
11 difficult to place it in Lihue, I believe.

12 COMMISSIONER OKUDA: But the development,
13 if you or if santa clause or the tooth fairy came to
14 see you about picking a place maybe without regard
15 too much to the specific size, appropriateness of
16 place for future development, you would focus it more
17 in or closer to Lihue, and not in an outlying place.

18 Is that a fair statement of your testimony?

19 THE WITNESS: Yes, that's a fair statement.

20 COMMISSIONER OKUDA: Thank very much, Ms.
21 Dalton. Thank you, Mr. Chair. No further questions.

22 CHAIRPERSON SCHEUER: Thank you.

23 Commissioner Giovanni.

24 COMMISSIONER GIOVANNI: Thank you, Chair;
25 thank you, Ms. Dalton, for your testimony today and

1 for making the time for this period. I've got two
2 simple questions.

3 The first is, in your testimony you made
4 the comment that the condos would be unaffordable due
5 to maintenance fee. And then they would be flipped
6 to market.

7 Can you explain what you mean by "flipped
8 to market", your understanding of that?

9 THE WITNESS: Yes. People would turn
10 around and sell it at market price and make a profit,
11 because they're buying it at so-called affordable
12 housing rate, so foreign investors or off-island
13 investors, that's motivation for them. Just buy it
14 and turn around and sell it at a profit.

15 Right now, we're silent.

16 COMMISSIONER GIOVANNI: I apologize, I
17 forgot to turn my phone off.

18 So your contention is that someone who
19 qualified to buy a condo that was designated in the
20 affordable category at a discounted price, once the
21 maintenance fees were added, it would be expensive
22 and then they would be unable to flip that to market;
23 is that your understanding?

24 THE WITNESS: Well, there are people who
25 look for bargains, and then they hold for a certain

1 amount of time, and then they flip it. That would be
2 true of Kauai residents. They would be happy if they
3 could find something truly affordable. HoKua Place
4 is out of reach for most Kauai residents.

5 COMMISSIONER GIOVANNI: I'll move on.

6 So on behalf of yourself or the Sierra
7 Club, are you aware of either formally, or there was
8 advertised or informally where they approached you
9 directly, was there any outreach by the developer,
10 his representatives or his consultants to confer with
11 you about your concerns about this project?

12 THE WITNESS: No, there was not.

13 COMMISSIONER GIOVANNI: Thank you. No
14 further questions, Chair.

15 CHAIRPERSON SCHEUER: Thank you very much,
16 Commissioner Giovanni.

17 Commissioners, are there further questions
18 for the witness? Commissioner Wong.

19 COMMISSIONER WONG: Thank you, Chair.

20 Ms. Dalton, I have a couple questions.

21 The first things I want to start with the
22 base.

23 The Sierra Club, what is their base, or
24 what is their goal or their bylaws, their mission?

25 THE WITNESS: To preserve and protect the

1 environment.

2 COMMISSIONER WONG: Okay, thank you.

3 Next question is, did you or anyone in the
4 Sierra Club read the EIS on this project?

5 THE WITNESS: Oh, yes, absolutely. Rayne
6 Regush has read it over the years, started several
7 years ago.

8 COMMISSIONER WONG: So the question I have
9 is, previous witness talked about wetlands in the
10 Petition Area. Did you read anything about wetlands
11 in the EIS or know about a wetland in the area?

12 THE WITNESS: All I know is that the
13 project would be right across the bypass road from
14 wetlands. And so we're concerned that the runoff
15 would go right across the road and, you know, affect
16 the wetlands and the endangered seabirds there.

17 COMMISSIONER WONG: So the question I have,
18 a previous witness said on the Petition Area there is
19 a wetlands or portion of the wetland is on the area.
20 What would happen? I mean, if the development, would
21 it affect, or there is no problems, or what would be
22 the Sierra Club's position on this?

23 THE WITNESS: Well, that's why we are
24 against this being zoning, the boundary amendment
25 zoning from changing. That's our position that we

1 don't want it to happen.

2 COMMISSIONER WONG: Because there is a
3 wetlands in the Petition Area, also not only adjacent
4 but on the Petition Area?

5 THE WITNESS: It's adjacent, wetland is
6 adjacent, just across the bypass road.

7 COMMISSIONER WONG: Thank you, Ms. Dalton;
8 thank you, Chair.

9 CHAIRPERSON SCHEUER: Are there further
10 questions for Ms. Dalton? Seeing none.

11 Thank you very much, Ms. Dalton, for your
12 testimony.

13 THE WITNESS: Thank you.

14 CHAIRPERSON SCHEUER: We appreciate it.
15 I'm going to move you back to being an attendee.
16 Okay.

17 Is there anybody who is attending the
18 meeting as an attendee who wishes to testify on this
19 matter? If so, you should use the raise-your-hand
20 function.

21 Now, that varies depending on the way
22 you're accessing this meeting. If you are calling in
23 from a regular phone, just using the phone function
24 of your phone, the phone function, dialing the number
25 and calling in, and that's how you're in, you press

1 *9 and that's raised hand, if you're somehow using
2 the phone, laptop, desk top and accessing via the
3 ZOOM software, towards the bottom of the screen,
4 there should be a raise-your-hand function available
5 and you click on that to raise your hand.

6 Is there anybody who wishes to testify,
7 raise your hand. Going once, going twice. Seeing
8 none, I'm going to move on further on our agenda and
9 I believe the next thing that we need to do is the
10 list of exhibits and entering those into the record.

11 We're going to start with the Petitioner,
12 Mr. Yuen and Ms. Ahu.

13 MR. YUEN: Petitioner moves to enter into
14 evidence Petitioner's Exhibits 1 through 38.

15 CHAIRPERSON SCHEUER: Are there any
16 objections from the parties, Kauai County?

17 MR. DONAHOE: No objection from Kauai
18 County.

19 CHAIRPERSON SCHEUER: OP?

20 MR. YEE: No objection.

21 CHAIRPERSON SCHEUER: Intervenor?

22 MS. ISAKI: No objections.

23 CHAIRPERSON SCHEUER: Commissioners?
24 Hearing none, Petitioner's Exhibits 1 through 38?

25 MR. YUEN: Yes.

1 CHAIRPERSON SCHEUER: Are entered into the
2 record.

3 Kauai County, Mr. Donahoe.

4 MR. DONAHOE: Thank you. We move to move
5 County Exhibits A through E into evidence.

6 CHAIRPERSON SCHEUER: Are there objections
7 from the parties? Mr. Yuen?

8 MR. YUEN: No objection.

9 MR. YEE: No objection.

10 CHAIRPERSON SCHEUER: Intervenor.

11 MS. ISAKI: Sorry, no objection.

12 CHAIRPERSON SCHEUER: Commissioners?
13 Commissioner Aczon.

14 VICE CHAIR ACZON: Mr. Chair, just a
15 clarification. Does this mean that the public
16 testimony, that the testimony, the public testimony
17 is closed?

18 CHAIRPERSON SCHEUER: Yes.

19 VICE CHAIR ACZON: Thank you.

20 CHAIRPERSON SCHEUER: Commissioners, any
21 objections to the County's Exhibits A through E being
22 entered into the record? Seeing none, they're
23 admitted into the record.

24 Mr. Yee, Office of Planning.

25 MR. YEE: Office of Planning moves Exhibits

1 1, 2A, 2B and 3 through 16 into the record.

2 CHAIRPERSON SCHEUER: Mr. Yuen?

3 MR. YUEN: Petitioner has no objections.

4 CHAIRPERSON SCHEUER: County?

5 MR. DONAHOE: County has no objections as
6 well.

7 CHAIRPERSON SCHEUER: Intervenor?

8 MS. ISAKI: No objection. Thank you.

9 CHAIRPERSON SCHEUER: Commissioners?

10 Seeing none, they're there entered into the record.

11 CHAIRPERSON SCHEUER: Now, Intervenor, with
12 regards to the introduction of your exhibits, we
13 received your proposed exhibit list, but we did not
14 actually receive a position statement or anything
15 that would give the parties or the Commission an
16 indication as to the relevance of each particular
17 exhibit.

18 So what we are going to be asking, is
19 either you make an offer proof as to relevance of
20 each exhibit as we go through. What we are going to
21 ask, we're going to ask you to make an offer of proof
22 for the relevance of each exhibit as you go through
23 your case rather than admit them.

24 Normally people offer a position statement
25 which relates the various exhibits they're going to

1 be calling on, and why they're being entered into the
2 record, but you did not do so.

3 MS. ISAKI: Thank you, Chair. I guess we
4 did not understand that there was also a position
5 statement required, instead we had them cited by our
6 witnesses in our witness statement.

7 So we can produce a list for each witness
8 for the exhibits that they referenced, or if there is
9 another method. I guess I was anticipating
10 discussing some the exhibits that we were supporting,
11 and I'm sorry, if I can -- (indecipherable) and my
12 co-counsel might have more to add later on.

13 CHAIRPERSON SCHEUER: Mr. Collins.

14 MR. COLLINS: Just that the -- all of the
15 exhibits were referenced in witness statements, so we
16 believe that all of the parties had notice of what
17 the purpose or relevance was, and so unless we're
18 prohibited from doing so, we would like to move all
19 of our exhibits into evidence as well.

20 CHAIRPERSON SCHEUER: Well, I can certainly
21 ask whether there is any objections from any of the
22 parties to so doing.

23 Are there any objections from the
24 Petitioner to moving all of Intervenor's Exhibits,
25 which are numbered 1 through 100 and --

1 MS. ISAKI: 124.

2 CHAIRPERSON SCHEUER: Exhibits 1-124 into
3 the record. Are there objections, Mr. Yuen?

4 MR. YUEN: Petitioner objects to
5 Intervenor's Exhibit 53, 54, 55, 56, 58, 59 and 99.

6 CHAIRPERSON SCHEUER: Can you repeat that
7 list slightly more slowly? I really appreciate it,
8 but please repeat it slowly. 53 through --

9 MR. YUEN: -- through 56, 58 and 59 and 99.

10 CHAIRPERSON SCHEUER: Before we go down
11 this road further, I'm going to ask the other parties
12 whether they have objections to any of the other
13 exhibits from the Intervenor.

14 County?

15 MR. DONAHOE: I do. Would you like me to
16 go down the list?

17 CHAIRPERSON SCHEUER: Yes.

18 MR. DONAHOE: Intervenor's 6, 10, and 17.

19 CHAIRPERSON SCHEUER: 6, 10 and 17.

20 MR. DONAHOE: Yes. 55.

21 CHAIRPERSON SCHEUER: Which is one of the
22 ones noted by Mr. Yuen.

23 MR. DONAHOE: And actually the same ones as
24 Mr. Yuen.

25 CHAIRPERSON SCHEUER: 6, 10, 17 and the

1 ones noted by Petitioner's attorney.

2 MR. DONAHOE: No other objections. Thank
3 you so much, Chair.

4 CHAIRPERSON SCHEUER: Mr. Yee?

5 MR. YEE: Office of Planning won't be
6 objecting to the admission of exhibits -- let me --
7 does not object to the admission of exhibits without
8 prejudice to our ability to argue how relevant they
9 may be in particular as to whether they might be
10 redundant of other exhibits or documents that are
11 already admitted into evidence.

12 CHAIRPERSON SCHEUER: Understood, okay.

13 So, parties, what I'm going to suggest we
14 do, is that I'm going to read out the accepted
15 exhibits and offer first to see whether or not we can
16 move all the other exhibits that were not objected to
17 into evidence.

18 And then what I'm going to suggest as the
19 second procedure is that as those non-accepted or
20 those objected to exhibits come up, we take them up
21 one by one with offers of proof.

22 Procedurally, Intervenors, how are you with
23 that?

24 MS. ISAKI: Yes, that sounds like a good
25 idea.

1 CHAIRPERSON SCHEUER: So I'm going to -- so
2 a final check, to admit all the Intervenor's 1
3 through 124 with the exception of Exhibits 6, 10, 17,
4 53 through 56, 58, 59 and 99.

5 Any further objections, Petitioner?

6 MR. YUEN: None.

7 CHAIRPERSON SCHEUER: County?

8 MR. DONAHOE: None.

9 CHAIRPERSON SCHEUER: Mr. Yee?

10 MR. YEE: No objection.

11 CHAIRPERSON SCHEUER: So the exhibits that
12 I listed are now entered into the report.

13 For Exhibits 6, 10, 17, 53 through 56, 58,
14 59 and 99, they are not entered into the record yet.
15 Intervenor may bring them up and offer of proof as to
16 them when they're needed by their witnesses.

17 With that, it is time that we can move on
18 to the Petitioner presenting their case.

19 If the Petitioner -- do you want to give me
20 a sense of your time? I'm open to either if you want
21 to give everybody a break then start later, and we
22 could spend -- it's 1:36 now, we could reconvene at
23 1:50 and then plow through for an hour and 10 minutes
24 uninterrupted.

25 It's your case. If you want to do that, or

1 we can start your case, take a break, and go until
2 3:00.

3 MR. YUEN: I'm fine either way. It might
4 make sense to start, and then give the court reporter
5 a break.

6 CHAIRPERSON SCHEUER: Okay. That's fine.
7 Why don't you proceed?

8 MR. COLLINS: Mr. Chair, I'm sorry. I
9 actually had a question about the evidence issue.

10 CHAIRPERSON SCHEUER: Okay. Go ahead.

11 MR. COLLINS: Just so that I understand,
12 the exhibits that have not been admitted are subject
13 to an objection as to relevance by whichever parties
14 have said that they're objecting, that's my first
15 question.

16 And then the second question is, that when
17 the objection is to relevance, that's the objection
18 that they're saying these exhibits have no tendency
19 to make the existence of a fact that is a consequence
20 of determination of this contested case, more
21 probable or less probable than it would be without
22 the evidence. That's what the objection is?

23 I just want to understand what the
24 objection is so we can make sure that we can provide
25 the correct offer of proof.

1 CHAIRPERSON SCHEUER: But you're not
2 objecting to the procedure for which I was planning
3 to deal with this on exhibit by exhibit basis?

4 MR. COLLINS: I just want to make sure I
5 understand what the objection is so we are correctly
6 prepared.

7 CHAIRPERSON SCHEUER: That's reasonable.

8 Mr. Yuen and Mr. Donahoe, if you can just
9 clarify the reasons why you objected to those
10 particular exhibits.

11 MR. YUEN: Mr. Chair, I believe that
12 Petitioner objects to the introduction of certain
13 articles and studies without an offer of the author
14 so that we can have the opportunity to examine the
15 author as to the findings or the facts that are
16 stated in the article or in the book.

17 In particular, we object to Mr. Collins'
18 attempting to offer into evidence an article he wrote
19 without the opportunity to examine Mr. Collins to
20 make him a witness.

21 CHAIRPERSON SCHEUER: I'm going to
22 recognize Commissioner Okuda.

23 COMMISSIONER OKUDA: Thank you, Mr. Chair.

24 My follow-up question then is, be more
25 specific. Is the objection an objection to

1 authenticity?

2 MR. YUEN: It's an objection to the
3 contents of the article or book or study in question
4 without the opportunity to examine the author.

5 COMMISSIONER OKUDA: That sounds like a
6 hearsay objection, but that's not my question.

7 My question, my first question is, are any
8 of your objections based on authenticity? In other
9 words, the piece of evidence is not what it purports
10 to be?

11 MR. YUEN: No, it's not an objection as to
12 authenticity.

13 COMMISSIONER OKUDA: Is your objection to
14 any of the evidence based on relevance?

15 MR. YUEN: Some of it is based on
16 relevance, yes.

17 COMMISSIONER OKUDA: Which exhibits can you
18 state that you object to are based on relevance?

19 Just so the record is clear, when I use the
20 term "relevance", I'm using it as that term is used
21 by the Hawaii Rules of Evidence even though the
22 Hawaii Rules of Evidence do not specifically apply to
23 this proceeding.

24 MR. YUEN: It would be 53, 55, 56, 58, and
25 99.

1 COMMISSIONER OKUDA: Do you object to any
2 other pieces of evidence being offered by the
3 Intervenor on the grounds of relevance besides what
4 you just stated?

5 MR. YUEN: No.

6 COMMISSIONER OKUDA: And, Mr. Chair, if I
7 can ask the final question.

8 Are any of your objections to the evidence
9 being -- that you objected to -- are any of the
10 objections based on a hearsay objection, an objection
11 that the evidence is hearsay?

12 MR. YUEN: All of them would be objections
13 as to hearsay unless I have the opportunity to
14 examine the author.

15 COMMISSIONER OKUDA: Do you agree that
16 under the administrative rules that govern contested
17 cases, that hearsay objection or hearsay is not a
18 grounds for basically an automatic exclusion of
19 evidence in a proceeding before an administrative
20 agency such as the Land Use Commission?

21 MR. YUEN: I wouldn't say it's an automatic
22 exclusion.

23 COMMISSIONER OKUDA: It's not an automatic
24 bar to the evidence, correct?

25 MR. YUEN: Correct.

1 COMMISSIONER OKUDA: Thank you, Mr. Chair,
2 no further questions.

3 CHAIRPERSON SCHEUER: So, Mr. Yuen, for
4 Exhibits 53, 55, 56, 58 and 99 can you clarify what
5 objections apply to which exhibits?

6 MR. YUEN: The relevance I think would be
7 53, 55, 56, 58, and 99, and hearsay as to all of
8 them.

9 CHAIRPERSON SCHEUER: 53, 55, 56, 58 and
10 99?

11 MR. YUEN: For relevance and hearsay for
12 all of them.

13 CHAIRPERSON SCHEUER: Mr. Collins, does
14 that clarify?

15 MR. COLLINS: Yes, Mr. Chair. I guess the
16 only other question, and this just applies in the
17 general sense, is that under HRS 91-10 the exclusion
18 of evidence is limited to relevance, repetition --
19 unduly repetitious or immaterial.

20 And can we have clarification about the
21 relevance objection in general, because that doesn't
22 seem to comport with any of the three standards that
23 apply to this proceeding?

24 CHAIRPERSON SCHEUER: Mr. Yuen.

25 MR. YUEN: I'm not sure on its face of the

1 exhibit what the exhibit purports to prove, and why
2 it's necessary for the Intervenor to use the
3 particular exhibit, if the author of the study in
4 question is not available for cross-examination.

5 CHAIRPERSON SCHEUER: So let me just stop
6 right here. You know, I proposed a method of going
7 forward, which was like taking these one by one as
8 they come up. I'm fine to argue this out and spend
9 our afternoon doing this too, I can go either way. I
10 have no actual strong preference to it, I just want
11 to make sure which way we're going.

12 MR. COLLINS: Mr. Chair, I don't want to
13 waste time. I think at least for the legal issue
14 that applies to multiple exhibits, it would be more
15 efficient to get a ruling from the Commission so that
16 we don't have to repeatedly argue this point through
17 every exhibit, but we can do it either way. It's
18 really whatever the Commission is more comfortable
19 with.

20 We don't want to waste time. We're hoping
21 to do this in a way that makes it more efficient.

22 CHAIRPERSON SCHEUER: Just to be really
23 clear, I was not suggesting any of the parties were
24 attempting to slow these proceedings down. If that
25 was interpreted that I was suggesting that, that was

1 not the case.

2 So with regards to Exhibits 53, 55, 56, 58
3 and 99 on relevance, you would like us to see whether
4 we can take them up as a whole or to see whether they
5 meet the legal standard under Chapter 91, an
6 objection as to relevance?

7 MR. COLLINS: No. For the one that's
8 relevance, because that is one of the -- that is one
9 of the three -- irrelevance is one of the three
10 manners in which evidence can be excluded in
11 contested cases. Those we can take up on a point by
12 point basis. But this other one about anything that
13 constitutes hearsay, that's something that I think we
14 would like to have --

15 CHAIRPERSON SCHEUER: Which I believe would
16 be Exhibit 54 and 59, Mr. Yuen?

17 MR. YUEN: 58 and 99.

18 CHAIRPERSON SCHEUER: Exhibit 58 -- so you
19 had both relevance and hearsay objection to 58?

20 MR. YUEN: Right, 58 -- 55, 56, 58 and 99
21 on hearsay.

22 CHAIRPERSON SCHEUER: Would you repeat
23 that, please? If you're on Oahu where I am, my phone
24 is going off with emergency alert, so I did miss for
25 your hearsay.

1 MR. YUEN: 53 -- hearsay all of them. All
2 of the ones that are relevance --

3 CHAIRPERSON SCHEUER: I'm going to
4 recognize Commissioner Ohigashi.

5 COMMISSIONER OHIGASHI: With regard -- are
6 any of these exhibits, Mr. Collins, do you intend to
7 refer to in cross-examination of any of the witnesses
8 that Mr. Yuen has proposed?

9 MR. COLLINS: I think it in part depends
10 upon what they say.

11 COMMISSIONER OHIGASHI: Usually if they're
12 not entered into exhibits, you would have to lay a
13 foundation, wouldn't you, for any particular piece of
14 evidence before they're used in cross-examination?

15 MR. COLLINS: Well, the only exclusion of
16 evidence in a contested case is relevance,
17 materiality or not being unduly repetitious. So the
18 foundation that's required under the Hawaii Rules of
19 Evidence don't apply in a contested case. So no,
20 actually, I don't even believe there needs to be a
21 sponsoring witness for the admission of exhibits into
22 evidence in a contested case.

23 COMMISSIONER OHIGASHI: So what are we
24 going to do? Are we going to allow witnesses to be
25 cross-examined by documents, with documents that we

1 have no reference to if allowed to do so -- I'm just
2 curious where we're going with that.

3 CHAIRPERSON SCHEUER: Who's that a question
4 for?

5 COMMISSIONER OHIGASHI: Mr. Collins.

6 CHAIRPERSON SCHEUER: Following this, I'll
7 recognize Mr. Yee.

8 MR. COLLINS: Commissioner Ohigashi, I
9 don't believe at this point we have any intention of
10 cross-examining any witnesses regarding documents
11 that they're not aware of, and I don't think that
12 that would illicit relevant testimony for the most
13 part, unless they're saying they're an expert in
14 something, and they recognize some document as a
15 well-known thing in their field, and then they don't
16 know anything about that document. Other than that,
17 I don't see there being any line of questioning that
18 would fit your fact pattern, and that's not the
19 intention of -- all of these exhibits were in the
20 witness statements that were filed.

21 And so at least at this point our concern
22 has to do with the objection on hearsay, and we're
23 hoping to get a ruling on the issue of exhibits being
24 excluded on the basis of hearsay, because that does
25 not go to relevance, doesn't go to materiality or not

1 being unduly repetitious.

2 So the facts that the person who authored
3 the particular written document is not subject to
4 cross-examination is not a factor under 91-10. So we
5 are hoping to get a ruling on that so that we can be
6 clear that we can focus our offer of proof on the
7 issue of relevance, not on these other things that
8 don't have anything to do with 91-10.

9 COMMISSIONER OHIGASHI: The reason why I'm
10 asking these questions, if they're not necessarily
11 going to be used in cross-examination, at least
12 initial witnesses, that your offer of proof as well
13 as your comments on each one of them can be placed in
14 writing and taken up at our next hearing to make that
15 determination.

16 I'm just offering that as a way to just
17 proceed forward, so at least you can have one
18 witness, at least some witness to proceed today.
19 That's my suggestion.

20 CHAIRPERSON SCHEUER: Mr. Yee?

21 MR. YEE: Thank you. I think I'm following
22 exactly along Commissioner Ohigashi's suggestion
23 which is, I think, to save time and we have no
24 particular interest in the outcome, but if
25 intervenors could simply provide something in writing

1 regarding the relevance of these documents and allow
2 the Petitioner and County to express their objections
3 in writing so that the Intervenors can see what those
4 objections are, and then give the Intervenors another
5 opportunity to respond to the particular objections,
6 sort of as in a motion in opposition and/or reply.

7 Then we can deal with it. Unless these are
8 documents that are going to be brought up today or
9 tomorrow, we can take it up before we begin the
10 hearing next, because, you know, obviously the
11 likelihood is we're never going to get to the
12 Intervenors case over the next two days. So just as
13 a matter of process.

14 CHAIRPERSON SCHEUER: There's been a
15 suggestion as to a different process than we
16 normally -- than I previously suggested. It would be
17 as Mr. Yee outlined asking the County and Mr. Yuen to
18 put in writing the reasons for their objections and
19 the Intervenor to respond in writing if none of these
20 documents need to be relied on in today or tomorrow's
21 proceedings.

22 Is that procedure acceptable to the
23 parties, starting with Mr. Yuen?

24 MR. YUEN: That would be acceptable, but I
25 don't know if he intends to use any of these exhibits

1 to cross-examine our witness.

2 CHAIRPERSON SCHEUER: Mr. Collins or Ms.
3 Isaki.

4 MR. COLLINS: Sorry, my mute button was
5 sticking.

6 At this point, we may use some of the
7 exhibits that are being sought to be excluded.

8 CHAIRPERSON SCHEUER: Today or tomorrow?

9 MR. COLLINS: I'm sorry. I misunderstood.
10 No, no, no.

11 At this point we only intend to use our
12 exhibits with our witnesses, but, of course, as I
13 indicated to Commissioner Ohigashi, if something
14 comes up that there might be some narrow reason to
15 jump that in, if they refer to our exhibits in their
16 own testimony or something like that, but otherwise
17 we're okay with the procedure, and it probably would
18 be more useful to have this legal back and forth
19 reduced to writing so that it's not people arguing,
20 shooting from the hip, but people actually can give
21 everybody the opportunity to see what the full
22 argument is.

23 CHAIRPERSON SCHEUER: County, objections to
24 this?

25 MR. DONAHOE: Thanks, Chair. From the

1 County's perspective, our objections, reviewing the
2 objections were all based on relevance. If it was
3 the Commission's purview, if admitted to under the
4 proviso that the County at a later time could argue
5 the relevance, or how it applies or doesn't apply,
6 that might clarify the issue.

7 CHAIRPERSON SCHEUER: That's not waived by
8 admitting them.

9 Let me ask confirmation from our counsel at
10 this time, the LUC procedures.

11 If an exhibit is entered into evidence in a
12 contested case proceeding, parties are not barred
13 from arguing how it may or may not be relevant to a
14 particular question?

15 Mr. Wynhoff? We have a visual thumbs up
16 from Mr. Wynhoff.

17 MR. WYNHOFF: I agree with that statement
18 as you stated, Chair.

19 CHAIRPERSON SCHEUER: Thank you.

20 Does that assure the County?

21 MR. DONAHOE: Yes, I'll take the visual
22 thumbs up as an assurance.

23 CHAIRPERSON SCHEUER: That was not my
24 question, not interpretation from hand signals from
25 my counsel.

1 MR. DONAHOE: With that proviso, I have no
2 objection subject to argument at a later time to the
3 Intervenor's exhibits.

4 CHAIRPERSON SCHEUER: Okay. So Exhibits 6,
5 10 and 17 can be admitted into the record as well. I
6 believe only the County objected to those and that
7 objection is now being withdrawn.

8 So we're now only dealing with 53, 56, 58,
9 59 and 99.

10 MR. YUEN: 53, 54, 55, 56, 58 and 99.

11 CHAIRPERSON SCHEUER: If I did not say 53
12 through 56, that's what I meant to say. Okay.

13 It's 1:56 P.M. Too many people are talking.
14 Mr. Yee.

15 MR. YEE: You were asking the parties for
16 their positions and you have not yet called on OP.

17 CHAIRPERSON SCHEUER: You're correct.

18 MR. YEE: I think my only caveat is my
19 suggestion really started with Intervenor submitting
20 an explanation of relevance for this, because that's
21 something that is information within the Intervenor's
22 hands, hearing on why these documents are relevant.

23 The issue of hearsay, I agree, needs to be
24 brought up by Petitioner or any other argument they
25 think of. But it is a little difficult, I think, for

1 Petitioner to say a document is irrelevant because
2 that's demonstrating negative, Petitioner will not
3 know why the Intervenor is using the documents. So I
4 had started -- my suggestion started with the
5 Intervenor simply explaining why these documents are
6 relevant. Totally on the issue of relevance. And
7 any other objection, either because Petitioner thinks
8 they are not relevant or because they have something
9 else to say, then Petitioner would have to raise
10 those issues subsequently. And, of course, give
11 Intervenors another chance.

12 That was my suggestion. Obviously, it's up
13 to the LUC as to what they're going to do, but that
14 was my suggestion.

15 Thank you. And OP has no objection to
16 whatever you eventually decide.

17 CHAIRPERSON SCHEUER: Whatever? That is a
18 broad admission.

19 MR. YEE: It may come back to bite me, yes.

20 CHAIRPERSON SCHEUER: Okay. We need a
21 break and have some time for the Petitioner today.

22 Commissioner Cabral, are you raising your
23 hand? No.

24 Any other Commissioners have something to
25 say?

1 What I'm going to ask if we can take a
2 break until 1:10, and the Intervenor I'm asking going
3 to ask -- we are going to take a break until 1:10.
4 During the break I'm going to ask Mr. Wynhoff to work
5 with Mr. Orodener to break out the suggested
6 procedure to make it very clear to the parties.

7 I will review those before we allow Mr.
8 Yuen to use the remaining time to present his
9 (indecipherable). We will be in recess until one --
10 sorry, 2:10.

11 (Recess taken.) Little description --

12 COURT REPORTER: Excuse me. The rain is
13 coming down hard here, so can I ask you to raise your
14 voice a bit so I can hear?

15 CHAIRPERSON SCHEUER: Certainly.

16 COURT REPORTER: Thank you.

17 CHAIRPERSON SCHEUER: What I'm going to ask
18 is that we take a break until 1:10 and the
19 intervening time, I'm going to ask the LUC Executive
20 Officer to work with Mr. Wynhoff to write out the
21 suggested procedure to make it very clear to the
22 parties.

23 I will review those before we allow Mr.
24 Yuen to use the remaining time to start to present
25 his case. We will be at recess until 2:10.

1 (Recess taken.)

2 At the risk of beating a dead horse to
3 further death. I want to clarify.

4 Mr. Yuen, I know you objected to all of the
5 exhibits based on hearsay, and some as to relevance.

6 Which are the ones just as to relevance?

7 MR. YUEN: It would be 53, 55, 56, 58 and
8 99.

9 CHAIRMAN SCHEUER: 53, 55, 56 --

10 MR. YUEN: 58.

11 CHAIRPERSON SCHEUER: And 99, okay.

12 So I'm ready actually to note your
13 objection based on hearsay, but overrule it, and
14 allow those into evidence. I don't believe we are
15 allowed to -- under our rules under the relevant
16 portion of HRS -- not admit exhibits into evidence
17 based on hearsay. So those will be admitted into
18 evidence.

19 The ones that you objected to based on
20 relevance, again, we can -- you've been asked for
21 proof of relevance.

22 So is the Intervenor prepared to submit
23 something in writing as to the relevance of those
24 particular exhibits, and we might be able to take
25 them up as a batch?

1 MR. COLLINS: Yes, Your Honor -- I mean,
2 Chair, or Honorable Chair.

3 CHAIRPERSON SCHEUER: Many would dispute
4 that, in many ways.

5 Okay. With that, I think that we're done
6 with exhibits, and we can actually move on, unless
7 there are any other comments on exhibits from the
8 parties. Going once, twice --

9 MR. YUEN: You've asked Mr. Collins to
10 submit something, so we would submit something in
11 response, or not at all?

12 CHAIRPERSON SCHEUER: You could certainly
13 submit. You made an objection as to relevance. The
14 Intervenor will produce something in writing as to
15 the relevance of those.

16 You can respond in writing, and if it's not
17 settled, if you don't -- if you are not satisfied
18 with their statements as to relevance, we can take it
19 up on oral argument when we get together after these
20 two days.

21 MR. YUEN: Thank you.

22 CHAIRPERSON SCHEUER: County, you're fine
23 with this procedure?

24 MR. DONAHOE: Yes, Chair. Thank you.

25 CHAIRPERSON SCHEUER: Mr. Yee?

1 MR. YEE: No objection. Thank you very
2 much.

3 CHAIRPERSON SCHEUER: Okay. Mr. Yuen, the
4 next 47 minutes are entirely yours.

5 MR. YUEN: Petitioner calls Mr. Jacob
6 Bracken and we're going to use Exhibit No. 11.

7 CHAIRPERSON SCHEUER: Mr. Bracken, do you
8 swear or affirm the testimony you're about to give is
9 the truth?

10 THE WITNESS: Yes, I do.

11 CHAIRPERSON SCHEUER: Your witness, Mr.
12 Yuen.

13 JACOB BRACKEN

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

17 DIRECT EXAMINATION

18 BY MR. YUEN:

19 Q Please state your name and address for the
20 record?

21 A My name is Jacob Bracken. I live at West
22 Sand Ridge Drive. That's in Hurricane, Utah.

23 Q Please tell the Commission your job title
24 and your responsibilities with the Roche Enterprises
25 group of companies in HG Management.

1 property since 2013. Overall I manage about 40,000
2 acres of real estate properties in a number of
3 states, including residential, agriculture,
4 commercial, industrial.

5 Q And can you tell the Commission who Robert
6 Roche is and how he's connected to the project?

7 A Robert is essentially the founder and owner
8 of Roche Enterprises. He does most of his business
9 in Asia. He has -- he describes himself as a serial
10 entrepreneur, civic leader. Like I said, we have
11 been working in a number of states.

12 We have been doing a lot of real estate
13 development, and he also deals with a lot of market
14 and hospitality projects and other numerous business
15 ventures.

16 Q I would like you to give the Commission a
17 brief description of HG Management's different real
18 estate projects.

19 A Sure. Green River, that was one that we
20 started in 2007 green. We assembled a little over
21 10,000 acres. I think we're up to about 12,000 acres
22 in total. We have been putting water to use out
23 there. We have developed 4500 acres of farm land,
24 developed the water infrastructure for that. We move
25 enough water around that farm to probably support

1 about 20,000 households currently.

2 So it has been a very big project, put in
3 all the infrastructure and manage the agricultural
4 operations.

5 Q Can you next describe your Gallup project?

6 A We entered into the New Mexico area in
7 about 2013 with the purchase of a little over 26,000
8 acres. The property itself is situated near the BNSF
9 transcontinental line. So we have been doing a lot
10 of work. Our biggest development out there has been
11 expanding and developing a rail-served industrial
12 park.

13 We now have -- it's a 2500 acre park. We
14 have 360 acres approximately certified by the BNSF as
15 a certified rail site.

16 We also have a number of buildings,
17 commercial leases, industrial leases. We have some
18 operations down there including one of the largest
19 native American markets in the U.S., flea market
20 basically. But since COVID, it's been closed, so we
21 are hoping that comes back.

22 We have made a substantial investment out
23 there.

24 Q Finally, can you describe the Sand Hollow
25 Resort?

1 A Sand Hollow Resort is in Southern Utah. We
2 have approvals for 2000 units in that project. We
3 have invested in excess of \$50 million since 2008.
4 We have finished and sold out Over 500 units.

5 We will continue to develop out mainly the
6 multi-family section of that over the next few years,
7 but that has been a successful project that we have
8 been involved in for some time.

9 Q Can you please describe how you intend to
10 finance the development of HoKua Place?

11 A Right now we are still in the
12 predevelopment stage, but we have secured a couple of
13 predevelopment lines of credit. First was
14 \$15 million line; the second one was \$5 million line.
15 Those are available for the predevelopment and some
16 of the spine infrastructure.

17 We do expect to mainly rely on conventional
18 institutional construction loans.

19 To date we really have -- you know, the
20 purchase of the land and many of our projects we do
21 not have leverage, so we do expect to use very
22 standard conventional lending and companies of our
23 existing equity if we need additional cash. We have
24 resources for that.

25 Q Can you please describe your proposed

1 affordable housing plan?

2 A I know affordable housing is always a
3 touchy subject. We understand now the current
4 requirement is an affordable requirement of
5 20 percent of the total units under what we are
6 submitting, that would be 154 units. So we are
7 looking at 46 of those units would be for people that
8 are up to 80 percent of the HUD annual median income,
9 62 units would be between 81 and 100 percent of the
10 HUD AMI; 46 units would be between 101 and
11 120 percent of HUD AMI.

12 This has been a recent change. So we have
13 been planning and still are committing to the
14 additional ten percent affordable under the previous
15 rules, which is an additional 21 units between 101
16 and 120 percent of the HUD AMI, and 56 units between
17 121 and 140 percent of HUD AMI.

18 Now, overall, we have been planning this to
19 be an affordable or workforce-type housing, which is
20 why we are doing the multi-family.

21 I've heard a number of times quoted the
22 maintenance fees about \$800 to \$1100 per month. I
23 don't know where those are necessarily coming from.
24 That's certainly not in our scope here. We are
25 looking to build what we feel is needed, what we are

1 being told is needed for the people of that area, the
2 Kapaa area.

3 Q Can you discuss the background of this
4 project and what you are trying to accomplish within
5 the framework of what you started?

6 A Yeah.

7 Now, we got involved in 2013. I'll work
8 backwards from there.

9 We purchased the property in a foreclosure
10 sale. At the time we understood that in the Kauai
11 General Plan this area had been designated as an
12 Urban Center since 1982. So for the last
13 approximately 40 years, you know, from today.

14 In 2010, it was previous developers were
15 encouraged to continue to develop under that Urban
16 Center and to look for affordable housing, as it
17 comes up over and over that housing is an issue for
18 this area.

19 So we continued along that trail, and
20 pushed for that. As we looked at the property, we
21 also felt that was the best use of the property.
22 This was not an area that was suitable for high end
23 housing, and there was such a need for the local
24 community to have housing.

25 And in 2018 when the General Plan was

1 updated, it was -- this property continued to be
2 designated in that as the neighborhood general, the
3 newer designation, and so we've taken that also as,
4 you know, another affirmation that that was the
5 appropriate use of this property.

6 Q Can you please describe your vision for
7 HoKua Place?

8 A Another buzz word, but the sustainable and
9 affordable is always the words. We do believe in
10 that. Not just because they are the buzz words, but
11 because that is what is wanted for the area. We have
12 been looking at this as a traditional neighborhood
13 design concept.

14 The feedback that we have, has been, you
15 know, trying to make this walkable. We want to look
16 at green space, open space. In particular, bicycle
17 path seems to be something that's coming up over and
18 over again. So we definitely see this as an area
19 with bicycle paths, walking paths to encourage people
20 to walk into Kapaa Town to tie into the
21 infrastructure.

22 Of course, all of that is consistent with
23 the Kauai General Plan, and something we would want
24 to be working with the County to make sure our vision
25 fits with what their vision is for the project.

1 Q Can you discuss your development timetable?

2 A We do expect this to be really single phase
3 within ten-year time period. I know there's been
4 some discussion of incremental reclassification as a
5 specialty that we have a lot of spine infrastructure
6 that needs to come in the very beginning, very
7 integral to the whole project on our map that would
8 be the Road A, the bypass road that goes through the
9 project.

10 So we do plan on -- you know, we feel this
11 must be a single-phase project in, you know, for the
12 Land Use Commission.

13 We're hoping, with State and County
14 approval, we're hoping to break ground by 2023 with
15 the first homes in 2025.

16 Q In the event that the Commission required
17 or requested an incremental development program, can
18 you describe what would be in the first increment and
19 what would be in the second increment?

20 A If you can see the map that we have, there
21 is a -- kind of hard to see sometimes -- that there
22 is a dotted line that is just to the right of the
23 main spine road that goes through the property.

24 So the part on the left, which would be --
25 yeah, that would be the Phase I, and include the

1 majority of the spine infrastructure.

2 The second phase could be the smaller
3 section to the right on the map.

4 Q And have you undertaken traffic studies of
5 the area?

6 A We have done a traffic study. We did want
7 to update that as we got closer, but with the
8 pandemic it certainly didn't seem like the right time
9 to update the traffic study.

10 Also that would be the widening of the
11 bypass road by the Cocopalms. There's some changes
12 that are taking place that would certainly affect
13 that traffic study.

14 So although we do have an existing traffic
15 study, we do plan on updating that traffic study and
16 working with the County and Department of
17 Transportation to make sure that that new traffic
18 study takes into account the current condition of the
19 site.

20 Q Can you discuss your commitment that you
21 intend to make to the County?

22 A First is the affordable housing agreement,
23 which is a requirement, but we certainly want to not
24 just maintain that, but that is really where we see
25 our niche in the area. As again, we do feel like

1 what is appropriate here is housing for the
2 community, so we are willing to buy -- or to build
3 for that community.

4 We do propose to dedicate a well to the
5 County and construct lines to the reservoir in
6 consideration for the County Department of Water
7 providing potable water and, you know, fire
8 protection.

9 So that is something, an agreement we would
10 like to enter into at some point.

11 Then we do expect that there will be some
12 form of sewage collection system and transmission
13 line to the existing wastewater treatment plant.

14 And we all know that's a topic that has
15 been discussed, and that is also, again, something
16 that we will be working with the County and
17 cooperating with, you know, pay for whatever our
18 share of upgrades, and making sure that's supported.

19 Q Next, I'm going to turn to a couple of
20 areas.

21 First, how did you acquire the property?

22 A We initially acquired the property in a
23 foreclosure sale in 2013. So this was a court
24 approved foreclosure sell that we went through at
25 that time.

1 Q And do you have good title to the property?

2 A Yes. We have done a recent title report,
3 and I believe that has been put into evidence.

4 Q I'm going to next turn to the County's
5 suggested conditions on development.

6 And ask you first, the County suggested
7 that you commission an updated traffic impact
8 analysis report to be submitted with your application
9 for change in zoning.

10 Is that something you intend to do?

11 A Yeah. That is something we intend to do.

12 Q And I think the County asked that you study
13 the project without any suggested -- any improvements
14 suggested by the State Department of Transportation.

15 None of them appear to be on the horizon
16 except for the widening of the highway that you
17 mentioned.

18 A That is something we agree as well.

19 Q And I think you mentioned that your spine
20 road, Road A, is going to be multimodal. Is that
21 something you intend to follow through on?

22 A Yes, that is.

23 Q And a criticism has been made that you had
24 stated that you intend to provide a mix of
25 multi-family housing types, but that none have been

1 provided to date.

2 What is your intention in that regard?

3 A That is something we expect to be working
4 directly with the County as we go through zoning, and
5 you know, taking the feedback in lead of what the
6 County wants to see for that area. We will be
7 developing that at that time.

8 Q And have you had discussions with the
9 county regarding providing the location for the
10 County swimming pool and other County facilities?

11 A Yes. We had a number of conversations over
12 the years. My understanding is there is a need to
13 move the swimming pool, and we've talked about how we
14 can help for that. And that's something we plan on,
15 have that conversation and see what we can do to
16 relocate what needs to be.

17 Q The State Office of Planning has also
18 recommended approval of the project subject to a
19 number of conditions.

20 I would like to take you through those
21 conditions and ask how you intend to support the
22 State's request.

23 First, the State has suggested that you
24 implement best management practices to minimize
25 runoff during construction. Is this something you're

1 prepared to do?

2 A Yes. That's something that we typically
3 see in other places as well. We like to play by the
4 rules.

5 Q What about participation in an air quality
6 monitoring program?

7 A Yes. That is something we are prepared to
8 do.

9 Q And you've already said that you intend to
10 prepare -- have prepared and submit an updated
11 traffic impact analysis report.

12 Are you prepared to cooperate with both the
13 State and the County in order to satisfy their
14 concerns?

15 A Yes. We expect we will need to work with
16 them and have their approval.

17 Q And if you are asked to contribute to your
18 fair share of regional traffic impact fees, or
19 traffic impact improvements, is this something you're
20 prepared to do?

21 A Yes, that is.

22 Q Has the property owner agreed to dedicate
23 the right-of-way under the Kapaa bypass road to the
24 State?

25 A Yes, we've agreed to dedicate that at the

1 appropriate time, and we understand that there is
2 going to be an additional setback from that as well.

3 Q Are you prepared to recognize any
4 established traditional and customary gathering
5 rights of native Hawaiians who use the Petition Area?

6 A Yes, we are.

7 Q If historic resources or human remains are
8 identified during construction, what are you
9 proposing to do?

10 A Yeah, we would, obviously, cease operations
11 until we have the appropriate archaeological
12 clearance that would be appropriate.

13 Q The State has suggested that clearing of
14 dense vegetation over 15 feet should not occur during
15 June 1st through September 15th.

16 Is this a condition you're willing to agree
17 to?

18 A Yes, we are.

19 Q Are you prepared to retain a wildlife
20 biologist to survey the project site for listed
21 waterbirds prior to construction?

22 A Yes, that is acceptable.

23 Q And what kind of mitigation measures would
24 you take should waterbirds be discovered?

25 A Obviously, the standard mitigation,

1 construction fences, anything else that is
2 appropriately recommended by the biologist.

3 Q Will you minimize moving plant soil
4 material to minimize the spread of invasive species?

5 A Yes, we understand that.

6 COURT REPORTER: Excuse me, Bill. Can you
7 go back to that last question? The rain is coming
8 down hard and loud here, so if you can speak a little
9 louder, that would be helpful.

10 Q (By Mr. Yuen): Will you minimize moving
11 plant soil material to minimize the spread of
12 invasive species?

13 A Yes.

14 Q The State has suggested that you avoid
15 night construction work that requires outdoor
16 lighting from September 15th through December 15th of
17 each year.

18 Is this a condition you're willing to
19 comply with?

20 A Yes, we are.

21 Q Do you intend to consult with the Kapaa
22 Middle School to mitigate construction-related
23 impacts to the school population?

24 A Yes, we will work with the Middle School to
25 be good neighbors.

1 Q Do you intend to contribute on a fair-share
2 basis to fund and install civil defense warning
3 sirens as required by the Hawaii Emergency Management
4 Agency?

5 A Yes, we will.

6 Q And are you intending to develop the
7 property in substantial compliance with the
8 representations that you are making to the
9 Commission?

10 A Yes, we will.

11 Q Finally, do you intend to complete
12 construction of the proposed backbone infrastructure
13 requirement including primary roadways and access
14 points and infrastructure within ten years from the
15 date of receiving all governmental approvals for the
16 project?

17 A Yes, that is our plan.

18 Q No further questions.

19 CHAIRPERSON SCHEUER: Your witness is
20 available for cross, Mr. Yuen?

21 COURT REPORTER: Can I ask one more time,
22 please. I've got lightening and thunder going on
23 here as well, so if everybody can please keep your
24 voice up so I can hear you clearly.

25 CHAIRPERSON SCHEUER: Questions for the

1 witness, starting with Kauai County.

2 MR. DONAHOE: Thank you.

3 CROSS EXAMINATION

4 BY MR. DONAVON:

5 Q Hi, Mr. Bracken, just a few questions.

6 Just to get your commitment on the record,
7 you're saying that you would be willing to obtain an
8 updated TIAR addressing traffic and possible safety
9 concerns especially around Kapaa Middle School area
10 prior to County zoning amendment?

11 A Yes, that's correct. In fact, we started
12 the process and decided to postpone it, just because
13 the pandemic felt like we need normal traffic
14 patterns. That is something we are committing to.

15 Q I know the proposal mentions relocation of
16 the emergency services such as Kauai Police
17 Department or Fire Department.

18 Have there been any discussion between
19 either of those agencies regarding the relocation as
20 it fits into the project?

21 A There has been conversations that are, you
22 know, multiple year's old. We know that it has been
23 something that has been requested. We haven't had
24 recent conversation with that, but we are
25 understanding that that is something that is needed

1 and we are willing to work with the County and those
2 departments to make sure those are addressed.

3 Q In your PowerPoint you describe on the map
4 the incremental redistricting plan.

5 How did you come up with the manner in
6 which that was done?

7 A The main issue that we have is the majority
8 of the improvements are going to be coming in along
9 the spine road that goes directly through the middle
10 of the property. So that that Phase I really does
11 need to incorporate those utilities and the road
12 that's going to bring that through the property.

13 And so we are -- our general method there
14 was to identify the primary, you know, location of
15 where that road is going to be, obviously that may
16 change a little bit as we go through with the County
17 where those utilities are and that initial area that
18 would be directly served by that.

19 And those utilities would essentially carry
20 forward to the Phase II, but that Phase I really was
21 to incorporate any moving of estimated utilities and
22 that spine road encapsulating all of that.

23 Q Very well. Thank you, Mr. Bracken.

24 I have nothing further, Chair.

25 CHAIRPERSON SCHEUER: Thank you very much.

1 Office of Planning, Mr. Yee.

2 CROSS-EXAMINATION

3 BY MR. YEE: Thank you.

4 Q Mr. Bracken, I'm going to go over some
5 things I think you said and some things I'm just not
6 sure.

7 If I understand it correctly, Mr. Roche is
8 the founder and owner of Roche Enterprises, correct?

9 A That's correct.

10 Q Roche Enterprises is the parent company of
11 HG Kauai Joint Venture, correct?

12 A Yeah, ultimate parent company essentially,
13 yes.

14 Q So there's multiple layers, you're saying
15 between --

16 A Yeah, there's several layers in between.

17 Q And, of course, HG Kauai Joint Venture is
18 the Petitioner in this case, correct?

19 A Yes. That is correct.

20 Q And the assets of HG Kauai Joint Venture, I
21 assume, is primarily the lands; is that right?

22 A Right, the entity was set up specifically
23 for the acquisition of this land and to take us
24 through this process.

25 Q Does HG Kauai Joint venture actually own

1 the property?

2 A Yes. It is titled in HG Kauai Joint
3 Venture.

4 Q And then you are CFO for which company?

5 A I'm the CFO for Roche Enterprises, and
6 essentially I'm the CEO for HG Management. Now, HG
7 Management is operating as manager of HG Kauai Joint
8 Venture. So just to clarify, the HG kind of
9 references a parent company called Hickory Grove,
10 have a relationship. They're very related entities.

11 Q So explain what is your role, if any, in HG
12 Kauai Joint Venture in this case?

13 A Essentially I'm the manager of the entity
14 here, and both in my role as HG and representing the
15 project coming through.

16 Q And how is it that you can speak then on
17 behalf of Petitioner?

18 A I'm the manager of the Petitioner entity,
19 of that LLC. Essentially the corporate officer. We
20 have two managers, I'm one of the managers. There's
21 a second manager, that's Theresa Roche, which is
22 Robert's sister.

23 Q Is it the manager manage the enterprise?

24 A That's correct.

25 Q Thank you.

1 Briefly on the affordable housing. If I
2 read your PowerPoint correctly, you're saying that
3 there are a certain number of the affordable units
4 that you're going to be required to be built pursuant
5 to Kauai County law.

6 And then you also say you're building
7 additional units just because you're offering to do
8 so?

9 A Essentially, my understanding, there has
10 been a recent change. We have been planning and
11 continue to plan to go under the old rules, which was
12 30 percent affordable.

13 So I believe the extra ten percent is no
14 longer defined under the new affordable act, but we
15 do intend to have additional affordable units, yes.

16 Q Will the result -- since you're following
17 the old rules, providing more units than the new
18 rules would otherwise require you; is that right?

19 A That is correct.

20 Q With respect to the other market units that
21 you'll be providing, will those units follow the
22 outline in the market study as part of the FEIS?

23 A That is our intent. And like I said, our
24 vision for this property, this project, is we do want
25 to build for the community.

1 We do want to make all of these affordable
2 for the community to the extent that we possibly can.

3 Q You know, I appreciate everyone's
4 intention. But as an attorney, I also want to know
5 what representations and commitments you can make to
6 the Land Use Commission.

7 I also understand that conditions can
8 change and you want some flexibility. So my question
9 then is this.

10 Does this project substantially conform to
11 the market price units or the units outlined in your
12 market study?

13 A Yes.

14 Q With respect to the wastewater treatment
15 plant, I understand your intention is to connect up
16 to the County system.

17 What happens if the County system is not
18 able to connect you at the time that you want? Do
19 you have another plan?

20 A That is something that we will have to work
21 with the County. We understand the issue, and want
22 to be, you know, work with everybody to be part of
23 the solution here.

24 We need the wastewater treatment as much as
25 anybody else, more so because we don't have use of it

1 currently, so that is our current plan. If there is
2 something -- we would have to work with the County
3 and wastewater to come up with an alternative. I
4 don't have an alternate --

5 MR. COLLINS: Mr. Chair, I'm sorry, don't
6 mean to interrupt --

7 CHAIRPERSON SCHEUER: Go ahead.

8 MR. COLLINS: For some reason, maybe this
9 is a technical problem on my end, but it appears that
10 the witness' audio is actually coming from
11 Petitioner's counsel.

12 THE WITNESS: Yes, We were having problems
13 earlier with echo, so we are all using the same audio
14 here, all of our counsel and I, we're all sitting in
15 the same room.

16 MR. COLLINS: Okay, sorry.

17 CHAIRPERSON SCHEUER: Mr. Collins, we
18 were -- when we were setting up the meeting before
19 the public portion of the meeting started, we were
20 getting extensive echo.

21 You'll actually also notice that when Mr.
22 Yuen speaks, it's actually not coming through in
23 relationship to his video, it's coming through a
24 different --

25 Is there a procedural concern that this

1 gives rise to?

2 MR. COLLINS: Well, I just wasn't sure
3 because nobody is wearing masks and everybody is
4 using the same microphone -- okay, there's pro -- I
5 wasn't sure what exactly was going on, and why audio
6 wasn't coming out of his thing and coming through
7 somebody else's.

8 CHAIRPERSON SCHEUER: I lack jurisdiction
9 over mask wearing, among many other things I lack
10 jurisdiction over.

11 Please continue, Mr. Yee.

12 Q (By Mr. Yee): Would you be ruling out
13 individual wastewater units for each dwelling unit?

14 A No. We wouldn't rule that out. But we
15 would like to go through the engineers and make sure
16 that we did that in a way that makes sense, but I
17 wouldn't rule that out at this time.

18 Q So rather than do a sort of miniature
19 treatment plant, you may be using over 700 individual
20 wastewater units?

21 A Like I said, I wouldn't rule out anything.
22 I don't know how that would work. When you ask if I
23 would rule that out, you know, that would be -- I
24 don't know how you would do that, but that's why I
25 punt back to the engineers. I'm not sure how that

1 would work.

2 Q You're aware that you're at least adjacent
3 to a wetland area?

4 A Yes. I've seen some of the wetlands in
5 that area.

6 Q Are you familiar with -- at least generally
7 familiar with the environmental risks that are
8 associated with pollution of these types of habitats?

9 A Yes, I'm aware.

10 Q With respect to your sustainability plan,
11 as I read it, and I noticed it contained a number of
12 measures that would be -- I wonder -- but you did
13 talk about the multimodal Road A as one thing that
14 you will be doing.

15 Did I read that correctly?

16 A Yes. That has been something we have had
17 on our plans from the beginning, bicycles and
18 walking, and we would like to get the bus routes out
19 there.

20 Q So in addition to the multimodal Road A
21 that you are committed to doing, and aside from
22 something that might be required by State, County or
23 Federal law, can you describe any other
24 sustainability measures that you're committing to
25 rather than simply considering?

1 A Sorry, say that again.

2 Q Okay. Let me start again.

3 There are a number of measures in your
4 sustainability plan that you say you are considering.

5 My question does not involve measures that
6 are being considered. One thing that you've
7 committed to it appears is at least a multimodal road
8 for Road A, right?

9 A Correct.

10 Q So then my question is, what other
11 measures, what other sustainability measures are you
12 committing to that are not otherwise required by
13 federal, state or county law, if you can describe it?

14 A I don't know that I've got any -- that what
15 I can commit towards right now. We have obviously
16 been looking at, as everybody does, we look at green
17 space. We're very interested in power conservation.
18 We are planning on keeping the Petition Area -- it's
19 part of the property we own. We are looking at
20 leaving some of the land in agriculture, which is
21 along the waterways, and, you know, some land that
22 was more appropriate for that.

23 Again, I guess the bike paths are part of
24 the multimodal, but we've been looking at a number of
25 issues like that.

1 Q Can you explain to me then how the Land Use
2 Commission should evaluate your project in terms of
3 meeting the sustainability goals under the State plan
4 where -- if you are only committing to one particular
5 mitigation measure?

6 A I guess part of that is going to come with
7 some of the additional planning. You know, I'm not
8 quite sure how to answer your question fully, and
9 maybe some of my engineers can help with that. I
10 guess we can look at -- I'm not sure which particular
11 goals you're wanting us to set up-front.

12 Q Well, I was referring generally to
13 sustainability. Sustainability is one of the goals
14 and objectives of the State plan in and of itself,
15 and I was wondering, other than the multimodal road
16 that you're agreeing to construct, I mean, does this
17 come down to simply trusting you to do the right
18 thing, or is there something more?

19 A Again, we've looked at solar. We have
20 looked at trying to develop some of the water. I
21 don't know what more, or what official commitment or
22 specific commitment the Land Use Commission would
23 like on this.

24 I guess that would be something we would be
25 open to hear from you.

1 Q One of the things that you talked about is
2 stormwater runoff and non-stormwater source control
3 measures to minimize the discharge of erosion and
4 other pollutants from entering into the receiving
5 State waters.

6 My question is, when this was said, do you
7 know if that included the State wetlands, or was it
8 only referring to streams and ocean ways?

9 A I would have to -- I believe so, but I
10 would have to maybe have that answered by the
11 engineer who is testifying on that later to make sure
12 you get the correct answer.

13 Q Do you know who that engineer is?

14 A I believe we will have Bill Bow will be
15 testifying on that, Bow Engineering.

16 Q I don't want to stop you, do you have
17 anything else?

18 A That's it.

19 Q Would he also be testifying as to anything
20 involving retention, detention basins and --

21 A Yes, that's correct.

22 CHAIRPERSON SCHEUER: Mr. Yee, if I may.
23 It's 2:54. We have a hard stop at 3:00. Where are
24 you in your flow?

25 MR. YEE: Close. I'm not sure I'm six

1 minutes close, but close.

2 CHAIRPERSON SCHEUER: Just be prepared I
3 may either interrupt you, or the witness, and we will
4 recess until tomorrow morning at 9:00 o'clock, at
5 which time we will continue with more questioning, if
6 you're still going.

7 MR. YEE: I appreciate that, thank you.

8 Q With respect to solar water heating, is
9 that something you're committing to do?

10 A Yes, that is something we looked at or we
11 would be willing to commit.

12 Q Well, I just want to know whether you're
13 going to do solar water heating or the -- now I'm
14 blanking on the term for instant water heating.

15 Do you know which you'll be going with --

16 A When you refer to the instant, are you
17 talking about like the instant, like the tankless
18 water heating or --

19 Q Yes, thank you.

20 A My understanding is the County is requiring
21 solar. So, you know, I'm looking at the County
22 requirements as I'm answering that question. That's
23 what I have in mind.

24 Q And with respect to solar energy, not solar
25 water heating, solar energy, this is something that

1 your sustainability process you're looking at. Is
2 there anything you can commit to, such as offering a
3 solar energy package to homeowners?

4 A Well, you know, as part of the larger
5 project, there is a -- there is some solar in place.
6 So I mean, solar is something we're very interested
7 in. I suppose that -- you know, I'm not sure what
8 the operating package would be, or committing to at
9 this point, but that is something I think would be on
10 the table.

11 CHAIRPERSON SCHEUER: Excuse me. Will the
12 witness clarify when you talk about the larger
13 project, are you not talking about the project in
14 front of us, are you --

15 THE WITNESS: As part of the larger piece
16 of land that this was a part of.

17 CHAIRPERSON SCHEUER: We're discussing the
18 Petition Area?

19 THE WITNESS: Not on the Petition Area.

20 Q (By Mr. Yee): Is there a solar farm on
21 another piece of property nearby?

22 A Neighboring piece of property, and it's
23 actually -- it's owned by us. This is the Petition
24 Area is a part, a smaller part of the larger
25 property, and there's an existing solar farm on that

1 that we're leasing the ground for.

2 Q And that's the reference you're making in
3 your prior answer?

4 A Correct, yes. That is part -- it's
5 currently located on part of our agriculture piece.
6 It's a small part of that.

7 Q With respect to the Petition Area that's
8 before the LUC today, would you ensure that any
9 housing is defined so that it is engineered so that
10 it's ready for solar energy, so it has the
11 appropriate conduits in place to allow for the
12 construction of solar energy, if the homeowner so
13 chose?

14 A Yes. That wouldn't be an issue that I
15 would see.

16 Q Would it be fair to say that any questions
17 regarding -- well, do you have anything to say
18 regarding archaeological or cultural impacts on this
19 site?

20 A I would leave that to our experts, but on a
21 larger general basis, it is something I'm sensitive
22 to and certainly aware of. We have, in the New
23 Mexico property that I talked about, that is
24 something that we deal with on almost a daily basis
25 and it is something that we're definitely sensitive

1 to.

2 Q Mr. Chair, may I note for the record that
3 we would go like to hear from their archeologist, and
4 would respectfully review the right to ask Mr.
5 Bracken's return if there's additional information
6 for which we were previously unaware in the record to
7 any conditions or commitment.

8 CHAIRPERSON SCHEUER: Thank you, Mr. Yee.

9 Yeah, I'm assuming that Petitioner can make
10 Mr. Bracken available at the end of our proceedings
11 should any of the other witnesses make assurances
12 that we wish to make sure that we are binding the
13 Petitioner.

14 Is that acceptable, Mr. Yuen?

15 MR. YUEN: That's acceptable, yes.

16 CHAIRPERSON SCHEUER: Okay. It is 3:00
17 o'clock. I'm going to take us into recess. We will
18 continue tomorrow morning with Mr. Bracken,
19 cross-examination with Mr. Yee.

20 (Recess was taken at 3:00 p.m.)

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