

LAND USE COMMISSION
STATE OF HAWAI'I
Hearing held on March 24, 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. CLOSING ARGUMENTS & DECISION MAKING
A18-806 Barry Trust (Hawaii)
- V. CONTINUED HEARING AND 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 GARY OKUDA (Oahu)
5 LEE OHIGASHI (Maui)
6 ARNOLD WONG (Oahu)
7 DAWN CHANG (Oahu)
8 DAN GIOVANNI (Kauai)

9 STAFF:

10 LINDA CHOW, ESQ.
11 Deputy Attorneys General

12 DANIEL ORODENKER, Executive Officer
13 RILEY K. HAKODA, Chief Clerk
14 SCOTT DERRICKSON, Chief Planner
15 NATASHA A. QUINONES, Program Specialist

16 BRYAN YEE, ESQ.
17 Deputy Attorney General
18 RODNEY FUNAKOSHI, Planning Program Administrator
19 AARON SETOGAWA, Planner
20 State Office of Planning
21 State of Hawaii

22 JEAN CAMPBELL, ESQ.
23 Deputy Corporation Counsel
24 JEFF DARROW, Deputy Planning Director
25 Planning Department
County of Hawaii

CHRIS DONAHOE, ESQ.
Kaua'i Corporation Counsel

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HG Kaua'i Joint Venture LLC

BIANCA ISAKI, ESQ.
LANCE COLLINS, ESQ.
For Intervenor

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1 CHAIRPERSON SCHEUER: Aloha mai kakou, and
2 good morning.

3 This is the March 24th, 2021 Land Use
4 Commission meeting, which is being held, of course,
5 using interactive conference technology linking
6 videoconference participants and other interested
7 individuals of the public via the ZOOM internet
8 conferencing program.

9 We are doing this to comply with State and
10 County official operational directives during the
11 COVID-19 pandemic. Members of the public are able to
12 view or listen to the meeting via the ZOOM platform.

13 For all meeting participants, and I really
14 want to stress this for everyone, there is an
15 importance of speaking slowly, clearly and directly
16 into your microphone. Before speaking, you should
17 state your name and identify yourself for the record.

18 Also please be aware that for all meeting
19 participants, you're being recorded on the digital
20 record of this ZOOM meeting. Your continued
21 participation is your implied consent to be part of
22 the public record for this event. So if you do not
23 want to be part of the public record, you should
24 leave the meeting now.

25 This ZOOM conferencing technology allows

1 the parties and each participating Commissioner
2 individual remote access to the meeting proceedings.
3 We are all on our individual personal digital
4 devices.

5 So also please note, due to matters
6 entirely outside of our own control, occasional
7 disruptions to connectivity may occur for one or more
8 members of the meeting at any given time. If such
9 disruptions occur, you should let us know and be
10 patient as we try to restore the audio/visual signals
11 to effectively conduct business during the pandemic.

12 My name is Jonathan Likeke Scheuer, and I
13 currently have the honor and pleasure of serving as
14 the Land Use Commission Chair. Along with me is --
15 Commissioner Aczon is absent today or at this point,
16 correct?

17 CHIEF CLERK: Chair, this is Riley, that's
18 correct.

19 CHAIRPERSON SCHEUER: Yeah, so.
20 Commissioner Okuda, Commissioner Wong, our LUC --
21 Commissioner Chang, Commissioner Okuda, Commissioner
22 Wong, the LUC Executive Officer, Daniel Orodener,
23 Chief Planner, Scott Derrickson, Chief Clerk, Riley
24 Hakoda, our Deputy Attorney General, who appears to
25 be Linda Chow today. Our Program Specialist Natasha

1 Quinones, and our Court Reporter, Jean McManus are
2 all on the Island of Oahu. Commissioner Nancy Cabral
3 is on the Big Island, Commissioner Lee Ohigashi is on
4 Maui, and Commissioner Dan Giovanni is on Kauai. We
5 currently have eight seated Commissioners of a
6 possible nine.

7 I will note for the record that
8 Commissioner Dawn Chang needs to leave between 11:30
9 and 1:00 today. I will also note for everybody,
10 because I happen to know it, it's Dawn Chang's
11 birthday. Happy birthday, Dawn.

12 And we will also have some other absences
13 tomorrow which I will announce tomorrow.

14 Our second order of business, after wishing
15 Dawn a happy birthday, is the adoption of the March
16 10th and 11th minutes. I will note there is a
17 correction to the minutes that was circulated in that
18 it had erroneously noted Commissioner Aczon had
19 returned to the meeting at one point, and rather it
20 was Commissioner Ohigashi.

21 Mr. Hakoda, are there any members of the
22 members of the public who wish to testify on the
23 adoption of the minutes?

24 CHIEF CLERK: No public testimony on that.

25 CHAIRPERSON SCHEUER: Are there any people

1 attending the meeting who wish to comment on adoption
2 of the minutes only? Commissioner Ohigashi.

3 COMMISSIONER OHIGASHI: No. I was going to
4 make a motion.

5 CHAIRPERSON SCHEUER: Let me first see if
6 there's any testimony. I don't see anybody calling
7 in, so if you're participating, you have the ZOOM
8 meeting platform, use the raise-your-hand function if
9 you wish to testify on adoption of the minutes.
10 Seeing none.

11 Are there any further comments or
12 corrections, Commissioners, other than the one I
13 noted?

14 There is a motion to adopt, I believe, from
15 Commissioner Ohigashi.

16 COMMISSIONER OHIGASHI: Yes.

17 CHAIRPERSON SCHEUER: Is there a second?
18 There is a second from Commissioner Cabral.

19 COMMISSIONER CABRAL: Yes.

20 CHAIRPERSON SCHEUER: I'm going to ask the
21 Commissioners if there is any further discussion.
22 Seeing none, Commissioners please raise your hand
23 indicating "aye", all in favor? Is anyone opposed,
24 raise your hand and say "nay". Seeing none, the
25 motion passes unanimously.

1 Our next order of business is our tentative
2 meeting schedule. Mr. Orodener, would you walk us
3 through that.

4 EXECUTIVE DIRECTOR: Thank you, Mr. Chair.

5 Tomorrow we will be here today for HoKua
6 Place matter if needed.

7 And I forgot to mention that all of these
8 meetings will be by ZOOM unless otherwise notified.

9 On April 14th, we will be adopting the
10 order in the Barry Trust matter, and we will also be
11 hearing DR21-71, which is a declaratory ruling from
12 Maui. A11-790, which is a status report on Kula
13 Ridge matter.

14 April 15th, we will be hearing any
15 continued matters related to DR21-71 and the Kula
16 Ridge status report.

17 April 28th we will be taking up the
18 Kamalani Motion to Extend Time, and we will begin
19 hearings on the Oahu IAL submission.

20 On the 29th, we will be once again hearing
21 the Oahu IAL matter, and any matter that's needed to
22 be completed, with HoKua Place, we will also have
23 time to take that up.

24 On May 12th we will be taking up the
25 Pohakea Special Permit on Maui, and the Oahu IAL

1 matter if necessary.

2 On May 13th we also have that set aside for
3 the Pohakea Special Permit and the IAL matter.

4 On May 26th, we will be taking up SP21-411
5 which is the AES West Oahu Solar matter, and any
6 remaining IAL matters. Same for May 27.

7 On June 9th we will be meeting to hear any
8 additional action on the Kula Ridge matter. And we
9 will also be doing that on June 10th and taking up
10 any matters that may remain with HoKua Place matter.
11 The same for June 23rd.

12 And that takes us through the end of the
13 fiscal year, Mr. Chair.

14 CHAIRPERSON SCHEUER: Thank you, Dan.

15 Commissioners, any questions for Mr.
16 Orodenker on our schedule? Seeing none.

17 A18-806 Barry Trust Hawaii

18 Our next agenda item is an action regarding
19 Docket No. A18-806 Barry Trust Hawaii, an Amended
20 Petition to Amend the Land Use District Boundary of
21 Certain Lands Situated at Keaau, Puna, County and
22 State of Hawai'i; Consisting of .51 Acres from the
23 Conservation District to the Agricultural District
24 Tax Map Key No. (3)1-5 Parcel 59, Lot 59.

25 Will the parties please identify themselves

1 for the record?

2 MR. SIMON: Good morning, Chair,
3 Commissioners, Derek Simon here on behalf of Kevin
4 and Monica Barry as Trustees of the Barry Family
5 Trust.

6 CHAIRPERSON SCHEUER: Thank you.
7 County of Hawaii.

8 MS. CAMPBELL: Jean Campbell, Deputy
9 Corporation Counsel representing the Planning
10 Department for County of Hawaii.

11 MR. DARROW: I'm Jeff Darrow, Deputy
12 Planning Director with the County of Hawaii.

13 CHAIRPERSON SCHEUER: Welcome.
14 Office of Planning.

15 MR. YEE. Attorney General Bryan Yee on
16 behalf of the Office of Planning. With me is Rodney
17 Funakoshi and Aaron Setogawa from the Office of
18 Planning.

19 CHAIRPERSON SCHEUER: Let me update the
20 record.

21 On February 24th, 2021 the Commission met
22 via ZOOM virtual conference technology to consider
23 the Amended Petition to Amend the Land Use District
24 Boundary in question.

25 Also on that day, the Commission received

1 the Office of Planning's Exhibit 1, Division of
2 Forestry and Wildlife Memorandum.

3 On March 8th the Commission received the
4 Petitioners Proposed Findings of Fact, Conclusion of
5 Law and Decision and Order.

6 On March 15th, the Commission received the
7 Office of Planning's Response to Petitioner's
8 Proposed Findings of Fact, Conclusion of Law, and
9 Decision and Order.

10 Also on that day the Commission mailed out
11 and emailed the Agenda to the Parties in this docket
12 as well as our Statewide and County mailing lists.

13 Let me briefly describe our procedures for
14 today.

15 First, I will recognize any written public
16 testimony on this matter.

17 Next I will call for anybody who wishes to
18 provide oral testimony on this docket through the
19 same method of raising hands and bringing you in to
20 be a participant in the meeting.

21 Following that, we will end public
22 testimony, and hear closing arguments from the
23 parties. After all parties have presented their
24 arguments on the Amended Petition to Amend the Land
25 Use District Boundary from Conservation District to

1 the Agricultural District, the Commission will
2 conduct our deliberations and deliver a decision.

3 Parties, are there any questions on our
4 procedures for today?

5 Mr. Simon?

6 MR. SIMON: None from Petitioners, Chair.
7 Thank you.

8 CHAIRPERSON SCHEUER: County?

9 MS. CAMPBELL: None here. Thank you.

10 CHAIRPERSON SCHEUER: Mr. Yee?

11 MR. YEE: No questions. Thank you.

12 CHAIRPERSON SCHEUER: Thank you.

13 Is there any written testimony on this
14 docket, Mr. Hakoda?

15 CHIEF CLERK: Mr. Chair, there were no
16 submittals for public testimony.

17 CHAIRPERSON SCHEUER: Thank you.

18 Is there anybody who is attending this
19 meeting as an attendee via the ZOOM webinar platform
20 or dialing in? If so, use the raise-your-hand
21 function in the ZOOM software, or *9 if you are
22 dialing in to this meeting if you wish to testify on
23 this matter.

24 I see none.

25 Mr. Simon, please present your closing.

1 MR. SIMON: Good morning, Chair,
2 Commissioners. Thank you again for your time. I
3 know the Commission has other business today, so I'll
4 try to be brief.

5 As I mentioned last month during the
6 hearing, this docket was originally opened in
7 December 2018 when the Commission agreed to be the
8 approving agency for Petitioner's compliance with
9 Chapter 343. That process culminated in the
10 Commission's issuance in its Finding of No
11 Significant Impact, which cleared the way for the
12 Amended Petition before you for decisionmaking today.

13 That FONSI is also the Commission's
14 determination that the proposed reclassification will
15 not impact environmental, archaeological, cultural
16 resources or practices.

17 As explained in the Amended Petition by Ms.
18 Barry in the hearing here last month, Petitioners
19 have really requested this Boundary Amendment so they
20 can be placed on par with the neighbors and be able
21 to use their property in the same manner that their
22 many neighbors are able to, and enjoy the rural
23 agricultural lifestyle Island of Hawaii in general
24 offers, and Hawaiian Paradise Park in particular.

25 As we discussed, the Barrys are proposing

1 to construct a modest home or dwelling, and have made
2 very firm commitments to this Commission to implement
3 an appropriate agricultural use as required for farm
4 dwelling under Chapter 205 of the Commission's rules
5 and County zoning.

6 While I mention the Barrys simply want to
7 be placed on par with their neighbors, Mrs. Barry
8 also acknowledges that action won't be totally true
9 because they have, in fact, committed to this
10 agricultural use, which virtually none or any of the
11 neighbors are doing.

12 We understand that some of the
13 Commissioners have concerns about the current status
14 of the enforcement of farm dwellings in the
15 Agricultural District. However, as we discussed last
16 month, this issue is really much larger than the
17 Petition before you today, and it shouldn't prejudice
18 the Barry's Petition, because again, they have made
19 firm commitments and they fully understand that they
20 will be bound to those commitments.

21 The Amended Petition details how the
22 Petition Area was originally in the Agricultural
23 District, why it was placed into the Conservation
24 District by the Commission during its five-year
25 Boundary Review, and why it was not placed back in

1 the Agricultural District in 1977 when the Hui
2 Hanalike Paradise Association filed its en masse
3 Petition.

4 The history behind this docket makes clear
5 the Agricultural District really is the only
6 appropriate district for the Petition Area.
7 Specifically, the Commission's already once
8 determined the Petition Area meets the requirements
9 for the Agricultural District, has twice determined
10 that all the coastal parcels surrounding the Petition
11 Area have met those standards.

12 Last month I displayed some maps showing
13 the Petition Area surrounded in virtually every
14 direction by thousands and thousands of acres of
15 Agricultural land.

16 We also discussed the Petitioner's poor
17 soils.

18 Both of those facts placed the Petitioner
19 squarely within the criteria of HAR 15-15-19,
20 Subsection 3, which again, is the Commission's
21 criteria for the Agricultural District.

22 Therefore, based on the record before you,
23 and on behalf of the Petitioners Kevin and Monica
24 Barry, I respectfully request that you approve the
25 Amended Petition and reclassify the Petition Area to

1 Agricultural District by finding by a clear
2 preponderance of the evidence that the proposed
3 Boundary Amendment meets the standards for the
4 Agricultural District under HAR 15-15-19, is
5 reasonable, is not violative of HRS 205-2, and is
6 consistent with the policy and criteria established
7 by HRS Sections 205-16, 205-17, and 205A-2.

8 I want to thank the Commission again for
9 its consideration of the Amended Petition.

10 CHAIRPERSON SCHEUER: Thank you very much,
11 Mr. Simon.

12 Commissioners, are there questions for the
13 Petitioner? Commissioner Okuda.

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

16 Thank you, Mr. Simon, for your argument,
17 and thank you very much for the proposed Findings of
18 Fact and Conclusions of Law.

19 Without getting into my specific
20 inclination right now about how I would vote, if I
21 may ask you a few questions.

22 Again, these questions are not intended to
23 indicate prejudice or preference one way or the
24 other, but if the Commission were to grant the Barrys
25 Petition, would you have any objection to the

1 conclusions of law including the specific sections
2 which deal with permitted uses in an Agricultural
3 District, and that specifically Sections 205-5,
4 205-2(d), and Section 205-4.5?

5 All of these are from the Hawaii Revised
6 Statutes.

7 MR. SIMON: Commissioner Okuda, I do not
8 think we'd object to that. I believe the proposed
9 D&O already references farm dwelling requirements of
10 Chapter 205, as well as the Commission's rules and
11 the County code.

12 COMMISSIONER OKUDA: Maybe I'm sorry for
13 not making it specific, and I know, having once been
14 a teaching assistant in legal research and writing,
15 that using block quotes may not really be a good way
16 of writing or presenting.

17 But if the Commission were to grant the
18 Petition, would you have an objection for block
19 quotes so that these sections actually be quoted in
20 their entirety so that the public and other
21 practitioners, when they look at the order, will
22 understand, you know, the breadth or the provisions
23 of these sections without having to refer to the
24 statute itself?

25 MR. SIMON: No objection to that. I

1 believe that is the current state of law.

2 COMMISSIONER OKUDA: And if the Commission
3 were to grant the Barrys' Petition, would you have
4 any objection that included also in the Conclusions
5 of Law would be the appropriate quotations from two
6 prior Land Use Commission rulings which dealt with
7 farm dwellings, or use of dwellings on agricultural
8 land, specifically it would be portions -- and I can
9 tell you, would be Conclusion of Law No. 5 at page 17
10 of the Declaratory Order filed in a case called: In
11 The Matter of the Petition of John, J-O-H-N, Godfrey,
12 G-O-D-F-R-E-Y, which is Docket No. DR 94-17; and also
13 the appropriate section from the decision in a case
14 called In The Matter of a Declaratory Ruling to
15 Determine Whether a Single-Family Dwelling may be
16 established within the State Land Use Agricultural
17 District if the agricultural activity proposed to be
18 conducted by the family occupying the dwelling is for
19 personal consumption and use only, which is cases
20 designated as DR83-8.

21 Would there be any objection if the
22 appropriate section of that order also be included as
23 part of the Conclusions of Law?

24 MR. SIMON: Commissioner Okuda, I don't
25 have those orders in front of me. I'm somewhat

1 familiar with the latter of the two. I'm not
2 familiar with the first.

3 I'll note with DR83-8 there was a verbiage
4 change in Chapter 205 subsequent to that. At time of
5 that declaratory ruling, I believe a farm dwelling's
6 required to be either used in connection with -- was
7 required used in connection with a farm and where the
8 agricultural activity provided income to the owner or
9 the occupant.

10 I believe that "and" was changed to an "or"
11 where the current farm dwelling rule in Chapter 205
12 says that a farm dwelling must be used in connection
13 with a farm, comma, or where agricultural activity
14 provides income to the occupant of the parcel.

15 So I think there's a verbiage difference
16 there that I think should be noted because I think
17 language changed, that the legislature had a reason
18 for changing that.

19 But generally speaking, you know, we made
20 representations that the Petitioner will be used
21 consistent with the requirements of a farm dwelling.

22 COMMISSIONER OKUDA: Mr. Simon, I believe,
23 you're probably correct. I would have to go back and
24 look at the verbiage change.

25 But assuming you are correct, would you

1 have an objection that the Conclusions of Law include
2 the verbiage that you have just now recited, assuming
3 that is what the statute now says?

4 MR. SIMON: Please don't quote me verbatim.
5 I think it was a pretty accurate recitation, but we
6 don't have an objection to the (indecipherable) -- of
7 farm dwelling as required in Chapter 205 be included
8 in the Decision and Order, if I understand your
9 question correctly.

10 COMMISSIONER OKUDA: And if I can just sum
11 up, based on what you have said.

12 Mr. Simon, let me tell you that when I
13 first looked at this docket, even though I really
14 tried not to prejudge anything, my inclination was I
15 was troubled with the initial reaction I had in my
16 gut that there was improper residential use being
17 proposed in an Agricultural District.

18 I believe your very cogent legal
19 presentation, together with Ms. Simon's (sic)
20 testimony, which I find clear, credible and
21 believable, demonstrates the fact that many of us
22 should not just rely on what our gut tells us, but we
23 should evaluate the evidence presented.

24 So with that, Mr. Chair, that answers all
25 my questions.

1 CHAIRPERSON SCHEUER: Commissioner Okuda, I
2 assume you meant Mrs. Barry when you said Mrs. Simon?

3 COMMISSIONER OKUDA: I am sorry. I meant
4 Ms. Barry, not Mrs. Simon, you are correct.

5 CHAIRPERSON SCHEUER: I was listening
6 carefully on the entire discussion. That was the
7 only thing I had a concern with what you said, and
8 the only thing I was concerned what Mr. Simon said,
9 was that he assumed the legislature had a reason for
10 doing something. Questionable.

11 COMMISSIONER OKUDA: And I apologize to Ms.
12 Barry for misidentifying herself. That was not my
13 intention.

14 Again, I found her testimony to be very
15 persuasive and also very credible.

16 Thank you, Mr. Chair.

17 CHAIRPERSON SCHEUER: Are there further
18 questions for the Petitioner, Commissioners?

19 Commissioner Cabral.

20 COMMISSIONER CABRAL: I would like to first
21 speak in favor of accepting this, approving this
22 Petition and also speaking in favor of it.

23 I wanted to, because it is on my island and
24 I am extremely familiar with that property and that
25 location. It is what the Barrys are asking to do --

1 CHAIRPERSON SCHEUER: Commissioner, if I
2 may. I want to still give a chance for closing
3 arguments to the County and the Office of Planning
4 before we go into deliberation.

5 COMMISSIONER CABRAL: I'm trying to be
6 efficient, but I definitely want to support the Barry
7 Trust request because I know --

8 CHAIRPERSON SCHEUER: I will be sure to
9 call on you first during deliberation, Commissioner
10 Cabral.

11 Are there any more questions for the
12 Petitioner? Seeing none.

13 Hawaii County.

14 MS. CAMPBELL: Good morning. The County of
15 Hawaii has no comments and no objections to this
16 Petition.

17 CHAIRPERSON SCHEUER: Commissioners, any
18 questions for Hawaii County? Seeing none.

19 Office of Planning, Mr. Yee.

20 MR. YEE: Thank you and good morning. The
21 Office of Planning supports this request for District
22 Boundary Amendment.

23 We note that this is a very unusual case in
24 that it is a single parcel located within a larger
25 subdivision that's already been reclassified. These

1 cases normally do not come before the Land Use
2 Commission either, because the acreage is small
3 enough at the County level, or frankly because there
4 is concern by many as to the time, cost, expense and
5 potential risk of coming before the LUC.

6 So we are very happy that the Barry Trust
7 in this case decided to take on that challenge and
8 bring forward, complete their environmental review
9 and hire an attorney, and get the experts and present
10 their case before you.

11 We have tried to make this process as
12 painless as reasonably possible and, you know, as
13 such, I think our comments to their proposed Finding
14 of Facts reflects simply a clerical error in one of
15 the paragraphs.

16 We do note, however, that contested cases
17 are contested cases specifically because they were
18 circumstances of a case. So our review of this case
19 does not necessarily reflect the appropriate review
20 in another case involving much larger parcels as is
21 more difficult (indecipherable).

22 CHAIRPERSON SCHEUER: Mr. Yee, your audio
23 has started to break up a little bit.

24 MR. YEE: Well, I'm not sure why.

25 CHAIRPERSON. SCHEUER: I'm not accusing,

1 I'm just observing.

2 MR. YEE: In that case, maybe I should just
3 conclude by say saying the Office of Planning
4 supports the Petition. Thank you.

5 CHAIRPERSON SCHEUER: Thank you.

6 Commissioners, are there questions for the
7 Office of Planning?

8 Commissioner Giovanni. You're muted,
9 Commissioner Giovanni. Commissioner Giovanni.
10 Commissioner Giovanni, can you hear me? Are there
11 other -- Commissioner Giovanni, can you hear me?

12 COMMISSIONER GIOVANNI: Can you hear me
13 now?

14 CHAIRPERSON SCHEUER: Now we could hear
15 you.

16 COMMISSIONER GIOVANNI: Sorry, I have some
17 technical difficulties.

18 CHAIRPERSON SCHEUER: Please proceed.
19 Did you have a question?

20 COMMISSIONER GIOVANNI: One second here.
21 Hello.

22 CHAIRPERSON SCHEUER: Hi, Commissioner.

23 COMMISSIONER GIOVANNI: Sorry, I have some
24 technical difficulties.

25 CHAIRPERSON SCHEUER: Do you have a

1 question for Mr. Yee at Office of Planning?

2 COMMISSIONER GIOVANNI: No.

3 CHAIRPERSON SCHEUER: Commissioners, any
4 questions for Mr. Yee? Seeing none.

5 I'll ask Mr. Simon, no rebuttal I assume?

6 MR. SIMON: No rebuttal from Petitioners.
7 Thank you very much.

8 CHAIRPERSON SCHEUER: Any final questions
9 for any of the parties, Commissioners?

10 Seeing none, the Commission will now
11 conduct formal deliberation whether or not to grant
12 or deny.

13 I will note for the parties and public,
14 that during the Commission's deliberations, I will
15 not entertain any additional input from the parties
16 or from the public, unless those individuals or
17 entities are specifically requested to do so by me as
18 Chair.

19 If called upon, I would ask that any
20 comments be limited to the questions at hand.

21 The Commission held hearings on the merits
22 of this Petition January 23rd and 24th, 2019,
23 August 29th, 2019, June 24th and 25th, 2020, and
24 February 24th, 2021. Closing arguments were
25 concluded today.

1 Commissioners, let me first confirm that
2 each of you have reviewed the record and read the
3 transcripts for any meeting that you may have missed
4 and are prepared to deliberate on the subject docket.
5 After I call your name, would you please signify with
6 either an "aye" or "nay" that you are prepared to
7 deliberate on this matter.

8 Commissioner Chang?

9 COMMISSIONER CHANG: Aye.

10 CHAIRPERSON SCHEUER: Commissioner Cabral?

11 COMMISSIONER CABRAL: Aye.

12 CHAIRPERSON SCHEUER: Commissioner

13 Giovanni?

14 COMMISSIONER GIOVANNI: Aye.

15 CHAIRPERSON SCHEUER: Commissioner

16 Ohigashi?

17 COMMISSIONER OHIGASHI: Aye.

18 CHAIRPERSON SCHEUER: Commissioner Okuda?

19 COMMISSIONER OKUDA: Yes.

20 CHAIRPERSON SCHEUER: Commissioner Wong?

21 COMMISSIONER WONG: Aye,

22 CHAIRPERSON SCHEUER: And I, as Chair, am
23 also prepared to deliberate on this matter.

24 Commissioners, the Chair will entertain a
25 motion that the LUC accepts or does not accept the

1 Amended Petition to Amend the Land Use District
2 Boundary of Certain Lands Situated at Keaau, Puna,
3 County and State of Hawaii, Consisting of .51 acres
4 from the Conservation District to the Agricultural
5 District.

6 The motion should state the reasons for
7 acceptance or non-acceptance of the Petition and the
8 conditions that will apply.

9 I will call on Commissioner Cabral.

10 COMMISSIONER CABRAL: Thank you.

11 You know me, trying to get efficient here.

12 I would like to support the Petition
13 A18-806 and move to grant the Petitioner Barry Trust
14 their request for the District Boundary Amendment.
15 That would include the Office of Planning's
16 conditions and suggestions, which had previously been
17 agreed upon, and to also now include the items
18 recently discussed regarding Chapter 205 that the
19 property would be subject to. Thank you.

20 CHAIRPERSON SCHEUER: You're referring to
21 the questions and answers from Commissioner Okuda and
22 Mr. Simon?

23 COMMISSIONER CABRAL: Yes. And Mr. Simon,
24 yes.

25 CHAIRPERSON SCHEUER: Do we have a second

1 for the motion?

2 COMMISSIONER WONG: I second.

3 CHAIRPERSON SCHEUER: Thank you.

4 A motion has been made by Commissioner
5 Cabral and seconded by Commissioner Wong to grant the
6 Petition with conditions.

7 Commissioner Cabral do you wish to speak?

8 COMMISSIONER CABRAL: Yes, I would like to
9 speak to it.

10 It is, as Office of Planning, Mr. Yee,
11 discussed, it is a very unique situation that it is a
12 one-acre parcel, and it is in the middle of 8,835
13 one-acre parcels and some one-half acres.

14 And that it has been due to technical
15 difficulties in the past with mail and just unique
16 situations, it's been signaled out and been
17 restricted in its usage.

18 And I do agree that there is a huge problem
19 with what zoning is and agriculture use is and the
20 restrictions within our County. And I would really
21 like to see our Hawaii County Planning Department
22 tackle those problems, and stop making everybody who
23 is on ag land on Hawaii County liars, and encourage
24 that situation to get cleaned up. But by no means
25 should the Barrys and the Barry Trust be limited in

1 their use of the land because of the somewhat
2 technical difficulties.

3 So I would like to encourage the LUC to use
4 common sense and vote in favor of their Petition.
5 Thank you.

6 CHAIRPERSON SCHEUER: Commissioners, we
7 have a motion before us.

8 Commissioner Okuda.

9 COMMISSIONER OKUDA: Thank you, Mr. Chair.

10 As I stated earlier, I believe that the
11 Barry Trust have met their burden of proof, which
12 they carry to have this Petition granted. I believe
13 they met their burden of proof again, not only
14 because of Ms. Barry's testimony, which is credible
15 and persuasive, but also the very clear concise,
16 legally and supported Petition and work and argument
17 presented by their counsel.

18 If I may add just one additional thing. I
19 believe it's necessary to make clear that the LUC, in
20 making this decision, is not simply rubber stamping
21 what has been requested simply because everybody else
22 is doing something else which might not be in
23 compliance with legal requirements.

24 The standard that we are applying, and
25 which we apply, whether it's for change of boundary

1 from Conservation District to Agricultural District,
2 or even from an Agricultural District to Urban
3 District is governed by HRS 205-4(h). And Mr. Simon
4 made reference to that, but it's not that long, so
5 let me just quote that so it's very clear on the
6 record the type of evidence that is necessary for any
7 boundary amendment, whether it's Conservation to
8 Agriculture, or for example, Agriculture to Urban.
9 And I quote:

10 "No amendment of a Land Use District
11 Boundary shall be approved unless the Commission
12 finds upon the clear preponderance of the evidence
13 that the proposed boundary is reasonable, not
14 violative of Section 205-2 and Part 3 of this
15 chapter, and consistent with the policies and
16 criteria established pursuant to be sections 205-16
17 and 205-17. Six affirmative votes of the Commission
18 shall be necessary for any boundary amendment under
19 this section", close quote.

20 So I believe that the Barrys have met their
21 preponderance under that section, and for those
22 reasons, I intend to vote in favor of this motion.
23 Thank you.

24 CHAIRPERSON SCHEUER: Thank you,
25 Commissioner Okuda.

1 Commissioners, is there further discussion
2 on the matter? Seeing none.

3 The Chair, I also intend to vote in favor
4 of the motion. I would join in the reasoning that
5 Commissioner Okuda has cogently laid out. And I
6 would note, quoting Mr. Yee, we wish to be as
7 painless as reasonably possible, could be a LUC
8 motto.

9 Just let me expand slightly on that. We
10 have real meaningful kuleana. We are not dragging
11 the Barrys through this because we want to inflict
12 pain. They're in the Conservation District. The
13 Conservation District is incredibly important to the
14 people of Hawaii, that's why it's there.

15 And we only move things out of the
16 Conservation District when we really believe a set of
17 very high standards have been met.

18 Now, it is an odd set of circumstances that
19 led to the parcel being in the Conservation District,
20 but nonetheless, I am grateful to them for following
21 what is indeed the proper path for them to move
22 forward on this, and very happily vote in favor of
23 the motion -- and will vote in favor of the motion.

24 Is there anything further? If not, Mr.
25 Orodenker, would you please poll the Commission?

1 EXECUTIVE OFFICER: Thank you, Mr. Chair.

2 The motion is to grant the Petition,
3 including decision and order to include OP's
4 amendments, and Commissioner Okuda's suggested
5 changes.

6 Commissioner Cabral?

7 COMMISSIONER CABRAL: Yes.

8 EXECUTIVE OFFICER: Commissioner Wong?

9 COMMISSIONER WONG: Aye.

10 EXECUTIVE OFFICER: Commissioner Aczon is
11 absent.

12 Commissioner Chang?

13 COMMISSIONER CHANG: Aye.

14 EXECUTIVE OFFICER: Commissioner Giovanni?

15 COMMISSIONER GIOVANNI: Aye.

16 EXECUTIVE OFFICER: Commissioner Ohigashi?

17 COMMISSIONER OHIGASHI: Aye.

18 EXECUTIVE OFFICER: Commissioner Okuda?

19 COMMISSIONER OKUDA: Yes.

20 EXECUTIVE OFFICER: Chair Scheuer?

21 CHAIRPERSON SCHEUER: Aye.

22 EXECUTIVE OFFICER: Thank you, Mr. Chair.

23 Motion passes with seven affirmative votes.

24 CHAIRPERSON SCHEUER: Congratulations, Mr.

25 Simon, and thank you very much for the efficient

1 presentation of your case.

2 MR. SIMON: Thank you.

3 CHAIRPERSON SCHEUER: It is 9:38. We will
4 take a couple minutes' recess just to let folks on
5 this previous matter log off, then we will reconvene
6 at 9:40 to take up our next agenda item.

7 We will take a real break about ten minutes
8 later.

9 (Recess taken.)

10 A11-806

11 CHAIRPERSON SCHEUER: 9:42 A.M.

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

20 Will the parties please identify themselves
21 for the record, beginning with the Petitioner.

22 MS. AHU: Good morning, Janna Ahu and
23 William Yuen for Petitioner HG Kauai Joint Venture,
24 LLC, and our client is with us in the audience. And
25 with us today is our first witness, William Bow for

1 Bow Engineering.

2 CHAIRPERSON SCHEUER: Thank you.

3 County?

4 MR. DONAHOE: Good morning, Chair; good
5 morning, Commissioners. Deputy County Attorney,
6 Chris Donahoe on behalf of the County. Also present
7 is Deputy Director of Planning Jodi Higuchi Sayegusa.

8 CHAIRPERSON SCHEUER: Good morning.

9 Mr. Yee, Office of Planning.

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

14 CHAIRPERSON SCHEUER: Intervenors.

15 MS. ISAKI: Good morning, Bianca Isaka and
16 Lance Collins here on behalf of the Intervenor, Liko
17 Martin.

18 CHAIRPERSON SCHEUER: And I believe your
19 client is with you as well?

20 MS. ISAKI: Correct, thank you.

21 CHAIRPERSON SCHEUER: Now, let me update
22 the record.

23 On March 10th and 11th, the Commission met
24 via ZOOM technology to consider the Intervenor's
25 Motion to Continue the Contested Case hearing dates,

1 Intervenor's Motion for Leave to File Response to
2 Applicant's Motion for Protective Order -- I
3 apologize.

4 On March 10th and 11th, the Commission met
5 on this docket; heard public testimony on this
6 docket, and moved onto hearing the Petitioner's
7 presentation.

8 On the same date the Commission received
9 the Intervenor's Memorandum in Opposition to the
10 Applicants -- excuse me, I'm sorry.

11 Mr. Orodener. Mr. Orodener.

12 EXECUTIVE OFFICER: Yes, Chair.

13 CHAIRPERSON SCHEUER: I'm just clarifying
14 the record. The items that are referred to in terms
15 of the Applicant's Motion in Opposition, those were
16 considered in an earlier hearing not March 10th and
17 11th hearing; is that correct?

18 EXECUTIVE OFFICER: Yes, that's correct,
19 Chair.

20 CHAIRPERSON SCHEUER: I apologize to
21 everybody, and for the record on March 10th and 11th,
22 we heard public testimony on this matter and began
23 with the Petitioner's presentation.

24 On March 15th, the Commission mailed out
25 and emailed the agenda for March 24th and 25th, 2021

1 hearing to the Parties in this docket and to the
2 Statewide and to the County mailing lists.

3 On March 16th the Commission received
4 Intervenor's submission of Offer of Proof for
5 Relevance of Exhibits Nos. I-53, I-55, I-56, I-58,
6 I-99.

7 On March 17th the Commission received
8 Intervenor Martin's Relevance Brief.

9 On March 19th, the Commission received
10 Petitioner's Opposition to the Intervenor's Offer of
11 Proof for Relevance of Exhibits.

12 On March 22nd, the Commissioner received
13 the Intervenor's Reply to Petitioner's Opposition to
14 Submission of the Offer of Proof.

15 And from March 10th through this morning,
16 the Commission has received additional Public
17 Testimonies.

18 Those testimonies will be posted to the
19 Land Use Commission website, and will be considered
20 to be part of the official record of this docket.

21 Now, let me go over our proceedings for
22 today. I will note the written public testimony that
23 has been submitted in this matter. We will not be
24 taking additional oral testimony today other than
25 from witnesses called by the parties.

1 My intention as Chair, which is within my
2 discretion, we closed public testimony on this matter
3 for the evidentiary portion of our proceedings at our
4 last hearing.

5 Prior to the presentations of Draft
6 Decisions and Orders and argument on this matter, I
7 do intend to allow the public to testify again, given
8 the keen and substantial public interest on this
9 matter on the Island of Kaua'i, so when and if this
10 docket proceeds to that portion, we will again allow
11 public testimony. But during the evidentiary portion
12 of this docket, there will be no more public
13 testimony orally provided, however, written public
14 testimony will continue to be accepted by the Land
15 Use Commission.

16 Following the noting of written public
17 testimony that's been received, the Commission will
18 hear arguments on the written offers of proof and the
19 responses from the parties, and we will make a
20 decision on admission of those exhibits to the record
21 or non-admission of those exhibits to the record.
22 And following that the Petitioner will continue to
23 present their case.

24 Once the Petitioner has completed with
25 their presentation, should we get that far today or

1 tomorrow, it will be followed in turn by the County
2 of Kaua'i, Office of Planning, and the Intervenor,
3 Mr. Liko Martin.

4 As you know is our practice, from time to
5 time, approximately every 50 minutes of Commission
6 meeting time, I'll call for a ten-minute break.

7 Are there any questions on our procedures
8 for today, starting with Petitioner?

9 MS. AHU: No questions.

10 CHAIRPERSON SCHEUER: Mr. Donahoe?

11 MR. DONAHOE: No questions from the County,
12 Chair.

13 CHAIRPERSON SCHEUER: Mr. Yee?

14 MR. YEE: No questions.

15 CHAIRPERSON SCHEUER: Ms. Isaki?

16 MS. ISAKI: No questions. Thank you.

17 CHAIRPERSON SCHEUER: The following public
18 written testimony was received through the 18th of
19 March on this matter.

20 On March 11th Milton Ching and Julie
21 Dalton.

22 On March 15th from Wendy MacIntosh and Paul
23 Daniels.

24 On March 16th from Vatsala Andrade and
25 Jacques Pautrat.

1 On March 17th, from George Oswald.

2 On March 18th from Matthew Mannisto and
3 Andy Stennett.

4 And I also note that as I stated before,
5 additional testimony has been submitted that was
6 received today.

7 Now, before we proceed with -- Commissioner
8 Ohigashi.

9 COMMISSIONER OHIGASHI: I just wanted to
10 know if this is the time that I disclose that I have
11 reviewed the one hour that I missed on March 11th and
12 reviewed the tape, video of that occurrence. And to
13 prove it, I can say that Arnold used the word "pake".

14 CHAIRPERSON SCHEUER: Thank you. We won't
15 be asking for offers of proof on that, but thank you
16 for noting that for the record, Commissioner
17 Ohigashi.

18 What I was going to do next was actually a
19 different sort of disclosure. I want to check again
20 if there is any additional disclosures that might be
21 related to this docket from any of the Commissioners,
22 and I say this because I have some.

23 I did not thoroughly review, before our
24 first hearing, the entire witness list for all of the
25 parties. Now that I've thoroughly reviewed that, I

1 need to note that both the Petitioner and the
2 Intervenor have witnesses that I have relationships
3 with, which I will explain as follows.

4 My wife is a consultant, a planner for
5 Group 70 International. I did not realize the
6 Petitioner had hired G70 International and called on
7 of their employees as a witness in this matter,
8 Cody -- I don't have his last name in front of me --
9 Winchester, Cody Winchester.

10 My wife has not participated at all
11 whatsoever in this project or as a consultant to this
12 project. We have no financial interest or benefit
13 from any action related to this project; and I
14 believe I can be fair and impartial regarding that
15 particular relationship that I have.

16 In addition, I would note that the
17 Intervenor's witnesses include two people who I
18 consider to be friends. Dr. Adam Asquith I have
19 known for over a quarter century from when I briefly
20 lived on the North Shore of Kaua'i, and former mayor,
21 JoAnn Yukimura. I don't know if JoAnn considers me a
22 friend, but I have considered her a friend for many
23 years and have known her socially.

24 And so I want to make those disclosures,
25 all three of them to the parties. I want to

1 apologize for not having caught that when I initially
2 reviewed the voluminous matters in this docket. And
3 ask any of the parties if there's any objections, and
4 procedurally, if there's anybody who has concerns or
5 objections or wishes to discuss this further, at that
6 point if there are any, I want there to be a full and
7 robust discussion and I would ask the Vice Chair to
8 proceed over any such discussion.

9 From the Petitioner?

10 MS. AHU: No objection.

11 CHAIRPERSON SCHEUER: From the County?

12 MR. DONAHOE: No objection. Thank you.

13 CHAIRPERSON SCHEUER: Mr. Yee?

14 MR. YEE: No objections, thank you.

15 CHAIRPERSON SCHEUER: Ms. Isaki?

16 MS. ISAKI: No objections, thank you.

17 CHAIRPERSON SCHEUER: Commissioners, are
18 there any further disclosures to make regarding this
19 docket? Seeing none.

20 Now, pursuant to this -- we will move on to
21 the Offers of Proof, and then we will start in on it
22 and then see whether or not we can finish it or take
23 a break.

24 Pursuant to the Chair's instructions to
25 provide Offers of Proof to the admission of the

1 Intervenor's Exhibits I-53, I-55, I-56, I-58, and
2 I-99, we will now hear arguments from the Parties and
3 make a determination on the Offer of Proof.

4 Ms. Isaki.

5 MS. ISAKI: Actually I think Lance Collins
6 was going to take this argument.

7 CHAIRPERSON SCHEUER: Thank you. Mr.
8 Collins.

9 MR. COLLINS: Thank you, Mr. Chair.

10 We more or less stand on our submission of
11 Offer of Proof for Relevance that we filed March 16th
12 as well as the reply. Each of the exhibits that have
13 been called out are all relevant, material and not
14 unduly repetitious with respect to the standards that
15 this Commission is required to evaluate in this
16 proceeding. And so they should all be admitted based
17 on HRS 91-10.

18 CHAIRPERSON SCHEUER: Commissioners, are
19 there questions for Mr. Collins? Any questions,
20 Commissioners?

21 Petitioner.

22 MR. YUEN: Thank you, Mr. Chair.

23 In particular, Petitioner objects to
24 introduction of Exhibit I-53 in that the conclusion,
25 we believe the conclusion is speculative and lacks

1 essential foundational facts.

2 With respect to Exhibit I-55, we don't
3 believe that the experience of conversion of former
4 sugar lands on Maui is relevant to a discussion of
5 conversion of former sugar lands on a different
6 island.

7 With respect to Exhibit I-56, we don't
8 believe it's relevant, because there is nothing in
9 the record to suggest that folks in HoKua Place are
10 intended to marketed or designed for second home
11 buyers.

12 And with respect to Exhibit I-58, the need
13 for affordable housing on Maui may not be relevant to
14 the need for affordable housing on Kauai.

15 CHAIRPERSON SCHEUER: Commissioners, are
16 there questions for Mr. Yuen?

17 Commissioner Okuda.

18 COMMISSIONER OKUDA: Thank you, very much,
19 Mr. Chair. Thank you, Mr. Yuen.

20 If I may ask these questions. Number one,
21 would you agree that it would be reasonable for the
22 Commission to conclude that notwithstanding your
23 objections, that a lot of the points that you are
24 raising go to the weight that should be given those
25 exhibits, and not necessarily the admissibility?

1 Because admissibility, especially in an
2 administrative proceeding, is designed to be broader
3 than, for example, the admissibility standards in
4 court.

5 So in other words, we are really talking
6 about the weight that should be given the evidence,
7 not necessarily the admissibility.

8 MR. YUEN: That's a fair conclusion.

9 COMMISSIONER OKUDA: And if these exhibits
10 were to be admitted, what specific prejudice -- and
11 when I use the word "prejudice", I mean legal
12 prejudice, which is something beyond what you might
13 not win your case, but what would be the specific
14 legal prejudice your client would suffer if these
15 exhibits were to be admitted?

16 MR. YUEN: I believe the prejudice would be
17 that the conclusion in these exhibits may be
18 speculative and may sway the decision of the
19 Commissioners.

20 COMMISSIONER OKUDA: Okay. But when I talk
21 about legal prejudice, I'm talking about something
22 like, for example, surprise, or if this evidence is
23 admitted, you know, a witness that you otherwise
24 would have called is dead, so you can't get that
25 person's testimony, legal prejudice, which I believe

1 is defined more than it might sway our decision to
2 rule against you.

3 Is there any legal prejudice as I have
4 described the term legal prejudice?

5 MR. YUEN: Probably not.

6 COMMISSIONER OKUDA: And my final question
7 is: If -- and this doesn't prejudge anything here --
8 but if the Commission were to rule in your favor,
9 wouldn't it be in your interest to allow this
10 evidence to be admitted, because it would be one less
11 grounds on which the Intervenor could challenge the
12 Land Use Commission decision or appeal?

13 MR. YUEN: I'm not sure I would agree that
14 the inadmissibility of certain exhibits would
15 constitute reversible error in this case.

16 COMMISSIONER OKUDA: I know, but if the
17 Commission were to admit the evidence, it would be
18 one less grounds for appeal by the Intervenor; you
19 would agree with that?

20 MR. YUEN: I would certainly see that it's
21 possible, yes; but I don't believe that the denial of
22 these exhibits would constitute reversible error.

23 COMMISSIONER OKUDA: Thank you very much,
24 Mr. Yuen; thank you, Mr. Chair. No further
25 questions.

1 CHAIRPERSON SCHEUER: Thank you.

2 Commissioners, are there further questions
3 for Mr. Yuen? Seeing none.

4 Is there any response, Mr. Collins?

5 MR. COLLINS: Mr. Chair, no. I don't want
6 to have to repeat what we put in our reply, but the
7 essence is these objections goes to what the
8 Petitioner feels should be the value or weight of
9 evidence, not to admissibility under the 91-10
10 standard. Thank you.

11 CHAIRPERSON SCHEUER: Commissioners, any
12 final questions on this matter?

13 So it's the Chair's inclination to admit
14 these documents into the record over the objections
15 of the Petitioner, essentially for the reasons that
16 came out in the colloquy between Mr. Okuda and Mr.
17 Yuen.

18 I don't think that there is legal harm
19 being done to the Petitioner. I think it reduces our
20 chances of reversal on appeal by admitting them. And
21 I have incredible confidence in the mental acuity and
22 legal understanding of these eight Commissioners to
23 not be unduly swayed by documents that might have
24 speculative portions to them.

25 So my intention is to rule to admit those

1 into the record.

2 Commissioners, any concerns? Seeing none.
3 All of the proposed matters are introduced into the
4 record. And this does not -- just to be clear --
5 limit the Parties, including the Petitioner or the
6 County, who earlier expressed concerns that when the
7 relevant witnesses or portions of the proceedings
8 come up, that we refer to these documents to
9 vigorously question their import to the proceedings.
10 That's not been foreclosed for your abilities to do
11 so.

12 With that said, it is 10:01 A.M. Why don't
13 we take a ten-minute break, and we will go on to
14 continue with the Petitioner's first witness at
15 10:11. Ten-minute break.

16 (Recess taken.)

17 CHAIRPERSON SCHEUER: It's 10:11. Back on
18 the record.

19 During the break counsel for Office of
20 Planning and for the Intervenor indicated they had
21 procedural questions. Let's take those up now before
22 we go into Petitioner's next witness. Mr. Yee.

23 MR. YEE: Thank you, I have two.

24 We have no objection to having Mr. Bow
25 testify next. We notice he's number seven on the

1 witness list. We are just wondering if the
2 Petitioner would be willing to give us the
3 anticipated order of its witnesses, obviously,
4 without prejudice to make revisions as time and
5 schedules require.

6 The second question that is related
7 somewhat is that we understand that Petitioner
8 submitted a revised list of exhibits/witnesses.

9 And we're wondering, assuming that we do
10 not need those exhibits for the testifiers this
11 morning, we were hoping we can take this up, not now,
12 but at least after lunch, after we have a little time
13 to review those exhibits. Thank you.

14 CHAIRPERSON SCHEUER: Mr. Yuen, would you
15 take up the second question first?

16 MR. YUEN: The second question being the
17 witness list or the order --

18 CHAIRPERSON SCHEUER: Yes.

19 MR. YUEN: What we submitted as additional
20 exhibits are three letters or statements by former
21 employees of the Lihue Plantation who were contacted
22 by Nancy McMahon, our archaeological and cultural
23 expert. These were originally intended to be
24 exhibits to her report, but they were inadvertently
25 omitted from the Final Environmental Impact Statement

1 when that was published.

2 And we also have located a kama'aina
3 witness, Milton Ching. We added him to the witness
4 list, and we have a statement of his qualifications.

5 And finally, we have designated, but have
6 not yet filed, a pro forma budget for the project
7 that we are in the process of preparing that we know
8 the Commission had asked for our primary witness Jake
9 Bracken to prepare.

10 CHAIRPERSON SCHEUER: So to the question
11 from the Office of Planning, is there anybody who
12 you're planning to call as a witness this morning
13 prior to lunch who is going to be referencing any of
14 these proposed witness statements or exhibits?

15 MR. YUEN: No.

16 CHAIRPERSON SCHEUER: Now, onto his first
17 question. And I was also a little bit surprised by
18 the witness who was appearing in front of us. What
19 is your order of witnesses, and how will you --

20 MR. YUEN: After Mr. Bow, we intend to call
21 Cody Winchester, David Rietow, the agricultural
22 expert. Then call Milton Ching, then Nancy McMahon.

23 If we could get through those today, that
24 would be outstanding.

25 It's primarily a question of scheduling,

1 Mr. Chairman, available when.

2 CHAIRPERSON SCHEUER: Mr. Yee, does this
3 sufficiently address your stated concerns?

4 MR. YEE: It does, thank you. If we could
5 maybe get a list at the end of the day then for
6 tomorrow of the order of his witnesses, that would be
7 appreciated. Thank you.

8 CHAIRPERSON SCHEUER: Is that possible, Ms.
9 Ahu or Mr. Yuen?

10 MR. YUEN: Yes. It just depends how many
11 we get through today.

12 CHAIRPERSON SCHEUER: Understood.

13 Mr. Collins.

14 MR. COLLINS: Thank you, Mr. Chair.

15 Part of -- actually our procedural
16 questions were the same as Mr. Yee's.

17 The only thing other than what he raised
18 that we wanted to get clarification on is, while this
19 hearing is going on, should we expect to have
20 additional revised witness lists and exhibits being
21 filed during the hearing? Because, for example, this
22 one was submitted for E-filing after you folks
23 already convened. And so just want to get an idea of
24 like how prepared we need to be for surprised
25 witnesses and surprised exhibits.

1 CHAIRPERSON SCHEUER: Thank you. And you
2 raised this, if I recall correctly, you raised this
3 concern on when there was an expressed desire from
4 the Petitioner to perhaps call additional witnesses
5 after the public testimony included statements,
6 including the statement that asserted that there is a
7 heiau on the property. And Petitioner indicated they
8 might want to have witnesses associated with that.

9 My inclination is, with the parties, that
10 if by the end of our two days of proceedings, I could
11 at least get a read from all of you whether there's
12 any intention to call any other witnesses or admit
13 any other further exhibits, then we would close it
14 after a couple days.

15 My inclination to keep it a little more
16 fluid than would normally be the case is due to the
17 sort of significance of this project to the people of
18 Kauai, and the dynamic nature of the information
19 that's been coming before of us and wanting to ensure
20 that all the parties, Intervenors, Petitioner, County
21 and Office of Planning have full opportunity to make
22 their cases.

23 But I'm comfortable with after we've heard
24 from a number of Petitioner's witnesses, that it will
25 be time to cut off that additional submission of

1 witnesses.

2 Does that sound acceptable, starting with
3 Petitioner?

4 MR. YUEN: Yes, Chair.

5 CHAIRPERSON SCHEUER: Mr. Donahoe?

6 MR. DONAHOE: That's acceptable, thank you.

7 CHAIRPERSON SCHEUER: Mr. Yee?

8 MR. YEE: The only caveat I would add, that
9 the deadline to submit, parties could make a good
10 cause showing for an exception, although they would
11 have to (indecipherable) --

12 CHAIRPERSON SCHEUER: Mr. Collins?

13 MR. COLLINS: We generally have no
14 objection, and we don't have any objection to the
15 Petitioners putting on whatever rebuttal evidence
16 they feel would be necessary even at the end of when
17 all of the witnesses are called.

18 Our concern is just that the meeting has
19 started, and then we're getting a filing while the
20 meeting is going on. That's just our concern, is
21 sort of -- I mean in this it turned out that actually
22 the witness list didn't even have the correct order
23 of the witnesses that are going to be called today
24 anyway, so I don't know what purpose it was, and some
25 of the exhibits that have been filed are part of the

1 Final Environmental Impact Statement.

2 So in this particular instance, I don't
3 think there is any prejudice to us, but our only
4 concern is just whatever the sequencing is, not to
5 deprive anybody from their ability to put on rebuttal
6 evidence, but it's not a trial by surprise or
7 contested case by surprise.

8 CHAIRPERSON SCHEUER: We're going to stick
9 by the advice of the Office of Planning to make this
10 as painless as is reasonably possible.

11 Any further procedural concerns?

12 Commissioner Chang.

13 COMMISSIONER CHANG: Thank you, Mr. Chair.

14 I do apologize in advance that I will be
15 leaving the meeting early today about 11:30, and then
16 hopefully be back by 12:30 or 1:00 o'clock.

17 Likewise, tomorrow I will be leaving a
18 portion of the meeting in the morning about 10:15
19 until probably around 12:00.

20 I do have a series of questions for one of
21 the witnesses, Nancy McMahon, so I would ask counsels
22 if you could accommodate my schedule, and if you call
23 that witness to ensure that I'll be here at that
24 time.

25 Again, I do apologize that I won't be here

1 at those times, but I would appreciate an
2 accommodation of your witnesses.

3 MR. YUEN: Could I get those times again?

4 COMMISSIONER CHANG: Sure. I will be
5 leaving today from about 11:30 to about 1:00 o'clock;
6 and then tomorrow from 10:30 to 12:00.

7 MR. YUEN: Okay, thank you.

8 COMMISSIONER CHANG: Thank you very much.

9 MR. YUEN: We will adjust our witness order
10 accordingly.

11 COMMISSIONER CHANG: I appreciate that very
12 much.

13 CHAIRPERSON SCHEUER: And, of course, as
14 Commissioner Ohigashi has so diligently modeled, all
15 of the Commissioners who will eventually deliberate
16 on this matter will have reviewed all of the matters
17 prior to deliberation and will attest to the same.

18 Are there any other procedural concerns or
19 questions from the parties or from the Commissioners?
20 Seeing none.

21 Mr. Yuen or Ms. Ahu, who is going to be
22 bringing forward your witness?

23 MS. AHU: Mr. Yuen.

24 MR. YUEN: Thank you. We're going to call
25 Mr. William Bow.

1 CHAIRPERSON SCHEUER: Mr. Bow, do you swear
2 or affirm the testimony you're about to give is the
3 truth?

4 THE WITNESS: Yes, I do.

5 MS. AHU: May I share my screen?

6 CHAIRPERSON SCHEUER: Yes.

7 WILLIAM Bow

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

11 DIRECT EXAMINATION

12 BY MR. YUEN:

13 Q Bill, please state your name and address
14 for the record.

15 A My name is William H.Q. Bow. The business
16 is located at 1953 S. Beretania Street, Penthouse A.
17 Full name of the company is Bow Engineering &
18 Development, Inc.

19 Q What is your profession and your business
20 affiliation?

21 A I am a licensed civil engineer in the State
22 of Hawaii. I am the CEO and founder of Bow
23 Engineering & Development. And my experience is in
24 planning, design and construction, administration and
25 management.

1 Q I would like to have the witness qualified
2 as an expert in civil engineering.

3 CHAIRPERSON SCHEUER: Any objections from
4 the parties, County?

5 MR. DONAHOE: No objection from the County.

6 CHAIRPERSON SCHEUER: Mr. Yee?

7 MR. YEE: No objection.

8 CHAIRPERSON SCHEUER: Mr. Collins?

9 MR. COLLINS: Mr. Chair, I guess just a
10 question is that, is it necessary to have the Land
11 Use Commission make a determination about whether the
12 person is qualified as an expert where there is no
13 rule that indicates that the Commission is supposed
14 to do that?

15 CHAIRPERSON SCHEUER: It is at least our
16 practice. I'm going to actually call on Ms. Chow and
17 Mr. Orodener to respond to your inquiry.

18 EXECUTIVE OFFICER: It is our practice to
19 qualify or not qualify witnesses as experts so that
20 the weight of their testimony can be determined by
21 the Commissioners in comparison to lay testimony.

22 MS. CHOW: I would agree with that
23 procedure.

24 CHAIRPERSON SCHEUER: Mr. Collins?

25 MR. COLLINS: Our only concern --

1 CHAIRPERSON SCHEUER: Sorry, one moment.
2 May I ask you to stop screen sharing, Ms. Ahu?

3 MS. AHU: Yes, Chair.

4 CHAIRPERSON SCHEUER: Please continue, Mr.
5 Collins.

6 MR. COLLINS: Our only concern is because
7 no rule has been adopted, it's not really clear what
8 are the standards by which the Commission determines
9 somebody is an expert or not. Since the rules of
10 evidence don't apply, those wouldn't be the
11 standards, and the Commission hasn't adopted other
12 standards, so we don't really have notice about
13 whether or not what these standards are, and how
14 persons should be evaluated to be determined whether
15 or not they're experts.

16 We don't have objection to the witness
17 testifying on these matters to the extent that
18 they're relevant, material and not unduly
19 repetitious, but to the extent that there is
20 nonexistent standard, we have a concern with that.

21 CHAIRPERSON SCHEUER: Commissioner Okuda.

22 COMMISSIONER OKUDA: Thank you, Mr. Chair.
23 If I may ask Mr. Collins a question?

24 CHAIRPERSON SCHEUER: Please.

25 COMMISSIONER OKUDA: Mr. Collins, what

1 legal prejudice do you or your clients suffer if
2 there is a determination that the person is
3 testifying as an expert?

4 MR. COLLINS: Well, without the standards,
5 we don't know what the significance of that
6 ultimately is, and because there's no standards, I
7 don't know that ultimately the Commissioners might
8 not be on the same page, so we would say that that
9 could be considered arbitrary or capricious, or could
10 improperly evaluate the evidence with standardless
11 discretion.

12 COMMISSIONER OKUDA: What legal authority
13 can you cite to? When I say legal authority, I mean,
14 a specific statute, administrative rule, or Hawaii
15 appellate case which supports your argument?

16 MR. COLLINS: Well, the first one that
17 comes to mind is Lewin versus Aluli, that agencies
18 are not allowed to engage in unbridled discretion
19 with respect to procedures in a quasi-adjudicative
20 manner. That would be the first one that comes to my
21 mind.

22 COMMISSIONER OKUDA: Can I stop you right
23 there.

24 But how would we be engaged in unbridled
25 discretion if we -- if there is a determination or

1 acceptance that the person is an expert, because
2 again, wouldn't that, as you say, you argued earlier,
3 go to really the weight of the evidence? And in
4 fact, even if a person is determined to be an expert,
5 we may decide, after hearing his or her testimony,
6 that a little or no weight should be given to the
7 testimony for many reasons.

8 So in other words, we would be using the
9 determination of expertise to actually exercise our
10 discretion, because let me tell you something, if
11 somebody is offered as an expert and their testimony
12 falls flat, that is not necessarily going to bode
13 well for the person that offered that person as an
14 expert.

15 MR. COLLINS: Mr. Okuda, I think the
16 concern that we have is primarily --

17 CHAIRPERSON SCHEUER: Commissioner Okuda.

18 MR. COLLINS: Sorry, Commissioner Okuda.

19 Is that if the Commission is going to make
20 a determination that would apparently alter how the
21 Commission evaluates evidence, that we be apprised of
22 what that standard is so that we can assure that we
23 are also properly evaluating that.

24 The concern is very narrow. I definitely
25 agree with everything that you've said, it's just

1 that we have notice of what the standards are by
2 which the Commission evaluating and making the
3 determination which will affect how the evidence is
4 evaluated.

5 COMMISSIONER OKUDA: Isn't it true that
6 there is no Hawaii appellate case which holds that an
7 administrative agency using the standards set forth
8 in Chapter 91 is prohibited from accepting testimony
9 with the designation that that witness is designated
10 an expert?

11 MR. COLLINS: Well, I think the holding in
12 the dependence of Cazimero would counsel against
13 that, because it would basically be indirectly
14 reinserting the Hawaii Rules of Evidence into the
15 proceeding possibly.

16 Or if that's not the standard that's being
17 used to qualify a witness as an expert, then
18 basically it goes back to Aluli versus Lewin case,
19 which is that the agency is engaging in standardless
20 discretion by not having standards.

21 COMMISSIONER OKUDA: Mr. Collins, I think
22 you've answered my question. Thank you, Mr. Chair,
23 no further questions.

24 CHAIRPERSON SCHEUER: Thank you.

25 Commissioner Ohigashi.

1 COMMISSIONER OHIGASHI: I have a question.
2 Do you plan in --

3 CHAIRPERSON SCHEUER: To whom is your
4 question?

5 COMMISSIONER OHIGASHI: Mr. Collins.
6 Do you plan to ask the Commission to
7 designate any of your witnesses as experts? Because
8 I notice your witness list, you indicate that there's
9 certain Ph.D., doctors going to testify about water,
10 infrastructure, agricultural, water resource
11 development, normally those are for experts to
12 testify on.

13 Are you going to offer them as experts in
14 your case?

15 MR. COLLINS: Well, at this moment, up
16 until this moment, there is no rule that indicates
17 what the standards are for qualifying witnesses. So
18 our witnesses are all experts, but we had no
19 intention of asking the Commission to make a separate
20 determination because it's not -- there is no rule to
21 that effect, and there is no clear standards about
22 how we would go about doing that in any event.

23 COMMISSIONER OHIGASHI: Would it be fair to
24 say then that you are not going to ask us to
25 designate them as experts?

1 MR. COLLINS: Well, I think, part of it
2 depends on how this objection is ruled upon. If the
3 Commission is going to qualify persons as experts, we
4 would just ask for that standard so that we can
5 evaluate all of the witnesses based on that standard,
6 and also we could follow the same procedure for our
7 witnesses.

8 COMMISSIONER OHIGASHI: I'm just asking, is
9 that your plan at this point in time, because you
10 made this objection, and before this, not to ask for
11 designation of -- (indecipherable).

12 Is that your position?

13 MR. COLLINS: Well, it depends on what the
14 ruling on this objection is.

15 CHAIRPERSON SCHEUER: Let me first clarify
16 something. If I had understood you, Mr. Collins, you
17 had said you were not objecting to this witness, but
18 you raised a procedural concern, and you're now
19 referring to this as a formal objection.

20 Are you objecting?

21 MR. COLLINS: If the Commission is going to
22 take formal action to make a determination about
23 somebody being an expert, then, yes, then we would
24 object to that and ask for the standard for how that
25 is done to be evaluated to be made known to us so

1 that we have notice.

2 And if that is going to be the procedure in
3 this case going forward, then we will also comply
4 with that procedure and that standard.

5 CHAIRPERSON SCHEUER: Commissioner Okuda
6 and Wong -- I mean, Commissioner Okuda. Kala mai.

7 COMMISSIONER OKUDA: Thank you, Mr. Chair.

8 Mr. Collins, let me ask you this question
9 then.

10 What really is the difference in how the
11 Commission is to evaluate a witness if the witness
12 is or is not designated an expert, or if there's no
13 designation of expert?

14 Or let me put it more succinctly, or
15 following up on what Commissioner Ohigashi asked.

16 If you're calling a bunch of witnesses with
17 the initials Ph.D. after their name, aren't you
18 trying to get us to give that witness more
19 credibility? Maybe you can answer the first question
20 first.

21 What really is the difference in how we are
22 to evaluate a witness if one is determined to be an
23 expert, and the other one is not determined to be an
24 expert?

25 What's the difference in how we are to

1 consider evaluating that witness' testimony?

2 Just answer that question, please.

3 MR. COLLINS: I think the -- well, if there
4 is a standard, then that would be great. If there
5 isn't a standard, I think the concern is that what it
6 does is that in some ways can put the thumb on the
7 scale by having the Commission, before they hear all
8 of the testimony of the witness, start making
9 credibility determinations.

10 I mean, that's more of a policy issue, but
11 the more narrow issue is, what is the standard that
12 the Commission is using to evaluate if it's not like,
13 you know, Rule 702? I mean, what's the standard that
14 we're applying?

15 COMMISSIONER OKUDA: I'm still uncertain.
16 Let me ask this question, which hopefully will be my
17 last question.

18 If we withhold our determination about the
19 credibility of a witness until that witness finishes
20 testifying, in other words, we don't assume, just
21 because somebody is determined to be an expert, or if
22 somebody is determined to have a Ph.D., if we
23 withhold our determination of credibility until we
24 hear all the witnesses' testimony, including
25 cross-examination, what really is the difference

1 between -- in respect to how we evaluate a witness
2 between whether or not a witness is determined to be
3 an expert or not deemed to be an expert; what's the
4 difference if we are withholding our determination of
5 credibility until the end?

6 MR. COLLINS: I think because it just goes
7 to credi-- I mean, there's two ways of doing it, as
8 you've described. I don't think that there is one
9 that's necessarily better than the other. The only
10 difference being at the moment is the issue of all of
11 the parties having notice of what the standards are
12 by doing that.

13 I don't think there is any harm in not
14 having it, but if the Commission feels that that's
15 something that's important, and apparently there is
16 some custom of doing that, that there should be
17 standards so that all the parties have notice on what
18 those standards are going forward.

19 COMMISSIONER OKUDA: If we tell you that
20 the standard we are applying are the standards
21 referred to described in Chapter 91, no matter what
22 terminology we use or what words we use in admission
23 of or acceptance of witnesses, because let's face it,
24 you do agree Chapter 91 doesn't really require
25 administrative agencies to use special words or terms

1 in deciding when and how to hear witnesses.

2 Do you agree with that?

3 MR. COLLINS: Yes, that's correct.

4 COMMISSIONER OKUDA: So, in other words, if
5 we assure you that whatever terms we use, whether we
6 accept somebody as an expert witness or not, we
7 assure you that the bottom line is we're following
8 all the requirements of Chapter 91, does that satisfy
9 your concerns?

10 MR. COLLINS: I think our concern is just
11 that they -- just that we know what the standards
12 are, because obviously by making a credibility
13 determination, making a determination that witnesses
14 should be designated as expert, we don't know what
15 the standards are for that, and now I'm learning what
16 you and other Commissioners believe is the
17 significance of that designation. None of that was
18 adopted by an administrative rule.

19 And so if it's going to be adopted through
20 the adjudicative process, I think due process still
21 requires that we be entitled to notice of what those
22 standards are and how it operates.

23 CHAIRPERSON SCHEUER: Commissioner Wong,
24 I'm going to -- we're kind of going in circles here.
25 Commissioner Wong.

1 COMMISSIONER WONG: Thank you, Chair.

2 I would like to make a motion to move to go
3 into executive session to meet with our legal counsel
4 regarding this issue about what was just stated,
5 determination of what is --

6 CHAIRPERSON SCHEUER: Expert --

7 COMMISSIONER WONG: Expert, yes.

8 CHAIRPERSON SCHEUER: Is there a second to
9 the motion --

10 COMMISSIONER OHIGASHI: Second.

11 CHAIRPERSON SCHEUER: -- made to move into
12 executive session by Commissioner Wong and seconded
13 by Commissioner Ohigashi.

14 If we move into executive session, for the
15 benefit of all the people who are panelists or
16 attendees, the Commissioners will leave this ZOOM
17 meeting, go into a separate ZOOM meeting with their
18 counsel and Executive Officer, and then we will
19 rejoin this meeting. This meeting will remain open.

20 Obviously, due to the nature of executive
21 sessions, it is the equivalent of if we were in a
22 physical meeting, we'd kick you out of the room and
23 you wouldn't know when we were coming back, so you've
24 just got to be patient.

25 Is there discussion on the motion by

1 Commissioner Wong and seconded by Commissioner
2 Ohigashi to move into executive session?

3 CHAIRPERSON SCHEUER: Seeing none. Mr.
4 Orodanker, please roll call the Commission.

5 EXECUTIVE OFFICER: The motion is to go
6 into executive session.

7 Commissioner Aczon is absent.

8 Commissioner Cabral?

9 COMMISSIONER CABRAL: I have no objection.

10 CHAIRPERSON SCHEUER: It's an "aye" or
11 "nay", Commissioner.

12 COMMISSIONER CABRAL: Going into executive
13 session, aye.

14 EXECUTIVE OFFICER: Commissioner Chang?

15 COMMISSIONER CHANG: Aye.

16 EXECUTIVE OFFICER: Commissioner Giovanni?

17 COMMISSIONER GIOVANNI: Aye.

18 EXECUTIVE OFFICER: Commissioner Ohigashi?

19 COMMISSIONER OHIGASHI: Aye.

20 EXECUTIVE OFFICER: Commissioner Okuda?

21 COMMISSIONER OKUDA: Yes.

22 EXECUTIVE OFFICER: Commissioner Wong?

23 COMMISSIONER WONG: Yes.

24 EXECUTIVE OFFICER: Chair Scheuer?

25 CHAIRPERSON SCHEUER: Aye.

1 EXECUTIVE OFFICER: Thank you, Mr. Chair.
2 The motion passes unanimously.

3 CHAIRPERSON SCHEUER: The Executive Officer
4 will send to the Commissioners and our Deputy
5 Attorney General our information on our meeting. And
6 for the rest of you, I'm sure Petitioner will
7 eventually get to call a second witness, but not
8 quite yet. We're going into executive session.

9 (Executive session.)

10 CHAIRPERSON SCHEUER: It's 11:33 A.M. Back
11 on the record.

12 Commissioner Wong?

13 COMMISSIONER WONG: Commissioner Cabral
14 left. We have to wait for her.

15 CHAIRPERSON SCHEUER: Thank you.

16 (Recess continued.)

17 CHAIRPERSON SCHEUER: It is 11:36. We are
18 back on the record. We will go until 12:30, take a
19 45-minute break for lunch and resume at 1:15.

20 When we left off there was a series of
21 discussions between Mr. Collins and Commission that
22 was stemming from the request from the Petitioner to
23 admit Mr. Bow as an expert.

24 Mr. Collins has raised an objection that is
25 novel, not objecting to the qualifications of

1 specific witness, but instead objecting to the
2 Commission's standard that we would use to qualify
3 witnesses as experts if the Commission did so in this
4 case.

5 In order to maximize fairness and
6 transparency in this docket as we move forward, in
7 light of the unusual objection, and I use the word
8 "unusual" in the sense of not something that's been
9 usually done, at least in my LUC experience over many
10 years, I'm not inclined, as the Chair, to qualify
11 witnesses in this docket as experts in particular
12 matters, but instead parties are welcomed and
13 encouraged to present, as part of the witness'
14 testimony, information on their knowledge, skill and
15 experience and education that would be relevant to
16 the weight to which the Commission will place their
17 testimony.

18 This is in addition to any substantive
19 testimony on the facts of the case, and parties are
20 then similarly welcome to cross-examine the other
21 witnesses as to the same, as to whether or not they
22 have questions about their skill, experience,
23 knowledge or education of that the witnesses have.

24 Are you prepared to continue with your
25 questioning of your witness?

1 MR. YUEN: Yes, I am, Mr. Chairman.

2 MS. AHU: Chairman, may I share screen,
3 please?

4 CHAIRPERSON SCHEUER: Yes, Ms. Ahu.

5 Do you need to be enabled to do so again?
6 You should be able to.

7 Q (By Mr. Yuen): While she's doing that, Mr.
8 Bow, can you please describe to the Commission your
9 educational and professional background in civil
10 engineering?

11 A Yes. I have been a practicing civil
12 engineer for 44 years, so you see all the gray hair I
13 have. It's aged me, but aged me well.

14 Graduated from University of Hawaii-Manoa.
15 For the 44 years of private practice, I've worked on
16 numerous housing projects. I formed the Bow
17 Engineering & Development, Inc., about 24 years ago.
18 As a company, we have assisted in over 600 units of
19 affordable housing throughout the State, many of
20 those on the Island of Kauai.

21 We have also done some other housing
22 projects on Oahu and elsewhere.

23 Q Thank you.

24 Did your firm prepare the potable water
25 analysis, the wastewater analysis and the drainage

1 analysis for HoKua Place?

2 A Yes, we did.

3 Q First, that's your resume up there. Is
4 there anything in your resume you want to point out
5 as particularly relevant to the engineering issues in
6 this project?

7 A I think our specialization, as shown here
8 on the slide, is relevant to any development, land
9 development. I won't go through and read this. You
10 can see it here.

11 And my credentials, as I said, Im a
12 licensed engineer since 1980 with the State of
13 Hawaii. And there is a list further on, if you
14 scroll down, Janna, there is my professional
15 affiliations.

16 Past president of American Civil
17 Engineering, American Society of Civil Engineers,
18 President of American Council, Engineering Companies
19 of Hawaii, active with the University of Hawaii
20 Alumnae Association; and I served as Chair on the
21 State DCAB Board.

22 So I've been around the block a few times,
23 as well as being a member of Pearl Harbor Rotary Club
24 on this island.

25 Q I would like to turn to Petitioner's

1 Exhibit No. 28, which is Mr. Bow's PowerPoint. And
2 in particular -- and can you please describe the
3 potable water demand for HoKua Place at full build
4 out?

5 A I'll wait for the slide to come on.

6 So, yeah. We did analyze the potable water
7 system for HoKua Place, and we analyzed it based on
8 the Kauai Department of Water Supply standards.

9 I won't go through and read all of this,
10 but the standard state for single family, it's
11 design -- the design should be based on 500 gallons
12 per unit, and for multi-family, 250-gallons per unit.

13 Fire protection, 2000 gallons per minute
14 for two-hour duration.

15 So the average demand for Hokua Place, in
16 addition to the ag parcel, is 0.4 million gallons per
17 day. HoKua Place in itself, which is part of this
18 Petition, is 0.3 million gallons per day. So it's a
19 little deviation from what's shown there on the
20 slide.

21 So we are proposing to put in a well to
22 provide the water to the project site. We anticipate
23 utilizing the existing reservoirs that the County
24 has, Kauai water, and those are two reservoir sites,
25 one at 313 elevation, and the other at 214 elevation.

1 The total capacity that we need to fulfill the
2 domestic and fire protection requirements for the
3 site would be 700,000 gallons.

4 And you can see that the table below the
5 average demands period zones that I talked to you
6 about, the 313 elevation zone and the 214 elevation
7 zone.

8 The slide you see here is the slide of the
9 313-foot elevation network or system that already
10 exists in the area. So this is the 313 foot service
11 limit.

12 The site is shown in the south -- there we
13 go, thank you. That is our site below there.

14 CHAIRPERSON SCHEUER: Hold on. For the
15 purpose of the transcript, the counsel is
16 highlighting -- could you orally describe?

17 MR. YUEN: This is Figure 4 of Petitioner
18 Exhibit 28.

19 CHAIRPERSON SCHEUER: And in particular, on
20 Figure 4 of Exhibit 28.

21 MR. YUEN: The witness is highlighting the
22 Petition Area.

23 Similarly, the next slide that will be
24 highlighted will be Figure 5 of Petitioner's
25 Exhibit 28. And, again, we will highlight the

1 Petition Area on the next slide.

2 CHAIRPERSON SCHEUER: Thank you.

3 THE WITNESS: This is upper service limit,
4 the 313; and this shows you the lower service limit
5 or the 214-foot elevation service limit.

6 And this is our site that's shown here.

7 MR. YUEN: The highlight function is not
8 working so well.

9 Q Next, can you please describe the amount of
10 wastewater expected to be generated by HoKua Place at
11 full build out and how HoKua Place intends to dispose
12 of the wastewater?

13 A The average daily flow of wastewater being
14 generated from HoKua Place is 0.21 million gallons
15 per day. And, again, based on the Department of
16 Public Works standards for wastewater design.

17 The maximum actual daily flow is
18 1.06 million gallons per day, and the peak flow is
19 1.31 million gallons at full build out. So there
20 will be a network of infrastructure throughout the
21 site. It will vary from pipe size from 6, 8 on up to
22 18-inch sewer main that will connect to the County
23 wastewater system further downstream along the Bypass
24 Road.

25 The connection -- go to the next slide,

1 Janna.

2 So the connection, there is an existing
3 21-inch main on Kukui Street that has a capacity of
4 3.23 million gallons per day. According to the plans
5 that we researched, the existing usage is
6 1.82 million gallons per day.

7 We have researched or reached out to
8 Department of Public Works Wastewater Management
9 Division in January of this year, and had a
10 discussion with them. And they are saying that the
11 treatment plant currently has a capacity of 1 million
12 gallons per day capability; and the current flow to
13 the treatment plant is -- (indecipherable).

14 CHAIRPERSON SCHEUER: Hold on one second.
15 I don't know who moved something, but it became
16 inaudible in the last sentence.

17 THE WITNESS: Oh, so let me repeat.

18 So I was talking about the Wailua
19 Wastewater Treatment Plant. It is treating
20 approximately 0.6 million gallons of average daily
21 flow currently. It has a capacity to treat
22 1.0 million gallons per day. So there is an excess
23 capacity for the treatment plant.

24 And we have contacted them and they do
25 indicate that there is capacity for HoKua Place.

1 Q (By Mr. Yuen): Would HoKua Place
2 contribute to the cost of upgrading the County
3 wastewater system to accommodate HoKua Place
4 wastewater?

5 A Yes, it is my understanding that we would
6 contribute to that. At this point it seems like
7 there is adequate capacity though.

8 But we are told that the Public Works was
9 looking at doing a CIP project to increase the
10 design, the capacity of that treatment plant.

11 Q Please describe provisions for drainage of
12 stormwater at HoKua Place?

13 A Yes. So I think it might be beneficial,
14 instead of reading through this, if I talk through
15 this using the figure. So if you could go to the
16 next figure, Janna. There you go.

17 So this figure here, Figure 3, if the
18 Commissioners would like to turn to it, is the basin,
19 the HoKua Place basin, existing basin.

20 So you can see that on the north side,
21 that's where you see the buildings there, that is the
22 Kapaa Middle School. So we take that flow -- that
23 flow actually comes into HoKua Place. So we will be
24 taking and handling that storm water runoff.

25 The purpose of looking at existing flow is

1 that we analyze it, again, based on Department of
2 Public Works standards, storm stream standards, for
3 2-year and 100-year storm flows.

4 And in doing so, we need to find out what
5 that amount is, because we allow to have that flow
6 come through the lot. When we develop it, there will
7 be impervious surfaces put in, houses, roadways, et
8 cetera, will increase the amount of runoff from the
9 site, as you well know.

10 So we need to find out what the
11 predevelopment flows are. That's the purpose of this
12 analysis.

13 So if you could switch to the next slide,
14 Janna.

15 MR. YUEN: This is labeled Figure 4 of
16 Exhibit 28 Concept Proposed Drainage Map.

17 A On this map here, you can see it's all
18 color-coded with the developments that are being
19 proposed, multi-family as well as single family. The
20 green areas are the natural greenbelt or the flowage
21 where natural flow goes through.

22 And as I mentioned before, we need to
23 contain the increase in stormwater to predevelopment
24 levels.

25 So we have sized the basins. We call it

1 detention basins. So detention Basin 1 is located
2 there (indicating), at the south end of the project
3 site below the multi-family one site.

4 MR. YUEN: The witness is referring to a
5 location on the map identified as Detention Basin 1.

6 A Right. So that basin is sized to handle,
7 or volume of 675,000 cubic feet of runoff. So that's
8 Basin 1.

9 Basin 2 is located in the greenbelt area to
10 the east, kind of the southeast corner. Janna will
11 highlight that area. That detention basin is a
12 little smaller, 625,000 cubic feet of storage.

13 And, again, this is conceptual in nature
14 because we haven't laid out any of the interior roads
15 or buildings, so forth.

16 But based on the 50 percent impervious
17 coverage of these other developed areas, we have come
18 up with these sizing of detention basins.

19 Q Turn to solid waste.

20 Can you please describe the Petitioner's
21 plan for disposal of HoKua Place Solid Waste?

22 A Yes, thank you.

23 So each household will generate
24 approximately 18 pounds of solid waste per day. The
25 Kauai County is currently updating its integrated

1 Solid Waste Management Plan.

2 I had a chance to review the copy. The
3 last version was done in 2009. HoKua Place has and
4 will comply with the integrated Solid Waste
5 Management Plan, and would encourage recycling of
6 solid waste and greenwaste for its community.

7 The County will provide single-family
8 residences with solid waste collection on a weekly
9 basis. The multi-family areas or condominiums will
10 have private solid waste pickup.

11 As far as the landfill, it's located in
12 Kapaa, as you know, and we have touched bases with
13 the solid waste chief there, and she states that
14 there is a seven-year life on the landfill.

15 Q Isn't the landfill located in Kekaha?

16 A Oh, I'm sorry, I misspoke. Kekaha, that's
17 correct.

18 Q I have no further questions of this
19 witness.

20 CHAIRPERSON SCHEUER: We will proceed to
21 cross-examination by the parties, and then the
22 Commissioners followed by any redirect.

23 Mr. Donahoe?

24 MR. DONAHOE: Thank you Chair.

25 -o0o-

CROSS-EXAMINATION

1
2 BY MR. DONAHOE:

3 Q Good morning, Mr. Bow.

4 On page 3 of your PowerPoint you indicated
5 that the plan for water is for a well to service
6 HoKua Place, correct?

7 A Correct.

8 Q And to your knowledge, has the location for
9 the proposed new well source been found?

10 A There is as an existing well in the
11 southwestern portion of the site where some well
12 tests were done.

13 Q And has that been confirmed?

14 A Yes. They did do some water pump test and
15 took samples for biological testing, and everything
16 came out meeting clean water standards.

17 Q Did you assess the cost for locating and
18 constructing a new well?

19 A I beg your pardon? Can you repeat?

20 Q Did you assess the cost for locating and
21 construction of the new well?

22 A Yes. There was a consultant, Tom Nance
23 Water Resources Engineering. He's another
24 sub-consultant who will be testifying probably
25 tomorrow on this, but he did provide me some of the

1 cost for that.

2 Q On page 3 of the wastewater analysis for
3 HoKua Place it states:

4 Prior to the COVID-19 pandemic, the Wailua
5 Wastewater Treatment Plant, or WWTP, to which the
6 sewerline is routed from HoKua Place is treating
7 approximately 0.6 million gallons per day daily
8 average flow; correct?

9 A Correct.

10 Q And the WWTP is designed to treat 1.5
11 million gallons per day average daily flow; correct?

12 A 1.0 million gallons per day.

13 Q It's designed, but isn't it true that one
14 of the one of the processes is currently offline?

15 A Yes. I don't know that for a fact, but
16 based on our conversation with the wastewater
17 management, he stated that currently it has
18 capability of treating 1.0 million gallons per day.

19 Q And so the average daily flows prior to
20 COVID-19 were approximately 0.6 million gallons per
21 day or 60 percent of the capacity of Wailua WWTP?

22 A Correct.

23 Q And so any remaining capacity is either
24 already allocated or may be allocated for new
25 development projects as sewer agreements are executed

1 and sewer connection fees are then paid, correct?

2 A That's correct. That's my understanding.

3 Q So the remaining capacity of the Wailua
4 WWTP depends on the timing of those other new
5 developments or County sewer expansion projects; is
6 that fair to say?

7 A Sure.

8 Q However, in the meantime, the capacity
9 remains at 1.0 million gallons per day?

10 A That's correct.

11 Q And so what is the estimated average daily
12 flow of wastewater in the millions of gallons per day
13 that HoKua Place development is going to use?

14 A Generate, right?

15 Q Correct.

16 A So at full build-out it will be 0.2 million
17 gallons per day, and that's provided the standard
18 absorption rate is ten years. So to get to that 0.2
19 will take you ten years, so incrementally, if you do
20 a straight-line progression, that's what you will
21 generate on an annual basis.

22 Q And if you're aware, the proposed Cocopalms
23 development is also slated to be served by the Wailua
24 WWTP; correct?

25 A That's 0.14 million gallons per day.

1 Q That's how much Cocopalms would produce?

2 A That's my understanding on it, yes.

3 Q So when Cocopalms is fully developed, the
4 Wailua WWTP will be approximately 74 percent
5 capacity?

6 A Correct.

7 Q And at 74 percent capacity, that doesn't
8 include the 0.2 million gallons per day that would be
9 caused by the completion of HoKua Place development?

10 A Correct.

11 Q So in addition to Cocopalms, isn't it true
12 there's also other small projects, including
13 individual and commercial properties that are
14 applying for sewer service that would also be
15 connected to Wailua WWTP?

16 A I don't know what's being applied for, but
17 I do know what's permitted. And I believe Cocopalms
18 is the only one that's permitted at this point.

19 So I'm not sure what other projects are
20 coming online.

21 Q But if there were these smaller projects,
22 if developed, that would add additional millions of
23 gallons per day potentially of average daily flow?

24 A I don't think it's millions of gallons.
25 You said small projects, so you're being vague. If

1 you could be more specific on the size, I can give
2 you an opinion.

3 Q Okay. So let's just focus just on
4 Cocopalms.

5 So if Cocopalms is completed as well as the
6 smaller projects, even if they're small, then the
7 Wailua WWTP may not have the capacity to handle the
8 additional average daily flow of wastewater generated
9 by the Hokua Place development; are you saying it
10 would?

11 A I don't know what is coming online, so I
12 can't render an opinion.

13 Q Is this limited treatment capacity that's
14 been identified, is that a limiting factor of the
15 County system in servicing wastewater flows from
16 HoKua Place?

17 A I don't see a limiting capacity. If you
18 look at the numbers, we're below what the capacity
19 is. So I don't understand your question.

20 Q Are you aware that -- you mentioned that
21 the County has two capital improvement projects in
22 the works, correct?

23 A I did not mention the number of CIP
24 projects that are in the works. I only understand
25 that they are looking at increasing capacity. So I'm

1 not sure if that's one or two, or what have you.

2 We haven't gotten into the design yet.

3 Q So if there are two capital improvement
4 projects, and one of these projects is anticipated to
5 complete construction in the spring of 2023, and the
6 other projects may require five more years beyond
7 2023. Are you aware of that?

8 A No, I'm not.

9 Q And then --

10 A Go ahead, I'm sorry.

11 Q So do you understand that even with the
12 full 1.5 million gallons per day capacity, if it was
13 restored to the Wailua WWTP, connecting through the
14 Wailua WWTP would depend on the timing of the other
15 new development projects, and the timing of HoKua
16 Place, and thus, capacity is not guaranteed under
17 those circumstances?

18 A I understand.

19 Q And you understand that Wailua WWTP's full
20 capacity, if brought up to 1.5 million gallons per
21 day, and the pre-COVID flows at 0.6 million gallons
22 day daily average flow, and the projected
23 1.31 million gallons per day projected requirements
24 of HoKua Place at full build-out, the Wailua WWTP
25 must still increase its capacity to accommodate HoKua

1 Place?

2 A When you state the 1.3 million gallons per
3 day at full build-out, that's peak flow. So we are
4 comparing apples and oranges here.

5 So we're looking at average flow. The
6 average flow is 0.21. It is not at 3.

7 Q But 1.31 is possible if it's at peak flow?

8 A That's correct.

9 Q And so if that is the case, if peak flow is
10 reached, then wouldn't there be a capacity issue with
11 the Wailua WWTP accommodating HoKua Place under those
12 circumstances?

13 A You have to understand that the particular
14 plant is designed to accommodate these max day flows
15 and peak flows. The peak flows are peak because of I
16 and I, infiltration and inflow caused by heavy rains,
17 like the ones we have experienced these past few
18 weeks. So that's the water that's getting into the
19 system and increases hydraulic loading onto the
20 wastewater treatment plant.

21 So not only are we contributing this, but
22 other existing properties are also contributing to
23 this also. And I believe that part of the CIP
24 addressing this I and I flow or the peak flow so the
25 treatment plant can handle these extra flows.

1 But, again, everything is based on
2 averages. So you can't mix an average with a peak
3 flow or add numbers together. It's got to be apples
4 and apples if I was clear on that.

5 Q But the preferred would be, for the
6 Petitioners would be to just hookup the wastewater
7 system to the Wailua WWTP?

8 A To the infrastructure, the 21-inch
9 pipeline. And that is conveyed through pump stations
10 and so forth to the Wailua Treatment Plant, yes.
11 That is correct.

12 Q If there are capacity issues with the
13 plant, has the developer considered other options to
14 deal with wastewater?

15 A No, not to my knowledge.

16 Q So for instance, if an option was to wait
17 for the County to finish upgrades, that hasn't been
18 considered?

19 A I believe you mentioned that the timing of
20 these upgrades are coming in about five years or so.
21 Our full build-out is ten years. So the upgrades
22 should be in place.

23 Q Has the Petitioner thought about an option
24 about paying for -- to help construct with the
25 upgrades to the Wailua WWTP to move it along?

1 A I think that's part of the testimony in my
2 highlighted point, the fourth point, bullet point,
3 said that HoKua Place was willing to contribute to
4 the upgraded cost.

5 Q Would they be willing to pay upfront?

6 A I can't answer that. You would have to ask
7 Jake or the developer.

8 Q But you don't know if there's been
9 discussions regarding payment?

10 A I do not.

11 Q Would you agree that paying for procuring
12 and constructing upgrades to Wailua WWTP could be
13 costly, complicated, and it may increase the
14 development timeline and product beyond the goal of
15 ten years?

16 A I don't have an opinion on that. I don't
17 know what the details are.

18 Q Has the Petitioner considered putting in a
19 private wastewater treatment plant that would service
20 HoKua Place?

21 A Not to my knowledge, especially in view
22 that there is capacity within the system currently.

23 Q But if there is a capacity issue, that
24 other option, putting in private wastewater treatment
25 hasn't been considered?

1 A No.

2 Q Has the -- again, if there are issues with,
3 the capacity, is it true that another option to
4 address the capacity issue would be for the developer
5 to install individual wastewater treatment systems?

6 A No, I don't think that's feasible.

7 Q Why? Is it too costly?

8 A No, it's against Department of Health rules
9 or IWS, individual wastewater systems.

10 Q Well, has the Petitioner, if you are aware,
11 have they considered another option -- let me go
12 back.

13 Why would it be against -- what is your
14 understanding of why that individual wastewater
15 system would be against State rules?

16 A The rules state that there is a
17 restriction. They need a 10,000 square foot land
18 area to accommodate a dwelling and an IWS. There
19 can't be multiple -- or multiple uses, and, you know,
20 for IWS, I'm not sure if you're familiar with that,
21 it's normally, it's for individual, not for,
22 quote/unquote, multi-family-type developments that
23 we're proposing.

24 Q Could the development though be redesigned
25 to comply with the unit size restriction, thus,

1 making it possible to comply with individual
2 wastewater?

3 A I don't believe so, I don't believe so.

4 Q Why not? What's your understanding?

5 A It's treatment and disposal, you know, so
6 those are the issues. We don't have enough land area
7 for the disposal.

8 And the other issue is that we are
9 drawing -- the well is in our project site, you don't
10 want to be dumping wastewater next to a well site
11 that you're going to be pulling drinking water out
12 of. That's another big one.

13 But I don't see why, if there is capacity,
14 why we can't work with the Public Works Wastewater
15 people to come up with a solution at the plant or
16 infrastructure conveying it.

17 We're willing to work with the County to
18 make it happen.

19 Q And you mentioned that you had
20 conversations with the County that involved plant
21 capacity; correct?

22 A Yes, correct.

23 Q It didn't include conversations about the
24 lines or connection points at all, that you recall?

25 A Yes. We talked about it. And as I said,

1 there was a point of connection, that 21-inch sewer
2 main that we tie into.

3 Q Do you recall who you spoke with at the
4 County who gave you that information?

5 A Jason Kagimoto, Chief of Wastewater.

6 Q In looking at some of the drainage
7 questions, drainage issues that you raised.

8 So on page 8 of your PowerPoint, you
9 stated:

10 Increases in runoff are estimated at
11 discharge points from existing to proposed condition,
12 and that an increase in stormwater runoff was due to
13 the increase in impervious surface was used to
14 determine the sizes needed for the proposed detention
15 basins.

16 Is that accurate of what you said?

17 A That's correct.

18 Q And then also page 10:

19 The proposed detention basins are indicated
20 on the project conceptual plans; correct?

21 A Yes.

22 Q And would you agree that locations of the
23 detention basins greenbelt, other drainage measures
24 could change as a result of the project's redesign,
25 based on a master planning process, and the

1 development of form-based code in the Petition Area?

2 A Yes.

3 Q And would you also agree that other
4 measures could be incorporated, including other green
5 infrastructure could be incorporated for drainage as
6 a result of the project's redesign based on the
7 master planning process; and the development of
8 form-based code in the Petition Area?

9 A Yes.

10 MR. DONAHOE: Thank you, Mr. Bow. I have
11 nothing further.

12 THE WITNESS: Thank you very much.

13 CHAIRPERSON SCHEUER: Thank you.

14 Mr. Yee.

15 MR. YEE: Thank you.

16 CROSS-EXAMINATION

17 BY MR. YEE:

18 Q Mr. Bow, let me start by noting or asking,
19 what is the division of testimony between you and Mr.
20 Nance regarding potable water, particularly regarding
21 whether or not the delivery system will be through
22 the County system versus independent system, whether
23 the source of the water, if you know, and the
24 environmental impacts of either or both of those?

25 A Tom Nance, Water Resources Engineering is

1 responsible for the well site. So they are -- will
2 be getting all the permits for the well. As I
3 mentioned before, they did take samples from the well
4 and ran it through a lab for biological testing, and
5 it did meet all the water quality requirements for
6 safe drinking water.

7 My role as Bow Engineering & Development is
8 to design the infrastructure to take it from the well
9 to tie into the County system and also design
10 infractures to support HoKua Place.

11 MR. YUEN: Mr. Chair, if I may. Mr. Nance
12 will be covering the question regarding source and
13 permitting capacity for the well.

14 CHAIRPERSON SCHEUER: Thank you.

15 I would hope that if this or similar
16 questions are not addressed by Mr. Nance, we will
17 have a chance to recall Mr. Bow.

18 MR. YUEN: We can, yes.

19 MR. YEE: So if I under correctly, the
20 issues involving the well and impacts of the well
21 would be addressed by Mr. Nance.

22 Q After it's pulled from the well and it's
23 distributed either directly into the subdivision or
24 to the County for distribution, those would be your
25 areas of expertise; is that correct?

1 A That's correct.

2 Q Okay.

3 Then with respect to the potable water, as
4 I understand it, you're focused primarily upon
5 tapping into the County system; is that right?

6 A That's correct.

7 Q Is there a proposal to distribute the water
8 through an independent plant solely for the
9 subdivision?

10 A The original plan is to provide the water
11 to the Department of Water Supply. We, back in 2011,
12 I believe, we received a letter from then Chief
13 Engineer Manage Director of the DOW saying that they
14 would take the water from the well, and in exchange
15 for storage.

16 That's nine, ten years ago. So we have
17 reached out to Department of Water to have a meeting
18 to see if things have changed in ten years.

19 So we have not been able to touch bases
20 with them yet. But yes, that is the game plan.

21 Q And at the moment I'm not asking about
22 likelihood of success, I'm just looking at the
23 alternatives that are or not being considered for
24 this project.

25 At this time would it be fair to say, if I

1 understand your testimony as well as the EIS
2 correctly, those studies are done for the creation of
3 a separate independent water system delivered solely
4 to this subdivision; is that right?

5 A That could be a possibility to have a
6 separate system, water system, but that would be
7 secondary. Our first focus would be to convey the
8 water to Department of Water.

9 Q My question is: Has that been studied?

10 A No, not as yet.

11 Q So the impacts, if any, from it, we are not
12 yet aware, and if I hear your testimony correctly, if
13 you get to that, then you'll cross that bridge once
14 you get to it?

15 A Correct.

16 Q Okay.

17 So we don't have to worry at the moment
18 about issues like what happens if the independent
19 water systems fails, or is not economically viable,
20 many of those questions don't have to be answered at
21 this point, because that's just not part of the
22 proposal at this time; is that right?

23 A That's correct.

24 Q With respect to wastewater. County's
25 proposal is to connect up to the County water supply,

1 correct?

2 A Yes.

3 Q And similar question. I think you've ruled
4 out individual wastewater systems, correct?

5 A Yes.

6 Q And it sort of goes without saying that I'm
7 going to ask anyway, it would also rule out septic
8 tanks because that's illegal; correct?

9 A What's that question?

10 Q Can we rule out septic tanks?

11 A Yes.

12 Q But you did mention, I think, the
13 possibility of a package plan wastewater system --

14 A No, I did not mention that.

15 Q Then let me ask the question.

16 Is a package plan for wastewater systems
17 under consideration for this project?

18 A No.

19 Q So the only thing, again, we need to
20 address is the connection to the County water system,
21 and there's been no studies done and no analysis done
22 for something like a package plan; correct?

23 A That's correct.

24 Q And with respect to flooding, I think you
25 talked about this, but let me just sort of set, you

1 know, the basic facts.

2 Urbanization will create additional
3 impervious surfaces?

4 A Yes.

5 Q And because of this, it changes the amount
6 of water that will be absorbed to the soil; is that
7 correct?

8 A That's correct.

9 Q Again, as to any other changes, it will
10 also tend to affect the direction of the water flow
11 on the Petition Area; is that also correct?

12 A That's correct.

13 Q So because of this, in urbanization, we
14 have to look into gaining efforts to control the
15 amount of water that flows off the property for
16 purposes of flooding; correct?

17 A Yes.

18 Q In this case, I take it you were directing
19 the flow of water -- well, let me ask the question.

20 Are you directing the flow of water to the
21 detention basins and greenbelts?

22 A That's correct, as indicated on Figure 2.

23 Q As I understand it, the precise locations
24 of the greenbelts and detention basins may change,
25 but regardless of where they are, you will need to

1 direct the flow of water to those locations; correct?

2 A That is correct.

3 Q Then with respect to that, let me ask you,
4 currently -- I'm going to go off topic a little bit
5 and come back -- is there currently flooding near the
6 roadway area by the Petition Area?

7 A Which roadway are you talking about?

8 Q I apologize. I don't know.

9 A There are several that loop around. There
10 is the Bypass Road to the south, then Olohena on the
11 north side.

12 Q The Bypass Road. Is there generally
13 flooding in that area?

14 A I'm not sure, to be honest. I haven't
15 really studied the downstream controls. The reason
16 for the location of the greenbelt is that there is a
17 stream that crosses the Bypass Road to the
18 southwestern portion. And there's Waika'ea Canal at
19 Greenbelt 2 and 3 by Substation 2. And those would
20 be the points of connection to the existing drainage
21 system.

22 So they already exist, so that's why we are
23 placing it there.

24 Q Thank you for the response, because that
25 does get into my next question.

1 If you could describe for each of the
2 greenbelts and detention basins, those particular
3 locations were at least preliminary chosen?

4 A Yes, that's correct. They're in close
5 proximity to the connection points to existing
6 drainage system.

7 Q Now, my understanding is, because you are
8 directing the flow to the detention basins and
9 greenbelts, this will direct a larger flow of water
10 into particular locations than would currently exist;
11 is that right?

12 A I don't know what you mean by "larger
13 amount of water". I suppose so.

14 If the detention basins are as we have
15 shown here, there would be an increase in runoff to
16 this point at full development due to the impervious
17 surfaces that are added; that is correct.

18 Q That's why additional mitigation is needed
19 to handle the increase flow so you can make
20 improvements to handle that increased amount of
21 water; correct?

22 A That's correct. That is the purpose of
23 detention basins.

24 Q Then my question is though, what happens to
25 the overflow of water? Is that directed to a

1 particular place?

2 A They are discards to the existing points of
3 connection, Waika'ea Canal and also the existing
4 stream that crosses to the southwest.

5 Q In the detention basin near the Bypass
6 Road, where does that overflow go?

7 A It goes to Waika'ea Stream. It's not
8 labeled on this site, but to the north -- looking at
9 Figure 2 if you have it in front of you, it's to the
10 southeast section right across from -- it's dashed
11 lines.

12 CHAIRPERSON SCHEUER: Hold on. What are
13 you referring to?

14 MR. YEE: Are you referring to Figure 2
15 within Exhibit 28 of you PowerPoint?

16 A Yes.

17 MS. AHU: Chair, may I share my screen?

18 CHAIRPERSON SCHEUER: Please.

19 THE WITNESS: That might be helpful, and I
20 can point to it.

21 CHAIRPERSON SCHEUER: Just noting, we said
22 we would go to 12:30.

23 THE WITNESS: So Figure 4, it's shown on
24 both, but right across from the Bypass Road by the
25 Greenbelt 2, that rectangular area there to the

1 southeast, Janna, if you see her hand there, that's
2 the Waika'ea Canal, which the flow naturally goes
3 through right now.

4 Q (By Mr. Yee): Where would the detention
5 Basin 1 overflow into?

6 A Detention Basin 1 to the southwest by
7 multi-family 1 goes to a stream, unnamed stream to
8 the southwest, close proximity to this area
9 (indicating).

10 Q And I guess my question then is, what is
11 the standard that you are going to be building these
12 detention basins and greenbelts to handle? Like
13 100-year storm, better than that? Please explain.

14 A According to the Department of Public Works
15 standards, we have to design it to meet a two-year
16 and a 100-year storm.

17 So we will have to detain to meet the
18 Public Works standards. And once we detain it to
19 that predevelopment levels, the other flow, the
20 predevelopment flows can be allowed to overflow out
21 of detention basin to the points of connection.

22 So the whole intent is not to increase the
23 runoff downstream.

24 Q There are concerns that existing
25 calculations for 100-year storm may no longer be

1 accurate.

2 Are there any intentions to develop to a
3 higher standard for this project?

4 A We design it to the Department of Public
5 Works standards. So unless their standards change,
6 that's the standard we have to follow.

7 Q Well, you certainly need to at least meet
8 that standard, but you are allowed to go and build to
9 a higher standard if you so chose.

10 I take it from your answer is you are not
11 going to be building to higher standards; is that
12 right?

13 A Not at this point.

14 I need clear direction from the owners and
15 developers to move in that direction. There
16 obviously, it could have a cost impact depending on
17 what standard above are you going to be designing to.

18 Are you designing to a 200-year storm, a
19 500-year storm? So it's kind of premature for me to
20 answer that, because I don't know how much higher are
21 we designing to. It's unclear at this point. We
22 need to see what to design to.

23 But I agree with you. With global warming
24 and so forth, numbers are changing. We are using
25 NOAA's latest rainfall information to design, and not

1 old antiquated rainfall densities. So we are current
2 in our rainfall analysis.

3 CHAIRPERSON SCHEUER: Mr. Yee. Since I
4 noticed I stopped you right before you're done. How
5 much more do you have?

6 MR. YEE: Five to ten minutes.

7 CHAIRPERSON SCHEUER: I'm going to let you
8 continue after lunch. It's 12:30. We're going to
9 reconvene at 1:15.

10 (Noon recess taken.)

11 CHAIRPERSON SCHEUER: 1:17 back on the
12 record.

13 Our witness is still under
14 cross-examination from Mr. Yee, Office of Planning.
15 I remind the witness you're still under oath.

16 You may continue, Mr. Yee.

17 MR. YEE: Thank you, Chair.

18 Q Just finishing up on the detention basins
19 and greenbelts.

20 Have you gotten to the part where you've
21 analyzed the direction of flow from the different
22 parts of the property into the various detention
23 basins and greenbelts?

24 A Generally we have looked at the direction
25 of flow. The natural lay of the land is north to

1 south flow direction, but obviously, when we start
2 carving up the various parcels, roadways, driveways
3 parking lots, it's going to change, right?

4 So generally speaking, we located the
5 detention basins at the lowest portions of the site,
6 in close proximity to the existing discharge points.

7 Q Just briefly, could I ask to call up Figure
8 4 again from Exhibit 28. It was the document we were
9 reviewing before.

10 MR. YUEN: She is pulling it up. Give us a
11 moment.

12 CHAIRPERSON SCHEUER: What is the figure,
13 Ms. Ahu?

14 MR. YUEN: Not sure that we can.

15 MR. YEE: Okay.

16 Q Let me just briefly ask this question.
17 What area of the Petition Area will be flowing into
18 detention Basin 1 on the south and the Greenbelt, I
19 think it's 1 on the western edge of the Petition
20 Area?

21 A So let me answer the second question.
22 Greenbelt 1 to the west side, we're not planning to
23 put anything over that. Everything will be routed
24 down to detention Basin 1, lower side or south end of
25 Multi-Family 1.

1 And for the -- right there where the hand
2 is, right?

3 So basically everything that's south of
4 Road 1, the spine road that connects up the bypass to
5 Olohena, anything south of that road will go towards
6 Detention Basin 1.

7 Also for the Greenbelts 2 and 3, shown on
8 the east, south eastern portion where the hand is
9 now, that will be picking up flows from the north
10 side and part of the multi-family, that purple area
11 on the lower side.

12 Some of that lower side will come across
13 the road. We haven't gotten that detailed yet, but I
14 think some of that will be coming over to -- I
15 don't -- I think that's going to go to Greenbelt 2
16 also, that detention basin.

17 Q So if I understand you correctly, the area
18 listed as Multi-Family 1 will be going into Detention
19 Basin 1, correct?

20 A Yes.

21 Q Part of the area of Single Family 1 might
22 be going into Detention Basin 1 as well?

23 A Let's see, I'm looking at my plan here -- I
24 think a portion of that may be going to Detention
25 Basin 1, and part of that Single Family 1 is -- will

1 go into the greenbelt area, Detention Basin 2.

2 Q Okay. Thank you. That answers my
3 question. You can take down the screen.

4 There are different pollutants that will be
5 generated from an urbanized area than an agricultural
6 area; is that right?

7 A Correct.

8 Q Can you describe what the differences in
9 the type of pollutants that will be for this
10 particular project?

11 A Well, in any development or subdivision,
12 you're going to have automobile oils, right, that
13 drip from the cars and so forth. Tires, fragments,
14 you're going to have vehicular exhaust, you know,
15 things of that sort. But mainly from the parking
16 lots where you have dripping oil and so forth.

17 So what we try to do there is we try to
18 have some bio swales and so forth to pick up that
19 initial flush, if you will, or runoff from those
20 parking areas and roadways, so that it's treated
21 before it gets out into the natural streams and in
22 the vicinity.

23 The detention basins serve that purpose too
24 because there will be grass, grass lines, so there
25 will be some percolation allowed there, you know, to

1 cleanse, pre cleanse the pollutants from there.

2 Q In this particular case, I believe the land
3 is fallow, so given that fact, would there also be
4 anticipated some additional pesticides and
5 fertilizers that will arise from the urbanization?

6 A I would say so. You know, some fertilizes
7 for lawns and gardens and what have you, sure.

8 Q Anything else on the different kinds of
9 pollutants that will be resulting -- or maybe I
10 should ask a more fundamental question.

11 Have you analyzed the type of pollutants
12 that will be resulting from this particular project?

13 A No, I have not.

14 Q So your answer is based more upon an
15 understanding of what happens with urbanizations
16 generally?

17 A That's correct.

18 Q Are you aware that there's a wetlands in
19 the area?

20 A Yes, I am.

21 Q Have you seen the Office of Planning's
22 Exhibit 16?

23 A No. Can you refresh my memory? Do you
24 have -- is what you're talking about is the wetland
25 map. I'm not familiar with that exhibit.

1 Q May I attempt to share a screen?

2 CHAIRPERSON SCHEUER: Yes, you may. And if
3 you succeed, you'll get bonus points.

4 MR. YUEN: If I may, Ron Agor is going to
5 testify about the wetland. This witness does not
6 have any involvement in either studying the wetland
7 and land planning.

8 CHAIRPERSON SCHEUER: Mr. Yee?

9 MR. YEE: My question is a little more
10 factual, so I can ask him a few questions about this.

11 Q Do you see Office of Planning's Exhibit 16,
12 a blown-up version?

13 A Yes, I see it. Thank you.

14 Q So this is a proposed detention basin, and
15 this area in pink is a proposal from the Office of
16 Planning on an area of wetland and buffer.

17 Do you see that area?

18 A Yes.

19 Q And do you also see Greenbelt 1 to the
20 north?

21 A Yes.

22 Q My question is, do any of either Greenbelt
23 1 or proposed detention basin flow into or through
24 the buffer area in pink?

25 A We are not touching the greenbelt. There

1 may -- we haven't studied it thoroughly yet. What
2 needs to be done is there needs to be a wetland
3 determination. I am not an expert on wetlands, but
4 we do need to have it delineated.

5 So this is just a sketch, pencil, we don't
6 know if this is a true wetland. I believe there are
7 some sloping areas here with some wetland vegetation.
8 So we need to clearly define the limits of the
9 wetland before we do any design work that puts any
10 water into or around the wetland.

11 Q So I understand that. I have not asked you
12 what impact it would have, or even if there are
13 wetlands. I've just asked geographically the
14 detention basin or the greenbelt as currently
15 proposed.

16 Will the water either be flowing into or
17 perhaps overflow of water be flowing into the area
18 the Office of Planning has marked as a buffer area?

19 A I believe so, yes. The more southwest
20 corner of the detention basin.

21 Q It overlaps?

22 A We will not be touching the wetland, if
23 that's what you're alluding to.

24 Q You said the detention basin would be --
25 the overflow would be flowing into the stream. Would

1 that overflow be going through this demarcated area?

2 A It will be flowing to the Kapaa Bypass
3 Road. I believe there's a culvert in that area that
4 crosses through or under the Kapaa Bypass Road, so we
5 have -- we don't have a topo locating that culvert as
6 yet, so we need to know exactly where that culvert is
7 to determine where the discharge point is.

8 So to answer your question, I don't know
9 for a fact where we're going to be discharging,
10 whether it would be in the wetland or not, but it
11 would be close proximity to the Bypass Road, and like
12 I said, the southwest corner of the detention basin.

13 Q What about the Greenbelt 1, does that have
14 any inter flow, would that flow also be going into or
15 through the key demarcated area?

16 A Yes, I think the greenbelt area is in the
17 area where you show pink there. But we're not
18 touching that area. We define it as hands-off area.
19 So the development is to the east of that line.

20 Q I think that's all I need to share. Now,
21 of course, I'm having trouble figuring out how to
22 unshare.

23 CHAIRPERSON SCHEUER: The box at the top.

24 MR. YEE: Sorry, I've I'm having trouble.

25 CHAIRPERSON SCHEUER: We now see recent

1 open files.

2 MR. YEE: That's unfortunate.

3 CHAIRPERSON SCHEUER: You went to law
4 school.

5 MS. CHOW: At the top of the screen there
6 should be like a red and a green box. One of them
7 says them "unshare".

8 MR. YEE: I have my cursor on --

9 CHAIRPERSON SCHEUER: I just stopped
10 participant sharing.

11 MR. YEE: Thank you so much.

12 CHAIRPERSON SCHEUER: I try not to use that
13 unbridled power too much.

14 MS. CHOW: It was called for here.

15 MR. YEE: So happy I did not need to tell
16 you that I'm not a cat.

17 CHAIRPERSON SCHEUER: For the transcript,
18 Mr. Yee is not a cat, is what he said.

19 Q (By Mr. Yee): So my last line of
20 questioning now involves something you touched on,
21 which is mitigation.

22 Have you planned out, given the fact that
23 there are concerns about sensitive natural areas,
24 have you -- do you have proposals or representations
25 as to what mitigation efforts will be made, not just

1 to control the amount of the water, but the quality
2 of the water that flows off the property?

3 A Not at this point.

4 Q So when you mentioned bio swales, is this
5 something you cannot commit to?

6 A We can commit to that. That's pre-standard
7 practice, especially along parking lots and so forth
8 to remediate some of the oils and so forth that wash
9 off of parking lots, but we still need to get to
10 detailed design before that, so it was a general
11 statement.

12 Q Do you have any standards other than
13 basically what the law requires as to what you'll be
14 doing to mitigate any impacts to wetlands or other
15 sensitive areas, either on the property or in the
16 nearby vicinity?

17 A Yes, we have standards. The Public Works
18 has standards too. Filtration socks and so forth.
19 Bio swales is another product there. There are
20 numerous products in the industry that can be used to
21 mediate.

22 Q I understand that there are a number of
23 different mediation efforts. I guess my question is,
24 can you represent to this Commission what, at least,
25 some of those mitigation measures that you will be

1 doing?

2 A Not at this point. Not until we get more
3 details in the layouts of the units and the parking
4 and roadways and so forth. This is premature at this
5 point.

6 Q And also nothing that you can commit to put
7 aside the particular mitigation efforts, any
8 mitigation results. I take it that no particular
9 standards you could meet or would be willing to
10 commit to meeting to reduce pollutants by some
11 percentage or by some amounts in order to safeguard
12 the environment?

13 A I can say we will meet all of the standards
14 as required by law and by the County.

15 Q If you're legally required to do it, you
16 will do it. If you are not legally required to do
17 it, the fact that there is a more sensitive wetland
18 area in the vicinity will not change your
19 representations of mitigations; is that right?

20 A No, I -- you are correct that we do need to
21 mitigate the runoff such as silt and other pollutants
22 from entering the wetlands. So we are sensitive to
23 that.

24 I'm not able to commit to what exact design
25 you would be installing to mitigate any of the

1 pollutants that could be generated from the site.

2 Q Okay. That is all I have for this witness.

3 Thank you very much for your testimony.

4 Thank you very much, Chair.

5 CHAIRPERSON SCHEUER: Thank you very much,
6 Mr. Yee.

7 Intervenor, which of the counsel will be
8 doing the cross? Ms. Isaki?

9 MS. ISAKI: Yes, it will be me, thank you.

10 CROSS-EXAMINATION

11 BY MS. ISAKI:

12 Q And thank you, Mr. Bow, for being here.

13 Actually I want to note at the outset that
14 we also had a lot of questions for the witness, Tom
15 Nance, but we are going to reserve those to save
16 time, and if for some reason Tom Nance does not
17 testify later, we will want to reexamine this
18 witness.

19 I'm going to do a lot of screen sharing and
20 starting with your drainage analysis, Exhibit 27. I
21 hope you guys can bear with me.

22 This is your Exhibit 27, page 4, and it's
23 showing the old detention basin, or the old drainage
24 analysis; is that right?

25 A That's the old version. It's not my

1 analysis. But, yes, that's an old version.

2 Q Right. And is it correct that your
3 drainage analysis and plan, that was not in the EIS
4 at all; correct?

5 A Correct.

6 Q And now I'm going to go to your page 1 of
7 this. I'm going to spend a little time going over --
8 whoops, sorry -- there's a lot of large -- I'll spend
9 a little time going over your existing and proposed
10 condition summaries. This is also in Exhibit 27,
11 page 1.

12 And for the purposes of this exercise,
13 would you agree that the factors to convert cubic
14 foot to a gallon is 7.4805?

15 A That's correct 7.4805.

16 Q So for the 100-year storm -- I'm not sure
17 if you can see my cursor -- you have the Q_{100} at
18 961.07, right?

19 A Yes.

20 Q And that's just for the proposed 91.49
21 acres.

22 And for that, are you assuming that the
23 100-year storm is going to be one hour?

24 A Yes.

25 Q So for that one hour, if you converted --

1 if you need me to pull up a calculator, we could do
2 that -- with that 961.07, would that become about 25
3 million gallons?

4 A You can't really do it that way. We don't
5 look at gallonage. In engineering we look at cubic
6 feet per second.

7 And the analysis here, what you do is very
8 rudimentary analysis. We run a software program
9 that's accepted by Department of Public Works for the
10 County, it's a TR-55 program that routes the storm,
11 particular storm, whether two-year or 100-year storm,
12 through the property to the detention basins. And
13 that's how we come up with these numbers or volumes,
14 right? So I hope that answers your question.

15 Q Yeah, yeah, thank you.

16 I'm going to ask my question a different
17 way then.

18 So for your existing Q_{100} , you have 611.44,
19 and these detention basins that you see at the
20 bottom, Detention Basin 1 and 2, which you said the
21 volume is going to be 675,000 cubic feet, and 625,000
22 cubic feet, are those meant to only hold the
23 difference between 961.07 minus is 611.44, the
24 difference between existing and proposed; is that
25 correct?

1 A That's correct.

2 Q So I have a question now about why is it
3 that the area of existing is 125 acres, but then the
4 proposed is 91.49? And what my question actually is,
5 it's the same drainage area have been compared for
6 pre and post development would be increase in the
7 amount as a percentage of the existing, would it have
8 been larger than what's presented?

9 A No. What is happening -- I mentioned it
10 when I gave my testimony -- the existing acreage
11 accounts for the Kapaa Middle School, whereas the
12 proposed took it out.

13 So we are basically routing the existing
14 flow through. That's the discrepancy in the proposed
15 areas.

16 Do you follow that?

17 Q Yeah. Can you explain a little more why
18 you included Kapaa Middle School, because if you had
19 included Kapaa Middle School also in the proposed
20 would that have been more apples to apples?

21 A No, because there is -- the Kapaa Middle
22 School is existing. We don't believe there is any
23 future build-out of the Middle School, so it's just
24 existing flow that's being routed through our
25 development.

1 So the only increase in runoff is due to
2 our proposed HoKua Place.

3 We are still handling the water. The water
4 is still flowing through our property, and we will be
5 taking care of it and conveying it, but there is no
6 difference.

7 Q When you said that HoKua Place is going to
8 be handling the runoff from Kapaa Middle School, you
9 mean that the runoff is just going to pass through
10 the detention basin and off the property, or as it
11 flow wherever it would go as it currently would?

12 A It will come through our system, whatever
13 system we have, whether over land or being piped
14 through our project site to the detention basin.

15 Q So but your detention basins are not built
16 to handle the Kapaa Middle School additional or
17 existing, however you are describing it?

18 A It's existing flow. So that -- if we did
19 nothing, that existing flow would pass right through.
20 But because we are building up the HoKua Place, and
21 there is increase in impervious surface there, and as
22 a result, the increase in runoff, we need to handle
23 the increase as created by HoKua Place. To --

24 Q And I'm just going to --

25 A Make --

1 CHAIRPERSON SCHEUER: You've got to make
2 sure -- it's really important that people don't speak
3 at the same time.

4 Q (By Ms. Isaki): And I want to make sure
5 then that you're saying that -- because this table is
6 a bit confusing -- so the existing from Kapaa Middle
7 School will go through your basin, but your basins
8 are not designed to handle the additional storage of
9 Kapaa Middle School on that extra acreage when we're
10 looking at the difference in the existing and
11 proposed acreage?

12 A According to the drainage standards, we are
13 allowed to bypass through -- bypass the
14 predevelopment flows. So essentially we cannot
15 increase it more -- I need to detain the difference
16 between the existing and proposed flows.

17 So, for example, the 100-year, the 200, we
18 would have to detain such that only 611 cfs of runoff
19 will leave the site, no more. It could be less than
20 that, but no more than that.

21 And we need to -- by detaining the peak of
22 the storm, the peak is the bell-shaped curve, so what
23 we do is, we store that top portion of it in the
24 detention basin to mediate this.

25 So it's a flood-routing question that comes

1 through, and that's how we come up with the sizing of
2 the basins. It's preprogrammed, so you can't just
3 divide by the 748 and come up with a number, because
4 it's routed through there, and it also takes into
5 account the percolation of the runoff through the
6 site and the runoff through impervious surfaces. We
7 had to make some assumptions there.

8 So all these factors are integrated. It's
9 not that easy to just add and subtract numbers, it
10 doesn't work that way. I hope that's clear. I tried
11 to make it as clear as possible.

12 There's a lot more that goes into it than
13 adding the two numbers. If you're trying to add it
14 and saying that it doesn't add up, you're right. It
15 doesn't add up, because there is other factors that
16 go into making this work, as I just mentioned.

17 Q Well, actually -- and I'm sorry.

18 If we go through, and if you multiply the
19 amount of -- if you multiply the amount of the Q_{100} ,
20 961.07 times 7.485 by the factor, if we convert all
21 of this to gallons, would you agree that this is
22 essentially about 25 million gallons; and would you
23 agree that your detention basins would hold almost
24 about 9.6 million gallons?

25 A I don't -- in engineering terms, we don't

1 look at gallons, right, we look at cubic feet of
2 storage. So I haven't calculated, punched it out.
3 It is what it is. So do you have a question for me?

4 Q I was asking you to confirm that because
5 that was just a conversion question.

6 Then I was going to ask you -- I guess I
7 was going to ask you if 25 minus 9.6 is about
8 10.4 million gallons that is not accounted for by
9 your detention basin?

10 A Do you want me to get my calculator out and
11 subtract it to confirm your number?

12 Q I suppose -- yes. We can do it on my
13 calculator here.

14 A For sake of time, I believe that you
15 punched it out correctly. So go ahead.

16 Q Okay, thank you.

17 So I'll move to my next question. And this
18 is -- going back to your greenbelt. This is also in
19 that Exhibit 27, greenbelt Figure 4. I'm also now
20 going to switch to our Intervenor's Exhibit 19. This
21 is slide 12. And I would like you to -- this is
22 represented as the quicket (phonetic) from one of the
23 earlier, I think, Draft EISs.

24 And it shows like where the houses were
25 supposed to be laid out for multi-family, is that

1 correct?

2 A I've seen this exhibit before, yes.

3 Q And that was actually more just to jog your
4 memory.

5 So when we're looking at these detention
6 basins and greenbelts, will that conceptual plan,
7 you're going to have to move or displace some of
8 those multi-family houses, and some single family on
9 the east side, and some of the multi-family on the
10 south side for the Detention Basins 1 and 2; is that
11 correct?

12 A That was a previous plan that I had not
13 worked on. This is the plan that we came up with,
14 and agreed with the development team. So it is -- it
15 stands as shown here. Multi-family would be
16 Multi-Family 1, Subdivision 1 and so forth.

17 So this is the current scheme we are
18 working with. So the other one is old, antiquated.
19 Shouldn't be looked at.

20 Q Okay. Thank you.

21 So you're confirming then that the design
22 in the older conceptual plan, including perhaps the
23 lot sizes might have to be changed?

24 A That's correct. It's a clean slate right
25 now.

1 Q Great. Thank you for explaining that.

2 I'm going to, also again, with your
3 drainage. I'm going to turn to page 36. This is PDF
4 36. This is your references section.

5 And I wanted to ask you, I assume that you
6 referred to all of these. There is references
7 section for the drainage analysis. It includes like
8 four or five, I think, references to wetland
9 material, like National Research Council; is that
10 correct?

11 A That's correct.

12 Q Did you discuss wetlands or wetland impacts
13 in your report?

14 A I don't believe I did.

15 Q Okay. And actually, I think Office of
16 Planning asked you the question about the DOFAW
17 wetland map.

18 So let me move on, sorry for that.

19 I'm going to go back to that Figure 4 with
20 the greenbelt. So -- actually, I think you called
21 them gullies in one of these.

22 A Yeah.

23 Q Okay. So I'm on page -- well, Figure 2,
24 page 9 of Exhibit 27, this is, again, your exhibit.
25 So you have several gullies going off toward Waika'ea

1 Canal, correct?

2 A Correct.

3 Q Have you ascertained whether the gullies
4 are places where existing native plants are located?

5 A I don't know.

6 Q And I will stop sharing for the moment.
7 And these might partially overlap with some of Office
8 of Planning's questions. But your calculations do
9 not establish a baseline for water quality; is that
10 correct?

11 A That's correct. We did not address that in
12 this analysis. It's simply drainage.

13 Q Have you measured the amount in kind of bio
14 swales that will be needed to mitigate water
15 pollutants, like how many bio swales? How large?
16 What kind?

17 A No, because we need to get just details of
18 design before we can do that.

19 Q Okay. And I'm again going to point to your
20 Exhibit 27, page 1, and let me know if you want me to
21 share that.

22 You discussed how the detention basins will
23 function as sediment control in allowing -- I'm
24 quoting you -- sediment and runoff to settle before
25 being discharged off-site.

1 Is that a correct statement from your
2 exhibit?

3 A Yes.

4 Q How would the accumulated sediment be
5 disposed of?

6 A There is -- the developer and owner will
7 have to enter into a detention basin maintenance
8 program with the Public Works, and it will be
9 recorded and documented.

10 So because we are to maintain a certain
11 amount or depth or volume in the basins, so
12 periodically they will have to be cleaned out. How
13 they're disposed of -- most of this may be silt
14 runoff that will possibly be reused in fields or
15 hauled off to a landfill, but I would think it would
16 be able to be reused.

17 Q Would the sediment include car oils and
18 exhaust and things that could be considered toxic?

19 A I don't know. I don't know, because we
20 would have a pretreatment ahead of that. I'm not
21 sure what would flow down to the bottom there,
22 because we talk about bio swales and other things,
23 pretreatment, right? So until we get to design, I
24 don't know what the final hazard would be, if you
25 will, if that's what you're asking.

1 Q Yes. And as we're talking about this, you
2 mentioned that the sediment might possibly have to be
3 put into the landfill. You mentioned earlier that
4 you had talked to somebody at the County in charge of
5 solid waste, and they said that there were seven
6 years left in the Kapaa landfill?

7 A Correct.

8 Q And the life of the project, or maybe the
9 onset of the project is beyond seven years; correct?

10 A The full build-out is anticipated in ten
11 years.

12 Q Thank you.

13 And still going on drainage. Also in your
14 Exhibit 27, page 11 -- and I can show that to you --
15 you mentioned there's going to be additional catch
16 basins, inlets and drain lines.

17 Can you describe where those additional
18 drainage improvements are going to be located?

19 A No, not until we get to details and design.

20 Q And you told Office of Planning there's an
21 existing culvert under the Bypass Road to the south;
22 is that correct?

23 A Yes.

24 Q Are you aware of other existing culverts or
25 drainage structures?

1 A I believe there is one by Waika'ea Canal.
2 We don't -- you can see on the Google Earth and other
3 maps, because there is an unnamed stream to the west
4 of the project that crosses under the road. And
5 also, you know, at Waika'ea.

6 So we don't have that detail topo
7 information or details of that, but there are
8 crossings there, yes.

9 Q Okay. Also Exhibit 27 at page 1 you said
10 the discharge points include Greenbelt 1, the unnamed
11 stream, Greenbelt 2, Greenbelt 3, Olohena Road and
12 Kapaa Bypass Road.

13 So does that mean that the runoff is
14 expected to go onto the road?

15 A No. Olohena Road to the north is actually
16 a ridge line. So everything south of Olohena Road
17 flows through either Middle School or through our
18 property down toward the Bypass Road.

19 The north side of Olohena Road flows the
20 other way, flows north, it drops off. So, no,
21 nothing from Olohena. So anyways, that's basically
22 it.

23 Did I answer your question? I'm not sure.

24 Q Well, so on page 1 of your first paragraph
25 of your Exhibit 27 you said: Discharge points

1 include Greenbelt 1, 2, 3; Olohena Road and Kapaa
2 Bypass Road.

3 Now, you're saying that Olohena Road is not
4 a discharge point; is that correct?

5 A Hold on, let me read this.

6 I think some shoulder runoff from Olohena
7 Road comes into our property. The Kapaa Bypass Road
8 is crowned, which I'm not sure would drop into our
9 property and then have to go under the road to get to
10 the other side.

11 So I think there are small areas there, and
12 I'm not sure. Maybe that was a misquote there,
13 discharge point. We are not discharging onto Olohena
14 Road, but we will discharge under Kapaa Bypass Road.

15 Q Thank you for that.

16 And as far as who's going to be maintaining
17 the bio swales and who's going to be maintaining the
18 sediment from the detention basins, is that going to
19 be the homeowners association, or whoever takes over
20 after the developer sells out its interest?

21 A That's to be determined. I can't answer
22 that.

23 Q Okay.

24 I'm going to move to Exhibit 26. So start
25 talking about the wastewater treatment.

1 Has your analysis of sewage considered the
2 impact of sewage going out from the wastewater
3 treatment plant to nearshore waters?

4 A Have we anal -- can you rephrase that? I'm
5 sorry.

6 Q Have you analyzed the impacts of project
7 sewage going out from the wastewater treatment plant,
8 the County wastewater treatment plant, to nearshore
9 waters?

10 A No. We are discharging to the County
11 system, and I think that's the County's
12 responsibility to treat and dispose of the wastewater
13 once we tie into their system.

14 Q So you didn't assess the impacts because of
15 the government agency's responsibility, in your
16 opinion?

17 A Yes.

18 Q Okay. I'm changing subjects a little.

19 Are you familiar with the concept of an
20 accessory dwelling unit or additional dwelling unit?

21 A Yes.

22 Q So can you tell me your understanding,
23 briefly?

24 A It's like a mother-in-law cottage or with
25 accessory, like a cottage, you know.

1 Q So my question would be, is 172 single
2 family units, instead of 89, there would be more
3 sewage and more water use, correct?

4 A That's correct.

5 Q So and your sewage and water use analysis,
6 they're based on the 89 single family, not the
7 possibility of additional dwelling units?

8 A It was analyzed based on the development
9 plan, which is the 700 -- I forget how many units
10 there were -- just under 800 units of combination
11 multi-family and single family, as well as park site
12 and commercial site.

13 Q Right, thank you.

14 Is it reasonable to assume that water going
15 into the project will be water coming out of the
16 project? By that I mean, like the water demand that
17 you calculated?

18 A Talking about wastewater or potable?

19 Q Water going into the project, so, yeah,
20 water that's actually on your Exhibit 25, but was it
21 reasonable to assume that water going into the
22 project as water resources through the distribution
23 line will be water coming out?

24 A I guess I don't understand the question.
25 Can you rephrase?

1 Q You said that the estimates for water use
2 in your exhibit, Petitioner's Exhibit 25, estimated
3 water demand.

4 Is it reasonable to assume that there is
5 going to be about that much wastewater coming out,
6 sewage?

7 A No. It's not one for one, because some of
8 it will be lost through irrigation. Normally it's
9 about two-thirds. Two-thirds would be released.

10 So for HoKua Place I'll give you some
11 numbers. We're estimating 0.3 million gallons per
12 day of water being used.

13 We are estimating 0.2 million gallons per
14 day of wastewater going out. Is that what you're
15 alluding to, the in and out?

16 So, yes, there is a difference of
17 0.1 million gallons per day.

18 Q And so you're estimating 0.3 not 0.6
19 million gallons per day of freshwater use?

20 A Correct, 0.31.

21 Q Okay. Can I turn your attention then --
22 because I should get this straight. This is actually
23 now Exhibit 25, and I'm looking at page 6 or 5, 6.

24 So your estimated use is going to be -- is
25 it shown as 0.3 here under max daily demand for total

1 or -- can you tell me which number?

2 A Average.

3 Q So 0.298 million gallons per day or 298,000
4 gallons per day?

5 A Yeah.

6 Q Okay, thanks for clarifying that. That
7 will change some of my questions.

8 You said in your Exhibit 26, the Wailua
9 Wastewater Treatment Plant will need to undergo CIP
10 project to increase its design capacity, and the
11 developer plans to work with DPW to schedule
12 construction to coincide with wastewater treatment
13 improvements.

14 Is that correct? And I can show you the --

15 A Yes.

16 Q Okay, thank you.

17 By design capacity, which capacities are
18 you referring to in regard to the wastewater
19 treatment plant?

20 A What I was, per our discussions with the
21 chief of the wastewater, he was stating that their
22 present capacity is 1 million gallons per day. Their
23 ultimate design capacity 1.5.

24 I understand they're having some issues
25 with their treatment plant. So there are CIP

1 projects to improve the treatment capacity.

2 But as I mentioned, we are within the
3 allowable range for the treatment plant. Because
4 they are currently treating 0.6 million gallons, so
5 they have excess capacity currently, even with one of
6 the units being down.

7 Q So when you're discussing capacity, you're
8 referring to the ability to treat water and not
9 necessarily their ability to dispose of wastewater;
10 is that correct?

11 A That's correct.

12 Q And I have one more question on this.

13 Are you aware that the Wailua Wastewater
14 Treatment Plant is within the 3.2 foot sea-level rise
15 area?

16 And I can show you a map if that will help
17 jog your memory?

18 A I'm not aware of that. Yeah, show me that.
19 Is it going to be inundated, is that what you're
20 saying?

21 Q Yes. I will go ahead and show you that.
22 It's exhibit -- well, our Exhibit 1, which is the
23 actual, the Amended dba Petition. It's Exhibit H,
24 and their sea-level rise assessment at page 2-9. And
25 I will show that to you, bear with me.

1 So the Wailua Wastewater Treatment Plant --
2 well, it's not marked there, but I can show you our
3 Exhibit I-64. You'll have to -- I can toggle back
4 between them, but -- this is the wastewater treatment
5 plant. And going back to -- and this is the
6 sea-level rise inundation area.

7 Do you see that there is an overlap between
8 the sea-level rise inundation area and where the
9 wastewater treatment plant is located?

10 A Unless we get exact topographic
11 information, I can't really answer. I don't know
12 what the elevation of the treatment plant is relative
13 to the sea-level rise. And I'm not even sure when
14 that 3.2 feet will occur, 20 years from now?
15 50 years? 100 years from now? We don't know.

16 So I'm not familiar with that exhibit that
17 you've shown.

18 Q Okay, thank you.

19 So you did not investigate the sea-level
20 rise issues with the wastewater treatment plant; is
21 that correct?

22 A That is correct.

23 Q So moving onto your water analysis. And I
24 can share my screen, if it's helpful.

25 You mentioned a 313-foot and a 214-foot

1 elevation area for storage reservoir.

2 These are County reservoirs. You're not
3 going to build those, correct?

4 A Correct.

5 Q And do you know the names of those water
6 reservoirs or storm tanks?

7 A I think one is Stable Tank, I think is the
8 214 elevation. Another one is Houki, Houki Road, new
9 reservoir constructed there as well as one that's
10 further up, Kaapuni Road, but I'm not familiar with
11 the name of that.

12 Q So there are some existing tanks as part of
13 the Board of -- Department of Board of Water Supply
14 system.

15 Q And are you aware of any allocated capacity
16 for the Stable Tank or the Houki Reservoir to other
17 developments?

18 A We are trying to schedule a meeting with
19 the Department of Water Supply to just talk about
20 that exact question.

21 Q Okay. And you haven't talked to them
22 before this about allocating the storage?

23 A No, not as yet.

24 Q Has the -- Office of Planning might have
25 answered this earlier.

1 The developer has not (indecipherable)
2 contingency plan for storage reservoirs or private
3 water system if the County doesn't agree to allow
4 storage; is that correct?

5 A That's correct. That will be the fall
6 back.

7 Q And are you aware that the Environmental
8 Impact Statement and other documents represent that
9 the developer has discussed a water master plan with
10 the County, the County Department of Water Supply?

11 A I think they did previously.

12 Q Are you aware of the scope, that the scope
13 of that discussion involved 50 farm dwelling units
14 and a goat raising operation?

15 A Yes, I'm aware of that.

16 Q And it did not involve 769 residential
17 units, correct?

18 A That was a different phase for HoKua
19 Development. This Petition is strictly for the HoKua
20 Place, and not the ag portion of it that's already in
21 existence.

22 CHAIRPERSON SCHEUER: I'm going to note
23 it's 2:09. I'm going to ask for a break at 2:15.

24 MS. ISAKI: I've two hopefully quick
25 questions. But okay.

1 Q When you mentioned earlier that you
2 wouldn't want the project well to be close to any
3 cesspools or individual wastewater units, you said
4 that, correct? I understood that correctly?

5 A Yes.

6 Q Weren't individual wastewater units
7 proposed for the 16 farm lots in Phase I, which is
8 just next to the Petition Area?

9 A I don't know. I don't know the answer to
10 that. I'm not aware.

11 Q And when you said that the well met clean
12 water standards, did you mean Clean Water Act or Safe
13 Drinking Water Standards?

14 A Safe Drinking Water Standards.

15 This should be asked to Tom Nance, because
16 he did that exercise and sent it out for testing. So
17 you might ask him that.

18 But I understood that it did pass drinking
19 water standards.

20 Q And you're aware that the test well drill
21 is not usable as the production well?

22 A I'm aware of that. The new well will have
23 to be drilled.

24 Q And the production well cannot be drilled
25 on that site or in that area. Are there alternative

1 plans for water resources and distribution?

2 A That's a question for Tom Nance.

3 Q Is it correct that this will be the largest
4 development constructed on Kauai if it gets approved?

5 A I'm not aware of what has come before or
6 what is planned after this.

7 Q Thank you. I'm done.

8 A Thank you.

9 CHAIRPERSON SCHEUER: It's 2:11. I don't
10 mind stopping now. Let's take a recess until 2:21,
11 and then we will probably go until 3:30 after that,
12 and then be done for the day. Recess until -- let's
13 do 2:25.

14 (Recess taken.)

15 CHAIRPERSON SCHEUER: Let's start off with
16 the Kauai Commissioner.

17 COMMISSIONER GIOVANNI: Thank you, Mr. Bow,
18 for joining us today and for your testimony and for
19 your patience as we ask a few questions. I don't
20 have too many.

21 First one has to do with storm water
22 runoff. We had testimony at the last hearing on this
23 matter and from someone living on Malu Road.

24 Are you familiar with where Malu Road is?

25 THE WITNESS: No, I'm not.

1 COMMISSIONER GIOVANNI: So Malu Road
2 intersects Olohena Road coming from the north just
3 west of the roundabout. Can you visualize that or do
4 I need to put a map up?

5 THE WITNESS: No, I can visualize it.

6 COMMISSIONER GIOVANNI: Your testimony also
7 suggests or confirms that in order to have a good
8 assessment of the as-is conditions or the
9 preconstruction conditions in terms of storm water
10 runoff, is that correct?

11 THE WITNESS: Yes.

12 COMMISSIONER GIOVANNI: So did your
13 analysis include any runoff from Malu Road? Because
14 the testimony put before this Commission said that
15 during a normal rainstorm, much less a two day or
16 100-year storm, there is significant flooding down
17 Malu Road onto Olohena and into the Petition
18 property. Are you aware of that?

19 THE WITNESS: No, I'm not aware of that.

20 COMMISSIONER GIOVANNI: So wouldn't it be
21 appropriate to include that, if in fact that does
22 occur?

23 THE WITNESS: If it is a contributing flow
24 to the project, I would say so.

25 I think what you're saying is this site is

1 off our project site, right; it doesn't contribute to
2 the runoff to our site, correct.

3 COMMISSIONER GIOVANNI: I think it's to
4 your site, the same way that the school is to your
5 site.

6 THE WITNESS: Okay, okay.

7 COMMISSIONER GIOVANNI: That's the way I
8 interpreted it.

9 So just to make sure that we capture that
10 in any further analysis or design.

11 I misunderstood your testimony. I thought
12 you said that the Kekaha Landfill had 70 years
13 capacity, but you corrected that, or at least to my
14 ear, it was corrected to seven years; is that
15 correct?

16 THE WITNESS: That's correct, seven years.

17 COMMISSIONER GIOVANNI: What is your
18 expectation for solid waste management after seven
19 years?

20 THE WITNESS: It's really a County issue,
21 islandwide issue, because that's the only landfill
22 for the island, right? So whether they can expand it
23 or find another site to handle the solid waste from
24 the island.

25 COMMISSIONER GIOVANNI: You're not aware of

1 any solution beyond seven years at this time; is that
2 correct?

3 THE WITNESS: That's correct. I understood
4 that they will undertaking another integrated solid
5 waste management plan. The last was done in 2009, I
6 believe, so I think more study is necessary.

7 COMMISSIONER GIOVANNI: So you've made
8 reference to a two-day storm and a 100-year storm.

9 Could you further explain or provide
10 definition of exactly what you mean by a two-day
11 storm and a 100-year storm?

12 THE WITNESS: It's a two-hour storm --
13 excuse me -- two-year and 100-year storm. You and I
14 know, the 100-year storm, you know, used to be one in
15 100 years, right? It seems like every year we're
16 having 100-year storm because of whatever, the
17 climate change and so forth.

18 COMMISSIONER GIOVANNI: I think we had
19 three of them last week.

20 THE WITNESS: I think you're right. And I
21 think you really felt it in Kauai versus Honolulu.

22 But anyway, no, it's part of the design
23 standards, the Public Works design standards that we
24 follow.

25 COMMISSIONER GIOVANNI: So what the

1 Commission has learned in other development projects
2 is that as a consequence of the changing and the
3 weather, a lot of the expert testimony, or so-called
4 expert testimony that we are hearing is that it may
5 be more appropriate actually to look at 24-hour
6 storms, or the amount of rainwater that can
7 accumulate in that short of a time frame, as really
8 being the most dangerous and really the design point
9 that you have to be aware of.

10 In your work, in your firm's work, would
11 you agree with that, or do you think that there's a
12 need to go to a more stringent analysis to respect
13 what is going on in the environment?

14 THE WITNESS: I think the design community
15 working with Public Works needs to get together and
16 really collaboratively come up with a plan to address
17 these conditions, you know, to design for resiliency,
18 if you will. That's kind of a buzz word now,
19 "resiliency", right?

20 And it is the standard. And what is the
21 new standard? I can't make that up. You make a good
22 point, should we design for 24-hour versus one hour
23 or maybe a ten hour or -- what is it, right? I mean,
24 I can't come up with that number. Someone's got to
25 tell me.

1 And I think we, as engineers, as Public
2 Works officials, need to come together and create
3 that. I hear what you're saying. I agree with it.
4 I think it's got to be put into policy.

5 COMMISSIONER GIOVANNI: Thank you for that.
6 I think that that is a way forward.

7 Specific to this project, if we happen to
8 design to whatever standard that might be agreed to,
9 and it turns out to be insufficient, and we have a
10 consequence where we have significant overflow.

11 Based on your familiarity with the layout
12 of this project, where would that overflow occur?

13 THE WITNESS: Well, as I pointed out, it's
14 the Greenbelt area 1, 2 and 3 by Waika'ea Canal.
15 That's the low point there. And the other stream
16 side, on the stream to the southwestern portion of
17 detention basins, that's another low point. So that
18 would be the points of overflow, if the culverts were
19 not able to take or bypass the flow underneath the
20 Bypass Road, then obviously it would overflow. And
21 so that needs to be checked in the future when we get
22 into the details on the design.

23 COMMISSIONER GIOVANNI: In other words, if
24 I understood you correctly, if there's a chance that
25 the culverts are not adequately sized for this worst

1 case scenario, we're going to be flooding the Bypass
2 Road?

3 THE WITNESS: That could be. It could be.
4 I don't know what the existing -- I haven't analyzed
5 existing condition of that pipe that goes under the
6 Bypass Road. So if it is undersized, then we will
7 need to upsize it to accommodate the flow.

8 COMMISSIONER GIOVANNI: So let me shift a
9 little bit to wastewater. And I don't want to get
10 into a numbers conversation. I think that you've
11 already been asked and you've attempted to answer and
12 clarify in that regard.

13 But I do have concern about a scenario --
14 and I'm not going to try to define that scenario --
15 where we exceed the capacity of the Wailua Wastewater
16 Treatment Plant.

17 My question is really, what would be the
18 consequence of exceeding the capacity of that plant
19 to the residents of HoKua Place, Kapaa Town and
20 Wailua Homesteads?

21 THE WITNESS: How would we exceed it when
22 the capacity is adequate at this time?

23 COMMISSIONER GIOVANNI: I don't want to
24 argue about numbers of capacity. I'm just saying, if
25 for whatever circumstance we did exceed it, what

1 would be the consequence?

2 THE WITNESS: You would need to work with
3 the Public Works and come up with a solution by
4 upgrading the facility to accommodate the flows which
5 I believe developer has volunteered to assist in.

6 COMMISSIONER GIOVANNI: My question is,
7 it's not a technical question in that regard. It's
8 not about sizing the plant properly. It's about,
9 what if we flush the toilets, and there's nowhere for
10 it to go? Do we have to put in emergency
11 proclamation for health reasons for this whole part
12 of the island?

13 THE WITNESS: If that's happening to HoKua,
14 it's happening to all of Kapaa Town. So I think we
15 have got a major problem, County has a major problem
16 if that happens.

17 COMMISSIONER GIOVANNI: It doesn't seem to
18 be happening in our current state, but if we add
19 30-some-percent capacity just to Kapaa Town by this
20 single project, I'm a little concerned that we are
21 edging very close to that reality.

22 But operationally, what is the consequence?
23 Do we go into a health emergency? Is that what we
24 have to protect against?

25 THE WITNESS: Who is "we"? Are you talking

1 about --

2 COMMISSIONER GIOVANNI: Residents of Kapaa
3 Town, HoKua Place and Wailua Homesteads and the
4 environs nearby in which the wastewater currently is
5 treated at this plant.

6 THE WITNESS: I think you have a major
7 problem, everyone has a major problem with this. The
8 whole community is at stake. It's not just HoKua,
9 but it's Kapaa Town, it's -- Department of Health
10 would be -- environmental. You got a can of worms if
11 that happens.

12 We're uphill. So can you imagine what's
13 happening downstream? I mean further on the low
14 side? They're backing up first.

15 COMMISSIONER GIOVANNI: This is something
16 we've got to get correct at the beginning.

17 THE WITNESS: I agree.

18 COMMISSIONER GIOVANNI: My final question
19 has to do with construction sequencing.

20 You know, your testimony alone identified
21 some very significant and important infrastructure
22 that would have to be designed, built and
23 operationalized as part of this project.

24 Can you speak as to the appropriate -- from
25 your view, what would be the appropriate sequencing

1 of infrastructure relative to the building, and
2 necessitate -- and causes the impacts that
3 necessitates that infrastructure?

4 THE WITNESS: Well, the sequence would be,
5 obviously you need to get in your water and sewer to
6 support the development, right?

7 It doesn't all have to be built at one
8 time, but it needs, depending on which portions are
9 going first, the service or infrastructure, needs to
10 get to that point.

11 And drainage, obviously, those are the
12 three main components, water, sewer drainage; right?

13 So detention basin needs to be built.
14 Perhaps not in this area here, because as we
15 mentioned before, we could do some -- if the project
16 site is smaller, we could do a smaller detention
17 further upstream or wherever it's located.

18 So a huge detention basin at the bottom
19 doesn't need to be constructed all at once, but could
20 be phased.

21 COMMISSIONER GIOVANNI: So in the testimony
22 or evidence in the record so far there is a lot of
23 mentioning that construction on the buildings will
24 hopefully commence in the next few years and be
25 completed within ten years.

1 In the analysis that you have done, have
2 you seen any timeline that kind of lays out what
3 elements of infrastructure would be built, and when
4 it would be built relative to the construction of the
5 buildings?

6 THE WITNESS: No, I have not seen any
7 schedule or phasing or sequence of construction.

8 COMMISSIONER GIOVANNI: Thank you very
9 much. That's all the questions I have today.

10 THE WITNESS: Thank you very much.

11 CHAIRPERSON SCHEUER: Thank you,
12 Commissioner Giovanni.

13 Commissioner Chang.

14 COMMISSIONER CHANG: Thank you, Mr. Chair.

15 Good afternoon, Mr. Bow. I'm sorry that I
16 had to leave a little early, and you may have
17 answered the questions that I'm about to ask.

18 First, I would like to followup on some of
19 the questions that Commissioner Giovanni asked you
20 regarding the infrastructure.

21 Do you have an idea, an estimated cost to
22 put in the retention basin, these priorities, sewer,
23 water and drainage, do you have an estimated
24 development cost for that infrastructure?

25 THE WITNESS: I do have some budget

1 construction cost for the infrastructure, yes, but I
2 didn't -- go ahead, I'm sorry.

3 COMMISSIONER CHANG: Could you share that
4 cost with us? What is your estimate?

5 THE WITNESS: So for the total development,
6 we're looking at about \$83 million, that's with water
7 and all infrastructure, grading out the pads, and you
8 know, it's budget. It's really rough.

9 It's based on cost per acre. It's based on
10 our data that we have from other Kauai housing
11 projects that we have done. So that's what we have.

12 That's for the roadways, water, sewer. I
13 threw in Tom Nance's figures on the water well tank.
14 Also intersections for off of Olohena and the Bypass
15 Road, so about 83 million when all's said and done.

16 COMMISSIONER CHANG: I really appreciate
17 you coming up with a figure as we haven't been able
18 to get one.

19 Does your \$83 million include a new water
20 source if the existing doesn't have the capacity?

21 THE WITNESS: Yes, it does.

22 COMMISSIONER CHANG: Do you know whether
23 this cost of -- the estimate of 83 million is being
24 considered by the developer in his development cost?

25 THE WITNESS: I think he's working on it at

1 this point. I did listen in to the line of
2 questioning for Jake. I think Mr. Giovanni had asked
3 him for a breakdown or some pro forma, so I
4 understand he's working on it. So I did share these
5 numbers with him recently, so he's putting that
6 together for you.

7 COMMISSIONER CHANG: This \$83 million, does
8 it also include appropriate mitigation measures?

9 THE WITNESS: It's all built in. As I
10 said, it's all based on cost, average cost per acre
11 for a development such as, for example, we worked on
12 the Kauai affordable housing project out there in
13 Poipu 133 units, and that was -- we took that cost
14 and averaged it per acre, and used it.

15 So it's all encompassed. All the measures
16 are there. I can't itemize it out at this point.

17 COMMISSIONER CHANG: This is helpful. This
18 is the cost, \$83 million is the infrastructure cost
19 for the entire build out?

20 THE WITNESS: Correct.

21 COMMISSIONER CHANG: Can I ask you, are you
22 also the developer for the HoKua ag lots? Are you
23 the engineer, I should say, the engineer for the
24 HoKua ag lots?

25 THE WITNESS: I laid out the subdivision

1 for them, but I did not do the infrastructure. Just
2 basically paper subdivision.

3 COMMISSIONER CHANG: So you didn't
4 calculate the cost for developing the infrastructure
5 for that HoKua ag lots?

6 THE WITNESS: No, I did not.

7 COMMISSIONER CHANG: When you laid out the
8 planning for the HoKua ag lots, what impact did that
9 have on the HoKua Place development?

10 THE WITNESS: It didn't, it was separated.
11 It's a different development plan.

12 COMMISSIONER CHANG: But from -- I guess
13 kind of going back to Commissioner Giovanni's line of
14 questioning as well, we need to be proactive and make
15 sure there is sufficient and adequate infrastructure
16 to accommodate both the existing developments in this
17 area as well as this proposed one and the ag lots.

18 In your expert opinion, does the ag lots,
19 the full build out of the ag lots -- and I know they
20 are not part of this dba, but it is a substantial
21 development.

22 In your expert opinion, does the
23 development in the HoKua ag lots have an impact and
24 change any analysis for the HoKua Place
25 infrastructure?

1 THE WITNESS: No, it does not. We
2 accounted for the water. That's 0.1 million gallons
3 per day for the ag lots. So that's the only thing
4 that impacts us.

5 As far as wastewater, because of the large
6 acreage, they could go with an IWS, and they would do
7 that themselves.

8 COMMISSIONER CHANG: And I don't know
9 whether we can put such a condition, but given the
10 representation that any -- that the HoKua -- the
11 adjoining HoKua ag lots would not have any additional
12 impacts, wouldn't change your assessment for needs
13 and costs for the HoKua Place?

14 Do you understand what I'm asking?

15 THE WITNESS: Yeah. Let me see if I
16 understand it.

17 You want to know if the ag lots have an
18 impact to the HoKua Place in terms of water, sewer,
19 drainage?

20 COMMISSIONER CHANG: Yes.

21 THE WITNESS: I can tell you with drainage,
22 there's no impact because it's on the ridge line, and
23 it's going away from our site. So no impact on
24 drainage.

25 Water, as I mentioned, they are coming off

1 a well site or County line, if they choose to accept
2 our water and private system, whether public or
3 private, will provide water to the ag lots.

4 Wastewater, as I said, currently we are not
5 serving them. They are on their own for their own
6 treatment.

7 COMMISSIONER CHANG: I appreciate that
8 clarification.

9 Are you also qualified, or are you the
10 right person to ask about erosion control? Because
11 this is a large development, at any one point in
12 time, how much land would be exposed during the
13 development phase?

14 THE WITNESS: According to the County
15 standard for grading, it's ten acres.

16 COMMISSIONER CHANG: So are you telling me
17 at no time will there be more than ten acres of
18 exposed land either for infrastructure or
19 construction of the residential dwellings at any one
20 time?

21 THE WITNESS: That is the standard. There
22 can be exceptions to the rule, if you provide
23 mediating measures to that. So but the rule of thumb
24 is ten acres.

25 COMMISSIONER CHANG: Do you know what the

1 phasing of the HoKua Place -- and I think maybe
2 someone might have answered it -- but do you know
3 what the phasing plans are for the development of
4 this project?

5 THE WITNESS: No, I don't know at this
6 point in time.

7 COMMISSIONER CHANG: Okay. Thank you very
8 much.

9 Your estimated budget of 83 million.
10 That's very helpful to know that. Thank you very
11 much, Mr. Bow. I have no other questions.

12 THE WITNESS: Thank you.

13 MR. YUEN: Mr. Chairman, we have some
14 figures. Would you like those put into evidence?

15 CHAIRPERSON SCHEUER: Mr. Yuen, what are
16 you referring to specifically?

17 MR. YUEN: The infrastructure
18 (indecipherable) that Mr. Bow was quoting from in
19 response to questions by Commissioner Chang.

20 CHAIRPERSON SCHEUER: Yes, please, unless
21 there is an objection from any of the parties. Any
22 objection from the County?

23 MR. DONAHOE: No, Chair, thank you.

24 CHAIRPERSON SCHEUER: OP?

25 MR. YEE: No objection.

1 CHAIRPERSON SCHEUER: Intervenor?

2 MR. COLLINS: Mr. Chair, I just have a
3 question.

4 If they're submitting a new exhibit, will
5 we have an ability to cross-examine the witness on
6 this new exhibit?

7 CHAIRPERSON SCHEUER: If necessary, I
8 believe that -- if the Petitioner wishes to submit
9 that, that would be appropriate.

10 MR. COLLINS: Thank you. No objection at
11 this time.

12 COMMISSIONER CHANG: This is Commissioner
13 Chang.

14 Mr. Yuen, I greatly appreciate you
15 including that in as an exhibit, so documents, the
16 basis for that calculation, because I believe when I
17 was examining, I think it's Mr. Bracken, I did, and I
18 will ask again, for the developer to consider putting
19 up a performance bond equivalent to the cost of the
20 infrastructure development.

21 So it's helpful to know what that number
22 is.

23 CHAIRPERSON SCHEUER: Is that it,
24 Commissioner Chang?

25 COMMISSIONER CHANG: Yes, that is it.

1 Thank you.

2 CHAIRPERSON SCHEUER: Thank you very much.

3 Commissioner Ohigashi.

4 Can I get a sense for our remaining time.

5 What other Commissioners have questions?

6 Commissioner Okuda, Commissioner Ohigashi,

7 commissioner Cabral, Commissioner Wong.

8 That would be all of them. And I have
9 questions as well. So I suspect we will spend the
10 remainder of the day with Mr. Bow, and perhaps start
11 tomorrow to wrap up. We'll see how it goes.

12 Commissioner Ohigashi, please proceed.

13 COMMISSIONER OHIGASHI: I just have a few
14 questions.

15 Are you familiar with the standards used
16 for sewage treatment plants? Is that part of your
17 expertise, or within your knowledge?

18 THE WITNESS: No, it is not.

19 COMMISSIONER OHIGASHI: For example, if I
20 was to ask you is there a number or a capacity that a
21 sewage treatment plant should be working at that is
22 less than total capacity to be safe, are you able to
23 answer those questions?

24 THE WITNESS: No. There will be another
25 engineer. It's a wastewater -- standard engineering

1 is a field onto itself. I mean, you can get Master's
2 degree and Ph.D.s in wastewater engineering. So it's
3 not in my field.

4 COMMISSIONER OHIGASHI: So right now you
5 claim that there is excess capacity at the sewage
6 treatment plant; is that right?

7 THE WITNESS: That's what we are told.

8 COMMISSIONER OHIGASHI: How much of this
9 excess capacity would your project take?

10 THE WITNESS: As I mentioned, the current
11 plant capacity is 1 million gallons per day. They
12 are currently treating 0.6. So they have excess
13 capacity of 0.4.

14 At our full build out, we are looking at
15 0.2, that's in 12 years from now, right?

16 So we are within the current capacity, but
17 who knows what's going to happening 12 years from
18 now, right? Other developments may come online.

19 Anyway, we are within the limits of their
20 current capacity.

21 COMMISSIONER OHIGASHI: And would you be
22 able -- are you able to reserve that capacity?

23 THE WITNESS: I understand that the only
24 way to reserve is through building permit. We still
25 need to go through the County, do the design and so

1 forth. We need to show them what we're doing, but,
2 you know, projects fail, right?

3 So we reserve now, and you know, you may
4 have a reservation that somebody else could be using
5 the capacity on if they were shovel ready, if you
6 will.

7 COMMISSIONER OHIGASHI: My last question is
8 that, assuming -- are you aware of any County
9 standards or County regulation regarding how much
10 excess capacity should be maintained?

11 THE WITNESS: I do not. Not aware of that.

12 COMMISSIONER OHIGASHI: And your comment
13 would be that it would be up to some kind of
14 specialized engineer to find that out?

15 THE WITNESS: Yes, someone that's
16 specializes in wastewater treatment and design the
17 wastewater facilities.

18 COMMISSIONER OHIGASHI: So my guess would
19 be to ask the County witnesses or their people as to
20 what they estimate as a safe excess capacity to
21 maintain the current sewage treatment plant?

22 THE WITNESS: If you like, next time, I can
23 make a phone call to the wastewater division at the
24 County and find out what their policy is for --

25 COMMISSIONER OHIGASHI: It doesn't matter

1 if you make a call. I just was warning the County of
2 Kauai that I might ask questions so they will be
3 ready for it.

4 THE WITNESS: Okay, thank you. They're
5 probably listening to this right now.

6 COMMISSIONER OHIGASHI: He's sitting right
7 there, Chris.

8 THE WITNESS: Okay.

9 COMMISSIONER OHIGASHI: Thank you.

10 CHAIRPERSON SCHEUER: Anything further,
11 Commissioner Ohigashi?

12 COMMISSIONER OHIGASHI: No.

13 CHAIRPERSON SCHEUER: I'm going to go in
14 the order of Cabral, Wong, Okuda and Scheuer.

15 Commissioner Cabral.

16 COMMISSIONER CABRAL: Thank you. Thank you
17 very much for sticking to this. It's been really
18 gruesome for you, it seems.

19 I have some additional questions which have
20 been touched on by my fellow Commissioners, that has
21 to do with rainfall. Since I'm from the rainy city
22 of Hilo, and we have the combination, we're blessed
23 with a lot more porous land, because we have more
24 recent lava flows that are still very porous, so we
25 have huge amounts of rain but they seem to disappear

1 into the ground at a better rate than on Kauai, and
2 we see what's going on on the news.

3 So my question to you is really somewhat to
4 the County too. I'm greatly concerned about the
5 concept by which everything is being based on, that
6 these reservoirs are going to hold it and then the
7 overflow for that is going to be active.

8 Is there anything going on in your
9 knowledge in the County that you or the developer is
10 going to be looking at being able to handle what's
11 has happening going into the future?

12 It appears that everything -- you're basing
13 everything on the statistical rainfall, and that in
14 the past, but it clearly appears going forward, that
15 I know in Hilo, and obviously from the news in Kauai,
16 you guys are having more rainfall than you've had
17 more often in the past. So anything going forward
18 that is going to prevent more flooding that you are
19 aware of?

20 THE WITNESS: I'm not aware, but as I
21 mentioned before, I think there has got to be a
22 collaborative effort between the design community and
23 the Public Works to come up with a resiliency plan,
24 if you will, for future developments.

25 COMMISSIONER CABRAL: I can appreciate that

1 we all look to government.

2 In regards to the developer that you're
3 working with, do you have any thoughts that you
4 should perhaps suggest to them that they look to
5 oversize the system and be ready, so that they don't
6 create new subdivisions with a disclosure that it
7 might flood, you know, and stuff, so that they are
8 oversized rather than just barely adequate?

9 THE WITNESS: Yeah, it's -- you know,
10 engineers, we design to a standard. And as the other
11 Commissioner mentioned, someone mentioned that you
12 should design to a higher standard. Well, my
13 question is to what standard? How much higher,
14 10 percent, 50 percent? I don't know.

15 I don't want to make things up, that's why
16 I said it's got to be a collaborative effort between
17 Public Works, developers to come up with a game plan,
18 so we all can follow this into the future.

19 COMMISSIONER CABRAL: Thank you. I can
20 appreciate you're in the middle of this, but I think
21 it's clear that we as Commissioners are clearly
22 concerned about the future that we're going to allow
23 or not allow in terms of density and water flow, and
24 rain flow, and what that's going to do in the future.

25 Thank you very much.

1 CHAIRPERSON SCHEUER: Thank you very much,
2 Commissioner Cabral.

3 Commissioner Wong.

4 COMMISSIONER WONG: Thank you, Chair.

5 Good afternoon, sir. Just several
6 questions.

7 You got to explain this one to me, you
8 know, when these numbers, these calculations on your
9 exhibit, how did you derive all these numbers?

10 THE WITNESS: Which ones specifically are
11 you --

12 COMMISSIONER WONG: Just saying in general.
13 Let's say, how much water someone is going to do use
14 or how much do-do someone is going to make. How you
15 do the those numbers?

16 CHAIRPERSON SCHEUER: You can cover them in
17 order. Go with drinking water and then move to
18 number two question.

19 THE WITNESS: It's all based on standards.
20 For the water, there are Board of Water Supply
21 standards that we follow. Drainage, there is
22 drainage standards, so everything is -- all these
23 criteria, if you will.

24 The gallons per day, per unit, and so
25 forth, it's all part of the standard that we follow.

1 I don't make it up. It's just guidance by the
2 County.

3 COMMISSIONER WONG: So I guess maybe I'm
4 going to ask Mr. Bracken later, because I'm assuming
5 you had to kind of say, there's going to be five
6 houses that going drink this much water with this
7 much fecal, and make this much shi-shi and do-do, so
8 you have to sort of guesstimate how many buildings
9 there is going to be, right?

10 THE WITNESS: We didn't have to guess. I
11 think there was a plan at 769 units is what they told
12 me, so various mixes. So I had the mix breakdown, so
13 I knew how many units there were.

14 So using that, once I got that number, I
15 just applied the units per the standards, and I come
16 up with these numbers.

17 COMMISSIONER WONG: So I got a question.
18 If it's out your of realm, just say it's our of your
19 realm.

20 When you build houses, or whatever those
21 units, do you have like a -- don't people have like
22 I'm going to build this house and it's going to be
23 200 square feet, and it's going to cost this much per
24 square feet? I mean, don't they have this kind of
25 estimates usually?

1 THE WITNESS: Out of my realm. I think
2 that would be question for the architect.

3 COMMISSIONER WONG: Thank you, I'll go
4 there.

5 Then someone brought up the issue about the
6 drainage analysis that was -- is it in the EIS or not
7 in the EIS?

8 THE WITNESS: I did an independent
9 analysis. The analysis in the EIS was done by
10 another engineer.

11 I looked at it from a different point of
12 view, and so what is presented to you currently is
13 what Bow Engineering Development has analyzed and has
14 presented.

15 COMMISSIONER WONG: So the exhibit with
16 your name on it, does that supersede the EIS
17 information?

18 THE WITNESS: Yes, it does.

19 COMMISSIONER WONG: So the information that
20 we received was stale then?

21 THE WITNESS: Beg pardon?

22 COMMISSIONER WONG: The information that we
23 received in the EIS that we approved was stale.

24 THE WITNESS: Was stale. It's generally
25 the concept is there, except that I disagreed,

1 because, you know, every engineer looks at things a
2 little differently, right? So I had a different
3 approach to things. I didn't like the way certain
4 layouts were done and so forth.

5 So it's just a different opinion, if you
6 will, as to how things should be laid out and how
7 things should be processed. So little different. I
8 think it's not a substantial change, little minor
9 tweaking, if you will.

10 COMMISSIONER WONG: So the other -- I'm
11 sorry, you know, it's been so long ago that we went
12 on-site, but I guess we are talking about culverts.
13 Those are those big drain ditches or something,
14 correct?

15 THE WITNESS: Drain pipe.

16 COMMISSIONER WONG: Yeah. So did you walk
17 through them or -- I mean, you know, like if I was a
18 little boy I would go through them just to see what
19 is inside.

20 Did you see that they're open or not or if
21 there's anything inside?

22 THE WITNESS: I have not. We haven't
23 gotten to that yet. All we are doing is quantifying
24 the numbers.

25 But as I mentioned before, if it is unable

1 to transmit the flow, then we would have to upsize it
2 to the required pipe size.

3 COMMISSIONER WONG: Okay. So someone did
4 go look at all these things then for you?

5 THE WITNESS: I have not looked at the
6 culverts crossing the Bypass Road yet. That would be
7 the next stage of design, if we go that far.

8 COMMISSIONER WONG: So I got a question. I
9 really -- this is -- you know, I was always scolded
10 by my bosses, because I don't do my homework, which I
11 still don't do my homework.

12 So I was wondering, I mean, as a developer,
13 don't you -- you can say you don't know or you don't
14 want to answer this -- how do you get all this
15 information like the culverts, you know, that
16 wetlands issue, the drainage issue, I mean, aren't
17 you supposed to walk the site and bring out the tape
18 measure, or whatever, to figure it out; or when it's
19 raining, get ruler, say so much of how much water
20 comes down? I mean, we supposed to do these things
21 or just --

22 THE WITNESS: We will do that at the next
23 level of design. At this point we're just
24 quantifying the runoff, the increase in runoff that
25 needs to be handled on-site. So my commitment to the

1 Commission is that we will not exceed the present
2 flow that's exiting the site. So no increase in
3 runoff.

4 COMMISSIONER WONG: So the last question
5 is -- I don't know if you were here two weeks ago
6 when one of the public people testified about the
7 runoff, and all the things that came out during heavy
8 rains.

9 Were you here when someone talked about the
10 Cocopalms Hotel?

11 THE WITNESS: No, I didn't catch that.

12 COMMISSIONER WONG: Maybe I'll wait until
13 someone else can, but I'll just hold off on that for
14 now. Thank you, sir. Thank you, Chair.

15 THE WITNESS: Thank you.

16 CHAIRPERSON SCHEUER: Thank you very much,
17 Commissioner Wong.

18 Commissioner Okuda, and then I will have
19 some questions as well.

20 COMMISSIONER OKUDA: Thank you very much,
21 Mr. Chair.

22 Thank you, Mr. Bow, for being here with us
23 through the afternoon. We really appreciate your
24 presence.

25 Let me follow up on some of the questions

1 asked by my fellow Commissioners.

2 My first question goes to a response you
3 gave to Commissioner Wong's question pretty recent.
4 You said your analysis or your materials, if I can
5 use that term, more broadly differs from certain
6 information that the prior engineer had included in
7 the Final Environmental Impact Statement; is that
8 correct?

9 THE WITNESS: That's correct.

10 COMMISSIONER OKUDA: What is the name, and
11 can you identify the name, please or names, of the
12 persons who provided reports or opinions or materials
13 in the Final Environmental Impact Statement for which
14 you have differences of opinion, or differences of
15 conclusions or any type of differences, no matter
16 whether or not those differences are large or not
17 large?

18 THE WITNESS: I believe the engineering
19 company was Honua Engineering, located on North Shore
20 of Kauai.

21 COMMISSIONER OKUDA: Is there anything in
22 the record that you can point to which identifies or
23 clearly states to the Land Use Commission, and
24 frankly to the public, about the differences where
25 you do not concur or agree 100 percent with the

1 information that was contained in the Environmental
2 Impact Statement?

3 THE WITNESS: I don't know if it was an
4 issue or not, but the one thing that pops out to me
5 was in the Greenbelt Area 1, to the southwesterly
6 direction. If you remember, it's on the left side of
7 my image there. They had put a detention basin in
8 the wetland. I didn't like that idea. I don't think
9 any of you would like that either. So I redesigned
10 it and pushed it within our site.

11 COMMISSIONER OKUDA: I'm not -- you know,
12 I'm not playing hide the ball here. So let me tell
13 you at least one of the reasons why I'm asking this
14 question. And the fundamental reason is I don't want
15 to be admonished by the Hawaii Supreme Court later
16 that we did not follow strict procedures that they
17 have required of all government agencies dealing with
18 Environmental Impact Statement.

19 So that's the reason for my question. My
20 question is not for you, right now anyway, to
21 identify the specific differences between your
22 opinions, conclusions or how you view the situation
23 with the prior engineer, or any of the prior
24 submissions in the Environmental Impact Statement.

25 I'm asking whether there's any document in

1 the record which makes clear what these differences
2 are? In other words, what is the document or the
3 exhibit in the record which identifies the
4 differences between your opinion, your conclusion,
5 your observations and what is contained in the
6 Environmental Impact Statement?

7 Can you identify such an exhibit or
8 document, or where in the record we can find such
9 evidence?

10 THE WITNESS: I don't think there is any.
11 I haven't seen it.

12 COMMISSIONER OKUDA: Did you at any time
13 inform the developer, the developer's attorneys,
14 because I don't believe there's such a thing as
15 consultant attorney privilege, or anyone else that
16 you had differences with information that was
17 contained or disclosed in the Environmental Impact
18 Statement?

19 THE WITNESS: Yes, I did.

20 COMMISSIONER OKUDA: When did you first
21 disclose to anyone, acting either for the developer
22 or the developer them or itself, that you had
23 differences of opinion or observation from what was
24 contained in Environmental Impact Statement?

25 I'm looking for a date. It can be an

1 approximate date. If you can give me the month and
2 year, that be would be okay.

3 What is your best recollection, sir?

4 THE WITNESS: As we were preparing to enter
5 into contract for the preparation to submit to the
6 LUC is when we notified the developer.

7 So I would say I have to look back in my
8 files. I can't recollect. I would say about a year
9 ago.

10 COMMISSIONER OKUDA: Okay. So in other
11 words, it was before the pandemic, correct?

12 THE WITNESS: Yes.

13 COMMISSIONER OKUDA: Can you identify who
14 you told that you had differences as far as your view
15 of information and what was in the -- and just so
16 we're clear, your differences were what was contained
17 in the Final Environmental Impact Statement; is that
18 correct?

19 THE WITNESS: These are the civil
20 engineering issues that were part of the
21 Environmental Impact Statement, yes.

22 COMMISSIONER OKUDA: Are we talking about
23 the Final Environmental Impact Statement, or are you
24 referring to the Draft Environmental Impact
25 Statement?

1 THE WITNESS: The Final.

2 COMMISSIONER OKUDA: Who did you tell or
3 inform that you had these differences of opinion or
4 information.

5 THE WITNESS: I believe I met with Jake at
6 the time, and I believe at that time there was
7 another -- his island manager. What is his name? I
8 don't recall. But the project manager. Just when
9 Jake was coming onboard, I did mention that if they
10 wanted to hire us, I would look at it differently.
11 That I wouldn't accept what was presented.

12 I thought it wasn't -- I couldn't put my
13 name on it and my stamp on it, so I would have to
14 redo it to our standards and to meet the letter of
15 the law.

16 COMMISSIONER OKUDA: So just so that we're
17 clear, Jake is spelled J-A-K-E. The reason I'm
18 spelling these names is that we have a court reporter
19 preparing a transcript, so I don't want any appellate
20 court to criticize us for not keeping a clear
21 transcript either.

22 So Jake is spelled J-A-K-E, correct?

23 THE WITNESS: Correct.

24 COMMISSIONER OKUDA: What was Jake's last
25 name, if you can spell it, please, to the best of

1 your understanding.

2 THE WITNESS: Bracken, Jake Bracken,
3 B-R-A-C-K-E-N.

4 COMMISSIONER OKUDA: That was Mr. Bracken
5 who testified already initially in this matter,
6 correct?

7 THE WITNESS: Right, yes.

8 COMMISSIONER OKUDA: And when you told that
9 to -- let me ask you this.

10 When you say you couldn't put your stamp on
11 it, what did you mean by you couldn't put your stamp
12 on it?

13 THE WITNESS: I couldn't rubber stamp what
14 was being presented by someone else.

15 COMMISSIONER OKUDA: When you use the term
16 "rubber stamp", why are you using that term?

17 THE WITNESS: It's just meaning that
18 someone else -- it's like ghost for someone. So you
19 would -- someone would do the design, right, then you
20 would stamp it, say, yes, I approve it.

21 I didn't agree with some of the approaches
22 that were done, so I thought it could be done better.

23 COMMISSIONER OKUDA: In what way did you
24 believe the approaches that were contained in this
25 material, which became part of the Final

1 Environmental Impact Statement, how could it have
2 been done better?

3 THE WITNESS: From a -- I think from a
4 water approach is fine. The sewer analysis was good.
5 The only changes I saw was in drainage. So drainage,
6 the handling of the storm water, the analysis of the
7 contribution to the project, I felt it was lacking.
8 So it needed a little bit more massaging. So it's
9 more on the drainage issues.

10 COMMISSIONER OKUDA: Now, in response to my
11 questions, two or three questions before you made a
12 reference to something along the lines of not in
13 compliance with the law. I don't mean to misstate
14 your testimony in any way, but when you made
15 reference to compliance with the law, or words to
16 that effect, what did you mean?

17 THE WITNESS: I was talking about the
18 example I gave where detention basin was located in
19 the wetland. So that's a no-no. That wouldn't --
20 that wouldn't fly. We wouldn't get a permit for
21 that.

22 COMMISSIONER OKUDA: And how do you know
23 that wouldn't fly, or what -- let me ask you this
24 first.

25 What do you mean when you say "that

1 wouldn't fly"?

2 THE WITNESS: Wouldn't be able to get a
3 permit for it.

4 COMMISSIONER OKUDA: From who?

5 THE WITNESS: Well, the wetland would be
6 Corps of Engineers. Bow Engineering has done some
7 wetland studies working in the Kawainui Marsh right
8 now, Kohala Marsh, mediation on Oahu.

9 So we are familiar with the dealings with
10 the Corp and team water people at the Department of
11 Health, so we actually would be familiar with the
12 standards for wetlands.

13 COMMISSIONER OKUDA: When you told Mr.
14 Bracken that you could not put your stamp on what had
15 been submitted previously, what response did you
16 receive from him or anyone else who was present with
17 him or during this conversation or meeting?

18 THE WITNESS: They were very responsive.
19 They basically heard that, yes, you should do it your
20 way.

21 COMMISSIONER OKUDA: Beside that -- let me
22 just ask a foundational, as we say, question.

23 Was this conversation taking place in a
24 face-to-face meeting, over the phone,
25 videoconference; how did this meeting or conversation

1 take place?

2 THE WITNESS: Face-to-face on Kauai. He
3 had come down to Kauai, and I met with him and -- oh,
4 I remember the name, Greg Allen was the manager at
5 the time. He's no longer with the project. But he
6 introduced me to Jake and wanted me to be their civil
7 engineer.

8 So I basically was interviewing with Jake
9 to see if he wanted to hire us or not, and there were
10 certain stipulations that I had in order for them to
11 hire us.

12 COMMISSIONER OKUDA: Besides the discussion
13 you had about it having to be done your way, were
14 there any other stipulations that you had with Mr.
15 Bracken, or with anyone on the developer side, as a
16 condition for you to be hired?

17 THE WITNESS: Not that I can recall.

18 COMMISSIONER OKUDA: And this face-to-face
19 meeting that took place on Kauai, can you tell us
20 where on Kauai the face-to-face meeting took place?

21 THE WITNESS: Was in Harbor Mall in
22 Kalapaki -- is that Kalapaki? Right off of
23 Nawiliwili Road right there, Harbor Mall.

24 Are you familiar with that area?

25 COMMISSIONER OKUDA: Okay, yeah, I'm

1 familiar with that.

2 And after you told, or after you said these
3 things what you just testified to, what was Mr.
4 Bracken or Mr. Allen's response to what you said
5 besides what you already testified to?

6 THE WITNESS: Well, the proof of the
7 pudding is we signed my contract, they hired me.

8 COMMISSIONER OKUDA: Was there any
9 discussion, or are you aware of any discussion, or
10 did you have any discussion about the need to amend
11 or modify the Final Environmental Impact Statement?

12 THE WITNESS: No, we didn't have any
13 discussions on that.

14 COMMISSIONER OKUDA: What about up until
15 today, has there been any discussions that you are
16 aware of, or which you participated in, about the
17 need to modify the final Environmental Impact
18 Statement based on, or for the reasons as described
19 in your testimony that you have just given right now?

20 THE WITNESS: We were not asked to
21 contribute to the Environmental Impact Statement.

22 COMMISSIONER OKUDA: Do you have -- is it
23 within your realm of testimony to give us an opinion?
24 In other words, can you tell us whether you think the
25 Environmental Impact Statement might be, or might

1 contain some type of defect because it does not
2 include your analysis including with respect to the
3 wetland?

4 THE WITNESS: Off of top of my head, I
5 would say, no. But I would like to caveat, I would
6 like to look at it again to see. I think what we did
7 is, with our current submittal, we made it better,
8 and more environmentally friendly.

9 COMMISSIONER OKUDA: I would think just my
10 cursory look, that if you take a development out of a
11 wetland, it might be more helpful than less helpful
12 with respect to the wetland.

13 Let me ask you this. Do you know whether
14 or not any community organizations or people who were
15 consulted regarding the Environmental Impact
16 Statement were or was informed about your opinions
17 that you have just now testified or disclosed with
18 respect to the civil engineering items that were
19 contained in the Final Environmental Impact
20 Statement?

21 THE WITNESS: I'm not aware.

22 COMMISSIONER OKUDA: Okay. Let me shift
23 gears a bit. And I apologize for jumping around, but
24 I'm trying to go through what some of my fellow
25 Commissioners have asked.

1 In response to, I believe, a series of
2 questions that Commissioner Giovanni asked you, you
3 used the term designing for resilience, and you used
4 the word "resilience". Do you recall that?

5 THE WITNESS: Yes.

6 COMMISSIONER OKUDA: When you use the term
7 "resilience" or "designing for resilience", what do
8 you mean by that?

9 THE WITNESS: Design to withstand the
10 unknowns, global warming, due to global warming.

11 COMMISSIONER OKUDA: Isn't it true -- well
12 as part of your professional work, isn't it true that
13 you also participate in continuing education courses,
14 including professional gatherings whether virtual
15 because of the pandemic now, and maybe prior to the
16 pandemic in person?

17 THE WITNESS: Yes.

18 COMMISSIONER OKUDA: And at these
19 gatherings, isn't it true that among engineers there
20 have been discussions that the standard of care
21 applicable to engineering in general must start
22 taking into account the issues of resilience, even if
23 government standards may not reflect resilience;
24 isn't that true?

25 THE WITNESS: That's true.

1 COMMISSIONER OKUDA: And during these --
2 and these are the things that are talked about at
3 professional conferences, which are intended to
4 educate professional engineers; correct?

5 THE WITNESS: Yes.

6 COMMISSIONER OKUDA: With respect to this
7 specific project, has there been designs created with
8 the view towards resilience, as you understand the
9 term is used in a professional engineering setting?

10 THE WITNESS: No. We designed it -- our
11 analysis was based on the current standards.

12 COMMISSIONER OKUDA: Okay. And these
13 current standards, in your view as a professional
14 engineer with all the credentials, and I very much
15 respect the credentials as reflected in your resume,
16 which is part of the record.

17 Do the current County standards take into
18 account resilience, in your opinion?

19 THE WITNESS: Don't tell them I said so,
20 but no.

21 COMMISSIONER OKUDA: Okay. And so
22 designing to the County standards does not
23 necessarily mean that the design is resilient,
24 correct?

25 THE WITNESS: That's correct.

1 COMMISSIONER OKUDA: And with respect to
2 this specific piece of property, the development
3 project site, the site which is subject to this
4 application. If there is a lack of designing with
5 the eye to resilience, as you understand the term, it
6 creates a certain amount of risk to the public; isn't
7 that true?

8 THE WITNESS: That's correct. That's a
9 correct statement.

10 COMMISSIONER OKUDA: Can you please
11 describe generally -- and I'm not saying these things
12 are going to happen, but --

13 CHAIRPERSON SCHEUER: Sorry, Commissioner
14 Okuda. I want to do a time check. It's 3:27.

15 COMMISSIONER OKUDA: If you don't mind, I
16 have a bunch of other questions, but if you can just
17 have this as the last question of the day.

18 CHAIRPERSON SCHEUER: Okay.

19 COMMISSIONER OKUDA: Mr. Bow, I'm not
20 saying these things are going to happen, but if there
21 is no design for resilience, what type of risks could
22 the public be exposed to from this project if there
23 isn't resilience in the design?

24 THE WITNESS: Generally speaking, it would
25 be -- the most obvious would be drainage, right.

1 Because as I mentioned before, the 100-year storm is
2 not one in 100 years any more, almost every year. So
3 there needs to be, I think, an upgrade in the
4 standard.

5 I was saying that the County and the
6 community need to get together and come up with a
7 standard that we all adhere to, not just HoKua Place,
8 but islandwide, statewide there should be a standard
9 for resilience.

10 I think we are working for that. I know
11 City and County of Honolulu is doing that. They have
12 a department for resilience. I'm sure Kauai County
13 has the same thing.

14 So we're working toward it to protect the
15 community at large.

16 COMMISSIONER OKUDA: As one that recalls
17 the Keapuka floods many decades ago, one of the risks
18 to the public from the lack of resilience in the
19 flood condition is people can die. Isn't that
20 correct?

21 THE WITNESS: There were some changes done
22 to the dam. That's a dam --

23 COMMISSIONER OKUDA: That wasn't --

24 THE WITNESS: -- so it's a little different
25 from what we are developing here.

1 I'm not building a dam. So I heard Jimmy
2 Pflueger modified the dam outflow spillway, so that
3 may have caused the problem --

4 COMMISSIONER OKUDA: Well --

5 THE WITNESS: But, yeah, people died.

6 CHAIRPERSON SCHEUER: Excuse me. You need
7 to not talk at the same time.

8 Please continue your clarification.

9 COMMISSIONER OKUDA: I apologize, I
10 violated my own rule.

11 Keapuka was below Hoomaluhia Park. In
12 fact, that's the reason the park was developed
13 because the city built a dam to that. Prior to that
14 there was flooding that came down off the mountain,
15 and people in Keapuka Subdivision died.

16 I just want to make a point that if there
17 isn't resilience, and if the flood appears, people
18 can die; isn't that correct?

19 THE WITNESS: That's correct. That's
20 correct.

21 COMMISSIONER OKUDA: Mr. Chair, thank you.
22 I'll suspend my questions for today.

23 CHAIRPERSON SCHEUER: Thank you.

24 Members and Parties, it's 3:30.

25 Commissioner Okuda still has questions. I

1 haven't had a chance to question the witness, so we
2 know the first witness on your list for tomorrow, Mr.
3 Yuen. Can you please share with us the remainder of
4 the witnesses and the order?

5 MR. YUEN: Can I ask Commissioner Chang,
6 again, when she is going to be absent tomorrow?

7 COMMISSIONER CHANG: Yes, Mr. Yuen, I am
8 going to leave probably around 10:15 and I should be
9 back by noon.

10 MR. YUEN: I think after Mr. Bow, we will
11 go with Cody Winchester, then David Rietow or Milton
12 Ching. I think Milton Ching is a cultural kamaaina
13 witness.

14 MS. AHU: We need to talk to scheduling, so
15 we will be going mute really quick, then we will let
16 you guys know.

17 CHAIRPERSON SCHEUER: We will do a brief
18 recess, like just a minute. Nobody go away.

19 (Recess taken.)

20 CHAIRPERSON SCHEUER: Hold on. You're
21 ready now?

22 MR. YUEN: Mr. Bow has an appointment in
23 the morning. He can appear in the afternoon.

24 CHAIRPERSON SCHEUER: I don't have a
25 concern with that. Is there any objection? I see

1 shaking no from the County of Kauai.

2 MR. YEE: No objection.

3 CHAIRPERSON SCHEUER: None from Mr. Yee.

4 MS. ISAKI: No objection.

5 CHAIRPERSON SCHEUER: Okay, let's go ahead
6 and set our plan at lunchtime, at noon to 1:00
7 tomorrow, and we will try and be done again by --
8 Commissioner Wong.

9 COMMISSIONER WONG: I have to leave by
10 2:30, sorry.

11 CHAIRPERSON SCHEUER: So Commissioner Wong
12 will be gone by 2:30. We might try to continue until
13 later, and Commissioner Wong might have to review
14 some things. Commissioner Ohigashi has two absences
15 tomorrow as well, I believe. Commissioner Ohigashi?

16 COMMISSIONER OHIGASHI: Yeah, in the
17 morning I have a hearing, so I'll be gone about from
18 9:45. At 1:30 I have a hearing, but I'll be sitting
19 in my office doing the hearing and I should be back
20 pretty quick.

21 CHAIRPERSON SCHEUER: What's your order, Ms
22 Ahu or Mr. Yuen?

23 MR. YUEN: I think I'm going to put Milton
24 Ching on first, followed by Cody Winchester, David
25 Rietow, and I'm sure by that, be back to Mr. Bow.

1 CHAIRPERSON SCHEUER: Milton Ching is not a
2 new witness?

3 MR. YUEN: He is. I disclosed him earlier
4 today. Dawn Chang is still there.

5 CHAIRPERSON SCHEUER: And we have the
6 filings related to him?

7 MR. YUEN: Yes. There's one statement of
8 his for qualifications that was submitted.

9 CHAIRPERSON SCHEUER: Your proposal is Mr.
10 Ching followed by --

11 MR. YUEN: Mr. Winchester and David Rietow.
12 That should take us through the morning.

13 CHAIRPERSON SCHEUER: Followed by Mr. Bow
14 at 1:00 P.M. and then who?

15 MR. YUEN: Nancy McMahon, if we can get
16 that far.

17 CHAIRPERSON SCHEUER: Just in case we walk
18 it through, who else?

19 MR. YUEN: Randall Okaneku.

20 CHAIRPERSON SCHEUER: Any concerns or
21 procedural questions from the parties, County?

22 MR. DONAHOE: None from the County, Chair.
23 Thank you.

24 CHAIRPERSON SCHEUER: OP?

25 MR. YEE: Only that we will have to take up

1 the admission of the exhibits at some point that were
2 filed today. Thank you.

3 CHAIRPERSON SCHEUER: Right, we can do
4 that --

5 MR. DONAHOE: Sorry, Chair, I did have one
6 question regarding for purposes of our witnesses, any
7 discussion on future dates after tomorrow?

8 CHAIRPERSON SCHEUER: Mr. Orodener?

9 EXECUTIVE OFFICER: Thank you, Chair.

10 We have time set aside April 15th, and
11 April 29th for this matter, as well as May 13th.

12 CHAIRPERSON SCHEUER: 2021? (Laughter).

13 Let the record reflect the laughter
14 appropriately captured the attempt at humor by the
15 Chair.

16 MR. YUEN: April 29th and May 15th?

17 EXECUTIVE OFFICER: Yes, April 15th,
18 April 29th, May 27th.

19 MR. YUEN: I thought I heard May 13.

20 EXECUTIVE OFFICER: Yes, May 13th as well,
21 and after that we can fit this matter in as-needed.

22 MR. YEE: Were those single days or first
23 of two days?

24 CHAIRPERSON SCHEUER: Please identify
25 yourself before speaking for the benefit of -- if we

1 are going to be going back and forth.

2 MR. YEE: Deputy Attorney General Bryan
3 Yee.

4 I just wanted to know, were those single
5 days for additional hearings, or just the first of
6 two days that we're here?

7 EXECUTIVE OFFICER: Thank you, Bryan.
8 Those were single days. The calendar is always
9 subject to change.

10 CHAIRPERSON SCHEUER: Mr. Donahoe, does
11 that answer your questions?

12 MR. DONAHOE: Yes, it does, Chair. Thank
13 you so much.

14 CHAIRPERSON SCHEUER: Anything further, Mr.
15 Yee?

16 MR. YEE: Not at this time, thank you.

17 I'm sorry, you did ask -- I'm sorry, you
18 did ask for the final list of witnesses and exhibits
19 and the like. Do you want those from the parties
20 today?

21 CHAIRPERSON SCHEUER: Tomorrow.

22 MR. YEE: For tomorrow.

23 CHAIRPERSON SCHEUER: Mr. Collins or Ms.
24 Isaki?

25 MS. ISAKI: Nothing further.

1 CHAIRPERSON SCHEUER: Mr. Collins? No.

2 With that, it is 3:39. We will go into

3 recess and reconvene at 9:00 A.M. tomorrow morning.

4 (The proceedings recessed at 3:39 P.M.)

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CERTIFICATE

1 STATE OF HAWAII)
2) SS.
3 COUNTY OF HONOLULU)

4 I, JEAN MARIE McMANUS, do hereby certify:

5 That on March 24, 2021 at 9:00 a.m., the
6 proceedings contained herein was taken down by me in
7 machine shorthand and was thereafter reduced to
8 typewriting under my supervision; that the foregoing
9 represents, to the best of my ability, a true and
10 correct copy of the proceedings had in the foregoing
11 matter.

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

15 Dated this 24th day of March, 2021, in
16 Honolulu, Hawaii.

17
18
19 /s/ Jean Marie McManus
20 JEAN MARIE McMANUS, CSR #156
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