

LAND USE COMMISSION
STATE OF HAWAI'I
Hearing held on March 25, 2021
Commencing at 9:00 a.m

Held via ZOOM by Interactive Conference Technology

I. Call to Order

II. CONTINUED HEARING AND ACTION
A11-791 HG Kaua'i Joint Venture LLC-HoKua Place
(Kaua'i)

VI. ADJOURNMENT

Before: Jean Marie McManus, Hawaii CSR #156

1 APPEARANCES:

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

10 STAFF:

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12 LINDA CHOW, ESQ.
13 Deputy Attorneys General

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15 RILEY K. HAKODA, Chief Clerk
16 SCOTT DERRICKSON, Chief Planner
17 NATASHA A. QUINONES, Program Specialist

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21 State Office of Planning
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HG Kaua'i Joint Venture LLC

BIANCA ISAKI, ESQ.
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1 CHAIRPERSON SCHEUER: Aloha mai kakou.

2 This is the March 25th, 2021 Land Use
3 Commission meeting, which is being held using
4 interactive conference technology linking
5 videoconference participants and other interested
6 individuals of the public via the ZOOM internet
7 conferencing platform in order to comply with State
8 and County official operational directives during the
9 COVID-19 pandemic. Members of the public are able to
10 listen or view the meeting via the ZOOM platform.

11 I would like to remind all participants,
12 even though I said this to you yesterday, to speak
13 slowly, clearly and directly into your microphone,
14 and please, if you can, identify yourself before
15 speaking.

16 Please also be aware for all meeting
17 participants, you're being recorded on the digital
18 record of this ZOOM meeting. Your continued
19 participation is your implied consent to be part of
20 the public record of this event. If you do not wish
21 to be part of the public record, you should exit this
22 meeting now.

23 Because of the ZOOM technology that we're
24 using where each of us access the meeting via our own
25 personal digital devices, occasional disruptions to

1 connectivity may occur for one or more participants.
2 These matters are generally out of our control. If
3 it happens, please let us know, and please be patient
4 with us as we try to restore audio/visual signals so
5 we can conduct our business.

6 My name is Jonathan Likeke Scheuer and I
7 have the great pleasure and honor of serving as the
8 Land Use Commission Chair at this time. Along with
9 me, Commissioners Dawn Chang, Arnold Wong, Gary
10 Okuda, our LUC Executive Officer Daniel Orodener,
11 Chief Planner Scott Derrickson, Chief Clerk Riley
12 Hakoda, Deputy Attorney General, who is Dan Morris,
13 who is with us for the first hour today; is that
14 correct?

15 MR. MORRIS: That's correct.

16 CHAIRPERSON SCHEUER: Then we will have
17 Linda Chow back with us. Our Program Specialist
18 Natasha Quinones, and our Court Reporter Jean McManus
19 are all on the Island of Oahu. Commissioner Nancy
20 Cabral is on Hawaii Island, Lee Ohigashi is on Maui,
21 and Dan Giovanni is on Kauai. And Commissioner
22 Edmund Aczon is with us. Kala mai. Sorry for
23 missing you, Commissioner. I thought you were on a
24 beach somewhere in Tahiti based on your background.

25 We currently have eight seated

1 Commissioners of a possible nine.

2 Now, where we left off yesterday was that
3 we were going to do admission of exhibits this
4 morning, related to additional materials that parties
5 had filed, and then we were going to continue on with
6 witnesses for the Petitioner.

7 Have I missed something or anything in that
8 order of business for today, Mr. Orodener?

9 EXECUTIVE OFFICER: That's correct, Chair.

10 CHAIRPERSON SCHEUER: So we have some
11 exhibits that were sent to us and filed from the
12 Petitioner. Mr. Yuen?

13 MR. YUEN: Yes, Mr. Chairman. Exhibit 39,
14 40, 41 and 42 were, as I mentioned yesterday,
15 statements that were collected by Nancy McMahon, who
16 is our archaeological and cultural witness. We
17 inadvertently did not include these in the copy of
18 her report that was attached to the Final
19 Environmental Impact Statement, so we are asking to
20 submit 39, 40, 41 and 42 now.

21 CHAIRPERSON SCHEUER: Sorry, Mr. Yuen. I
22 realize I didn't even do appearances yet for today.
23 I have gotten ahead of myself. Can we do appearances
24 first?

25 MR. YUEN: Yes. William Yuen and Janna Ahu

1 on behalf of Petitioner HG Kauai Joint Venture, LLC.

2 MR. DONAHOE: Good morning, Chris Donahoe
3 on behalf of the County, and also present is Deputy
4 Director of Planning Jodi Higuchi Sayegusa. Good
5 morning.

6 CHAIRPERSON SCHEUER: Good morning.

7 MR. YEE: Deputy Attorney General Bryan Yee
8 on behalf of the Office of Planning, with me is
9 Rodney Funakoshi from the Office of Planning.

10 MS. ISAKI: Bianca Isaki and Lance Collins
11 here for Intervenor Liko-o-Kalani Martin, who is also
12 here this morning.

13 CHAIRPERSON SCHEUER: Thank you very much.
14 Thanks for your patience with me.

15 And in case it's not incredibly clear, we
16 are continuing on our hearing, Docket No. A11-791 HG
17 Kauai Joint Venture, HoKua Place.

18 Now, we can continue, Mr. Yuen, I believe
19 with entry of exhibits.

20 MR. YUEN: Let me go back again, and start
21 from the beginning.

22 Exhibit 39 is the statement of Albert
23 Fukushima.

24 Exhibit 40 is a statement of Willie
25 Sanchez.

1 Exhibit 41 is a statement of Stanley
2 Vasquez. These documents were inadvertently omitted
3 from the report of Nancy McMahon, her archaeological
4 and cultural assessment that were attached to the
5 Final Environmental Impact Statement.

6 Exhibit 42 is a statement of qualifications
7 of Milton Ching, who is our kamaaina witness.

8 Exhibit 43 is Mr. Ching's letter to the
9 Land Use Commission. We weren't sure if this was
10 actually received by the Land Use Commission or not.

11 Exhibit 44 is a space holder for a
12 development cost estimate that Mr. Bracken was asked
13 to prepare. We're not -- we don't have that document
14 prepared at this time.

15 Exhibit 45 was filed this morning and is
16 the development cost statement that Mr. Bow testified
17 to yesterday, and we're submitting this at the
18 request of the Land Use Commission.

19 I would like to move into evidence exhibits
20 39, 40, 41, 42, 43, and 45:

21 CHAIRPERSON SCHEUER: Are there any
22 objections from the parties? County?

23 MR. DONAHOE: No objections, subject to
24 cross-examination and to argue relevance at the
25 needed time. No other objections, Your Honor.

1 CHAIRPERSON SCHEUER: Thank you. Mr. Yee?

2 MR. YEE: No objections.

3 CHAIRPERSON SCHEUER: Ms. Isaki?

4 MR. COLLINS: Mr. Chair.

5 CHAIRPERSON SCHEUER: Mr. Collins.

6 MR. COLLINS: The only objection that we
7 have would be to Exhibits 39, 40, 41 and 43 as being
8 unduly repetitious. 39, 40 and 41 do actually appear
9 in the EIS, and we actually pulled it out as part of
10 our Exhibit No. 2 at PDF 485, 486 and 487.

11 The letter of Mr. Ching to the LUC does
12 already appear in the docket. It's on the LUC's
13 website.

14 So we just have an objection as to unduly
15 repetitious with respect to those exhibits.

16 CHAIRPERSON SCHEUER: Can you articulate
17 any harm to your client from the entry of these
18 exhibits?

19 MR. COLLINS: No. Just that it's unduly
20 repetitious.

21 CHAIRPERSON SCHEUER: I'm going to overrule
22 and admit them as exhibits.

23 Anything else procedurally before we move
24 on? If not, Mr. Yuen, will you go over again your
25 order of witnesses for the day?

1 MR. YUEN: The first witness we intend to
2 call is Milton Ching. We're then going call Cody
3 Winchester and David Rietow if we get to him in the
4 morning, if not, Bill Bow is scheduled to appear at
5 1:00 P.M. and he would be followed by Mr. Rietow,
6 Nancy McMahon, Randall Okaneku, Ricky Cassidy, Tom
7 Nance and Ron Agor.

8 CHAIRPERSON SCHEUER: Thank you very much.
9 We will be taking breaks approximately every 50
10 minutes. We will take a lunch break from noon to
11 1:00.

12 Are there any questions or concerns with
13 our procedures for today, starting with Petitioner?

14 MR. YUEN: None.

15 CHAIRPERSON SCHEUER: County?

16 MR. DONAHOE: None by the county,
17 Commissioner.

18 CHAIRPERSON SCHEUER: Mr. Yee?

19 MR. YEE: No questions, thank you.

20 CHAIRPERSON SCHEUER: Mr. Collins or Ms.
21 Isaki?

22 MS. ISAKI: No questions, thank you.

23 CHAIRPERSON SCHEUER: Bring on Mr. Ching,
24 Mr. Yuen.

25 MS. AHU: Mr. Ching is in the audience and

1 I'll be questioning him.

2 CHAIRPERSON SCHEUER: I'll admit him in.

3 Mr. Ching, I'm going to move you to be a
4 panelist. If you can enable your audio and video, I
5 will swear you in and then you'll be questioned by
6 the Petitioner and then the other parties and
7 Commissioners.

8 Mr. Ching, can you hear me? If you can
9 hear me -- you're in the room, but you need to enable
10 your audio and video. This might be at the bottom of
11 your ZOOM screen. We can see you. Awesome. We can
12 see the upper two-thirds of your head. If you can
13 adjust. There we go. Mahalo. Can you hear me okay?

14 THE WITNESS: Good morning, Mr. Chair.
15 Yes.

16 CHAIRPERSON SCHEUER: I'm going to swear
17 you in and you'll get questioned by the Petitioner.

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

20 THE WITNESS: Yes, sir.

21 CHAIRPERSON SCHEUER: Thank you very much.
22 Mr. Yuen, your witness.

23 MILTON CHING

24 Was called as a witness by and on behalf of the
25 Petitioner, was sworn to tell the truth, was examined

1 and testified as follows:

2 DIRECT EXAMINATION

3 BY MS. AHU:

4 Q Good morning. Please state your name and
5 address for the record.

6 A My name is Milton Kai Chong Ching. I live
7 at 5369 Kawaihau Road, Kapaa, Kawaihau, Kauai.

8 Q When and where were you born?

9 A I was born in 1957 in Lihue, Kauai.

10 Q Can you please explain your ancestral
11 background as it pertains to the land that is the
12 subject of this Petition?

13 A I am part Hawaiian. I am a resident of
14 Kapaa, Kawaihau, Kauai. My grandparents, Ching Kai
15 Chong and Kai Chong lived on Lehua Street, which is
16 about a half a mile from HoKua Place land.

17 My parents and my grandparents attended
18 Kapaa First Hawaiian Church, located in Kapaa, and
19 approximately one mile from the project site.

20 My Chinese tutu was a rice planter during
21 the 1920s and later the 1930s in the area where the
22 Kapaa Armory is now.

23 My family has lived in the ahupua'a of
24 Kapaa, along with the surrounding ahupua'as of Kealia
25 and Wailua.

1 I can trace my ancestors in the area back
2 to 1858, and my wife's ancestors in 1823. My tutu's
3 name appears in the tax records for Kapaa in 1858.

4 I grew up in this area. My children and my
5 mo'opunas live in the area.

6 Q Are you familiar with the term "cultural
7 descendants"?

8 A Yes, I do.

9 Q And what does that term refer to?

10 A It means a claimant who is recognized by
11 the Island Burial Council establishing connection to
12 native Hawaiian ancestors who once resided or are
13 buried or both in the same ahupua'a or district in
14 which native Hawaiian skeletal remains are
15 discovered.

16 Q Do you consider yourself a cultural
17 descendant or kamaaina of the Kapaa area who is
18 familiar with the traditional Hawaiian customs and
19 practices of the area?

20 A Yes, ma'am.

21 Q Can you please describe your background in
22 Hawaiian cultural practices and your work as a
23 cultural monitor?

24 A I was raised by my parents and learned
25 about Hawaiian cultural practices from the time I was

1 a child.

2 I have taken courses from the University of
3 Hawaii in the cultural anthropology and Hawaiiana.

4 I retired from the State DLNR DOCARE on
5 Kauai in 2012, and I am a former Kauai police officer
6 serving 35-and-a-half years in law enforcement.

7 I am a cultural monitor for development
8 projects.

9 As a cultural monitor, it is my job to
10 monitor ground disturbances on construction sites,
11 observe machinery, heavy equipment in excavation and
12 digging, and identify any cultural sites.

13 Q What projects on Kauai have you worked on
14 as a cultural monitor?

15 A One of the projects I worked was in
16 Princeville, Hanalei for Aina Pacific Consulting, an
17 archaeology company.

18 Q What did you do for that project?

19 A My responsibility on that job site was a
20 construction of a new septic system for the owners.

21 Q And did you also work on the Hanamaulu
22 project in Wailua?

23 A Yes. I worked for Cultural Surveys as a
24 cultural monitor for the Hanamaulu project.

25 Q What did you do for that project?

1 A My responsibility was to observe the
2 excavation of a trench and the removal of grass.

3 Q And did you also work on the bike and
4 pedestrian path in Waipouli?

5 A Yes. I'm currently working with County of
6 Kauai under the Bowers Contracting Company. So I'm
7 on the job site right now.

8 Q What are you doing for that project?

9 A I'm responsible for watching any
10 disturbance of the ground, and we also have an
11 archeologist on-site too.

12 Q And are you also working on the Kuhio
13 widening project?

14 A Yes. I'm also working with the Department
15 of Transportation on the widening of the highway in
16 front of the Cocopalms Hotel.

17 Q What are you doing for that particular
18 project?

19 A My responsibility, again, is to observe any
20 ground disturbance. And we also have an archeologist
21 also assigned to that project.

22 Q Are you familiar with the land for the
23 HoKua Place project?

24 A Yes, I am.

25 Q Historically how is the HoKua Place land

1 used, that you know of?

2 A Based on my observation, when I traveled
3 past the project site, it was remnants of the Lihue
4 Plantation Sugar Company.

5 Q And about back till when can you recall it
6 being remnants of the plantation?

7 A I would say around the 1990s.

8 Q And are you aware of anyone using the HoKua
9 Place land for traditional cultural practices or
10 gathering right now?

11 A Not to my knowledge.

12 Q As a kamaaina of the Kapaa area, are you
13 aware of any heiau or archaeological site on the
14 HoKua project land?

15 A The answer is no. There is not any
16 information on any archaeological sites, but I think
17 there is some plantation plumes on the property.

18 I also want to state there are two books
19 written by a guy named Thomas G. Thrum back in 1907,
20 1908; and another gentleman named William Bennett in
21 1931. So they provided a lot of information on
22 heiaus on the Island of Kauai, and also for the
23 ahupua'a of Kapaa.

24 Q Are there any heiaus listed on the
25 Petitioner's project site?

1 A According to the two references, no.

2 Q Are you aware of any Hawaiian burials on
3 the HoKua Place land?

4 A To my knowledge, no, but there are two
5 cemeteries close to the project site. One of them is
6 on -- it's a Chinese cemetery that's close to Malu
7 Road and Apopo Road. That is privately owned.

8 There is a second cemetery that is under
9 the jurisdiction of the County of Kauai, and it's a
10 little bit -- I would say, about a half mile from the
11 Chinese cemetery and maybe about a mile from the
12 project site.

13 Q But you don't know of any burials on the
14 project site, correct?

15 A Not to my knowledge.

16 Q As a kamaaina of the Kapaa area, are you
17 aware of any traditional ongoing cultural or
18 gathering practices taking place on the HoKua Place
19 project area?

20 CHAIRPERSON SCHEUER: Mr. Ching, you have
21 become muted.

22 THE WITNESS: Kala mai.

23 Q (By Ms. Ahu): Do you need me to repeat the
24 question?

25 A Yes, please.

1 over at Smith Boat and maybe Waialeale Tours.

2 CHAIRPERSON SCHEUER: If I may, counselor,
3 I'm not going to stop you from this line of
4 questioning, but I'm going to express my discomfort
5 with it, that you're trying to impinge the character
6 of other witnesses in their absence.

7 MS. AHU: We can move on from that.

8 Q Do you know Liko Martin?

9 A Yes, I do.

10 Q How do you know Liko Martin?

11 A Mr. Martin and I share the same kupuna.

12 He's -- his tutu named David Bonaparte Haumea, and my
13 tutu Pio Kaumaumau (phonetic) Haumea, so they were
14 siblings, Bonaparte Haumea and P.K. Haumea were
15 brothers, and we come from Hana, Maui.

16 Q What do you know about native gathering
17 rights?

18 A Native gathering rights are reserved for
19 the people of Hawaiian ancestry. I was involved in a
20 court case where a local Chinese guy was trying to
21 claim native gathering rights. The judge found
22 against him because he could not prove his Hawaiian
23 ancestry.

24 MR. COLLINS: Mr. Chair, we have an
25 objection.

1 CHAIRPERSON SCHEUER: What is your
2 objection?

3 MR. COLLINS: It's not clear what the
4 relevance of the last question and answer are to
5 these proceedings.

6 CHAIRPERSON SCHEUER: Ms. Ahu, what is the
7 relevance?

8 MS. AHU: This is just based of his
9 experience to demonstrate his credibility in this
10 particular area as a kamaaina witness, as a cultural
11 monitor and someone involved with court cases
12 involving native gathering rights.

13 CHAIRPERSON SCHEUER: Repeat the question,
14 please, for me.

15 MS. AHU: What do you know about native
16 gathering rights.

17 CHAIRPERSON SCHEUER: I'll allow it.

18 Q (By Ms. Ahu): One last question.

19 What's your experience in la'au lapa'au and
20 the gathering and use of these plants and in the
21 Kapaa -- was it done in the Kapaa area?

22 A When I was very young my father taught me
23 about the following Hawaiian medicinal plants and the
24 uses. One of them was the Popolo plant. And I used
25 to pick it, but today I don't remember what we used

1 it for.

2 The other plant that we used was the Olena,
3 and this plant I know about it because I used to pick
4 it. I used to help my dad grind it and mesh it up,
5 and he put it in my ear. So I know about the olena.
6 And that was used for earaches.

7 Another one that my dad shared with me was
8 young shoots of the guava tree. So I used to pick it
9 and today I forgot what the use of it was. And so I
10 cannot tell you folks what we used it for, but I
11 remember picking it from the tree that was in our
12 yard, and I used it and I did it for my dad.

13 The other one I know pretty well is the
14 Uhaloa plant, or they call it the Healoha plant.
15 This plant used to grow on the side of the road and
16 in dry places.

17 I used to go with my dad and pull it out,
18 scrape the bark from the root of the plant. Used to
19 boil it, and we drank it like tea. I drank it
20 because I used to get sore throat, so I know about
21 that.

22 The last, Laukahi plant, and we used to
23 grow it at home, and I used to pick it out of the
24 ground. And I used to dry it on a clothesline. And
25 when it got dry, my dad used to put it in a pot of

1 water and he boiled it and we drank it. But today, I
2 don't remember what was the thing about Laukahi, but
3 I can recognize the plant today. And I can tell
4 everyone that we used it when I was young.

5 Q And the plants that you used, they were
6 picked and used from your yard; correct?

7 A We used to plant all of these plants at
8 home.

9 Q That's all the questions I have.

10 A Thank you.

11 MS. AHU: Thank you, Chair.

12 CHAIRPERSON SCHEUER: Mr. Ching, you'll now
13 be available for questioning by parties and
14 Commissioners, starting with County.

15 CROSS-EXAMINATION

16 BY MR. DONAHOE:

17 Q Good morning, Mr. Ching. Thank you for
18 coming in today and testifying.

19 A Good morning. Thank you.

20 Q So in reviewing the written testimony that
21 you made or submitted in support of HoKua Place, it
22 says "I support this project".

23 So is it safe to assume that that's still
24 your opinion, you support HoKua Place being
25 developed?

1 A Yes, sir.

2 Q And also that this project will be
3 providing jobs and housing for those that are in need
4 of a home and employment, and you believe that?

5 A I believe in that, yes, sir.

6 Q Just curious, have you viewed the design
7 plans for HoKua Place?

8 A I only saw what was online that was
9 submitted by the Petitioners.

10 Q Do you know how many units are going to be
11 in the development?

12 A I cannot say exactly, but I read it online.

13 Q So you know that there will be 769 units
14 total in HoKua Place?

15 A Yes.

16 Q And that eight -- there will be 86 single
17 family homes that will be built in HoKua Place?

18 A Yes.

19 Q And that there will be 683 multi-family
20 homes also be built in HoKua Place?

21 A Yes.

22 Q Do you know how much each unit is going to
23 be sold for?

24 A I have no idea.

25 Q Do you know how many, if any, of the units

1 that are going to be built in HoKua Place will be
2 affordable or workforce housing units?

3 A I have no answer for that, Mr. Donahue
4 (sic).

5 Q So given you don't know how much each of
6 the units are going to be sold for, do you have
7 concerns that there will be a shortage of --
8 potentially a shortage of affordable houses in this
9 development for local families to purchase?

10 A I cannot answer that, Mr. Donahue (sic).

11 Q Okay. But if local families aren't able to
12 afford to purchase 70, 80 percent of the number of
13 units that are proposed, would that concern you?

14 A It really depends on the family, whether
15 they can afford it or not, but I cannot give you an
16 answer on that.

17 Q If prices are too high for local families
18 to afford, would that concern you that this
19 development isn't contributing to housing for local
20 families?

21 A That might be a possibility, yes. Yes,
22 sir.

23 Q You also state that the projects will
24 provide jobs.

25 A That is normally -- that goes with a

1 development. Jobs, construction jobs, et cetera.

2 Q So that statement there, that only covers
3 the jobs that will be created through the
4 construction of the development, and not jobs -- once
5 people move in, you don't know what percentage of
6 people are going to be able to get jobs in that area?

7 A Mr. Donahue (sic), I cannot answer that
8 question.

9 Q With this 769 units proposed, are you
10 concerned that there may be an increase in traffic
11 congestion around the Bypass Road in the surrounding
12 area?

13 A That would be reasonable to say, yes.

14 Q And does this concern you?

15 A Yes, it does.

16 Q Why?

17 A Because the way the traffic is in Kapaa, I
18 sat in the traffic from the Bypass Road and Kuhio
19 Highway, so the traffic is already here in Kapaa.
20 But also know that since the tourist hasn't been
21 here, the traffic is much better.

22 Q But should tourism come back, and there's
23 an increased number of units in this area, that could
24 create potential traffic congestion problems; that
25 would be a concern for you?

1 A That would be a reasonable answer, yes.

2 Q Do these traffic concerns, does that change
3 your opinion on whether you still support the
4 development or not?

5 A No, it doesn't. I still support the
6 subdivision.

7 Q Why is that, given these traffic concerns?

8 A Because we had other developments that came
9 before this project. We had a lot of traffic in
10 Princeville. And there's also a project coming up in
11 Kealia.

12 So we have lived here many, many years and
13 we went through whatever the politicians and the
14 experts did to create the subdivisions that came
15 before us.

16 So like I said, Mr. Donahue (sic), I'm in
17 favor of this project, mainly for the people that
18 don't have a job, don't have housing.

19 I have a job; I have a housing. So it
20 doesn't affect me about the new housing. I just have
21 known a lot of people that need homes. That's my
22 stance on it.

23 Q Okay.

24 And if there are ways that can be proposed
25 that would minimize or mitigate some of the traffic

1 concerns, would that help you to support the
2 position?

3 A Mr. Donahue (sic), I think the answer lies
4 with the County, Public Works, and also lies with the
5 Department of Transportation.

6 Q Let me ask you about -- so would you agree
7 that adding 769 living units of HoKua Place in the
8 area may increase the amount of wastewater that would
9 have to be disposed of or treated in the area?

10 A I cannot answer that. But a reasonable
11 person would say it will affect the system.

12 CHAIRPERSON SCHEUER: Mr. Donahoe, if you
13 just help me understand you. You're asking a number
14 of questions that seem to be outside of the area of
15 expertise of the witness.

16 MR. Donahoe: I understand that, Chair.
17 I'm just going from -- he's stating his support for
18 the project. Just bringing up if there are any
19 potential concerns that he's thought about.

20 CHAIRPERSON SCHEUER: Please proceed.

21 Q (By Mr. Donahoe): So if there were
22 potential issues with wastewater, would you want that
23 issue addressed so that there is enough capacity to
24 handle that additional development?

25 A My personal opinion is the answer is going

1 to lay with those experts who are -- who knows about
2 the sewage, not me.

3 But as a lay person, with a lot of homes
4 coming up, there is -- you know what I'm saying?
5 It's out of my realm.

6 Q Okay, perfect.

7 Did you ever -- have you ever walked from
8 this development area or Kapaa Middle School to town?

9 A No, I haven't. But I've been at the
10 school, my children went to the school.

11 Q Okay. Is it -- the distance from the
12 development area to Kapaa School, if you were to walk
13 it to the town, would that be like a flat walk or
14 would it be hilly?

15 A So the project site is next to Kapaa Middle
16 School, so when you walk down the hill on Kaapuni
17 Road, it goes downhill to the roundabout, and then it
18 goes straight to the town.

19 Q And then -- so do you think having a
20 roundabout there at the bottom of the hill, is that
21 safer than if it were, say, just like an intersection
22 with crossroads?

23 A Mr. Donahue (sic), I cannot answer that.
24 The roundabout is already in place. And the question
25 should be asked to the appropriate people.

1 Q Have you seen people walking to Kapaa Town
2 from Olohena Road from the development area in Kapaa
3 Middle School?

4 A I seen the kids walk from Middle School
5 when school is pau, I see the students walk down
6 along Olohena Road to the town.

7 Q Does it appear to be a safe walk for them?

8 A Well, I only can say when I drive past, I
9 see the kids walking down. And any comments after
10 that, I cannot answer you.

11 Q Okay. Have you seen kids riding their
12 bikes as well?

13 A No, I haven't.

14 Q If there was a connecting walking path
15 and/or a bike path to -- from the HoKua Place
16 development to Kapaa Town, would that be -- do you
17 feel that that would be a quicker path and a safer
18 path to get to town from the development?

19 A Well, let me answer about the bike path.

20 CHAIRPERSON SCHEUER: Sorry, one moment.

21 Commissioner Wong.

22 COMMISSIONER WONG: Chair, I just wanted to
23 check about the witness. He's a witness for what? I
24 mean, is he a witness for cultural issues or just
25 living in the area issues?

1 CHAIRPERSON SCHEUER: Ms. Ahu, it's your
2 witness. You're muted, Ms. Ahu.

3 MS. AHU: Kamaaina to the area. We are
4 using him as a cultural descendant. But to the
5 extent that he's familiar to the area, we don't have
6 any objections to this line of questions, familiarity
7 with the area.

8 COMMISSIONER WONG: Thank you, Chair.

9 CHAIRPERSON SCHEUER: Mr. Collins?

10 MR. COLLINS: Nothing, sorry.

11 CHAIRPERSON SCHEUER: Please continue, Mr.
12 Donahoe. I interrupted Mr. Ching's response.

13 THE WITNESS: Let's talk about the path.
14 You know, like the County built the bypass from
15 Lydgate, Wailua to all the way to Kealia, which is on
16 the makai side of Kapaa Town.

17 If you travel Kapaa Town, you don't see the
18 people using the bike path, they're on Kuhio Highway,
19 either riding against the flow of traffic, or not
20 even using the bike path. That's my observation of
21 the bike path in existence today in Kapaa Town.

22 But I cannot answer you what happens if
23 they do a bike path from the area down to the Kapaa
24 Town. I don't feel comfortable in answering that.
25 But I can only tell you what is happening now in

1 Kapaa Town with the bike path for our town.

2 Q Based on your observation of what is
3 happening with the bike path, it sounds like you're
4 saying if there was a bike path that was built from
5 the development to town, there's no guarantee that
6 people would use it.

7 A That's my opinion now, as I stand.

8 Q Excellent. Thank you so much Mr. Ching.
9 Nothing further.

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

12 Let me just check. How do you pronounce
13 your last name, counsellor?

14 MR. Donahoe: Donahoe, D-O-N-A-H-O-E.

15 CHAIRPERSON SCHEUER: I've been pronouncing
16 it correctly, but I started to question myself from
17 listening to the witness.

18 Mr. Yee?

19 MR. YEE: No questions. Thank you.

20 CHAIRPERSON SCHEUER: Who will be doing
21 this, Mr. Collins or Ms. Isaki?

22 MS. ISAKI: I will be doing this.

23 CROSS-EXAMINATION

24 BY MS. ISAKI:

25 Q Good morning, Mr. Ching.

1 So you said that you share lineage with
2 Liko Martin, and you mentioned David Haumea; is that
3 correct?

4 A That's correct.

5 Q Where did you get that information?

6 A I used to know Uncle Joseph Ipo Haumea. He
7 was a retired forester from DLNR. We had a case from
8 Maui involving, quiet title cases, involving our
9 Haumea family.

10 So Uncle Ipo Asked me to do his genealogy,
11 and because we were connected on the Haumea line, and
12 that's the reason why I know about Joseph Ipo
13 Haumea's connection to me, and I've done his
14 genealogy.

15 Q I'm sorry, so you did the genealogy of Mr.
16 Ipo?

17 A Yes, my Uncle Joseph Ipo Haumea, who lived
18 in Wainiha.

19 Q Thank you.

20 And you said that your family went to the
21 church by the project site, grew up in the area, and
22 you lived in Kawaihau; is that correct?

23 A That's correct.

24 Q And you did not respond to any calls for
25 cultural impact assessments, interviewees, native

1 informants?

2 A No, I did not.

3 Q And you said that your Hawaiian cultural
4 practices, that they consist of gathering; is that
5 correct?

6 A I testified that my father taught me the
7 plants, how to use them. Some of them I don't
8 remember how we used it. And so that is my mana'o on
9 cultural gathering rights. I don't exercise that
10 today.

11 Q Do you consider yourself a Hawaiian
12 cultural practitioner?

13 A I do.

14 Q Yes, you do, sorry?

15 A Yes, I do.

16 Q What other plants -- what plants do you
17 gather in that area?

18 A I have personally not gathered any of
19 those.

20 Q So when you say "those", you mean the
21 Popolo, the Healoha?

22 A That's correct.

23 Q And are you aware of any other plants in
24 the area that people have gathered?

25 A I cannot answer you on that.

1 Q Are you aware -- this is a separate
2 question.

3 Are you aware of any plants in the area of
4 the project that are traditional and culturally
5 gathered?

6 A I don't know.

7 Q Okay, just checking.

8 So you said that you were a cultural
9 monitor, correct?

10 A That's correct.

11 Q And you mentioned that Aina Construction, a
12 Kuhio widening project, and Cultural Survey Kauai,
13 employment as a cultural monitor; correct?

14 A There are different archaeology companies
15 in Hawaii, so when they get a project, they hire a
16 cultural monitor and/or a certified archaeologist.

17 Q So the company selected you as cultural
18 monitor. It wasn't any cultural descendant of the
19 area or community groups asking for you to be a
20 cultural monitor?

21 A That's correct.

22 Q Do you operate, or have you operated a
23 construction business in Kapaa?

24 A I used to have a business before in bobcat
25 excavators and backhoes back in the '80s and the

1 '90s. So I personally know how to operate those
2 heavy equipment.

3 Q And do you hold a State Archaeological
4 Services Permit?

5 A Could you say that again?

6 Q Do you hold an Archaeological Services
7 Permit from the State, State of Hawaii?

8 A No, I don't. It's reserved for the
9 archaeology companies. They have to be certified.

10 Q So you are not?

11 A I'm not an archaeologist, so I don't have
12 to have that certificate.

13 Q So is it true that cultural monitors are
14 not regulated by the State Historic Division or other
15 State agencies?

16 A That's correct.

17 Q Did the Petitioner interview you for the
18 cultural impact assessment or the archaeological
19 assessment for this project?

20 A No.

21 Q You said you're familiar with the Olohena
22 area, correct?

23 A Yes, I do.

24 Q And you mentioned William Bennett. Were
25 you referring to Wendel Clark Bennett or a different

1 Bennett consulting archaeologist?

2 A That's the same person I'm referring to.

3 Q Okay.

4 And have you ever read Archaeology of Kauai
5 by Bennett?

6 A I do. I have a book.

7 Q Oh, have you read about a Site 19 Mahe-Walu
8 Heiau on Olohena Ridge?

9 A I cannot answer you, because I don't have
10 the book in front of me now. But if it is in the
11 book, I cannot answer you because I don't have book
12 in front of me.

13 Q Okay. Are you familiar with Mary Kawena
14 Kukui Place Names of Hawaii?

15 A I am.

16 Q Good. Are you aware that it also describes
17 Olohena as a land division and ridge in the Kawaihau,
18 District of Kauai?

19 A Yes, it is.

20 Q And are you aware that she also described
21 Olohena having sacrifices on the ridge called
22 Mahe-Walu, short for Mahele-Walu eight division,
23 which is also a follow up to that definition?

24 A I'm sorry, don't know.

25 Q Okay. Thank you.

1 And so when we were talking about other
2 cultural practices in the area, you're not saying
3 that if you don't know of a cultural practice -- if
4 you don't know of cultural practice, that it hasn't
5 happened or it doesn't happen, just that you don't
6 know about it; correct?

7 A That's correct.

8 Q And when you were doing your direct
9 testimony, were you reading from something?

10 A Yes.

11 Q Can you tell us what you were reading from?

12 A My questions and answers, because I cannot
13 remember everything, you know, so I want to be
14 accurate.

15 Q So were you reading from Exhibit 42 or 43?

16 A No, I don't have that in front of me.

17 Q But Exhibit 42, I believe, is your written
18 statement or -- sorry, your statement of
19 qualifications; and then Exhibit 43 I believe, was
20 your written testimony to the Land Use Commission.

21 Was that what you were reading from?

22 I was just asking what you had in front of
23 you when you were doing your direct testimony. You
24 don't need to look for something new.

25 A I just wanted to be accurate when the

1 attorney asked me the question, so I can give a
2 correct answer.

3 CHAIRPERSON SCHEUER: One moment.

4 For the record, we have been joined by
5 Deputy Attorney General Linda Chow.

6 Q (By Ms. Isaki): Mr. Ching, can you tell
7 me, because I'm not sure I understand what you were
8 reading from during your direct testimony.

9 A So what I was reading from in front of me
10 is the questions and answers that I was supposed
11 to -- that was relevant to -- I'm sorry.

12 Q Did you prepare -- sorry.

13 Did you prepare that writing?

14 A Yes, I did.

15 Q And when you said the questions that you
16 were supposed to answer, who posed those questions?
17 Did you make up those questions?

18 A What I did is I submitted a summary of my
19 connections to Kapaa, genealogy-wise, experience, and
20 my experience as cultural monitor. And then we had
21 that put in very short to the point questions, and
22 then I answered the questions to my ability.

23 Q So is that the same exhibit that you --
24 when you say when --

25 Let me start again.

1 When you say "we" who are you referring to?

2 A I'm referring to the Petitioner's
3 attorneys.

4 Q Okay.

5 So this was prepared in anticipation of
6 delivering testimony for the Petitioner's attorney?

7 A That's correct.

8 Q When were you first contacted by the
9 Petitioner to become a witness here today?

10 A Well, I can't remember when I first sent in
11 my letter of support to the LUC website. And once
12 that was submitted, I got asked to be a witness in
13 front of the LUC board.

14 Q And so your public testimony was submitted
15 on March 11th, 2021?

16 A If you're referring to the LUC one I sent
17 through the email, I think it was March 10th, this
18 one.

19 Q Your testimony is that the written
20 testimony that you submitted to the LUC was dated
21 March 10th?

22 A I think so. That's the one Mr. Donahoe
23 talked about.

24 Q Okay, so you're saying March 10th is when
25 you submitted your written testimony?

1 A I think so.

2 Q Then right after that -- okay, right after
3 that the Petitioner got in touch with you?

4 A Yes.

5 Q How did they get in touch with you?

6 A Well, let me back up little bit.

7 I never knew what was going on with this
8 project. So when I heard that there were a lot of
9 oppositions that have come forward and spoke against
10 the project, I decided that I wanted to be a witness
11 for the project.

12 And so this is how it started with me.
13 I've never listened to anything before, so that is
14 how I got involved with this project.

15 Q So you contacted the Petitioner on/or after
16 March 10th, after you submitted your letter of
17 support to the LUC?

18 A Yes, let me just clarify. I did a letter
19 of support that I sent to the LUC website. And I
20 also had known Mr. Allen before, because when this
21 project was with the Highlands, when it was called
22 the Highlands, I don't know how many years ago was
23 that, I also remember supporting his Highlands
24 project, I would say five or six years ago. I don't
25 really know.

1 Since I supported Mr. Allen on the first
2 Highlands project, and I never knew what happened to
3 the project, so when it came up to now, I contacted
4 Mr. Allen to tell him that I was in support of his
5 new HoKua Place project.

6 CHAIRPERSON SCHEUER: Ms. Isaki, can I do a
7 time check how much longer do you think you have with
8 this witness? We are a little overdue. We are going
9 to lose Commissioner Chang at 10:30 for a little
10 while and I know she has questions. About how much
11 longer --

12 MS. ISAKI: I think we can take a break and
13 I can finish up my questions, if that's okay.

14 CHAIRPERSON SCHEUER: About how many more
15 minutes of questions do you have?

16 MS. ISAKI: It depends what his responses
17 are. At least maybe ten minutes of questions.

18 CHAIRPERSON SCHEUER: It's 9:55. Let's
19 take a break to 10:05 and come back.

20 (Recess taken.)

21 CHAIRPERSON SCHEUER: It's 10:05. We're
22 back in session.

23 I'm going to ask, if nobody is compelled to
24 object, but I'm going to ask if any of the parties
25 would object to us going out of order and allowing

1 Ms. Chang to question the witness, then going back to
2 the Intervenor?

3 MS. AHU: No objection, thank you.

4 MR. Donahoe: No objection.

5 MR. YEE: No objection.

6 CHAIRPERSON SCHEUER: Sorry to shift on
7 you, Mr. Ching, but I'm going to have Commissioner
8 Dawn Chang ask you some questions first, then we will
9 go back to the Intervenor, then go to the
10 Commissioners.

11 COMMISSIONER CHANG: Thank you, very much,
12 Mr. Chair. And thank you for the counsels and Mr.
13 Martin -- excuse me -- Mr. Ching. I do apologize, I
14 need to leave at 10:30. So mahalo, Mr. Ching.

15 I greatly appreciate the fact that you're a
16 cultural monitor, and the contributions that you make
17 as a cultural monitor from a kamaaina perspective.
18 Mahalo.

19 THE WITNESS: You're welcome.

20 COMMISSIONER CHANG: I'm going to ask you a
21 series of questions, and I am meaning no offense with
22 any of the questions that I ask you.

23 Cultural training, who trained you to be a
24 cultural monitor?

25 THE WITNESS: So when I was employed with

1 DLNR enforcement, I had a chance to work with a lot
2 of the State archeologists coming from SHPD, State
3 Historic Preservation, that worked in the department.
4 So I used to go with them.

5 We used go to Kalalau; we used to go to
6 Malae Heiau, Wailua Heiau, and I used to ask them the
7 question, what is this? What is that? How you know
8 the difference between a heiau, house site, taro
9 lo'i, all that kind of stuff.

10 So for years I worked with them, and I
11 gained knowledge. So when I retired in 2012, I was
12 hired by a Honolulu company, Scientific Consulting
13 Services out of Kapiolani.

14 Because of that experience, and the
15 experience that I had in college, they hired me as a
16 cultural monitor.

17 COMMISSIONER CHANG: Thank you for
18 clarifying that.

19 So your experience has primarily been from
20 an archaeological perspective. It has been through
21 your observations and questioning of the State, SHPD,
22 Martha Young with State Parks, but it's primarily
23 been through the lens of an archeologist.

24 Let me ask you this question.

25 Have you had any cultural training to be a

1 cultural monitor, you know, from kupuna or
2 non-archaeologists?

3 THE WITNESS: So right now, the University
4 of Hawaii doesn't have a course in cultural monitor.
5 I have asked the archeologists to let's go do a class
6 from Kauai, and lot of Hawaiians or whoever can learn
7 what is the steps of being a cultural monitor.

8 So right now, the UH system, they don't
9 have any courses in cultural monitoring.

10 COMMISSIONER CHANG: And, you're right,
11 cultural monitoring is a very new concept.

12 Let me ask you this question.

13 Have you ever monitored -- as a cultural
14 monitor, have you ever monitored any project where
15 you have discovered iwi kupuna?

16 THE WITNESS: Yes.

17 COMMISSIONER CHANG: And what is your
18 protocol when you discover iwi kupuna?

19 THE WITNESS: As a native Hawaiian, I
20 always have the position that the iwi should never
21 been removed from whatever year that they were
22 entered.

23 So I just want to clarify, when we're on a
24 job cite, you're going to have certified
25 archaeologist working. So normally, we as cultural

1 monitors, work under. So we the eyes and ears of
2 archaeologists. We go in the pit. We do the drawing
3 and all that kind of stuff.

4 COMMISSIONER CHANG: So when you
5 encounter -- where was this project that you
6 encountered iwi kupuna?

7 THE WITNESS: The Waipouli Marketplace,
8 which is next to Kapaa. We worked on that site for
9 four years with SES of Hawaii. We recovered over 40
10 iwi's from the ground.

11 Now, this specific area where they built
12 the marketplace back in the 1970s, the contractor ran
13 into the bones. So when we went on-site, we ran into
14 some of those iwi's, and we also found some other
15 iwi's that were not discovered back in the '70s.

16 Also want to say, in the '70s there were no
17 cultural monitors at that time.

18 COMMISSIONER CHANG: There was no burial
19 laws in 1970.

20 THE WITNESS: Well, there were no burial
21 laws until DLNR said, okay, SHPD, we're going to do
22 through the laws.

23 But I can tell from you researchers, aunty,
24 that there were burial laws in place. I studied all
25 the laws. And we had laws in 1850s, in the Kingdom

1 law. We had all those laws, but it was never
2 enforced.

3 So when DLNR came into existence, and the
4 Maui case, then the laws kick in. But I can share
5 with all of you that we did have laws during the
6 Kingdom base. I've seen it myself.

7 COMMISSIONER CHANG: You know, Mr. Ching,
8 I'm not going to disagree with you, but I used to be
9 with the Attorney General's Office, and I actually
10 helped to establish those burial laws. So I know
11 little bit something about them. But mahalo for your
12 telling us about your experience.

13 So when you found those kupuna at Waipouli,
14 did you have any recognized cultural descendants?

15 THE WITNESS: On the Waipouli ahupua'a, not
16 that specific project. We had another project next
17 store, Sheraton Coconut Beach Project when we
18 uncovered iwi on that property too.

19 My wife guys decided -- sister came from
20 the Waipouli area to be the cultural descendant. So
21 they submitted the paperwork to SHPD, and so my kids
22 and my wife are recognized by the Kauai Burial
23 Council as the descendants, cultural descendants.

24 There's two, right, lineal descendants and
25 cultural descendants. So they decided to put in for

1 cultural descendant. So my wife and my children are
2 recognized by DLNR.

3 COMMISSIONER CHANG: Mahalo to them for
4 doing that.

5 You mentioned that you have been recognized
6 as a cultural descendant. Can you tell me for what
7 iwi kupuna you have been recognized for?

8 THE WITNESS: Well, the Kealia project,
9 which is north of Kapaa, I went in to be recognized
10 by Kauai Burial Council, because my family, my mama's
11 side comes from Kealia for generations. So at that
12 time I decided that I want to go and be a cultural
13 for that ahupua'a.

14 COMMISSIONER CHANG: Now, Mr. Ching, and
15 you know, it is -- I appreciate that you sought
16 recognition.

17 From your perspective, what is the kuleana
18 of a recognized cultural descendent to the iwi
19 kupuna?

20 THE WITNESS: So this is the steps. When
21 we find fragments of iwi, not the whole body,
22 sometimes we find fragments of whatever it is. So
23 the job stops by law. The job stops. So we have
24 certified archaeologists come down to determine if
25 that iwi is animal or human.

1 And when it's decided by the archaeologists
2 that it is human remains, then we call the DLNR
3 archaeologist to come down and determine what is the
4 next step, whether to leave in place or remove.

5 But to remove or leave in place, other
6 people get involved which would be the cultural and
7 lineal descendants, the Kauai Burial Council, SHPD.

8 And so it's not one person that makes the
9 decision. But me as A Hawaiian, they were buried
10 years ago. They are not meant to be removed.

11 And so I've been on a project where some
12 are removed, after they have determined that they
13 want to remove, and move them to another place.

14 And I also experience them leaving in place
15 too.

16 COMMISSIONER CHANG: So once you've been
17 recognized as a cultural descendent and you've gone
18 through those processes with SHPD and Burial Council,
19 what is your kuleana as a recognized cultural
20 descendant? How do you malama those kupuna?

21 THE WITNESS: Well, one of the projects at
22 Sheraton Coconut Beach Hotel -- and we're doing it
23 now, going to enter about eight iwi's. They are put
24 into lauhala baskets. We going to dig a pit for
25 them. We going to do a Hawaiian ceremony. We are

1 going to line the burial, the new burial. We are
2 going to do a proper protocol on that specific site
3 that we working with the landowner, because my wife
4 folks are the lineal, cultural descendants of that
5 specific area. I bought a nice headstone for them
6 that was written in Hawaiian. We don't know who they
7 are. So I bought a nice headstone for them, and as
8 soon as that job starts up -- we've been having
9 problems on that specific site because of permits
10 issued by the State and County, so we're actively
11 working on that one.

12 COMMISSIONER CHANG: Can I ask you for your
13 ceremony, what was the training that you went through
14 for your cultural protocols?

15 Did you go through some kind of cultural
16 training with your ohana, or what is the basis for
17 your training?

18 THE WITNESS: So I have no certified
19 training, but one of the projects we worked with the
20 DLNR girls, Chuchu Kaian (phonetic). She was working
21 for DLNR.

22 COMMISSIONER CHANG: Kuchi Kaian
23 (phonetic).

24 THE WITNESS: She came to Kauai, worked
25 with her on different projects, two properties over.

1 She came and worked with us, told us what to do when
2 they built brand new burial site, which was like
3 stonewall, four corners of stonewall.

4 She came to Kauai, told us what to do. And
5 she also helped us on the Wailua project. We had a
6 lot of iwi across Cocopalms. That was another
7 project that I worked on, and she came. Told us what
8 to do.

9 And so that's my personal experience on how
10 to do the next one. Very frankly, there's only two
11 cultural monitors on Kauai, myself and sister out of
12 Koloa.

13 So if they bring in anybody to Kauai, it's
14 going to be outside island, or even in the mainland,
15 you know. So that position is hard to come by.

16 COMMISSIONER CHANG: Like I said, mahalo
17 for you taking on. That's a very important kuleana.

18 So when we talk about burials, you said
19 Kuchi Kaian gave you training.

20 Did your family, your own kupuna ever talk
21 to you about iwi kupuna and how -- what is your own
22 family protocols for iwi kupuna? Have you ever been
23 trained through your kupuna, your family?

24 THE WITNESS: The answer is yes. On my
25 mother's side. My grandfather died many, many years

1 ago. He taught his sons, which was my uncles, on how
2 to dig grave and what to do. So I'll give you guys
3 an example that was taught by my mom.

4 When we dig the hole, whatever size or
5 depth or width -- and I never knew this. But they
6 would cut a banana tree stump that would fit the
7 length of the burial pit. So let's say it's six
8 feet.

9 So I had questioned my uncles, why are we
10 cutting a banana tree and joining inside the hole?
11 And they told me that they were told by their father
12 who was told by his grandfather and great
13 grandfather, that the reasons why the Hawaiians put
14 banana stump inside of the grave is because they
15 don't want the devil to sleep in the hole at night.

16 COMMISSIONER CHANG: My mama taught me you
17 never leave a hole open. That's why we were always
18 taught to put banana stump.

19 THE WITNESS: Yeah. So this is one of the
20 Hawaiian things that they don't write in books. It's
21 passed down. So I know of that, aunty, about that.

22 COMMISSIONER CHANG: Mahalo for sharing
23 that.

24 So let me now talk about burials. Kala
25 mai, I'm kind of going a little fast here. I'm

1 trying to finish before 10:30, but thank you so much
2 for your statements.

3 Okay, so I believe I heard you saying you
4 testified that you are not aware of any burials in
5 the project site; is that correct?

6 THE WITNESS: Well, that is reasonable to
7 say that there is no burials until the action starts,
8 development, and that's the reason why I always
9 recommend that they have a monitor.

10 COMMISSIONER CHANG: So tell me, what do
11 you mean by that, until they reasonably start? Does
12 that mean there might be burials on that property?

13 THE WITNESS: Well, we don't know. Because
14 my question is, what was there on this project now?
15 What was there before the sugar company?

16 Remember now, McKee Sugar started around
17 1877. So what was there before McKee Sugar planted
18 sugarcane? That's my question.

19 COMMISSIONER CHANG: Yes.

20 THE WITNESS: We don't know the answer. So
21 that's why I always recommend if it's worth anything,
22 so let's have an archaeologist, and let's have a
23 monitor be there when the machines are working.
24 Because right now we don't know. We cannot say. You
25 know what I mean?

1 COMMISSIONER CHANG: Yep. You're right on
2 spot, because that's exactly what I was going to ask
3 you, is that we don't know what was the property used
4 prior to the sugarcane.

5 Do you know whether there's any kuleana
6 lands or Land Commission Awards within this project
7 area?

8 THE WITNESS: The answer is not in the
9 project area, but the closest one is next to the
10 Kahananui Stream, which they say is unnamed stream.
11 If you look and do your research good, you're going
12 to find that LCA Honoli'i or Keo (phonetic), it talks
13 about the 1848 metes and bounds, I'll say.

14 COMMISSIONER CHANG: So that's -- so what
15 I'm hearing you say now is, you may not know of any
16 known burials, but there could be burials once you
17 start construction and you start digging up the land.
18 Is that what you're saying --

19 THE WITNESS: Aunty, right now, we don't
20 have any information to say there is any burials on
21 the project site. We don't have any information.
22 Because when you do a research, you find a guy that
23 died in 1890, according to the Department of Health,
24 it's going to show "died Kapaa, buried Kapaa", but
25 you don't know where he is. So I can only say that

1 we don't know.

2 COMMISSIONER CHANG: You know, that is an
3 excellent point. Because when they do the EIS, when
4 this project developer prepared his EIS, they're
5 supposed to do two things: A cultural impact
6 assessment; and an archaeological assessment to
7 determine what is the likelihood of finding
8 subsurface burials.

9 So, for example, doing a Land Commission
10 Awards, interviewing people. Have you read through
11 the material that was prepared for this EIS, the
12 cultural impact assessment or the archaeological
13 assessment?

14 THE WITNESS: I briefly read some of it.
15 You know, a lot of things is on the computer now, so
16 I really wish I had like 160 pages in front of me so
17 I can take my time and read them, you know.

18 COMMISSIONER CHANG: So, Mr. Ching, what I
19 heard you say is, we need that kind of information.
20 And I guess what I asked you, are you aware that they
21 did prepare that information? And you said you read
22 some of it; is that correct?

23 THE WITNESS: Yes. I saw whatever was
24 online.

25 COMMISSIONER CHANG: And do you know who

1 prepared that information?

2 THE WITNESS: I think it was Nancy McMahon.
3 I'm not sure.

4 COMMISSIONER CHANG: You're correct. Have
5 you ever worked with Nancy McMahon?

6 THE WITNESS: Yeah. I've known Nancy since
7 she worked at DLNR and SHPD. I've known her since
8 then. She has also hired me as cultural monitor on
9 some of her projects, because she can't find anybody.
10 So I know Nancy.

11 COMMISSIONER CHANG: Are you working with
12 Nancy on this project?

13 THE WITNESS: No, I'm not.

14 COMMISSIONER CHANG: So what I'm hearing
15 you say is, one, that you don't know whether there
16 are burials on the property because we won't know
17 until we start excavation; and two, they should have
18 done -- that's the kind of work that they should be
19 doing before they start any project, is assessing
20 what was, what happened before the plantation.

21 So we can try to identify, because
22 Hawaiians, you don't want to disturb burials if you
23 don't have to; right?

24 THE WITNESS: That's correct.

25 COMMISSIONER CHANG: Let me move on to

1 cultural resources, because what I heard you testify
2 to is that you personally are not aware of any
3 cultural resources in the Petition Area; was that
4 your testimony?

5 THE WITNESS: That's correct.

6 COMMISSIONER CHANG: Okay. But I also
7 heard you, under examination by Ms. Isaki, that
8 that's your personal knowledge. You don't know -- I
9 mean, there may be resources that you don't know of;
10 is that correct?

11 THE WITNESS: That's correct.

12 COMMISSIONER CHANG: So when people come
13 forward and say "oh, no, I gather this on this
14 property", "I walk on this trail", or "I go hunting";
15 do you respect those people's -- their personal
16 knowledge?

17 THE WITNESS: Well, when it comes to this
18 project, I, as former law enforcement, know if I go
19 on this property, I'm trespassing. So that's my
20 mentality.

21 So I will not go onto this project to go
22 hunt pig, set a trap. Although I was a hunter
23 before. I had a hunting license before. So I get
24 respect for the landowners whoever they are.

25 COMMISSIONER CHANG: But you also testified

1 that you understand native Hawaiian rights.

2 THE WITNESS: Yes, I do.

3 COMMISSIONER CHANG: So do you know that
4 the constitution, that our Constitution in Hawaii
5 recognized traditional customary practices over
6 private landowner rights? So if a legitimate
7 Hawaiian has exercised hunting, gathering on that
8 property, even before this landowner bought the
9 property, they may be able to continue to exercise
10 those rights.

11 Do you know that? Are you aware of that?

12 THE WITNESS: Well, I understand according
13 to the PASH -- you know about the PASH? So the way I
14 interpret it, because I'm a lay person, if the land
15 is undeveloped, undeveloped, that they may have for
16 go, you know what I'm saying?

17 But if it becomes developed, sorry,
18 brother, just cannot hunt there no more. So that's
19 my interpretation of the PASH.

20 COMMISSIONER CHANG: That's a fair
21 statement.

22 So this proposed project area, would you
23 consider it developed or undeveloped?

24 THE WITNESS: If you look at the whole plan
25 with the solar next door, I would consider that

1 developed. But if you talked about that 79 acres or
2 whatever, it's undeveloped. So I cannot really give
3 you a --

4 COMMISSIONER CHANG: When the law looks at
5 it, it doesn't look at what's the proposed plan. It
6 looks at what is the land today. What does it look
7 like today. Is it undeveloped or is it developed?
8 What do you think, undeveloped?

9 THE WITNESS: It's undeveloped. If you're
10 looking at the project, yes, undeveloped.

11 COMMISSIONER CHANG: So if there are
12 legitimate practices, if there are legitimate
13 practitioners who say my ohana used to hunt this land
14 for generations, my tutu would take me up there to go
15 collect certain kind of medicinal plants, or there's
16 an auwai that ran through here that serviced our taro
17 patches.

18 If this is undeveloped land, then don't we
19 need to consider those practices and those statements
20 when we look at protecting these rights; wouldn't you
21 agree?

22 THE WITNESS: I would think they got to be
23 a meeting of the minds between the landowner and the
24 kanakas.

25 COMMISSIONER CHANG: Well, before we get to

1 that point, Mr. Ching, you're right. But, you know,
2 who has the first obligation? It's us as Land Use
3 Commissioners, we have that obligation. We got to
4 make sure that, one, you know, the parties are
5 bringing us all of that right information. But it is
6 really our obligation, Land Use Commission, to ensure
7 that those rights are protected.

8 And, you know, with that being said, Mr.
9 Ching, I have greatly appreciated you answering my
10 questions and you giving us the time. I thank you
11 very much, very much. Thank you.

12 THE WITNESS: You're welcome. I want to
13 say a little about you. We worked on several cases
14 when you were at the AG. I also knew you when you
15 were at (indecipherable). So, you know, I just
16 wanted to say thank you.

17 COMMISSIONER CHANG: Mahalo to you too. I
18 know you look familiar. I know you look familiar.
19 Thank you very much.

20 Thank you, Chair. I apologize, but I'm
21 going to step off of the line right now.

22 CHAIRPERSON SCHEUER: Thank you,
23 Commissioner Chang.

24 Ms. Isaki, are you ready to continue?

25 MS. ISAKI: Yes, thank you.

1 CHAIRPERSON SCHEUER: Thank you for
2 indulging the change in our schedule.

3 MS. ISAKI: You're welcome.

4 Q (By Ms. Isaki): Mr. Ching, you mentioned
5 that you had worked with Nancy McMahon but aren't
6 currently, is that correct?

7 A Yeah, not working with her on this project.

8 Q But if this project goes forward, do you
9 have any idea, or have you discussed working as
10 cultural monitor with anyone for this project?

11 A I have no idea, because I've been already
12 busy. One of the DOT job is a year job, the one in
13 front of Cocopalms. So I kind of locked in with a
14 contract.

15 Q You have not discussed this with them?

16 A No, no.

17 Q And in ten years -- but you understand this
18 project will be going on for about ten years,
19 correct?

20 A That's correct, that's what I heard.

21 Q How long will your DOT project go on?

22 A It's -- I'm on contract for a year.

23 Q So it might be possible, okay.

24 Sorry, my final question, because actually
25 Commissioner Chang went over a lot of things that we

1 probably -- it would be redundant to go over.

2 Has the Petitioner offered to compensate
3 you for your testimony today?

4 A No.

5 Q Has anyone offered to compensate you?

6 A No.

7 Q Okay, thank you.

8 A Thank you.

9 MS. ISAKI: That's all my questions.

10 CHAIRPERSON SCHEUER: Commissioners, are
11 there questions for the witness?

12 Commissioner Okuda.

13 COMMISSIONER OKUDA: Thank you very much,
14 Mr. Chair; and thank you, Mr. Ching, for your
15 testimony.

16 When you were at DLNR, did you work with
17 Randy Awo?

18 THE WITNESS: I did. Maui Branch Chief,
19 and then he became the State Chief.

20 COMMISSIONER OKUDA: Not that it makes any
21 difference, but my brother-in-law, who just recently
22 retired from the Liliuokalani Trust as a social
23 worker, they're really, really good friends. It's
24 always good to see the connection.

25 Anyway, I basically have this question, and

1 it's kind of a broader question.

2 You know, since you were in law
3 enforcement, you're really familiar, I'm sure, with
4 the rules of evidence. But as you probably know,
5 because we are an administrative agency, the rules of
6 evidence do not apply to us.

7 And, you know, there has been some talk of
8 people being offered up as kamaaina witnesses, but
9 actually that's a term under the rules of evidence,
10 and the body of case law in Hawaii.

11 But let me just say this. It recognizes
12 the fact that people who have a long standing
13 connection with the land who, if the rules of
14 evidence applied, may be considered kamaaina
15 witnesses, that that testimony should be heard even
16 if it technically runs afoul of like the hearsay
17 rule.

18 But like I said, rules of evidence don't
19 apply. But I recognize you as a kamaaina of the
20 area, but can I ask you this? And it's just a few
21 questions, just to get me oriented, because I'm not
22 from Kauai, I'm not from Kapaa.

23 The jobs in Kapaa Town right now, are there
24 jobs that would support wages or income so somebody
25 could buy a house that maybe -- or a condo apartment

1 that might be costing 5, \$600,000? I mean, are those
2 the kinds of jobs that are in Kapaa Town right now?

3 THE WITNESS: You know, with the minimum
4 wage that we have, there's no way that person can
5 afford a house in reference to this project.

6 COMMISSIONER OKUDA: But my question is,
7 the jobs in Kapaa Town, are there, to your knowledge
8 as kamaaina of the area, does Kapaa Town have the
9 kind of jobs which pay enough money so people could
10 buy a house if the house or condo or townhouse was
11 priced around 500 or \$600,000?

12 THE WITNESS: So let's say an average rate
13 for Kapaa Town is \$15 at the high, and in reference
14 to the cost of a house, ain't going to make it.

15 COMMISSIONER OKUDA: Let me ask you this,
16 okay.

17 And because, again, your knowledge of the
18 island, your roots of the island, I believe that's
19 worth a lot. I know we don't live in a perfect
20 world, but we got to make tough choices sometimes.
21 And I know you, having spent time in law enforcement,
22 you know, sometimes the choices are just bad choices
23 sometimes. But we got to follow the law and that's
24 what we got to do.

25 But if the tooth ferry or Easter bunny came

1 to you, Mr. Ching, and said, look, I just want your
2 ideas here, okay? If you had to choose a place for
3 development -- and I'm not saying your answer is
4 going to be taken as this just current project is a
5 bad project or a good project.

6 But just generally speaking, with your long
7 roots and knowledge of Kauai, does it make more
8 sense, that if there has to be development on Kauai,
9 because we do want housing for locals, no question
10 about that, would it be better to put the housing or
11 development in Lihue Town or closer -- or close to
12 Lihue, because that's where the employment center is?

13 THE WITNESS: The answer is no, because
14 Hanamaulu had a project which is little bit outside
15 of Lihue, they already had a project in Hanamaulu.
16 Kapaa would be a perfect place, because I tell you
17 this, when the government sold the lots in Kapaa
18 Town, back in 1909 and 1910 -- so, again, all these
19 bunch of Portagees that work for McKee Sugar, and all
20 the kanakas that live there.

21 So there was a first offering that the
22 territory, at that time, ever gave up to the people,
23 and this is the Kapaa lots.

24 So there a hasn't been any conveyance to
25 anybody except this project.

1 COMMISSIONER OKUDA: I heard your testimony
2 about traffic and traffic concerns. If in fact
3 employment centers, or there's more employment in
4 Lihue as compared to Kapaa, does it make more sense
5 to put, or focus development closer to where the jobs
6 are, so at least we can try to keep people off the
7 road?

8 What are your thoughts on that as a
9 long-time resident and kamaaina person from Kauai?
10 Keep the development close to places of employment?
11 What do you think?

12 THE WITNESS: Well, I tell you about the
13 traffic. In the morning a lot of cars go to Lihue.
14 And when pau hana, a lot of cars come back to Kapaa.
15 And when they put up the -- that's why the Department
16 of Transportation put up contra flow in the morning,
17 two lanes going to Lihue. So lot of jobs going to
18 Lihue and the west side, whatever. But there is no
19 contra flow coming back from Lihue in the evening.

20 So that's my observation of putting the
21 subdivision in Hanamaula or Lihue versus in Kapaa.

22 COMMISSIONER OKUDA: Thank you very much
23 for not only your testimony today, but thank you very
24 much for your service to the community and law
25 enforcement. Thank you.

1 Thank you, Mr. Chair.

2 CHAIRPERSON SCHEUER: Thank you,
3 Commissioner Okuda.

4 Commissioners, are there further questions
5 for this witness?

6 Commissioner Wong, Aczon, Giovanni, Cabral,
7 Ohigashi? I have a few questions for the witness,
8 Mr. Ching.

9 Like you said, you were not being paid to
10 be here today. I don't know if you know, but all
11 eight land Commissioners are volunteers. We just
12 disclose our finances and subject ourselves to senate
13 confirmations so that we can spend our days listening
14 to people, and hopefully making good decisions.

15 So I just had a few questions for you.

16 If I understood during your questioning
17 from the Petitioner, you stated there is no heiau on
18 the property.

19 THE WITNESS: Well, according to the two
20 references like I had mentioned, it does not mention
21 any heiau on the project site. So that's my answer.

22 CHAIRPERSON SCHEUER: Can you describe for
23 me the different kinds of heiaus that exist in
24 Hawaii?

25 THE WITNESS: Let me just start it is each

1 heiau, whatever island it comes from, is normally
2 dedicated to the four major Hawaiian gods, Ku, Lono,
3 Kane and Kaneloa. So most of the heiaus up in the
4 mountains is going to be dedicated to the Kane
5 heiaus. Of course, we know of Ku heiaus. So the
6 dimensions of each heiau is very different. It's my
7 understanding that no one is the same.

8 And also want to share with you folks that
9 whoever built the heiaus, let's say in 1700, although
10 it's not here today, the site itself is sacred. And
11 I give you an example.

12 Koloa Sugar out on the west side. We
13 worked on a case. The plantation demolished a heiau,
14 and we found the remnants of the stone all against
15 the mountain. So the site is no longer in the
16 canefield, but the remnants and the name of the heiau
17 is still there.

18 So I wanted to say that on personal
19 experience with one of the Koloa heiaus.

20 CHAIRPERSON SCHEUER: Thank you.

21 My next question -- I think, I'm just going
22 to double check on something that Ms. Isaki asked
23 you.

24 Do you have an expectation or promise of
25 work associated with this project?

1 THE WITNESS: No.

2 CHAIRPERSON SCHEUER: Last question I had
3 for you, and this is really drawing on something you
4 said during testimony, at least I heard you say, as
5 well as your experience as a DOCARE officer.

6 I believe you said that, you referenced a
7 case in which somebody was asserting traditional and
8 customary rights, however, they proved not to be
9 Hawaiian.

10 Did I hear you clearly, correctly?

11 THE WITNESS: That's correct.

12 CHAIRPERSON SCHEUER: Are you aware of
13 anything in Hawaii's constitutional statutory or case
14 law that prohibits or limits the exercise of
15 traditional and customary native Hawaiian practices
16 to people who are, by ancestry, native Hawaiian?

17 THE WITNESS: I only know a case that went
18 through Fifth District Court. One of my hunting
19 friends, native Hawaiian from Hanapepe ahupua'a, he
20 was cited by Gay Robinson, I think it was Gay
21 Robinson.

22 CHAIRPERSON SCHEUER: I have read this case
23 decision.

24 THE WITNESS: So he won against -- anyway,
25 he won his case because he proved that his kupuna

1 lived in Hanapepe, and he was afforded the rights to
2 continue gathering traditional, all that kind of
3 stuff.

4 So I personally spoke to the defendant in
5 that case.

6 CHAIRPERSON SCHEUER: I believe in that
7 particular case that it was actually not hinged on
8 the ancestry of the individual, rather the existence
9 of the practice.

10 So my question for you is, you seem to --
11 you're being presented in part, if I understood
12 correctly from Ms. Ahu, as an expert in traditional
13 and customary practices.

14 And I'm asking you if you are aware of
15 anything in Hawaii's Constitution or statutes or case
16 law that limit those rights to people who are native
17 Hawaiian?

18 THE WITNESS: I cannot answer you that. I
19 can only -- I'm sorry.

20 CHAIRPERSON SCHEUER: That's it. Thank you
21 very much.

22 THE WITNESS: Okay, thank you.

23 CHAIRPERSON SCHEUER: Is there anything
24 further, Commissioners?

25 If not, Ms. Ahu, redirect.

1 MS. AHU: No redirect. Thank you.

2 Thank you, Mr. Ching.

3 THE WITNESS: Thank you.

4 CHAIRPERSON SCHEUER: It is 10:45. The
5 next witness you had -- sorry, I started out by
6 calling Mr. Ching as being -- to be crossed by Mr.
7 Yuen -- or to be examined by Mr Yuen, but it was done
8 by Mr. Ahu.

9 So who's the witness and who is going to do
10 the examination?

11 MS. AHU: Our next witness is Cody
12 Winchester and I'm going to be examining him for
13 direct.

14 CHAIRPERSON SCHEUER: I'm looking at the
15 time, it's 10:46.

16 MS. AHU: If we can take a short recess.

17 CHAIRPERSON SCHEUER: Let's do ten, and we
18 will go through noon, we will reconvene at 10:56.

19 (Recess taken.)

20 CHAIRPERSON SCHEUER: 10:55, we're back in
21 session.

22 And, Ms. Ahu, your witness is here? There
23 he is.

24 Mr. Winchester, do you swear or affirm that
25 the testimony you're about to give is the truth?

1 THE WITNESS: Yes, sir.

2 MS. AHU: Chair, can I share my screen with
3 Exhibit 13?

4 CHAIRPERSON SCHEUER: You may.

5 CODY WINCHESTER

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

9 DIRECT EXAMINATION

10 BY MS. AHU:

11 Q Can you please state your name and address
12 for the record?

13 A Aloha, my name is Cody Winchester, and I
14 live at 1422 Ikaa Avenue, Honolulu, Hawaii.

15 Q What is your profession and your business
16 affiliation?

17 A I'm an environmental and land use planner
18 at an architecture, engineering and planning firm,
19 G70, located in Honolulu, Hawaii.

20 Q And can you provide us with a little bit of
21 information on your professional background in
22 environmental and land use planning?

23 A I have a background in earth sciences with
24 a Bachelor's degree in geology and geophysics. Also
25 hold a Master's degree in urban and regional

1 planning; and a Master's certificate in disaster
2 management and humanitarian assistance from the
3 University of Hawaii at Manoa.

4 My professional career includes over six
5 years in the field of earth environmental sciences
6 and planning in Hawaii.

7 At G70 where I serve as environmental and
8 land use planner, I specialize in the fields of land
9 use, disaster management and community-based
10 resiliency planning.

11 Q Have you worked on a project -- can you
12 tell us a little bit of background on the projects
13 you worked on?

14 A Sure. Started, worked on a variety of
15 projects where we developed homestead communities for
16 the Department of Hawaiian Home Lands, assessed risk
17 for sea-level rise for various landowners along the
18 coast; and also done some greenhouse gas assessments
19 for a variety of land use projects.

20 CHAIRPERSON SCHEUER: Mr. Yee, followed by
21 Mr. Collins.

22 MR. YEE: I was just wondering whether I
23 missed him getting sworn in to testify.

24 CHAIRPERSON SCHEUER: I did swear him in
25 and he called me "sir" rather than "Your Honor" or

1 "Chair".

2 MR. YEE: I apologize.

3 CHAIRPERSON SCHEUER: Mr. Collins.

4 MR. COLLINS: Mr. Chair, I have a question.
5 It's not exactly an objection, and I don't want to
6 try to drag this out at all, so I apologize if this
7 is something everybody else understands.

8 My understanding of the administrative rule
9 15-15-63(f) is that the approval of the presiding
10 officer is needed if a witness is reading something
11 into the record in the direct examination.

12 It appears that this is another witness who
13 is reading from something in answer to questions.

14 Is it possible that we can get a
15 clarification on that? I don't want to waste
16 anybody's time obviously, but it would be helpful to
17 know, since it doesn't appear in the record that he's
18 reading, for example, something, but it's apparent
19 from the video screen that he is.

20 MS. AHU: We have prepared a bullet-point
21 outline, which tracks his PowerPoint. And he does
22 have his resume and his report in front of him to
23 refer to.

24 CHAIRPERSON SCHEUER: Commissioner Okuda?

25 COMMISSIONER OKUDA: Thank you, Mr. Chair.

1 CHAIRPERSON SCHEUER: Ms. Ahu, can you stop
2 screen sharing for a moment, please?

3 COMMISSIONER OKUDA: Thank you, Mr. Chair.

4 I would just make a request that if
5 witnesses are reading off of a document, if that can
6 just be made clear that the witness is reading from a
7 document, because at least, just for me personally,
8 I'm only speaking for myself, not anyone else.

9 If a witness reads from a document, it will
10 impact or affect, at least in part, my evaluation of
11 the witness' credibility, and to what extent the
12 testimony that the witness is giving orally can and
13 should be relied on, and to what extent it should be
14 relied on.

15 So my general request is that if a witness
16 is going to read from a document, please make that
17 clear.

18 My second request or observation, Mr.
19 Chair, is that if somebody reads from a document and
20 it's not made clear that that witness is reading from
21 a document, then at least for me personally, only
22 speaking for myself, I will take that into account in
23 determining and evaluating credibility of a witness.

24 Thank you, Mr. Chair.

25 CHAIRPERSON SCHEUER: Thank you,

1 Commissioner Okuda.

2 Sorry, Ms. Chow, 15-15-63 (f), this is the
3 moment where, if we were physically together, I would
4 pause, and I would lean over and chat with my
5 Attorney General.

6 MS. CHOW: So if you would like me to give
7 that advice in public, I can do that.

8 CHAIRPERSON SCHEUER: Can you review for me
9 that administrative rule, please?

10 MS. CHOW: Would you like me to read it to
11 you or just review it?

12 CHAIRPERSON SCHEUER: Just read it.

13 MS. CHOW: With the approval of the
14 presiding officer, a witness may read into the record
15 the testimony of a witness on direct examination.
16 Before any written testimony is read, unless it's
17 excused by the presiding officer, the witness shall
18 provide an original and one paper copy and one
19 electronic copy of the written testimony to the chief
20 clerk with a copy to each party to the proceeding.
21 Admissibility shall be subject to the rules governing
22 oral testimony. If the presiding officer deems that
23 substantial saving and time will result, a copy of
24 the written testimony may be received into evidence
25 without reading provided that the witness shall be

1 subject to proper cross-examination on matters
2 contained in the written testimony. Any amendment to
3 direct and rebuttal testimony, or the introduction of
4 totally new matters by revision or supplement shall
5 be accompanied by a sworn affidavit or declaration
6 explaining why these matters were not submitted with
7 the original written testimony.

8 CHAIRPERSON SCHEUER: And now if you want
9 to share any advice.

10 MS. CHOW: My interpretation of this rule
11 is where the party wants to submit a direct written
12 statement in lieu of direct testimony from the
13 witness, the witness would still be subject to all
14 cross-examination or examination by the Commissioners
15 on what is contained in that written statement; or in
16 the alternative, could read that statement into the
17 record. But, again, it should have been provided to
18 the parties ahead of time.

19 In this particular case, where the witness
20 is actually just using a bullet point, according to
21 Ms. Ahu, using a bullet point to guide them through
22 their PowerPoint, which has been submitted to
23 everybody, it does not appear to be the type of
24 direct examination that is what's anticipated in this
25 rule.

1 CHAIRPERSON SCHEUER: So I'm going to join
2 in the observations of Commissioner Okuda, that when
3 it appears to be that somebody is reading from
4 something, it does affect my assessment of their
5 credibility as a witness.

6 I would like, Ms. Ahu, for you to make that
7 clear prior to the start of your examination of this
8 and any other witnesses, and I would not overrule a
9 request for any of these written materials to be made
10 available to the Commission.

11 MR. YUEN: Mr. Chair.

12 CHAIRPERSON SCHEUER: Mr. Yuen.

13 MR. YUEN: If I may, what we have done with
14 all of the witnesses, except for Mr. Milton Ching, is
15 we will we have submitted a PowerPoint outline, which
16 is the same outline that the witness may appear to be
17 reading from.

18 The witness may have made an additional
19 note on his own copy of the PowerPoint, and that we
20 don't control. But basically the contents of each of
21 our witnesses' testimonies has been submitted by way
22 of a PowerPoint.

23 CHAIRPERSON SCHEUER: Thank you for that
24 further explanation. I don't think it affects my
25 inclination that I stated earlier.

1 Mr. Collins.

2 MR. COLLINS: Mr. Chair, if it won't slow
3 down the examination of this witness, that would be
4 great; but we would prefer that if someone is going
5 to be reading from something, that that be provided,
6 if possible.

7 CHAIRPERSON SCHEUER: So my understanding
8 from the statement from Mr. Yuen speaking only for
9 his witnesses, is all of his witnesses, with the
10 exception of Mr. Ching, already concluded, are merely
11 reading from the PowerPoint which was provided.

12 Have I understood that correctly, Mr. Yuen?

13 MR. YUEN: Yes, that's correct. There may
14 be additional questions that we ask that are not
15 covered in the PowerPoint, but for the most part,
16 witnesses are following the PowerPoint.

17 CHAIRPERSON SCHEUER: But if there's the
18 additional questions, though, the pertinent question
19 here is, are they going to be referring to other
20 written materials in their answers to them?

21 MR. YUEN: Not necessarily, no.

22 CHAIRPERSON SCHEUER: I don't quite
23 understand your response.

24 MR. YUEN: In the course of preparing these
25 witnesses for testimony, it may occur with some of

1 the witnesses that we will be asking them additional
2 questions that are not covered in the PowerPoint, and
3 for the most part there are no written materials to
4 cover -- to be covered by the additional questions.

5 CHAIRPERSON SCHEUER: So to summarize,
6 you're asking them questions. They're referring to
7 PowerPoints. Any other written materials that they
8 might be referring to might have been prepared by
9 themselves but not by you?

10 MR. YUEN: Correct.

11 CHAIRPERSON SCHEUER: Mr. Collins.

12 MR. COLLINS: Mr. Chair, as long he's just
13 reading from a copy of Exhibit 13, I don't think
14 there's a problem. But if he's reading from
15 something else, then we would appreciate having that.

16 CHAIRPERSON SCHEUER: Ms. Ahu, you may
17 resume sharing screen, and your direct examination of
18 Mr. Winchester.

19 Sorry, was there somebody else who said
20 something? No. Please proceed.

21 Q (By Ms. Ahu): Mr. Winchester, I think when
22 we left off you were explaining your background as
23 far as projects that have to do with greenhouse
24 gasses, I believe.

25 Can you finish your thought on that?

1 A That's right.

2 I conducted other greenhouse gas
3 assessments using similar modeling technique that was
4 used in the HoKua Place assessment.

5 Q What is the greenhouse effect?

6 A The greenhouse effect is the natural
7 warming of the earth results when gasses in the
8 atmosphere trap heat from the sun that would
9 otherwise escape back into space.

10 So sunrise, travel from space, and enter
11 through the earth's atmosphere where they're absorbed
12 by the earth, by the ocean, by the plants. And a
13 portion of that is then reflected back out into space
14 in the form of invisible infrared light.

15 Another portion of that light, about 90
16 percent gets absorbed by atmospheric gasses and
17 causes further warming, and these atmospheric gasses
18 are what we call greenhouse gasses.

19 And since around the time of the industrial
20 revolution, human activities have generated
21 additional greenhouse gasses. They have enhanced the
22 buildup of the atmospheric radiation and causing
23 earth's temperatures to rise.

24 Q Can you describe the California Emission
25 Estimator Model and methodology employed to assess

1 the overall carbon footprint of the HoKua Place
2 project?

3 A Sure. So the California Emissions
4 Estimator Model, known as Cali-Mod, is an industry
5 standard for quantifying the carbon footprint of land
6 use projects.

7 So Cali-Mod is a modeling program that
8 allows users to input data about a development
9 project and generate estimates of the criteria
10 pollutant and greenhouse gas emissions associated
11 with both construction and operations of the project.

12 The model then allows the user to input
13 plant mitigation measures to reducing harmful
14 emissions. And the results compared emissions from a
15 typical unmitigated project to the site specific
16 project with mitigations implemented.

17 So the HoKua Place greenhouse gas
18 assessment, the model was calibrated with the
19 environmental conditions at the site, such as
20 precipitation, wind speed, and vegetation cover.

21 Data was input into the model based on the
22 environmental impact study that was completed for the
23 project, as well as our own GIS analysis and
24 consultation with developer.

25 Q Can you please describe the sources of

1 emissions for the HoKua Place project?

2 A Sure. Assessment looked at emissions from
3 three sources. The first is the emissions produced
4 during the construction phase of the project.

5 So some examples of these include the
6 emissions from engines from construction equipment,
7 fugitive dust, caused by trucks driving over dirt
8 roads at the site, and by emissions produced by
9 workers traveling to and from the site each day.

10 The second type of emissions is from the
11 operation stage. And these are the emissions from
12 folks actually living in their homes, cooking their
13 food, turning on their lights, their TVs, running the
14 water, and their daily commutes in and out of town.

15 And lastly, the third type of emissions
16 evaluated is from the land use change itself.

17 So an undeveloped parcel of land is usually
18 covered with some type of vegetation, and these
19 plants are actively pulling carbon from the
20 atmosphere and storing it in the leaves, the roots,
21 the branches of the trees.

22 And when land is cleared for development,
23 that carbon is released back out into the atmosphere,
24 and we also lose that plant's potential to continue
25 sequestering carbon in the future.

1 Q Can you please estimate the total GHG
2 project construction generated emissions using the
3 model?

4 A The project estimated to have a ten-year
5 phased construction period consisting of site
6 preparation, grading, building construction, paving
7 and architectural coding.

8 The model estimates that the total
9 construction-related emissions would be 7,745 metric
10 tons of carbon dioxide equivalent over that ten-year
11 span.

12 Some mitigation measures that were
13 implemented include using soil stabilizers, replacing
14 ground cover of areas that are disturbed, applied
15 water to disturbed surfaces and all roads, and
16 reducing speeds on unpaved roads to 15 miles per
17 hour.

18 These measures are common practices to
19 control fugitive dust in Hawaii.

20 Q Can you please estimate the operational
21 greenhouse emissions from occupancies from HoKua
22 Place once construction has been completed, and
23 explain the source of these emissions?

24 A So operational emissions, those related to
25 occupancy of the residents at HoKua Place over the

1 lifetime of the project. And for our analysis, we
2 looked at five major categories of emissions.

3 Area sources, which are associated with
4 mostly landscaping-type activities.

5 Energy sources, which are associated with
6 electricity usage.

7 Motor sources, which are related to the use
8 of motor vehicles for transportation.

9 Solid waste which is trash and greenwaste
10 that's sent to the landfill and results in landfill
11 off-gassing, which occurs offsite, but it's still
12 accounted for.

13 Lastly, water and wastewater. So that
14 includes the supply, conveyance, treatment and
15 distribution of water to and from the project.

16 A number of mitigation measures were also
17 implemented based on information from the EIS, and
18 with all these factors considered, the model
19 projected that HoKua Place would generate 7,117
20 metric tons of carbon monoxide equivalent annually.

21 Q Can you please describe the greenhouse gas
22 emissions from change in use of the HoKua Place
23 property from fallow to residential community?

24 A So these emissions are generated by that
25 one time change in land use from the site's natural

1 vegetative land cover to the proposed residential
2 community.

3 So to evaluate these emissions, we first
4 need to know what the existing land cover is to
5 determine the sequestering potential of that
6 vegetation.

7 So, for example, grassland has a lower
8 carbon sequestering rate than a forest, and based on
9 the biology report that was accompanying the EIS, as
10 well as land cover mass that we produced, we
11 understand that the site is predominantly grass and
12 shrubland.

13 We also understand that not all the land
14 will be used for housing purposes. So approximately
15 13 acres will be reserved as open space and park
16 lands, and these areas would receive landscaping and
17 new trees and plants that would help to offset the
18 loss of that grassland.

19 The purpose of this model, these are pretty
20 conservative estimates, and approximated that about
21 300 new trees be planted. Likely much more than
22 that. The individual homeowners could plant more
23 trees and more landscaping on their property.

24 But with all that considered, the model
25 predicted that projects will result about five metric

1 tons of carbon monoxide equivalent annually over the
2 lifetime of the project.

3 Now, there's also potential to achieve a
4 net gain if carbon sequestering as individual homes
5 plant trees or cultivate gardens and such on their
6 individual lots.

7 Q Does the Kauai General Plan address
8 mitigating the effects of climate change, and does
9 the HoKua Place intend to follow these
10 recommendations?

11 A Yes, absolutely. Kauai General Plan was
12 implemented in 2018, and makes combating climate
13 change one of its priorities.

14 The plan uses several smart growth
15 principles to reduce greenhouse emissions, such as
16 promoting higher density, residential development
17 near job centers, reducing carbon footprint and
18 supporting reduction and emissions from local energy
19 production.

20 HoKua Place project will emphasize
21 multi-family units within walking distance of Kapaa
22 Town. The planned community includes pedestrian and
23 bicycle paths that usually connect to the town center
24 to encourage residents to leave their cars at home;
25 and plans to utilize water and energy conservations

1 and efficiency measures to reduce the carbon
2 footprint.

3 It plans to increase trees and landscaping
4 in the park and open spaces; and the adjacent HoKua
5 Place ag lot includes a four-acre solar farm that
6 generates 1.18 megawatts of electricity annually.

7 Q Can you please describe the historical
8 sea-level rise in Hawaii?

9 A So sea-level rise is one of the major
10 impacts that Hawaii can expect as a result of global
11 warming. Observations of sea-level rise at
12 Nawiliwili indicated a rise of approximately seven
13 inches since 1955.

14 Q Can you discuss the projected impacts of
15 sea-level rise on HoKua Place?

16 A Sea-level rise rates in Hawaii are expected
17 to exponentially increase over the next century. The
18 National Ocean and Atmospheric Association estimates
19 that Hawaii continue anywhere between one-and-a-half
20 feet to 11 feet of rise by the year 2100.

21 That being said, one of the advantages of
22 the HoKua Place project is its elevation. The site
23 is located on a plateau above Kapaa Town, with
24 elevations ranging between 55 to 130 feet above mean
25 sea level.

1 So even with the most extreme sea-level
2 rise scenarios, HoKua Place would not be directly
3 impacted by inundation from sea-level rise.

4 HoKua Place could be indirectly impacted by
5 destruction to utility services, and access to
6 inundation to areas further makai of the site.

7 Most notably, the Wailua Wastewater
8 Treatment Plant is located along the coast in the
9 area vulnerable to sea-level rise.

10 The other major concern is that access to
11 HoKua Place from Kuhio Highway could be compromised
12 by chronic inundation and erosion. Kuhio Highway is
13 the main artery that connects Kapaa to Lihue, and the
14 Nawiliwili Harbor.

15 Of course, there's a risk of disruption
16 with the supply chain if that road were ever to be
17 compromised.

18 Q Can you please describe how HG Kauai
19 intends to minimize impacts of sea-level rise on the
20 project and surrounding areas?

21 A Yeah. So as mentioned, sea-level rise is
22 not expected to directly impact the HoKua Place
23 development. There are mitigations designed to
24 relieve the burden on infrastructure systems,
25 supplying services to the new community.

1 One of the most critical mitigation actions
2 the project is taking to donate a portion of the
3 property to the Department of Transportation to allow
4 for the expansion of the Kapaa Bypass Road.

5 This route offers an alternative route, in
6 the case of portions of Kuhio Highway and Kapaa
7 become impassable.

8 It's possible that the Bypass Road could
9 become the major inland roadway in the future.

10 Another primary mitigation action is in the
11 form of monetary contributions to the County
12 wastewater system. These funds will be used to help
13 the County retrofit and adapt the facility to
14 withstand higher sea levels.

15 And in regards to water systems, if
16 possible for an on-site water well to be utilized for
17 providing water to development in the future.

18 Q Thank you, Mr. Winchester. That's all the
19 questions I have for this witness.

20 CHAIRPERSON SCHEUER: Thank you.

21 We will proceed with cross, starting with
22 the County, Mr. Donahoe.

23 CROSS-EXAMINATION

24 BY MR. DONAHOE:

25 Q HI, Mr. Winchester.

1 So on your resume I noticed it says, other
2 than the HoKua Place climate change assessment, you
3 list 20 other selected projects that you've been
4 involved in.

5 Did any of those projects specific --
6 specifically involve conducting a climate change
7 analysis for proposed housing development of this
8 magnitude?

9 CHAIRPERSON SCHEUER: We're not hearing the
10 witness.

11 THE WITNESS: Can you hear me now?

12 CHAIRPERSON SCHEUER: Yes.

13 THE WITNESS: No, this is the first
14 residential development project that we have looked
15 using this method.

16 Q (By Mr. Donahoe): For your other projects,
17 you utilized the same methodology?

18 A Yes, sir.

19 Q Calling your attention to page six of the
20 PowerPoint, the construction generated GHG greenhouse
21 gasses, you say, the primary source of admission is
22 construction activity, and that this project will
23 take ten years construction period, and that's what
24 you based your analysis on?

25 A That's correct.

1 Q If the project takes longer than ten years
2 to complete, does that mean there's a much more -- a
3 higher chance of negative emissions into the
4 environment from construction activity?

5 A If the project were to take longer, then
6 there could be more emissions, yes.

7 Is that what you asked?

8 Q Yes.

9 A Right. The longer the project takes, then
10 the more greenhouse gas emissions would be produced.

11 Q And that could potentially have a negative
12 effect on the environment?

13 A That's correct.

14 Q So on page eight -- and I think you
15 testified to this -- you said primary source of
16 emissions is removal of existing vegetation for land
17 use change greenhouse gasses?

18 A That's correct. The one time change in
19 land use is the clearing of the existing vegetation,
20 which has a potential to sequester carbon in the
21 future as well as releasing the existing carbon that
22 is being stored in those vegetation.

23 Q So in general terms, in order to build
24 these units, you got to clear all the vegetation and
25 clearing of the vegetation itself has a negative

1 effect because it releases carbon into the
2 atmosphere?

3 A Correct.

4 Q And then just so I'm clear, carbon
5 sequestration that you mentioned, that's basically a
6 long-term way of storing carbon dioxide or other
7 forms of carbon, to either mitigate or defer global
8 warming and avoid dangerous climate change?

9 Is that a fair assessment?

10 A It's a natural process, so there's a cycle.
11 The plants are absorbing carbon from the atmosphere
12 and storing it, and releasing oxygen that we use to
13 breathe.

14 So I'm not sure if I answered your
15 question.

16 Q Is one of the best ways to achieve carbon
17 sequestration by planting more trees?

18 A That's a good way.

19 Q Once the development is built, is it the
20 developers -- you testified it's the developer's
21 intent to plant, you said, at least 300 new trees?

22 A That was a conservative estimate that we
23 made just conversations with the developer. I don't
24 know what the actual number will be. Like I said,
25 300 is pretty conservative. More than likely there

1 is going to be more trees, if each of the homeowners
2 were to plant trees on their property; additional
3 landscaping and planting in the parks and green
4 spaces.

5 Q Would there be also a vegetation aspect of
6 the proposed landscaping plan?

7 A I haven't seen the landscaping plan, but I
8 assume there will be landscaping involved in the park
9 and open spaces. And that the individual lots will
10 have landscaping as well, potential for gardens,
11 shrubs.

12 Q And you don't know if the plants that are
13 being proposed to be planted and the vegetation will
14 be planted at the seed level, which would mean it
15 would take some time for trees and the vegetation to
16 grow?

17 A It's fair to think some would be seed
18 level, but some would be plants already started. So
19 young trees from a nursery is pretty common in
20 development of a project like this. But you're
21 correct, that there is a lag time for new trees, and
22 that is something that the model considered.

23 Q And then let me just focus on some of the
24 issues that you brought up regarding multimodal and
25 some transportation issues.

1 So on page nine of your presentation,
2 entitled, just to orient, it's on the page Climate
3 Change Mitigation.

4 You stated that one method of the project
5 in mitigating potential climate change would be to
6 construct a multimodal transportation connection to
7 promote walking or bicycling to Kapaa Town?

8 A That's correct.

9 Q Have you reviewed the traffic impact
10 analysis report?

11 A I reviewed it, but not into extreme depth.
12 We used some of the information to -- as a way to
13 confirm our assumptions for traffic volume for the
14 greenhouse gas assessment.

15 Q But now are you aware that four of the
16 seven recommendations for traffic, not including
17 exclusive of the project that resulted in the TIAR,
18 would actually have to be excluded from the analysis
19 because they're either not achievable or having
20 little or no impact to mitigate traffic impact?

21 A Not aware of that information.

22 From my understanding, bike lanes and
23 pedestrian walkways would be included, and bus stops
24 would be available within the site.

25 Q But if they would be excluded, then that

1 would be the overall TIAR. It didn't accurately
2 possibly analyze the overall traffic impacts
3 resulting from the project if those conditions were
4 included, but should not have been included? Is that
5 a fair assessment?

6 A You know, I can't really speak to the
7 traffic impact. That wasn't be something I analyzed.

8 I think it's fair to say that if bike lanes
9 and pedestrian walkways were not included, then
10 residents would have to drive more to run their
11 errands for their daily commutes, and you would
12 expect more vehicle miles traveled, therefore, more
13 carbon monoxide produced.

14 Q So, for instance, if in the conceptual
15 plans, one of the proposals is a one-way stop
16 controlled T-intersection at the mauka end of the
17 Kapaa Middle School. Would there be concerns of
18 additional emissions from the automobiles that would
19 be stagnant waiting for the light to change?

20 A I'm not sure I understand your question
21 completely.

22 Q So if there's an intersection where there
23 is a stoplight and cars have to stop, because the
24 cars idle, does that increase emissions, negative
25 emissions toward having a negative effect on climate

1 change?

2 A Idling cars certainly would produce
3 emissions.

4 Q If that's the case, would a roundabout,
5 where the cars wouldn't have to stop, would that be a
6 better option?

7 A I presume it could be a better option as
8 far as emissions, but I can't tell you what the exact
9 values would be to give a tradeoff. We only looked
10 at what was proposed in the EIS.

11 Q Okay, it could.

12 What would make having a roundabout where
13 the cars wouldn't stop -- they may slow down, but
14 wouldn't stop -- as opposed to a T-intersection?
15 What would an analysis of the roundabout, what were
16 the reasons why that wouldn't be more effective in
17 preventing some negative emission?

18 A I suppose cars come to a halt and are
19 idling, staying in one place, they're producing
20 emissions. Slowing the cars down and causing more
21 time that the cars would be on the road, and then as
22 the car again accelerates from the stopped position,
23 the engine produces more emissions to go from a
24 stopping position to a motion, than if it were to
25 just have a steady flow uninterrupted.

1 Q And then also you mentioned the occupancy
2 where electricity is used to power the development.
3 So additional -- if there was a stoplight,
4 electricity would also have to be burned to use that
5 as well as opposed to a roundabout?

6 A That's true, correct.

7 Q Would you agree that the development that
8 would contain approximately 769 additional units have
9 the potential greatly OF increasing the number of
10 vehicles in the area?

11 A More homes in that area will mean that
12 there will be more vehicles.

13 Q And did you assess how many cars would be
14 replaced by bikes or walking to and from Kapaa Town
15 to reduce carbon emissions resulting from the
16 project?

17 A That's a factor that's input in the model.
18 So based on the density, the location of the
19 development, it makes a calculation of that offset of
20 people biking and walking instead of taking the car
21 based on assumptions of bicycle usage.

22 Q Okay. But if it was based on assumptions,
23 you don't have -- you didn't do like an actual study
24 of the actual number of people or residents that
25 wouldn't still regularly use vehicles to get to Kapaa

1 Town as opposed to bikes and walking?

2 A I did not perform a study like that. The
3 model makes those calculations.

4 Q And then have you assessed where potential
5 HoKua Place residents would be traveling? Would they
6 be going to work or going shopping, or did you assess
7 any of the overall traffic directions they would be
8 heading that would be generated from the project?

9 A Most residents would either be going to
10 Lihue Town or to Kapaa. Those are the main Urban
11 centers in the region where people would go for
12 shopping, for employment for running activities and
13 recreation, going down to the beach.

14 Q I just have a couple more questions. Let
15 me focus on sea-level rise.

16 A So on -- in your PowerPoint presentation
17 you stated that the provision of water, wastewater
18 and other utility services to HoKua Place should
19 consider potential sea-level rise.

20 A Absolutely.

21 Q Can you explain, just briefly clarify what
22 you meant by that?

23 A So the sea-level rise is not expected to
24 directly impact the site itself, because of it's
25 location, elevated on a plateau above Kapaa Town.

1 So it's really the vicinity. So the
2 utilities that would supply water, wastewater
3 services to the development that could be impacted.

4 Q Would utility pipes that serve the project
5 upwards have to be relocated; if you know?

6 A I can't say. I don't know their present
7 location to give you that answer.

8 CHAIRPERSON SCHEUER: If I may, Mr.
9 Donahoe, just quickly note that Commissioner Chang is
10 back with us.

11 Q (By Mr. Donahoe): And then on page 11 of
12 your PowerPoint you said that sea-level rise will not
13 adversely affect HoKua Place's well site, which I
14 think you explained.

15 To your knowledge, a productive water well
16 and source has yet to be procured and established; is
17 that correct?

18 A I'm not aware of it. I think it's been
19 something that's been looked at, analyzed and
20 considered. And I believe there has been some
21 preliminary studies that were done to see its
22 feasibility, and it's something that has the
23 potential to serve as a productive well on-site.

24 Q If multiple sites have to be investigated
25 and tested and looked at and drilled into, could the

1 multiple investigations into different site have a
2 negative affect on the climate, on the emissions?

3 A Sure. Drilling activities could produce
4 emissions that could have a negative impact on the
5 environment.

6 So the more drilling activities and testing
7 activities, then that would produce more impact.

8 Q And then, regarding the wastewater system,
9 you stated that HoKua Place contributions to County
10 wastewater system could include elevating or
11 waterproofing pump stations in other facilities to
12 protect from flooding. Correct?

13 A Yes, sir.

14 Q Would you agree that those measures would
15 be extremely costly and could increase the
16 development timeline for the project?

17 A I agree it would be costly. I don't
18 believe it will impact the timeline of the
19 development project at HoKua Place.

20 I think the retrofit to wastewater plant
21 falls within the kuleana of the County, and that's on
22 their timeline.

23 At present it doesn't seem that there's a
24 direct threat of sea-level rise, so it's more of a
25 future threat as sea-levels rise and hazard becomes

1 more severe, the County will need to take action
2 eventually to make retrofits and upgrades to their
3 treatment plant to adapt.

4 Q Have you analyzed at all, or anticipated
5 where, if there were issues with the wastewater
6 treatment plant and possible capacity, where possible
7 private wastewater system could be placed?

8 A That's not something that I've looked at as
9 part of my study.

10 Q So you wouldn't know if any suggested
11 location would fill or not affect sea-level rise; it
12 would depend on the location of the private
13 wastewater system?

14 A If there was a private wastewater site
15 selected at HoKua Place, it should be a safe location
16 for it, because it is not within the inundation zone
17 at sea level, right.

18 Q Final question.

19 If the State Land Use Commission approves
20 the boundary amendment, and the proposed development
21 is then subjected to County review, would you agree
22 to reassessment at the County level of the proposed
23 climate change recommendations that you testified
24 here to today as it goes through the processing at
25 the County level?

1 A I would agree to reassessment -- I'm sorry,
2 can you restate that?

3 Q If the Land Use Commission were to agree or
4 to grant the Petition for the boundary amendment, and
5 they approve it, then it would go down to the County
6 level where some of these concerns and issues would
7 have to be reassessed.

8 Would you agree that that may have to
9 happen at the County level and you would participate?

10 A Absolutely. I would happy to participate
11 if needed.

12 Q Great, great. Thank you, Mr. Winchester.
13 I have nothing further.

14 Thank you, Commissioners.

15 CHAIRPERSON SCHEUER: Thank you, Mr.

16 Donahoe.

17 Mr. Yee?

18 MR. YEE: Thank you.

19 CROSS EXAMINATION

20 BY MR. YEE:

21 Q Mr. Winchester, are you aware that the
22 State plan was recently amended to include a climate
23 change adaptation priority guideline?

24 A I'm sorry, which plan are you referring to?

25 Q The State, Hawaii Revised Chapter 56 --

1 COURT REPORTER: Excuse me, Mr Yee. Can
2 you repeat what you just said? It was muffled here.

3 Q Chapter 226 of the Hawaii Revised Statutes,
4 which is referred to as the Hawaii State Plan.

5 Are you aware that it was -- the law was
6 recently amended to include a climate change
7 adaptation priority guideline?

8 A Yes, sir, I'm aware.

9 Q And then I saw your testimony regarding
10 greenhouse gasses and sea-level rise.

11 Did you also analyze what impacts there
12 would be and what resilient efforts would be
13 appropriate for this project, due to weather changes
14 such as droughts or increased rain storms and
15 hurricanes?

16 A Those are certainly real concerns. That
17 was not something that my particular study looked at.
18 I only looked at the direct impacts of sea-level rise
19 inundation, and the emissions, greenhouse gas
20 emissions.

21 I know the EIS looked at, evaluated
22 potential other hazard threats than just flooding and
23 drought.

24 Q Was it your understanding that their
25 evaluation of flooding and drought took into effect

1 future changes due to climate change?

2 A I'm not sure, I'm sorry.

3 Q Do you know why your study did not look at
4 weather changes or impacts to weather changes and
5 resilient efforts that would be appropriate to take
6 that into account?

7 A I was asked to do a really specific narrow
8 task, which was just to perform sea-level rise
9 analysis and the greenhouse gas analysis.

10 Q So you were not involved in determining the
11 scope of this report; is that right?

12 A That's correct.

13 Q Thank you. I have nothing further.

14 CHAIRPERSON SCHEUER: Thank you, Mr. Yee.

15 Ms. Isaki?

16 MS. ISAKI: Thank you.

17 CROSS-EXAMINATION

18 BY MS. ISAKI:

19 Q Thank you for being here, Mr. Winchester.

20 So your sea-level rise report and
21 greenhouse gas report, they were prepared in
22 July 2020; right?

23 A That's correct.

24 Q So they were not in the 2019 EIS?

25 A That's right. They were produced

1 afterwards.

2 Q And so not subject to the public comments
3 on environmental impact disclosures?

4 A That's right.

5 Q And your reports are based -- some of -- at
6 least in part, it sounded like your reports are based
7 on information in the EIS.

8 A That's right.

9 So much of the information was taken from
10 the EIS to calibrate the model, to put in the
11 environmental conditions, and the site development
12 conditions to calibrate, refine that model.

13 Q Actually, as an aside, on that model, are
14 you able to disclose the assumptions in that model,
15 or is that proprietary information?

16 A No, that's all available, all public.
17 Cali-Mod shows several reports on how their model is
18 used, what their assumptions are based on, and how
19 they come to those assumptions.

20 Q Okay, that's helpful.

21 And so another question on this, your
22 reports are based on information in the EIS, are you
23 aware that EIS has obsolete information, including
24 the drainage plan?

25 A I'm sorry, what was that about the drainage

1 plan?

2 Q Are you aware that the EIS for this project
3 has obsolete drainage plans in it?

4 A Obsolete drainage plans?

5 Q The drainage plans that are no longer going
6 to be implemented.

7 A Okay, I wasn't aware of that, no.

8 Q Okay.

9 And your presentation described the
10 neighboring solar farm. Is that part of the Petition
11 Area, or is it independent of this project?

12 A It's independent of the pro -- well, it's
13 outside the area, but I would say it's a component of
14 the project, because it's a shared infrastructure
15 component.

16 So I think the intention of the site's
17 location was to share infrastructure with existing
18 solar panels at the neighboring ag lot.

19 Q Will the solar project continue to provide
20 electricity to KIUC independent of the Commission's
21 decision?

22 A Yes, I believe so.

23 Q Okay. Thank you.

24 And then -- I know that the County asked
25 you about your presentation slide 11. And I can jog

1 your memory by putting your presentation back up, if
2 that's helpful.

3 But you state:

4 Provision of water, wastewater and other
5 utility services to HoKua Place should consider
6 potential sea-level rise.

7 Who is the actor in this sentence? Is it
8 the County that should be considering sea-level rise,
9 or the Applicant?

10 A Both. The Applicant, I think, has
11 considered sea-level rise. Part of them considering
12 sea-level rise was hiring me to do this report and
13 conduct this assessment.

14 I think the County definitely is aware of
15 the trends of sea-level rise and is taking
16 independent actions to make island communities and
17 Kauai more resilient.

18 Q Does your report identify a County or State
19 plan to ensure infrastructural capacity, wastewater,
20 roads, regular water, that remains available for
21 HoKua Place in a 3.2 sea-level rise scenario?

22 A Under a 3.2-foot rise scenario would be
23 provision of water, wastewater still be available,
24 was that your question?

25 Q I'll clarify.

1 Does your report identify any State, County
2 or governmental plan to ensure infrastructural
3 capacity remains available under this 3.2-foot
4 sea-level rise scenario?

5 A No, my report did not look at State plans.

6 Q Does your analysis consider the cost to
7 upgrade or relocate County infrastructure to address
8 sea-level rise?

9 A No, it does not.

10 Q In regard to the Wailua Wastewater
11 Treatment Plant and sewage line, which your report
12 acknowledges will be impacted by storm surge and
13 sea-level rise, you assert that the project will
14 contribute funds for -- and I'm talking at this point
15 about your sea-level rise report, which is Exhibit 8
16 to the Amended Petition, which is our Intervenor's
17 Exhibit 1.

18 In that you state:

19 The referred maintenance and repairs to the
20 WWTP may include elevating or waterproofing.

21 Is that correct?

22 I can jog your memory with the document, if
23 you like.

24 A Those would be appropriate and logical
25 mitigation measures to take to shore up that

1 treatment plant -- take actions that will be taken,
2 but those do sound like logical measures to take.

3 Q In that same -- continuing with the
4 sentence, it says:

5 You further assert this will also be
6 important to monitor sewer infiltration and inflow,
7 and, quote, it may be necessary to implement pipe
8 lining in susceptible areas to reduce the
9 infiltration and to gravity sewers.

10 Does that sound familiar? Did you say
11 that?

12 A Right.

13 Q Are there here four sets of expenses,
14 maintenance repairs, elevating waterproofing,
15 monitoring and pipe lining?

16 A Sorry, what was the question?

17 Are there --

18 Q I'll ask it again.

19 So in that statement, you're identifying
20 four sets of expenses, which would be maintenance and
21 repairs, elevating and waterproofing, monitoring and
22 pipe lining.

23 And I guess my question is: Is the
24 developer only willing to pay for the first, which is
25 maintenance and repairs?

1 A That's all I'm aware of.

2 Q Do you know how much the developer will
3 contribute to wastewater treatment plant maintenance
4 and repairs?

5 A I don't know that, that dollar value. It
6 may be disclosed in the EIS, but I don't have that
7 number in front of me.

8 Q And I'm referring here to Petitioner's
9 Exhibit 11, and this is a presentation by, I believe,
10 Jake Bracken, Bracken's PowerPoint.

11 In that PowerPoint he stated that -- he
12 said that the project will construct a huge
13 collection and transmission line to the Wailua
14 Wastewater Treatment Plant, and I think later he said
15 that they would contribute to funds for upgrading
16 capacities.

17 Were you aware that those were the
18 represented commitments at this point?

19 A I was not aware. I didn't see Mr.
20 Bracken's presentation.

21 Q So in your opinion, if you construct the
22 sewage collection system and transmission line from
23 the project, and contribute capacity, how will
24 that -- or will that mitigate for sea-level rise
25 under any of those four expenses that you mentioned

1 in connection with sea-level rise?

2 A One of the biggest threats to our
3 infrastructure is that it's aging, that it's
4 underground, and it's in vulnerable areas, areas
5 where saltwater can intrude into the ground and
6 corrode those pipes and cause leakages and issues
7 which would be harmful for the environment, clearly.

8 So any new infrastructure and retrofits,
9 designing those new pipes to be out of vulnerable
10 areas and making sure they are resilient to the
11 impacts, withstand any impacts of intruding saltwater
12 would be an impertinent and a mitigation of sea-level
13 rise.

14 Q So contributing to the capacity of the
15 wastewater treatment plant and building out a new
16 transmission line just from the project, that's not
17 the same thing as retrofitting, correct?

18 A You're correct, those are two different
19 things.

20 Q Okay, thank you.

21 Moving to your -- again, this is also a
22 sea-level rise question.

23 Will rising oceans under your sea-level
24 rise model, will the -- (indecipherable) -- the
25 capacity of Waika'ea Canal causing overflow and

1 inundation of surrounding lowlying areas?

2 A That's right. We look at 3.2 sea-level
3 rise scenario. Much of the area makai of the project
4 area would experience significant flooding.

5 Q So because this canal, Waika'ea Canal is
6 also a drainageway for the project, these lowlying
7 areas will already be regularly flooded even without
8 considering added drainage for the project under your
9 sea-level rise model?

10 A That's not something that we looked at as
11 part of the scope of my project. I think that's
12 something maybe the engineers would need to look at
13 and decide about the drainage flows issue.

14 We just looked at direct impacts of
15 sea-level rise to the project.

16 Q And then you mentioned before this is not
17 considered or disclosed in the EIS because your
18 report came out afterward, correct?

19 A That's correct.

20 Q And you're not planning to develop the
21 drainage improvements for the project, right?

22 A Developer is not planning -- I'm not sure.
23 I wasn't aware the drainage plan was obsolete until
24 you mentioned it.

25 Q I was asking about your involvement in

1 developing the drainage improvement.

2 A I was not involved in that.

3 Q In your exhibit, again, A-2 exhibit to the
4 Petitioner's Amended Petition, you said that the
5 project drainage improvements you understood would
6 include the installation of drains in shallow dry
7 wells (indecipherable), end quote.

8 How deep will those shallow dry wells be?

9 A Again, I'm not sure. I think that's
10 something that would need to be decided in the final
11 design by the engineers. That's not something I had
12 available to me.

13 Q Okay. And I know the County did ask you
14 about your statement on slide 12 of your Exhibit 13.
15 Sea-level rise will not adversely affect HoKua Place.

16 My question is: Are you basing your
17 conclusion that sea-level rise will not affect well
18 activity on the proposed well location being inland
19 of the 3.2-foot sea-level rise inundation area?

20 A That's correct, as well as the analysis of
21 the groundwater and potential for saltwater intrusion
22 impacts. Based on geological surveys, it looked like
23 that well could be a feasible site, and would not be
24 impacted by future sea-level rises.

25 Q So the geological surveys, you're referring

1 to Tom Nance's -- sorry, what are you referring to by
2 geological surveys?

3 A So based on the EIS, I believe that was
4 from Tom's report. I'm not -- I can't confirm that
5 100 percent, but that's from the EIS, which stated
6 that the underlying geologic formations were
7 conducive to purveying those type of issues,
8 saltwater intrusion that could happen in other sites.

9 Q So saltwater intrusion will not occur in a
10 well being drilled to at least 280 feet?

11 A At this particular location, it doesn't
12 seem to be an issue.

13 Q And you're basing that on the EIS,
14 something in the EIS, but you are not sure what
15 report?

16 A That's right. I used the EIS as my source
17 for that.

18 Q But you are not really clear which part of
19 the EIS that saltwater intrusion will not happen in
20 that well?

21 A I believe it was in the water resources
22 section.

23 Q Thank you.

24 I do have more questions on sea-level rise.

25 Does your sea-level rise assessment assert

1 that donating the area along the property frontage
2 for Department of Transportation dedication and
3 future improvements, and usage of Olohena Road will
4 mitigate further portions of Kuhio Highway that will
5 be inundated by sea-level rise. Is that a correct
6 statement of your position?

7 A That's correct. It offers an alternative
8 route. So in the case that portions of the highway
9 were inundated down in the lower areas in or around
10 Kapaa Town, that there would be a pathway for folks
11 to be able to get out still using the Bypass Road.
12 So by donating that land and increasing capacity some
13 more, traffic flow would move through that area as
14 need be.

15 Q So the plan is that everyone who uses Kuhio
16 Highway will be pushed up towards Kapaa Bypass and
17 Olohena Road?

18 A They have an alternative in the case that
19 that road was compromised.

20 Q Thank you.

21 I will actually go back to traffic in a
22 minute.

23 Your sea-level rise assessment, the one
24 that was appended to the dba Petition concludes that,
25 quote, indirect impact could occur due to flooding

1 and erosion of the nearby coastal area.

2 Then you say: These impacts will be
3 mitigated through the project design elements and
4 funding for public road and infrastructure
5 improvements.

6 Is that correct?

7 A Yes.

8 Q Did you counter with the cost of sea-level
9 rise impacts and public infrastructure to draw your
10 conclusion that the developers contributions will
11 mitigate for its -- will mitigate for all this
12 reliance on the public infrastructure in the years to
13 come?

14 A No, costs were not estimated as part of the
15 survey.

16 Q But do you know how much the project is
17 (indecipherable) -- to contribute to these
18 infrastructural improvements?

19 A I don't.

20 Q Okay.

21 And so this is on your greenhouse gas
22 emissions. I'm just going to ask you if you
23 considered the energy cost for pumping water to
24 storage of 313 or 414 feet? Was that in your
25 assumptions about the emissions?

1 A I'm sorry, could you say that one more
2 time?

3 Q Did you include in your assumptions for the
4 energy cost or for sources of emissions, the energy
5 cost of pumping water to storage?

6 CHAIRPERSON SCHEUER: Sorry, if I may, Ms
7 Isaki, how long do you think more you have?

8 MS. ISAKI: I have three more questions,
9 but one of them is involving traffic. That might
10 take a little bit.

11 CHAIRPERSON SCHEUER: It 12:01, lunchtime.
12 I know the Commissioners have some questions as well.
13 So I think what we're going to have to do is recall
14 Mr. Bow, and following Mr. Bow, we will bring back
15 Mr. Winchester. Does that work, Ms. Ahu and Mr.
16 Yuen?

17 MR. YUEN: Do you want to hear from
18 Winchester first and then go to Bow or --

19 CHAIRPERSON SCHEUER: If Bow is flexible, I
20 would rather finish, then separate.

21 MR. YUEN: Let's finish Winchester and I'll
22 suggest to Bow that he come later.

23 CHAIRPERSON SCHEUER: You can confirm
24 that's going to be possible?

25 MR. YUEN: Yes.

1 CHAIRPERSON SCHEUER: Any concerns or
2 objections from the parties?

3 MS. AHU: What time are we finishing today?

4 CHAIRPERSON SCHEUER: I know that we are
5 going to lose Commissioner Wong at 2:30. Are there
6 others who have to leave at 2:30 or before?

7 My intent was to try to go through 3:30.
8 Giving the tremendous speed that we are rocketing
9 through this docket on, we need to spend as much time
10 on it as possible.

11 But that will now impose on Commissioner
12 Wong missing some of the hearing. So 3:30.

13 MR. YUEN: 3:30 or 2:30?

14 CHAIRPERSON SCHEUER: 3:30 concluding
15 today. And it's 12:03. We will reconvene at
16 1:00 o'clock with Mr. Winchester followed by Mr. Bow.

17 (Noon recess taken.)

18 CHAIRPERSON SCHEUER: It is 1:00 P.M.,
19 thank you everyone for being on time.

20 We are continuing with the
21 cross-examination by the Intervenor Petitioner's.
22 Witness from G70 on climate change impacts.

23 Ms. Isaki, your witness.

24 MS. ISAKI: Thank you.

25 Q So Mr. Bow --

1 CHAIRPERSON SCHEUER: Mr. Winchester.

2 Q (By Ms. Isaki): I'm sorry, Winchester.

3 So my question before we stopped for lunch
4 was energy cost for pumping water to the reservoir
5 storage included in your calculations of greenhouse
6 gas emissions.

7 A Yeah, there were -- we considered the cost
8 of the energy usage of acquiring water.

9 Q Including pumping water to storage above
10 313 and 414 feet in elevation?

11 A I don't think we considered that.

12 Q Okay, thank you.

13 And also under your greenhouse gas
14 analysis -- and I'm referring to -- this was the
15 exhibit that was appended to the Amended DBA
16 Petition -- you assumed weekly daily trips at 5,740
17 trips, and that the total average daily vehicle
18 miles, the travel data is 10.8 miles per trip; is
19 that correct statement?

20 A That's correct.

21 Q And that information is based on what?

22 A So it's based on some of the default values
23 of the model, which are based on averages that the
24 model creators developed based on other studies.

25 We did ground truth that thinking about,

1 you know, what is the distance, what is the distance
2 from the development project to Lihue to Kapaa,
3 thinking probably most trips are going to be shorter
4 than that actually if folks are just driving to Kapaa
5 Town for daily trips, picking up groceries, going to
6 the school.

7 We went with the more conservative value of
8 ten, just to accommodate that distance to Lihue as
9 well.

10 Q When you say it's a trip, considered like a
11 round trip, like leave for work then come back home,
12 or is it just --

13 A One way.

14 Q It's just one way. Okay, thank you.

15 So you described 5,740 trips. Are you
16 aware that DOT data from 2010 says that there's 7,400
17 vehicles per day on the area by the parcel?

18 A It sounds accurate. I didn't know exact
19 value, but I did read the report.

20 Q So that would be like an increase of like
21 maybe two-thirds to add another 5,740?

22 A I don't know, that sounds logical, but --
23 it's not always new traffic. A lot of these homes are
24 redistribution of where people will be coming from.
25 So local residents who would be coming from further

1 away, living out in more remote areas, would have the
2 opportunity to live closer to the Urban area in Kapaa
3 Town.

4 So vehicle trips would be shorter. So the
5 number might not necessarily change, but the vehicle
6 trip distance could change, become shorter actually.

7 Q I have a lot of questions about the
8 assumptions that the homes will go to local
9 residents. But I believe that I would ask, I think
10 Mr. Cassidy, about some of those assumptions.

11 Did your study analyze the assumptions of
12 whether or not these homes will be inhabited by local
13 residents?

14 Should I ask you these questions?

15 A Our study didn't look at that.

16 Q But your assumption is based on Cassidy's
17 report or another report?

18 A Our assumptions of traffic volume?

19 Q Your assumption that most -- that the
20 traffic will just be a redistribution of local
21 residents already, so that the traffic is just being
22 redistributed, if I understood you correctly.

23 A We did not look at where people would be
24 coming from that would be occupying the homes.

25 Q Okay, thank you.

1 You mentioned the landscaping plan, this is
2 in Exhibit 13, slide 8 and 9, or landscaping in
3 general.

4 When did you discuss landscaping with the
5 developer in regards to greenhouse gas emission
6 capture?

7 A We had a conversation, really just an
8 estimate of the number of trees that would be
9 planted. That was really the only conversation about
10 landscaping, and we estimated the 300 new trees would
11 be planned. Had a conversation about that, and he
12 confirmed that that was a good approximation for the
13 number of trees.

14 But no further discussions went into
15 detailed plans.

16 Q When did that discussions happen?

17 A I would have to check my records. Sometime
18 before the report was generated last year, so early
19 2000.

20 Q Early 2000, okay.

21 A I'm sorry, 2020.

22 Q You told the Office of Planning that you
23 were given a narrow task of just looking at direct
24 sea-level rise impacts, correct?

25 A We looked at impacts of sea-level rise to

1 the project area, so both direct impacts as well as
2 indirect impacts to the -- you know, how sea-level
3 rise impact in the vicinity may impact the site.

4 Q So the difference between direct and
5 indirect here is kind of like direct -- the
6 difference between a direct straight line by a
7 nuclear weapon, as opposed to the fallout to the
8 areas that are next to that direct straight; is that
9 correct?

10 A I wouldn't characterize it that way. I
11 think direct impact would be flood waters, ocean
12 water rising and directly impacting the site. So
13 flood waters inundating the HoKua site.

14 Indirect would be, for example, if the
15 sea-level rise were to impact the water
16 infrastructure in the vicinity that disrupted the
17 water supply to the project area. That would be an
18 example.

19 Q Okay, thank you.

20 So it's like the indirect impact would be
21 like to the wastewater treatment plant, because it's
22 not on-site?

23 A That's right.

24 Q Thank you. That's all my questions.

25 CHAIRPERSON SCHEUER: Thank you.

1 Commissioners?

2 Commissioner Giovanni.

3 COMMISSIONER GIOVANNI: Thank you, Chair;
4 and thank you, Mr. Winchester for your testimony
5 today.

6 I would like to make a general comment
7 up-front, but I find it refreshing sitting on this
8 Commission and having a petition come before us,
9 which the Petitioner took the matter of greenhouse
10 gas and climate change seriously, and actually
11 invested in a study to do this work.

12 So that's something we hope to see a lot
13 more of with things that come before us in the
14 future.

15 Also like to acknowledge and thank the
16 parties for their cross-examination, because I think
17 it brought forth a lot of the questions I had and
18 some of the clarification issues that I was looking
19 for.

20 Having said that, it also underscores, not
21 only the value of the study, but a lot of the
22 uncertainties associated with it.

23 I have a few questions in a couple of
24 different areas.

25 First one is about the model assumptions

1 itself. In recent testimony coming forward, and I
2 think on the record in this case, we see the need for
3 a growing investment in infrastructure associated
4 with the project. We know that there's 26-mile road
5 that's going to be built on the project, preliminary
6 estimate for that was like \$27 million.

7 We heard from a witness yesterday, Mr. Bow,
8 who estimated \$86 million for some of the
9 infrastructure related to controlling drainage and
10 stormwater runoff primarily.

11 And then there are various assumptions
12 going around about how much more could be involved in
13 terms of mitigations for traffic and wastewater
14 treatment. We don't know what it will amount to, but
15 could very well amount to hundreds of millions of
16 dollars of infrastructure.

17 My question is: Did you account for the
18 construction activity associated with that level of
19 infrastructure investment and activity in your model
20 as part of the construction greenhouse gas emissions
21 that will be produced during those construction
22 activities?

23 THE WITNESS: Thank you.

24 This model, it's not perfect. It does use
25 several assumptions. It looks at a range of similar

1 projects and what their averages are. And those
2 averages are used to generate the projections.

3 So I can't say whether or not the
4 infrastructure improvements would be more or less
5 than the average assumptions that are used in the
6 model.

7 COMMISSIONER GIOVANNI: Could you say
8 specifically what the model assumption was for
9 infrastructure improvement for wastewater?

10 THE WITNESS: It doesn't make any dollar
11 value, the estimates, if that's what you mean.

12 COMMISSIONER GIOVANNI: What kind of
13 estimate did it make? Just for greenhouse gas
14 associated with wastewater control?

15 THE WITNESS: That's right. The model
16 predicts greenhouse gas emissions resulting from --
17 the wastewater would be the conveyance, and movement
18 of wastewaters to, and the treatment of it at a
19 plant.

20 COMMISSIONER GIOVANNI: Let's move to
21 another area of assumptions.

22 I believe you said that you drew upon the
23 traffic study that was part of the Final EIS for
24 various numbers, I think is what you said, to use as
25 model inputs. Is that correct?

1 THE WITNESS: That's right.

2 COMMISSIONER GIOVANNI: So the testimony of
3 Mr. Bracken, there was an acknowledgment that that
4 study needed to be upgraded. In fact, they had
5 invested in that prior to the pandemic occurring, and
6 that work was suspended.

7 But this has been acknowledged by a number
8 of people in this docket that the traffic study does
9 need to be, at a minimum, updated.

10 Would that, in turn, would you feel that
11 that would cause you to do a subsequent update of
12 your model based on those numbers being updated?

13 THE WITNESS: I really don't know about the
14 deficiencies of the traffic report and how different
15 a new study might be. We really use the traffic
16 assessment as a way to ground truth a lot of our
17 assumptions, and ground truth the model, really,
18 especially things like the vehicle distance, the
19 15 miles that we referred to.

20 But beyond that, I can't imagine that there
21 would be a significant difference in the traffic
22 report, but I can't really speak to it. I don't know
23 what major changes there could be.

24 COMMISSIONER GIOVANNI: And we're not
25 asking you to guess or imagine, but would you agree

1 it would be prudent for you, should the new traffic
2 study be done, that you at minimum review that and
3 compare it to what you did use from it and possibly
4 update your study?

5 THE WITNESS: I would be happy to.

6 COMMISSIONER GIOVANNI: Okay.

7 Let's go onto another working assumption in
8 your model, which had to do with the bicycle and
9 walking accommodations being made through this
10 project.

11 And in your testimony you made the comment,
12 it would be easy to connect to Kapaa Town.

13 Can you describe what you mean as to what
14 is an easy connection?

15 THE WITNESS: I suppose it would be easy
16 for the user, if the desired result, so that users
17 would easily be able to bicycle from the development
18 to town and back or walk from town to back, not
19 necessarily easy to develop. That's outside of my
20 expertise.

21 COMMISSIONER GIOVANNI: So Mr. Donahoe
22 asked you a series of questions about what type
23 of passage would be envisioned for crossing the
24 Bypass Road as and easy -- my words -- easy
25 connection between the project and downtown.

1 Can you expand upon that a bit more what
2 you envision to be an easy connection across the
3 Bypass Road?

4 THE WITNESS: I don't really know that the
5 final design and -- I know complete streets is
6 something that was -- complete streets. Practices
7 would be implemented in part of the project, that's
8 something the EIS states. But I'm not a traffic
9 engineer, or -- so that's outside of my expertise.

10 COMMISSIONER GIOVANNI: My take away is
11 that you really kind of don't know how easy or uneasy
12 it might be to get to town from HoKua Place.

13 THE WITNESS: We assumed that a seamless
14 bike lane going from Kapaa Town to town would be
15 implemented, and that it would be easy for the users.
16 That's the assumption that was made in the model.

17 But I don't know exactly what it means to
18 be easy for development.

19 COMMISSIONER GIOVANNI: By seamless, do you
20 mean it would stop traffic on the bypass?

21 THE WITNESS: I don't know, I'm sorry.

22 COMMISSIONER GIOVANNI: Let's move on.

23 Let's move on in your area of experience
24 and work. It's, again, refreshing to see somebody
25 that's looking in quantitative terms trying to assess

1 the sea-level rise that could possibly occur. And I
2 think that in one of your slides you said it could
3 range from, by the year 2015, to be three to 11 feet
4 at sea level, or at shore level in this area; is that
5 correct?

6 THE WITNESS: NOAA has created a range of
7 potential sea-level rise scenarios that goes from
8 intermediate low to extreme. I think there's six
9 different scenarios depending on the climate
10 pathways, so the number of emissions.

11 You know, there's a kind of business as
12 usual assumption that if we keep burning fossil fuels
13 at the pace we are, and that would cause sea level to
14 rise a certain level.

15 The intermediate high is the scenario that
16 most scientist believe is the most likely scenario,
17 and I believe that one shows about a 3.2 rise in the
18 Kapaa area around the year 2070.

19 COMMISSIONER GIOVANNI: That's the number I
20 was really honing in on because it's come up a couple
21 of times in this docket. The nominal 3.2 feet, I
22 think you just characterized that as reasonable or
23 not being extreme; is that a fair statement?

24 THE WITNESS: That's correct. That's the
25 general feeling amongst most scientist is that

1 intermediate high is the most likely scenario.

2 COMMISSIONER GIOVANNI: So the impact of
3 that type of sea-level rise would directly affect the
4 wastewater treatment plant, as you've testified,
5 would necessitate a number of retrofits, possibly
6 elevating equipment and things of that sort; is that
7 correct?

8 THE WITNESS: That's right.

9 You know, not just the wastewater treatment
10 plant, but this is an issue for the entire island,
11 entire State, County and State will need to really
12 consider sea-level rise and work on retrofitting and
13 adapting all of the infrastructure that could be
14 vulnerable to sea-level rise, not just this area.

15 COMMISSIONER GIOVANNI: We heard from Mr.
16 Bow yesterday that he did not consider himself an
17 expert in the design and operation of the treatment
18 facility themselves. That was a specialty in
19 engineering.

20 Would you consider yourself to be
21 well-qualified and versed in that area, or similar to
22 Mr. Bow, somebody else's area?

23 THE WITNESS: I'm not an expert on
24 wastewater treatment engineering or what would be
25 needed to make those retrofits.

1 COMMISSIONER GIOVANNI: I will accept that.
2 I'm not either.

3 It is a specialty. It's conjecture, but
4 the possibility exists that a major investment would
5 have to be made to the wastewater treatment facility
6 for capacity. That this project and other projects
7 along the coast could contribute to push the envelope
8 in the capacity of that existing facility.

9 In view of the potential reasonable
10 expectation, or likely expectation of sea rise, would
11 it be, as a general consultant on urban planning,
12 would you recommend to the County or others that a
13 major investment of the sort should be made at sea
14 level for additional capacity?

15 THE WITNESS: I believe the County does
16 need to take action, and it is something they're
17 aware of, of the issue, and they are taking action
18 to, you know, make improvements for the long term.

19 Investment is needed, and the HoKua Place
20 project has committed to providing funds that would
21 go towards County's improvements.

22 COMMISSIONER GIOVANNI: There's a
23 difference between improvements and a sizeable CIP
24 project to expand capacity of a wastewater treatment
25 plant by 50 percent, which is the number that's been

1 put on the table, to take it from one million to
2 1.5 million gallons per day treatment.

3 Again, do you think it would be reasonable,
4 or would a recommendation be made to the County that
5 that's a good location to make that investment?

6 THE WITNESS: I really can't say. I don't
7 know. I'm not an expert in what would be needed to
8 make those improvements and to fully
9 adapt (indecipherable) that treatment plant for the
10 future scenario.

11 I think an independent study would really
12 need to look at what is needed in that area to find
13 what those impacts are, what the vulnerabilities are,
14 and make specific recommendations for improvements.
15 Then you can start to estimate cost and whatnot.

16 But that's really outside what we looked at
17 for this study.

18 COMMISSIONER GIOVANNI: Would you think a
19 study like that should consider alternatives to the
20 location?

21 THE WITNESS: Certainly. You know, any
22 time an EIS is done for a project like that, usually
23 alternatives are looked at which would include
24 alternate location.

25 COMMISSIONER GIOVANNI: And I agree that an

1 EIS would be required for something such as that.
2 And we all know the timetables associated with that.

3 Do you think something like this could be
4 accommodated in a reasonable timeframe, and what do
5 you think is reasonable?

6 THE WITNESS: I really can't say. I don't
7 know.

8 COMMISSIONER GIOVANNI: I don't want to
9 push you to speculate beyond your area of expertise.

10 I do want to thank you again for doing this
11 type of work and this type of development.

12 So thank you. I have no further questions.

13 THE WITNESS: Thank you.

14 CHAIRPERSON SCHEUER: Commissioners?

15 Commissioner Chang.

16 COMMISSIONER CHANG: Thank you very much,
17 Chair.

18 Good afternoon, Mr. Winchester. Thank you
19 for your testimony. I just have just a few
20 questions.

21 I'm wanting to followup on Commissioner
22 Giovanni. Listening to his line of questioning, I
23 thought, wow, this developer has been quite noble to
24 do these studies. But these are required under Land
25 Use Commission rules. Isn't that correct?

1 THE WITNESS: That's correct.

2 COMMISSIONER CHANG: So both the sea-level
3 rise assessment and the greenhouse gas emission
4 study, those are required by our Land Use Commission
5 rules that were recently adopted; is that right?

6 THE WITNESS: Right. So that would be the
7 impetus for initiating these studies.

8 COMMISSIONER CHANG: Okay.

9 So wasn't necessarily because the
10 Petitioner wanted, thought this would be a great
11 thing to do, he was required to do it; right?

12 THE WITNESS: I can't really speak to what
13 the Petitioner thinks.

14 COMMISSIONER CHANG: But you would agree it
15 is required by Land Use Commission's regulations?

16 THE WITNESS: That's correct.

17 COMMISSIONER CHANG: But the Final EIS did
18 not include either of these two studies; is that
19 correct?

20 THE WITNESS: That's correct.

21 COMMISSIONER CHANG: And do you know why?

22 THE WITNESS: I don't know why. I was not
23 involved in the production of the EIS. I believe
24 that sea-level rise was mentioned as a hazard in the
25 EIS, but it did not go into the depth of analysis

1 that this study has.

2 COMMISSIONER CHANG: And perhaps they were
3 grandfathered in under the old rules that may not
4 have required it. I'm only speculating, like you.

5 This is my final line of questioning. I'm
6 really interested in infrastructure cost. So under
7 your sea-level rise assessment, and through various
8 cross-examinations there was questions regarding
9 potential mitigation measures to address that,
10 including retrofitting and the line of questioning
11 about the wastewater treatment facility.

12 Do you have any kind of an estimate of what
13 that would cost to address these impacts?

14 THE WITNESS: I really don't. I think it
15 would really need to be individually looked at and
16 assessed. Take a separate independent study to look
17 at off-site improvements that the County might need
18 to make to improve resilience to future sea-level
19 rise conditions.

20 COMMISSIONER CHANG: Do you have any kind
21 of ballpark figure based on your own expertise in
22 doing a lot of these assessments? Any reasonable
23 guess based upon your expertise?

24 THE WITNESS: I can't, because I don't know
25 the extent of the area that would be looked at.

1 Sea-level rise is something that is happening in
2 coastal areas in the entire island, so if we're just
3 talking about just Kapaa Town, it's one thing,
4 talking about the region, east coast of Kauai being
5 another, but I really can't speculate or guess what
6 those costs might be. It would really take an in
7 depth study to --

8 COMMISSIONER CHANG: I'm sorry. Is that
9 something that you do?

10 THE WITNESS: I think engineers would need
11 to really look at that and do that type of
12 assessment.

13 COMMISSIONER CHANG: Thank you so much, Mr.
14 Winchester.

15 I have no further questions.

16 CHAIRPERSON SCHEUER: Thank you,
17 Commissioner Chang.

18 Commissioner Wong, followed by Commissioner
19 Okuda.

20 He's running away from the room, harking
21 back to his HBA days when called on by the teacher.

22 COMMISSIONER WONG: Sorry, Chair have to --
23 the unmute button on the computer. Thank you, Chair.

24 Good afternoon, Mr. Winchester.

25 The first question is kind of like

1 following Commissioner Giovanni's line of questioning
2 about the sewer. So after lunch, thinking about
3 sewer and all that, you know, the project itself is
4 above Kapaa Town right above the sewer plant. So
5 sewer will go down, right? Go downhill, not uphill,
6 correct? I mean, because it's gravity fed, right?

7 THE WITNESS: Sure, that's correct.

8 COMMISSIONER WONG: So this project, from
9 what I understand, is going to use sewer lines in the
10 project; is that correct?

11 THE WITNESS: (Nods head up and down.)

12 COMMISSIONER WONG: You're nodding your
13 head yes.

14 So, you know, it's going to hookup the
15 existing sewer lines, which is little bit old and
16 decrepit, no offense, Kauai, about this.

17 But the sewer area is taxed. Is going to
18 be taxed. So because it's uphill, all that sewer
19 going down is more pressure, I mean, on the lines
20 because of all that, you know, all the do-do flowing
21 down. All the people that -- wouldn't it affect, I
22 mean, more the sewer treatment plant? I mean,
23 because -- isn't that issue of sewer going downhill
24 with the pressure going to increase the pressure on
25 the downhill side, and wouldn't the lines immediately

1 burst? I mean, can you answer that?

2 THE WITNESS: I really can't say. I
3 apologize. That was outside what I was asked to look
4 at for the study. Looking at the capacity of the
5 pipes or the condition of those pipes wasn't
6 something that was considered in our study.

7 We just looked at which areas were
8 vulnerable to sea-level rise.

9 COMMISSIONER WONG: Because I was thinking
10 about the pressure would increase, and also the
11 saltwater will degradate the sewer lines more, so
12 that's where I was coming from, but I'll ask that
13 later on.

14 The other question I have is in your
15 exhibit, page eight, you were talking about
16 multimodal transportation such as walking or
17 bicycling to Kapaa Town.

18 How far is the project to Kapaa Town?

19 THE WITNESS: I don't know off the top of
20 my head. I would have to check a map.

21 COMMISSIONER WONG: Okay. Just because,
22 you know, like half a mile from me, I'll be huffing
23 and puffing, I need to take a break. And if you're
24 going uphill, it's worse. Downhill you just going to
25 coast it. So I mean, for other people, be easy, but

1 not for me.

2 I was thinking about this. Where in the
3 plan, the whole plan itself, or even EIS, showed a
4 walking or bicycling path?

5 THE WITNESS: So those final design
6 elements have not been ironed out. I'm not aware of
7 them, if those specific locations have been designed.
8 The EIS states that they will be included.

9 So that's pedestrian pathways will be
10 connected to existing pedestrian network connecting
11 to town and bicycle infrastructure and elements will
12 be implemented.

13 COMMISSIONER WONG: Just, I understand
14 where you're coming from, climate change. Everyone
15 wants less gasses. Even my wife wants less gasses
16 from me.

17 But what I'm saying is the interesting
18 thing about this is, it's -- you know, I would rather
19 ride a bike, if I could, to work, you know, but
20 hopefully not 20 miles away. I don't want to do a
21 century ride or something to work.

22 So I was wondering if you knew that
23 distance.

24 THE WITNESS: My report quickly -- and the
25 plateau is directly above Kapaa Town where the

1 project site would be adjacent to the elementary
2 school. It's a close distance, in my opinion, it's a
3 walkable distance for someone like me. I walk and
4 bicycle to work as-is, so that's something regular
5 for me. I assume a lot of folks, healthy and
6 willing, would do the same rather than drive.

7 COMMISSIONER WONG: So the other question
8 I'm going to have, following Mr. Donohoe's line of
9 questioning about a roundabout on the Bypass Road.

10 So, I mean, there has to be either overpass
11 or underpass, right, for that bike or walkers, isn't
12 that correct? Because you don't want them to go
13 through busy highway, right?

14 THE WITNESS: Not necessarily. They can be
15 designed using complete streets, elements to
16 integrate the bike lanes and pedestrian pathways into
17 that roundabout. There are examples of that in other
18 places.

19 COMMISSIONER WONG: So what Mr. Donahoe
20 says, possible having roundabout instead of a, you
21 know, a pure stop for people to walk across?

22 THE WITNESS: It's a possibility.

23 COMMISSIONER WONG: Okay.

24 THE WITNESS: I can't speak as to whether
25 it's, you know, the best option or not.

1 COMMISSIONER WONG: So if we put in a
2 condition, say you got to put -- you must put
3 overpass or underpass, just for kids to be safe,
4 then, that's a possibility too, right?

5 THE WITNESS: It's a possibility. I can't
6 say whether or not it's the best option or not
7 without looking at the research and studies in that
8 area that may require a separate study in itself.

9 COMMISSIONER WONG: Going back to Mr.
10 Donahoe's question about the roundabout, the gas
11 house, and all that stuff, greenhouse effect.

12 So your study took that in account like all
13 those extra cars coming from the project going into
14 Kapaa Town?

15 THE WITNESS: Correct.

16 COMMISSIONER WONG: I think, something
17 about Mr. Donahoe's alluding to either is it better
18 to have it as a roundabout or stoplight, which one
19 would be better to reduce the gas emission; is that
20 correct? Did you answer that or was it -- you
21 know --

22 THE WITNESS: I believe a roundabout would
23 generate less greenhouse gas emissions than standard
24 four-way stop with stoplight.

25 COMMISSIONER WONG: Okay, that's it. Thank

1 you, Mr. Winchester. Thank you, Chair.

2 CHAIRPERSON SCHEUER: Commissioner Okuda.

3 COMMISSIONER OKUDA: Thank you very much,
4 Chair.

5 Thank you, Mr. Winchester, for bearing with
6 us.

7 Mr. Winchester, my questions follow up
8 somewhat the questions that the prior Commissioners
9 have asked.

10 Can I ask a background question. Are you a
11 member of any of the professional organizations, like
12 American Planning Association or Urban Land Institute
13 or anything similar like that?

14 THE WITNESS: Yes, sir. I'm an American
15 Institute of Certified Planners candidate.

16 COMMISSIONER OKUDA: And you periodically,
17 or let's say prior to the pandemic, and maybe during
18 the pandemic virtually, but you generally regularly
19 attended conferences, whether it's the ULI, the
20 American Planning Association or locally the HCPO,
21 entities like that, correct?

22 THE WITNESS: Yes, sir.

23 COMMISSIONER OKUDA: And tell me if I'm
24 misstating anything, because I don't want to put
25 words in your mouth.

1 Isn't it true that at a lot of these
2 gatherings, especially in the last maybe 45 years,
3 there have been a lot of discussion about how cars on
4 the road contribute to greenhouse gasses?

5 THE WITNESS: Absolutely.

6 COMMISSIONER OKUDA: And, in fact, the time
7 that is spent traveling, not only contributes to
8 greenhouse gasses, but, in fact, it contributes to
9 negative health outcomes; isn't that correct?

10 I mean that's been discussed whether the
11 ULI, HCPO or American Planning Association meetings;
12 isn't that true?

13 THE WITNESS: That's correct.

14 COMMISSIONER OKUDA: Would it be a fair
15 statement to say that at least in the last five
16 years -- and the reason why I'm asking this, I don't
17 want to give my conclusion from me attending these
18 conferences, you know, during the last five years,
19 but would it be a fair statement that the standard of
20 practice among professional planners is that if it is
21 at all possible, the goal is to reduce the amount of
22 transit time and transit distance with respect to the
23 use of personal automobiles?

24 THE WITNESS: Yes, sir.

25 COMMISSIONER OKUDA: And, in fact, one of

1 the accepted techniques of doing so is, as much as
2 possible, place the location of residences, in other
3 words, places where people are actually going to
4 live, as close to retail locations or employment
5 centers as possible; isn't that what is basically
6 being drilled down on us, it seems like at every
7 conference we go to every six months prior to the
8 pandemic on the mainland or even locally, that that's
9 like the mantra that is being drilled down as far as
10 what is the standard of modern planning practice; is
11 that a fair statement?

12 THE WITNESS: That's a fair statement.

13 COMMISSIONER OKUDA: We, in fact -- and
14 tell me if I'm wrong -- can you recall in the last
15 five years any speaker at any of these conferences,
16 whether at the ULI, HCPO or American Planner
17 Association that has advocated placing or
18 intentionally placing housing developments,
19 especially large housing developments, away from
20 places of employment or retail, when it's possible to
21 place a development closer?

22 THE WITNESS: I can't recall a talk like
23 that.

24 COMMISSIONER OKUDA: It's unlikely, yeah?
25 And, again, I'm not a professional planner, like you,

1 so I'm not passing any judgment or anything one way
2 or the other, just asking a question to try to get
3 what might be the standard of practice among
4 professional planners.

5 Can I ask you this? Now, it's, I think
6 more than just scientific conclusion, it's kind of
7 common sense that the longer somebody is in a car,
8 not electric car, but a car fueled by gasoline or
9 diesel, the longer the car is on the road, the more
10 greenhouse gas is going to come out of the car; isn't
11 that correct?

12 THE WITNESS: That's correct. The longer
13 the engine is running and combusting fossil fuels,
14 the more emissions that would be generated.

15 COMMISSIONER OKUDA: In fact, your
16 statement is much more accurate than mine because
17 you're right, it's possible to be in a car with the
18 engine off.

19 So determining the amount of greenhouse
20 gasses that are really going to be emitted by
21 individual's vehicles, individually or especially
22 collectively, we basically have to know, number one,
23 what is the intended destination.

24 Number two, what is the purpose to go to
25 the intended destination?

1 And number three, the regularity, or how
2 many times that type of trip would be taken.

3 When I say "intended destination", that
4 really includes figuring out the distance between the
5 starting point and ending point.

6 We would really need to know all of that to
7 determine what would be the cumulative impacts of
8 greenhouse gasses from travel; isn't that correct?

9 THE WITNESS: That's correct.

10 COMMISSIONER OKUDA: In preparing your
11 report, did you review the Final Environmental Impact
12 Statement?

13 THE WITNESS: Yes, sir.

14 COMMISSIONER OKUDA: And have you also
15 reviewed the documents the Applicant, Petitioner, in
16 this case, has submitted to the Land Use Commission?

17 THE WITNESS: Which document specifically?

18 COMMISSIONER OKUDA: Well, there's been a
19 filing which is the Petitioner's Petition, and then
20 there has been a bunch of exhibits. I think we might
21 be up to Exhibit 45 or 46 at this point in time.

22 I mean -- well, let me first say, what was
23 the scope of your review of documents that have been
24 submitted by the Petitioner?

25 THE WITNESS: I have not reviewed all those

1 documents or any documents.

2 COMMISSIONER OKUDA: Other than the
3 Environmental Impact Statement, okay.

4 Based on whatever documents you reviewed,
5 did you ever see any document or material prepared by
6 the developer, or anyone else, that set forth or
7 documented where the intended residents or expected
8 residents of this development would go for work or
9 for their location of their place of employment?

10 Did you ever see anything like that?

11 THE WITNESS: I believe the intention of
12 building the community where it is because of it's
13 location in a town center, so Kapaa, and recognizing
14 that Kapaa is a more urbanized area, especially for
15 Kauai, with employment opportunities, with schools,
16 with hospital, that the intention was for folks to be
17 using those amenities that are in Kapaa, and making
18 most of their trips to Kapaa Town.

19 COMMISSIONER OKUDA: My question wasn't
20 about people's intentions. And the reason why I'm
21 asking this question is really followup on some of
22 the testimony that came from Mr. Ching, the kamaaina
23 witness presented by the Petitioner.

24 And my specific question is: Did you ever
25 see anything in the record which set forth or

1 documented the location of employment of the persons
2 or people who are anticipated to reside in the
3 proposed development?

4 THE WITNESS: I'm not aware of a document
5 like that.

6 COMMISSIONER OKUDA: Did you see any
7 document or study or other materials in the record
8 which documented where and what type of retail,
9 people who live in the development, would frequent or
10 go to?

11 And let me clarify that, because my
12 understanding is, there's no COSTCO in Kapaa Town and
13 some of the big box, other similar big box locations
14 are elsewhere. And I think Wilcox Hospital is not in
15 Kapaa Town either.

16 So is there any type of document or
17 evidence in the record which sets forth in a
18 professional manner -- and when I say that,
19 sufficient to what you professional planners would
20 rely on, which provide data as far as what retail or
21 other nonemployment destinations the people who are
22 expected to live in the development would be going
23 to?

24 THE WITNESS: I'm not aware of a document
25 like that.

1 In your practice as a professional planner, have you
2 prepared environmental impact statements or been part
3 of the preparation of environmental impact statement?

4 THE WITNESS: Yes, sir.

5 COMMISSIONER OKUDA: Did you form any
6 opinion in reviewing the Environmental Impact
7 Statement, whether or not there is a need to
8 supplement the Environmental Impact Statement?

9 THE WITNESS: I don't have any. I don't
10 know well enough of the deficiencies that may exist.

11 COMMISSIONER OKUDA: Were you ever present
12 at any discussions where there was a discussion about
13 whether or not, all things considered, including
14 proceedings that have taken up until today, that the
15 Environmental Impact Statement may at this point in
16 time be deficient?

17 THE WITNESS: No, sir. We just used the
18 EIS as a tool to input data into the model, and for
19 that purposes for my study there was sufficient
20 information to do what I needed to do for my study.

21 COMMISSIONER OKUDA: Did you make any
22 determination of any of the data that is contained in
23 the Environmental Impact Statement, the Final
24 Environmental Impact Statement, whether any of that
25 data required supplementation or updating under the,

1 either the administrative rules that govern
2 supplementation of the Environmental Impact Statement
3 or under what we would normally commonly call the
4 Kuilima case, but I believe that Hawaii Supreme Court
5 case is Unite Here! Local 5 versus City and County
6 of Honolulu.

7 Did you consider perhaps the data required
8 supplementation, or you just assumed that none was
9 needed?

10 THE WITNESS: I don't have an opinion. It
11 was sufficient for my needs to complete my part of
12 the project and do my studies. I didn't read the
13 entire Environmental Impact Statement, I only used
14 the portions that pertained to my study in
15 particular.

16 So of the areas that I reviewed, I believe
17 that they were sufficient in serving the purpose and
18 the intent.

19 COMMISSIONER OKUDA: Did you form any
20 opinion one way or the other about whether or not the
21 traffic impact study required supplementation under
22 either the administrative rules governing
23 supplemental Environmental Impact Statements, or
24 under the Hawaii Supreme Court, which I mentioned to
25 you?

1 THE WITNESS: I'm sorry, I don't have an
2 opinion. I was just asked to do a very narrow task.
3 And, you know, making judgments about the traffic
4 study is outside of that scope.

5 COMMISSIONER OKUDA: Last question, just so
6 I get the clear understanding in my mind.

7 Did you form an opinion that the traffic
8 study did not need supplementation, or did you just
9 take the traffic study as-is without making a
10 determination whether it needed supplementation?

11 THE WITNESS: I don't have an opinion on
12 the sufficiency of it in itself. It was sufficient
13 for my needs and for the model for ground truthing
14 the assumptions that were used in the model. And for
15 that purpose, it was useful. Beyond that, I can't
16 say.

17 COMMISSIONER OKUDA: Thank you very much,
18 Mr. Winchester.

19 Thank you, Mr. Chair.

20 CHAIRPERSON SCHEUER: Thank you very much,
21 Commissioner Okuda.

22 Commissioners, are there further questions
23 for this witness? Commissioner Cabral.

24 COMMISSIONER CABRAL: Thank you for putting
25 up with all of our questions. It's a big decision

1 and appreciate all of our experts of various skills.

2 There has been so much water. We have all
3 of this surface water, that we have well water that
4 you want for drink. We have all of surface water
5 that we have to deal with to not have it flood, and
6 then there's concerns of where the flooding water is
7 going to go; there's concerns if there is enough well
8 water for future consumption.

9 I think in some areas, clearly in the Hilo
10 area, or where we have lots of rainwater, has any
11 consideration been given, or are you aware of the
12 possibility of trying to make design feature where
13 you would use well water for potable water for people
14 to use, and then the surface water, try to have that
15 from your retention basins, an that to be able to go
16 up and have a secondary water system, and that would
17 be our use water.

18 And I do know in areas where water is not
19 as plentiful as here, I'm sure the additional
20 plumbing pipes and that, but then you could have
21 catchment basins in closer areas that would be first
22 consumed by neighborhoods before it would runoff into
23 other areas.

24 Has that been ever thought of?

25 THE WITNESS: Our study looked at, for the

1 greenhouse gas assessment, we only looked at what the
2 emissions would be from water of the County
3 connection, not necessarily from on-site pumping.

4 We acknowledge that that's a possibility,
5 that if the water system were to be compromised from
6 sea-level rise in the future, that onsite water
7 production is feasible.

8 But to answer your question about the
9 extent, or the actual design of that, isn't something
10 that I looked at all.

11 COMMISSIONER CABRAL: Another concern, it's
12 been -- several of the other Commissioners have
13 touched on it. It's really hard with the maps that
14 we have seen. I haven't seen a really good overlay
15 of where exactly town is and school is and that, but
16 from your representation, and although you said you
17 haven't walked to it, it is a community that's within
18 a short driving distance, bicycling or walking is
19 something that Kapaa Town could service.

20 And then my question is, what is the
21 current population of Kapaa Town?

22 THE WITNESS: I don't know off the top of
23 my head.

24 COMMISSIONER CABRAL: I'll get that from
25 the County then. Thank you very much.

1 CHAIRPERSON SCHEUER: Commissioners, are
2 there further questions for Mr. Winchester?

3 If not, I have a series of questions.

4 Let's see, in no particular order, so
5 forgive me.

6 Have you been to the site?

7 THE WITNESS: I have not. I've been to
8 Kapaa Town, but not onsite at HoKua Place.

9 CHAIRPERSON SCHEUER: So none of your work
10 was informed by any site visit to this location, is
11 that right?

12 THE WITNESS: That's correct. The data was
13 from the EIS, from its components of the biology
14 assessment, from GIS data, and photos from the site,
15 aerial imagery.

16 CHAIRPERSON SCHEUER: In your direct
17 examination by Ms. Ahu, you referred to NOAA as the
18 National Oceanographic and Atmospheric Association,
19 it's Administration; is that correct?

20 THE WITNESS: That's correct. Thank you
21 for correcting me.

22 CHAIRPERSON SCHEUER: Petitioner's
23 Exhibit 8 is your report; is that correct?

24 THE WITNESS: Yes.

25 CHAIRPERSON SCHEUER: On page 4. -- 4-3,

1 Chapter 4, page 3. Scrolling to it myself right now.

2 There is a statement that states, regarding
3 freshwater resources. Maybe I have the wrong page.
4 Where there's multiple -- there is a statement that
5 says that:

6 Geologic studies indicate a thick basaltic
7 layer separates the aquifer, which is to be utilized
8 or targeted from other areas.

9 Do you have a citation for that report?

10 THE WITNESS: That information came from
11 the EIS, which I don't know the source material that
12 the geologic study was. Presume if you look in the
13 records, it's in the EIS.

14 CHAIRPERSON SCHEUER: You go onto write:

15 This underlying layer of depth rock could
16 act as a natural barrier to saltwater intrusion.

17 Do you have any confidence -- can you give
18 us any level of confidence in that statement?

19 THE WITNESS: I used the source material.

20 CHAIRPERSON SCHEUER: Yes or no is fine.

21 No, you can't?

22 THE WITNESS: I don't know if I can give
23 you a confident answer.

24 CHAIRPERSON SCHEUER: Also regarding the
25 freshwater resources, if I understood your response

1 to a question from Intervenor's attorney Bianca
2 Isaki, you stated that the calculation you used
3 included the energy cost of pumping potable water in
4 the development.

5 Is that correct, when you were analyzing
6 greenhouse gas impacts?

7 THE WITNESS: No. I apologize. The
8 assessment considered water being provided by the
9 County water system, not from being pumped at the
10 site. It acknowledges that there's a possibility for
11 water to be pumped at the site, but that wasn't
12 included in the assessment.

13 CHAIRPERSON SCHEUER: So the increased
14 impact on Kauai's energy grade of pumping and
15 possibly treating water to provide for the water
16 demands are not included as part of your analysis?

17 THE WITNESS: That's right. We only -- we
18 assumed the water would be provided by the County
19 water system.

20 CHAIRPERSON SCHEUER: So then, if I may,
21 you know -- and this is where like, right, if you
22 remember back to school, there's advantages and
23 disadvantages to being the first kid to answer a
24 question, right? So yours is the first, I believe,
25 GHD and SOR analysis to come in front of this

1 Commission. So you're going to get asked more
2 questions than perhaps the next guys are, and you're
3 going to get asked questions that you perhaps haven't
4 thought of.

5 So the administrative rule that you are
6 responding to is HAR 15-15-50, Part 24, and among it,
7 it says in Part A: The impacts of sea-level rise on
8 the proposed development, the infrastructure
9 adaptations to assess the impacts of climate change,
10 including sewer, water and roadway improvements.

11 So by your study assuming that water was
12 provided by the County and no further analysis is
13 being done, would you conclude that your study is
14 fully responsive to the requirements of Part B?

15 THE WITNESS: No. This study has its
16 limitations, and we analyzed, to our best knowledge,
17 what the most likely scenario would be as said in the
18 Environmental Impact Statement, water would be
19 provided by the County water system. The option of
20 drilling water on-site is --

21 CHAIRPERSON SCHEUER: Regardless, the study
22 does not include the energy and analysis of the
23 greenhouse gas impacts from the energy required to
24 deliver water to the site, the increased consumption
25 of water. That's what I understood your testimony to

1 be. Is that correct?

2 Whether or not it's provided by the County
3 or on-site, there is no analysis?

4 THE WITNESS: Yes. The model does estimate
5 emissions of delivering water to the site from the
6 County water system. Those emissions are included in
7 the analysis.

8 CHAIRPERSON SCHEUER: So how does it --
9 then I misunderstood your earlier statement then.

10 How does your model account for different
11 potential sources of water? Because depending on the
12 source that the County is using, which well, or which
13 surface water treatment plant, there's a different
14 energy cost associated with delivering it to your
15 site.

16 Is that in your study or in your model?

17 THE WITNESS: The model uses many
18 assumptions, based on averages of similar types of
19 projects, land use projects.

20 So the projections that are made are,
21 again, just based on those assumptions, but not
22 necessarily being specifically at the exact
23 indication and analyzing the --

24 CHAIRPERSON SCHEUER: So the answer is no
25 to my question?

1 THE WITNESS: I think so.

2 CHAIRPERSON SCHEUER: Going back to your
3 study, the section on water supply, page 4-2, it says
4 the State's 2019 updated Water Resource Protected
5 Plan -- which actually should be Water Resources
6 Protection Plan -- indicates a sustainable yield of
7 21 million gallons per day for the aquifer.

8 Have you read the Water Resources
9 Protection Plan?

10 THE WITNESS: I used it as a reference
11 tool.

12 CHAIRPERSON SCHEUER: Are you familiar with
13 the discussion of climate change?

14 THE WITNESS: I'm familiar with the
15 discussion.

16 CHAIRPERSON SCHEUER: Can you tell me
17 whether or not future climate scenarios where Hawaii
18 gets dryer have been used in the calculation of
19 sustainable yield or not?

20 THE WITNESS: I can't say. I don't know
21 for sure right now. I presume so.

22 CHAIRPERSON SCHEUER: So they have not.
23 Your assumption would be incorrect. They explicitly
24 have a very long discussion of potential impacts of
25 climate change and how important this is, and proceed

1 to say this should be considered in the future.

2 So relying on a sustainable yield, which
3 assumes rainfall will remain consistent, is that, do
4 you feel, responsive to the requirements under HAR
5 15-15-50 to take into account the potential impacts
6 from climate change on water infrastructure?

7 THE WITNESS: That's a good question.
8 Certainly the rainfall patterns will be impacted by
9 climate change. The wetter areas are projected to
10 get even wetter, and dryer areas are projected to get
11 dryer.

12 CHAIRPERSON SCHEUER: Which projections are
13 you referring to, please?

14 THE WITNESS: That would be from the 2017
15 climate change and sea-level rise report.

16 CHAIRPERSON SCHEUER: That was a sea-level
17 rise report. You're talking about rainfall data.

18 Are you referring to the statistical
19 downscaling work of Tom Giambelluca, or the dynamic
20 downscaling work of climatic models?

21 THE WITNESS: I'm not sure. I believe
22 it's, you know, kind of general knowledge somewhat in
23 our field, but I can't give you the specific source.

24 CHAIRPERSON SCHEUER: I guess I personally
25 believe there's actually considerable debate whether

1 or not the wetter gets wetter, and dryer gets dryer
2 remains true, particularly for the Island of Kauai,
3 but across the islands.

4 In any case, I believe your answer was that
5 you were unaware that the State Water Protection Plan
6 does not actually incorporate climate models with a
7 drawing trend into the calculation of sustainable
8 yield; is that correct?

9 THE WITNESS: That's correct.

10 CHAIRPERSON SCHEUER: Last question.

11 Is this one of the largest single owner
12 parcels of land mauka of Kapaa Town?

13 THE WITNESS: I believe so.

14 CHAIRPERSON SCHEUER: So with development
15 of this project, in your professional opinion as a
16 planner, increase or decrease the options for coastal
17 retreat for Kapaa?

18 THE WITNESS: Well, having homes available
19 in the areas outside of sea-level rise exposure area
20 would allow for residents that are in that zone to
21 retreat upwards if desired.

22 CHAIRPERSON SCHEUER: But you -- I believe
23 the sea-level rise studies show significant potential
24 inundation to Kapaa, not just for residences, but for
25 significant major infrastructure, transportation,

1 water, sewer, electrical, as well as the commercial
2 core of Kapaa; is that correct?

3 THE WITNESS: That's correct.

4 CHAIRPERSON SCHEUER: So will use of this
5 land primarily for residential development increase
6 or decrease the possibility of coastal retreat
7 options for the County of Kauai?

8 THE WITNESS: Those are something that the
9 County really needs to consider islandwide and
10 vulnerable areas. I think designing this project in
11 an area outside of the sea-level rise exposure area
12 is responsible and is an encouraged project, I think,
13 as far as not building it in a vulnerable area.

14 CHAIRPERSON SCHEUER: You know, I want to
15 thank you, again. And you're the first one to come
16 in front of us, I want to be really clear that that's
17 a tough position to be in.

18 THE WITNESS: Thank you. It's an honor and
19 privilege.

20 CHAIRPERSON SCHEUER: Thank you very much
21 for your testimony, Mr. Winchester.

22 Anything further, Commissioners? If not,
23 redirect, Ms. Ahu?

24 MS. AHU: No, thank you, Chair.

25 CHAIRPERSON SCHEUER: Okay, it is 2:10.

1 Let's recess until 2:20. We will call up Mr. Bow,
2 and that will be the remainder of our day, I believe.

3 Thank you very much, Mr. Winchester.

4 (Recess taken).

5 CHAIRPERSON SCHEUER: It is 2:22. Back on
6 the record.

7 Mr. Bow, you're still under oath and we
8 were continuing with the questions from the
9 Commissioners.

10 WILLIAM BOW

11 Was recalled as a witness, was previously sworn to
12 tell the truth, was examined and testified as
13 follows:

14 Commissioner Gary Okuda.

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

17 Thank you, Mr. Bow, thank you for coming
18 back this afternoon.

19 Petitioner's attorneys filed Exhibit 45,
20 which is titled: Constant Cost Estimate for HoKua
21 Place, and it appears to be on your company's
22 letterhead.

23 Is Exhibit 45 the copy of the
24 infrastructure cost estimate that you were earlier
25 referring to in your testimony?

1 THE WITNESS: Yes, it is.

2 COMMISSIONER OKUDA: You estimated that the
3 cost of the infrastructure was about \$83 million, and
4 it's a little bit less than that, according to
5 Exhibit 45, but approximately \$83 million is an
6 accurate statement; correct?

7 THE WITNESS: Yes, that's correct.

8 COMMISSIONER OKUDA: What date did you
9 prepare Exhibit 45?

10 THE WITNESS: I think this was -- the date
11 on it is January 2020, but I think that's an error.
12 I think it was either end of 2020 or early 2021. I
13 think that's a typo. I can check, but I think it was
14 earlier this year.

15 COMMISSIONER OKUDA: In any event, you
16 prepared Exhibit 45 before Mr. Bracken began his
17 testimony before the Land Use Commission, correct?

18 THE WITNESS: Yes, it was before Mr.
19 Bracken was testifying.

20 COMMISSIONER OKUDA: Who asked you to
21 prepare the estimate which resulted in Exhibit 45?

22 THE WITNESS: I think it was the HG HoKua
23 staff that had asked me to prepare it.

24 COMMISSIONER OKUDA: Can you give me the
25 name of the person, if you recall, who asked you to

1 prepare the estimate?

2 THE WITNESS: I believe her name -- Trisha.
3 Trisha is one of the managers.

4 COMMISSIONER OKUDA: Did anyone ever tell
5 you the reason why you were being asked to prepare
6 the estimate?

7 THE WITNESS: No. I just thought it would
8 be a good idea to have some numbers. I assumed it
9 would be a good idea to have the numbers. But no, no
10 explanation, no.

11 COMMISSIONER OKUDA: Why did you believe,
12 or why did you assume that it would be a good idea to
13 have some numbers?

14 THE WITNESS: In my experience in working
15 with other developers, they always have enough data
16 cost to make sure that they have the right budget
17 figures.

18 COMMISSIONER OKUDA: Do you recall about
19 what date you gave the estimate to, you know, to your
20 client?

21 And let me -- I understand you said you
22 completed it, or your company completed it end of
23 2020 or early 2021. Maybe a better question I should
24 ask is, how much time passed after the date, the
25 estimate, Exhibit 45 was completed, that you gave it

1 or transmitted a copy to your client?

2 THE WITNESS: I don't recall. I've got to
3 check my files. I believe it was sometime, like I
4 said, either end of 2020 or early 2021.

5 COMMISSIONER OKUDA: In any event, it was
6 before this hearing commenced before the Land Use
7 Commission, and before Mr. Bracken testified before
8 us; is that correct?

9 THE WITNESS: That's correct.

10 COMMISSIONER OKUDA: Who did you give the
11 estimate to, or who was it transmitted or addressed
12 to?

13 THE WITNESS: I believe I sent it to the
14 team, HoKua team. So that would be Bill Yuen, Janna,
15 Trish Rioux, R-I-O-U-X, sorry if I butchered your
16 name. Anyway, it was emailed to the team.

17 COMMISSIONER OKUDA: When you sent this
18 email to the team, which contained or -- strike that.

19 When you sent Exhibit 45, the cost estimate
20 to the team, at any time after that, did anyone talk
21 to you about the estimate that was prepared,
22 Exhibit 45?

23 THE WITNESS: No.

24 COMMISSIONER OKUDA: Did anyone ever tell
25 you that they believe your estimate was wrong,

1 erroneous, misleading, should be changed or any type
2 of modification should be made, any words to that
3 effect?

4 THE WITNESS: No.

5 COMMISSIONER OKUDA: Were you present
6 listening to the testimony that Mr. Bracken was
7 giving when he was asked about cost regarding
8 infrastructure?

9 THE WITNESS: I think I was tuning in and
10 out. I think I may have heard bits and pieces of his
11 testimony. I know his testimony -- he was testifying
12 for quite a long time, so if you ask me a question, I
13 can see if I recollect hearing that testimony.

14 COMMISSIONER OKUDA: Fair enough.

15 Do you recall hearing him provide a dollar
16 amount regarding anything to do with estimated cost
17 regarding the project?

18 THE WITNESS: I think I heard that part of
19 it. I believe he stated -- I heard a number of 25
20 million. I don't know what that number entailed,
21 whether that was for the entire project or a portion
22 of the project. I just heard a number of 25 million,
23 but that's the number that sticks in my head.

24 COMMISSIONER OKUDA: When you heard the
25 number 25 million, did you form any opinion one way

1 or another whether or not the testimony he was giving
2 was accurate, not accurate, or you just didn't form
3 an opinion one way or the other?

4 THE WITNESS: Not knowing what the basis of
5 that number was, I couldn't form an opinion.

6 COMMISSIONER OKUDA: Okay. Now, during
7 your last time before us, we were using the word, and
8 we talked about the word "resilience"; do you recall
9 that?

10 THE WITNESS: Yes, I do.

11 COMMISSIONER OKUDA: The estimate that you
12 prepared, Exhibit 45, is that an estimate of building
13 the infrastructure with resilience, using that term
14 as how you understand that term to mean, or is the
15 estimate of construction without resilience?

16 THE WITNESS: The estimate is based on the
17 County's standards as they are presently written.

18 COMMISSIONER OKUDA: So that means that the
19 estimate does not take into account construction with
20 resilience or -- yeah, doesn't take into account
21 construction with the eye to resilience, as you
22 understand the term "resilience" to mean?

23 THE WITNESS: Correct.

24 COMMISSIONER OKUDA: That a fair statement,
25 I'm sorry?

1 THE WITNESS: That's correct, that's
2 correct.

3 COMMISSIONER OKUDA: If the infrastructure
4 needed to be designed and constructed with the goal
5 of having resilience be designed and built, how much
6 more would be added to the estimate of construction?
7 And you can give that either in a percentage or by
8 dollar amount.

9 THE WITNESS: I can't do that. I can't
10 render an opinion, because the design is not far
11 enough along to offer that kind of opinion.

12 COMMISSIONER OKUDA: But resilience would
13 increase the cost, is that correct?

14 THE WITNESS: There are factors of safety
15 built into this cost estimate. There's 20 percent
16 contingency built into it. So resiliency could
17 possibly be built in, but not knowing the extent of
18 design, I don't know if 20 percent is a good number
19 or not. It could be ten percent, you know, of the
20 construction, so can't render an opinion.

21 COMMISSIONER OKUDA: When you were
22 testifying, you used the term "clean slate". I think
23 it dealt with your ability to approach this project
24 with a clean slate, but I might not be really
25 correct, that's why I'm asking you the question.

1 When you use the term or phrase "clean
2 slate", what did you mean by that?

3 THE WITNESS: I meant another viewpoint, a
4 fresh look at the project, more options. That's what
5 I meant by it.

6 COMMISSIONER OKUDA: Okay. And so you were
7 bringing those items to the table with your
8 retention, is that a fair statement?

9 THE WITNESS: What items are you talking
10 about?

11 COMMISSIONER OKUDA: What you just
12 described, more options, new viewpoint, things like
13 that.

14 THE WITNESS: Yes, that's correct.

15 COMMISSIONER OKUDA: Was any of that, the
16 clean slate items, was any of that reflected in the
17 Final Environmental Impact Statement?

18 THE WITNESS: No.

19 COMMISSIONER OKUDA: Okay. Let me move on
20 then to some questions regarding the Environmental
21 Impact Statement. And just so that you know, so I'm
22 not accused of playing hide the ball, these are the
23 reasons why I'm asking you this question. It goes to
24 the issue of whether or not a supplemental
25 Environmental Impact Statement is required under HAR,

1 Hawaii Administrative Rule Section 11-200.1-30, and
2 that Hawaii Supreme Court case I mentioned in my last
3 questioning, the case is called Unite Here! Local 5
4 versus City and county of Honolulu which is found at
5 123 Hawaii Reports at 150, the Pacific 3d citation is
6 231 Pacific 3d, 423. It's a 2010 Hawaii Supreme
7 Court case.

8 Now, in your record, and also in the Final
9 EIS, there is was a drainage plan that was attached
10 to the Final EIS as Exhibit F; correct?

11 THE WITNESS: I -- what is Exhibit F? I'm
12 sorry, I don't have it in front of me.

13 COMMISSIONER OKUDA: Why don't you take
14 your time and locate it, because it would be helpful.
15 That's the drainage plan attached to the Final EIS,
16 Exhibit F, it's Exhibit F to the Final EIS.

17 THE WITNESS: Bill is going to look for it.
18 Let me see if I can find -- I'm going to look on --
19 let's see. I'm on my laptop right now. I'm trying
20 to pull up Exhibit F from our files.

21 COMMISSIONER OKUDA: Because I'm going to
22 ask you to look at the drainage plan, which was
23 attached to the Final EIS, and I'm going to ask you
24 some questions about that. And you might want to
25 take a look at that.

1 Let me give you a moment to try to get that
2 document up in front of you.

3 THE WITNESS: So I think I have it. Is
4 it -- how many pages? I have a figure here labeled
5 Kapaa Highland Phase II Preliminary Drainage Plan
6 dated July 2011.

7 Is that the one you're looking at?

8 COMMISSIONER OKUDA: That's correct,
9 diagram found on page 153.

10 THE WITNESS: I don't have that. I just
11 have the excerpt of Exhibit F, just looking at this
12 one piece here. Go ahead.

13 COMMISSIONER OKUDA: That's the document
14 anyway that I'm referring to. Okay.

15 Your drainage analysis was prepared in
16 February of 2021, which is almost ten years after the
17 drainage report, which was made part of Exhibit F of
18 the Final Environmental Impact Statement.

19 Isn't that correct?

20 THE WITNESS: Yes, correct.

21 COMMISSIONER OKUDA: Now, was your drainage
22 analysis that you prepared almost ten years later,
23 dated February 2021, was your drainage analysis at
24 any time ever submitted as a supplement to the Final
25 Environmental Impact Statement?

1 THE WITNESS: Not to my knowledge.

2 COMMISSIONER OKUDA: Have you ever learned
3 or been part of any discussion about submitting your
4 drainage analysis as a supplement to the Final
5 Environmental Impact Statement?

6 THE WITNESS: I was not approached to
7 provide copies of our report to augment or to amend
8 the EIS.

9 COMMISSIONER OKUDA: And were -- did anyone
10 even discuss the possibility of submitting your
11 drainage analysis as a supplement to the Final
12 Environmental Impact Statement?

13 THE WITNESS: I believe we talked about it,
14 but we were so far along -- I was told that they were
15 so far along with the EIS that the changes that we
16 were working on were not material to the EIS.

17 COMMISSIONER OKUDA: And when you said "we
18 talked about it", who were the people, and please
19 name them, that were involved in this discussion
20 about, you know, the EIS being too far along?

21 THE WITNESS: That would be Bill Yuen.

22 COMMISSIONER OKUDA: Anyone else?

23 THE WITNESS: I believe we had
24 conversations with Ron Agor.

25 COMMISSIONER OKUDA: Anyone else?

1 THE WITNESS: I believe that was it.

2 COMMISSIONER OKUDA: In your extensive
3 career as an engineer and your career as reflected in
4 your resume, which is part of the record, have you
5 participated in the drafting of environmental impact
6 statements, whether the preparation of draft
7 environmental impact statements or final
8 environmental impact statements, or any other the
9 type of environmental impact statement?

10 THE WITNESS: I have provided engineering
11 reports that were made part of the environmental
12 impact statement.

13 COMMISSIONER OKUDA: In your experience, in
14 your professional practice, has anyone ever told you
15 that it was legally permissible not to comply with
16 the requirements of the law regarding environmental
17 impact statement because, and I quote, "we are too
18 far along", close quote?

19 THE WITNESS: No, I have not.

20 COMMISSIONER OKUDA: Based on your
21 experience, your education, you experience with
22 environmental impact statements, do you believe that
23 is a sufficient justification not to provide material
24 information to an environmental impact statement just
25 because, quote, "we are too far along", close quote?

1 THE WITNESS: No. It has to be
2 substantiated. But as I said earlier, the changes
3 were deemed not material to the impact statement.

4 COMMISSIONER OKUDA: Who said the changes
5 were not material to the impact statement?

6 THE WITNESS: I believe it was -- I can't
7 recall who it was, either Bill or Ron Agor.

8 COMMISSIONER OKUDA: And what did you
9 understand Ron Agor's function or role to be with
10 respect to the project?

11 THE WITNESS: Project architect, and also
12 he was preparer of the -- he signed the EIS as
13 preparer of the document.

14 COMMISSIONER OKUDA: When were you told
15 that what you had drafted was not material, or
16 changes were not material?

17 Did you tell them what you testified to at
18 our last hearing, as far as what you told us, that
19 you would not be willing to stamp the prior report?
20 And when I say "report", the prior drainage report?
21 Did you tell them that you would not have been
22 willing to stamp the prior drainage report?

23 THE WITNESS: That's correct, I have, I
24 did.

25 COMMISSIONER OKUDA: Would you agree that

1 not being willing to stamp the prior report would be
2 common sense evidence that it probably means you're
3 updated report does have material changes?

4 THE WITNESS: No, it doesn't. I can tell
5 you why.

6 COMMISSIONER OKUDA: Yeah, go ahead. Tell
7 me why.

8 THE WITNESS: Okay, because there's
9 different ways of doing things, right, as an
10 engineer. If you ask one engineer to design
11 something, it would be different, not substantially
12 different, than another engineer.

13 So as I mentioned before, I would have a
14 different approach to things than Honua Engineering
15 did on this report.

16 Was it material? No. I looked at the
17 report. I thought additional studies, additional
18 analysis was necessary, and that's what I meant by
19 "clean slate". I needed more work to convince, to be
20 satisfied that what we were presenting today will
21 stand up and can be built.

22 So that was my basis for it. I did look at
23 what was submitted in the EIS, and I too thought that
24 some changes could be made to make it better. And I
25 had mentioned that to the Commissioners yesterday in

1 that I would not have put the Detention Basin 1 in
2 the location that it is, in proximity of the wetland.

3 So that's one big highlight that came to
4 mind. Now, having said that, I don't really know
5 where the wetland was located, right? It's a line
6 drawn on a 500 scale map, so determination is needed.

7 But I thought it would be prudent, in my
8 analysis, to move that detention basin outside of it.
9 It is a betterment.

10 Can it be done the way it's drawn in the
11 EIS? It's possible, but in my opinion, right, it's
12 unlikely that it would be permitted.

13 Can it be done? With a lot of engineering
14 and a lot of heartache dealing with the Corps of
15 Engineers and Fish and Wildlife and so forth, it's
16 possible, but it's tough.

17 COMMISSIONER OKUDA: But in any event, as
18 you just testified, you believed more analysis was
19 needed after you reviewed the drainage report, which
20 was submitted as part of the Final Environmental
21 Impact Statement; correct?

22 THE WITNESS: Yes.

23 COMMISSIONER OKUDA: What additional
24 analysis did you believe was necessary or needed?

25 THE WITNESS: Well, we needed to analyze

1 the detention basins. I didn't see any sizing of
2 detention basins in this report, so we had to run the
3 numbers through our software program, as I mentioned
4 before, TR-55 program, which is accepted by
5 Department of Public Works.

6 So we ran that through. And we also needed
7 to study the terrain better to get a better feel for
8 where the flows were coming, and what the
9 predevelopment flows were. It wasn't clear in this
10 report how to quantify that. So we needed to
11 quantify that, and that's what we were doing.

12 COMMISSIONER OKUDA: Besides what you
13 testified up until now, were there any other
14 additional analysis that you believe was necessary
15 with respect to the drainage plan which was attached
16 to the Final Environmental Impact Statement?

17 THE WITNESS: That's generally it. We just
18 needed more analysis to make sure that it worked.

19 COMMISSIONER OKUDA: Now, attached to your
20 report or analysis were, I believe, four attachments;
21 correct.

22 THE WITNESS: Talking about my exhibits,
23 right, that we presented for the hearing?

24 COMMISSIONER OKUDA: Yes, in other words,
25 the report that you prepared, you had four

1 attachments -- and just so that we are all talking
2 about the same pieces of paper -- the first
3 attachment is entitled NOAA Precipitation Frequency
4 Estimates.

5 That's one of your attachments to your
6 report, correct?

7 THE WITNESS: Yes, that's correct.

8 COMMISSIONER OKUDA: Why was this
9 information important or necessary for your analysis
10 or report?

11 THE WITNESS: It's used to quantify the
12 amount of runoff for a certain design storm. So this
13 would be your rainfall intensity.

14 COMMISSIONER OKUDA: What was the date of
15 the information from NOAA with respect to the point
16 precipitation frequency estimate?

17 THE WITNESS: I don't recall, sorry. I
18 don't have that in front of me.

19 COMMISSIONER OKUDA: To the best
20 recollection you would have, based on your normal
21 procedure and practice of preparing these types of
22 report, would you use information which is current
23 within a certain period of time of when you prepared
24 your report?

25 THE WITNESS: One more time, sorry.

1 COMMISSIONER OKUDA: Just trying to find
2 out, would you normally use information from NOAA
3 which is current within, for example, a year of the
4 time when you're writing up this report? Or you
5 would go back two years or five years? I mean, what
6 was your normal practice as far as how far back you
7 would be willing to reach to get this point
8 precipitation frequency estimate report?

9 THE WITNESS: It's an online report, so we
10 go online to NOAA site and we download it. So I'm
11 not sure how frequently they update their data.

12 COMMISSIONER OKUDA: Okay, but you would go
13 online near or at the time you draft the report; is
14 that correct?

15 THE WITNESS: That's correct.

16 COMMISSIONER OKUDA: Since June of 2011,
17 which is the date of the drainage study, which was
18 attached to the Final Environmental Impact Statement,
19 or at least the best data I could get there, have the
20 numbers of precipitation, which are shown in your
21 Attachment 1, gone up or gone down since 2011?

22 THE WITNESS: I don't believe I saw that,
23 those numbers in the EIS. I don't think they were
24 provided in the EIS, the rainfall frequency.

25 COMMISSIONER OKUDA: You're correct, they

1 weren't in the EIS, and that's kind of one of the
2 reasons I'm asking the question.

3 My more specific question, based on your
4 experience, yeah, your experience and education, have
5 these numbers gone up or down in the last ten years?

6 THE WITNESS: Based on my knowledge, I
7 believe the rainfall intensity has gone up.

8 COMMISSIONER OKUDA: You knowingly would
9 not rely on precipitation data from 2011 in preparing
10 your analysis, correct?

11 THE WITNESS: I would not.

12 COMMISSIONER OKUDA: And you would not rely
13 on precipitation data from 2011 because rainfall has
14 probably gone up since 2011, over the last ten years;
15 and if you relied on 2011 data, you might underdesign
16 or give a potentially harmful recommendation or
17 design regarding drainage; isn't that correct?

18 THE WITNESS: That's correct.

19 COMMISSIONER OKUDA: So your general
20 practice would be to rely on the most available
21 current data, correct?

22 THE WITNESS: The best available
23 information. That's what I would do, that's correct.

24 Now, having said that, Commissioner Okuda,
25 the standards may not have been updated in Public

1 Works. You know, they're in the process of updating
2 it. The drainage standards are dated, they're old.
3 And I know all the Counties are in the process of
4 updating it.

5 So I wouldn't do it, but it's still, as I
6 said before, it's standard. You have to design to
7 some standard, right? And if that's in black and
8 white, that's what you design to. I'm not sure what
9 Honua Engineer designed to, because it's not in the
10 document. So that's why I wanted to get to the next
11 level.

12 COMMISSIONER OKUDA: Let me explain to you.
13 The standard that I am asking the questions about, or
14 the reason why I'm asking the questions, is actually
15 to comply with the standard -- actually, it's the
16 admonition and direction by the Hawaii Supreme Court
17 in the Unite here! Local 5 versus City and County
18 case which basically says that if there are, in some
19 cases, material changes in data or information, it
20 may require a supplemental environmental impact
21 statement.

22 And just speaking for myself, I hate to be
23 admonished by the Hawaii Supreme Court. That's a
24 personal thing.

25 Can we move to Attachment No. 2, which is

1 your attachment titled: Custom Soil Resource
2 Request. Do you see Attachment No. 2?

3 THE WITNESS: That's in my report?

4 COMMISSIONER OKUDA: I believe that's
5 Attachment No. 2.

6 THE WITNESS: Hold on. Let me see if I can
7 find it.

8 COMMISSIONER OKUDA: Take your time. Take
9 your time.

10 THE WITNESS: Yes, okay. I have it.

11 That's USDA NRCF Island of Kauai, Hawaii.
12 Is that the one you're looking at?

13 COMMISSIONER OKUDA: Yes. And it's dated
14 December 4, 2020; correct?

15 THE WITNESS: Correct. I see it. I have
16 it.

17 COMMISSIONER OKUDA: Why was this
18 information important or necessary for your analysis
19 or report?

20 THE WITNESS: What we used this for is to
21 be plugged in -- this is the soils in the area,
22 right? So we used this to plug into our software,
23 the TR-55 program. It takes into account the
24 rainfall data, the different types of soil, the
25 percolation rate and so forth, the slopes of the

1 land. All this is plugged in our software to
2 generate a sizing for the detention basin.

3 So that's the purpose of this is to plug
4 that information into our software.

5 COMMISSIONER OKUDA: And as far as the
6 information you're plugging into your software, with
7 respect to custom soil resource report type of data,
8 you would, as a matter of practice, plug in or input
9 the most recent available data; is that correct?

10 THE WITNESS: Soils don't change. It's the
11 oldest dirt. That's what it is. It doesn't change.

12 COMMISSIONER OKUDA: Okay, so it doesn't
13 matter whether you use the report from 2011 or 2020,
14 or 1850? In your opinion, it makes no difference?

15 THE WITNESS: Yeah, it doesn't make any
16 difference.

17 COMMISSIONER OKUDA: Okay. Good enough.

18 Can you look at Attachment No. 3, which is
19 the Greenbelt/Channel Reports.

20 Do you see those reports?

21 THE WITNESS: Hold on. I'm scrolling down.

22 COMMISSIONER OKUDA: Take your time.

23 THE WITNESS: We're short of time, so I'm
24 trying to rush through this so I can get you guys out
25 of here.

1 COMMISSIONER OKUDA: Take your time. This
2 is a very important case for us, and we will give it
3 as much time as necessary.

4 THE WITNESS: What are you looking at
5 again? What am I looking for?

6 COMMISSIONER OKUDA: Attachment No. 3
7 Greenbelt/Channel Report.

8 THE WITNESS: Okay, I got it.

9 COMMISSIONER OKUDA: What was the date
10 these reports were generated?

11 THE WITNESS: December 2020, December 17,
12 2020.

13 COMMISSIONER OKUDA: Why was this report
14 important for your analysis or report?

15 THE WITNESS: If you scroll in through the
16 report here, you'll see some channel reports and
17 sections. It was to determine the flood boundaries
18 and the construction limits.

19 COMMISSIONER OKUDA: Was or were these
20 reports affected by rainfall data, such as the NOAA
21 report which was part of Attachment No. 1?

22 THE WITNESS: Yes, we routed -- if you look
23 at some of the other attachments behind this cover
24 sheet, you'll see sections, and they -- we ran a
25 100-year design storm through the channel or section

1 to determine where the flood limits were.

2 COMMISSIONER OKUDA: So in other words, if
3 in preparing --

4 CHAIRPERSON SCHEUER: One moment,
5 Commissioner Okuda, sorry.

6 Mr. Collins?

7 MR. COLLINS: Mr. Chair, sorry. I had
8 raised my hand a little bit earlier.

9 I just wanted to clarify that the chuckling
10 and muffled comments that occasionally can be heard
11 are coming from Mr. Yuen and not another person who's
12 off screen from Mr. Bow.

13 CHAIRPERSON SCHEUER: Who is in your room
14 with you, Ms. Ahu?

15 MS. AHU: Just myself, Bill Yuen and Bill
16 Bow. And Bill can turn his video on.

17 MR. YUEN: I had to call the next witness,
18 I didn't chuckle or anything like that.

19 COMMISSIONER OKUDA: Mr. Chair, I take no
20 offense one way or the other.

21 I draw no conclusion one way or the other
22 of either the statement by Mr. Collins or the
23 response by Mr. Yuen. In fact, I didn't hear
24 anything. I'm okay.

25 CHAIRPERSON SCHEUER: Please continue,

1 Commissioner Okuda.

2 COMMISSIONER OKUDA: Mr. Bow, sorry if I'm
3 repeating myself, but I kind of lost track with the
4 objection and the colloquy.

5 But going to the documents or the reports
6 which are Attachment No. 3, basically because you are
7 routing in, or taking information about rainfall,
8 which was the Attachment No. 1 information, you would
9 want to use the most current information available;
10 correct?

11 THE WITNESS: We used the NOAA site, as I
12 stated earlier, for the rainfall data.

13 COMMISSIONER OKUDA: And if you had used
14 rainfall data from, or about the date of the original
15 drainage report, it would probably give a potentially
16 erroneous conclusion; is that correct?

17 THE WITNESS: With relation to the channel
18 report or analysis, I think we would be very close.
19 When I'm looking at the channel report, there was a
20 lot of freeboard, great amount of freeboard.

21 There wasn't any potential for overtopping
22 or flooding out our site or any adjacent site. So I
23 don't think it would have been a material change.

24 COMMISSIONER OKUDA: That's fine.

25 But still, you would want to have the most

1 current data used in preparing the report based on
2 your understanding of your own standard of care and
3 standard of practice; correct?

4 THE WITNESS: That's correct.

5 COMMISSIONER OKUDA: And looking at the
6 final report that was prepared, Attachment No. 4, The
7 hydro CAD reports.

8 What were the date or dates when this
9 report was generated?

10 THE WITNESS: Hold on, let me check. About
11 the same time period, December. I see printout of
12 December 17, 2020.

13 COMMISSIONER OKUDA: And what type of data
14 was used or inputted to create these reports?

15 THE WITNESS: It was, as I mentioned
16 before, the ground cover type of soils, slope and
17 terrain, the various location of the detention
18 basins, the soil classification. The -- let's see,
19 (indecipherable) coefficient. I'm looking at the
20 spreadsheet printout. It's a voluminous printout of
21 material, evaluates the time of concentration of the
22 storm, for water to fall on the highest northern
23 parts to run all the way down through parcel to the
24 detention basin.

25 So all of that is factored into the study

1 and the printout.

2 COMMISSIONER OKUDA: So rainfall or
3 predicted rainfall data was also used to create the
4 report which appears as Attachment No. 4, correct?

5 THE WITNESS: It is an input item, yes.

6 COMMISSIONER OKUDA: Besides rainfall data,
7 was there any other data inputted into that report,
8 which you believe might have changed over the last
9 ten years before the report was prepared and
10 generated?

11 THE WITNESS: I don't understand the
12 question. Could you rephrase?

13 COMMISSIONER OKUDA: I'm just trying to
14 find out, is there any data or category of data that
15 that was used to prepare the report where that data
16 would possibly be different ten years before?

17 THE WITNESS: Well, as I mentioned before,
18 the rainfall intensity may have changed, right? Ten
19 years ago.

20 COMMISSIONER OKUDA: Okay. Anything else?

21 THE WITNESS: Not that comes to mind
22 presently.

23 COMMISSIONER OKUDA: Okay. Now, if I can
24 ask you to compare two plans that are here. These
25 are the two conceptual plans, one is Exhibit 27,

1 which is titled, the HoKua Place Concept Proposed
2 Drainage Map, that's December 2020; and Exhibit 34
3 which is the HoKua Place Conceptual Subdivision Map,
4 which is dated February 2021.

5 MR. YUEN: Excuse me, Commissioner Okuda.

6 COMMISSIONER OKUDA: Yeah.

7 MR. YUEN: Exhibit 34 is HoKua wetland map.

8 COMMISSIONER OKUDA: Yeah. That's another
9 way of describing Exhibit 34.

10 THE WITNESS: Hold on. Let me get a copy
11 of that.

12 COMMISSIONER OKUDA: This will be probably
13 my last series of questions.

14 CHAIRPERSON SCHEUER: How much longer, do
15 you believe, Commissioner Okuda?

16 COMMISSIONER OKUDA: Maybe ten minutes.

17 CHAIRPERSON SCHEUER: I believe
18 Commissioner Ohigashi may have another question or
19 two. I still have questions as well.

20 COMMISSIONER OKUDA: I'll try to keep this
21 brief.

22 Let me give you the question here. Try to
23 short circuit this.

24 Exhibit 34 shows location of wetlands,
25 correct?

1 CHAIRPERSON SCHEUER: You're muted.

2 COMMISSIONER OKUDA: Yes. The map that has
3 the wetlands, Exhibit 34, do you see that?

4 THE WITNESS: Yes. I believe we are
5 looking at the same thing.

6 COMMISSIONER OKUDA: Okay. Is that the
7 first map or diagram that you are aware of which
8 delineates or shows the location of the wetlands?

9 THE WITNESS: Yes. We created this by
10 overlaying the wetland map with our maps for the
11 development.

12 COMMISSIONER OKUDA: And when you over laid
13 it, that would be on or about February of 2021; is
14 that correct?

15 THE WITNESS: Yes, that's correct; or that
16 was -- probably analysis was done sometime in
17 December or January. That's the date on the figure,
18 is the final print date. So, yes, early 2021.

19 COMMISSIONER OKUDA: When you say December,
20 you mean December of 2020, correct?

21 THE WITNESS: That's correct.

22 COMMISSIONER OKUDA: And that is the first
23 document submitted by the Petitioner or Applicant
24 which delineates or shows the location of wetlands,
25 correct?

1 THE WITNESS: I don't know what was
2 submitted. I assume so.

3 COMMISSIONER OKUDA: Do you believe, based
4 on your experience in your profession, including your
5 experience with environmental impact statements, that
6 this is the type of information that should be
7 included in an environmental impact statement?

8 THE WITNESS: Yes, yes, I would say so.

9 COMMISSIONER OKUDA: Thank you, Mr. Bow.
10 Appreciate your indulgence.

11 Thank you, Mr. Chair, no further questions.

12 CHAIRPERSON SCHEUER: Thank you very much,
13 Commissioner Okuda.

14 Commissioner Ohigashi. Thanks for your
15 patience.

16 COMMISSIONER OHIGASHI: I just wanted to
17 ask you about Exhibit No. 45.

18 Is it okay to ask about Exhibit 45? Is it
19 in evidence?

20 THE WITNESS: Which one is that?

21 CHAIRPERSON SCHEUER: Mr. Yuen, I believe
22 it's not in evidence yet, or is it? Is that the one
23 excluded?

24 MR. YUEN: I'm going to introduce it after
25 he's finished testifying.

1 COMMISSIONER OHIGASHI: I'm just asking, is
2 it okay to ask questions on it, Mr. Chair?

3 CHAIRPERSON SCHEUER: So none of the
4 parties have had a chance to examine it. So you're
5 asking about this document that we don't have access
6 to; is that right, Commissioner?

7 COMMISSIONER OHIGASHI: I saw it on our
8 page, so it was referred to by Mr. Okuda, so I'm just
9 asking, wondering if I could ask questions about it.

10 My questions are basically subdivision cost
11 summary, and I just wanted to know what is considered
12 subdivision cost.

13 CHAIRPERSON SCHEUER: What is going to
14 prevent you from introducing it now, Bill?

15 MR. YUEN: Nothing.

16 I move to introduce Exhibit 45 into
17 evidence. I believe Mr. Collins wanted to ask some
18 questions regarding it. So I leave it to you to
19 decide who gets to ask questions first.

20 CHAIRPERSON SCHEUER: So for the purpose of
21 getting this into the record so it can be used in
22 question by Commissioner Ohigashi.

23 Questions or objections to introduction of
24 Exhibit 45 into the record?

25 MR. DONAHOE: No, Chair.

1 MR. YEE: No objection.

2 CHAIRPERSON SCHEUER: Mr. Collins?

3 MR. COLLINS: None.

4 CHAIRPERSON SCHEUER: Exhibit 45 is entered
5 into the record.

6 Mr. Ohigashi, please proceed.

7 COMMISSIONER OHIGASHI: My father is Mr.
8 Ohigashi.

9 Mr. Bow, so my question is essentially what
10 is defined as subdivision cost in this particular
11 document that you prepared?

12 THE WITNESS: It's the cost for the
13 infrastructure construction cost.

14 COMMISSIONER OHIGASHI: Infrastructure, do
15 you mean only the drainage requirements in the water
16 development, or do you mean interior roads? What is
17 included and what is excluded from that?

18 THE WITNESS: It's everything. So to go
19 through this, it's to prepare the land ready for
20 going vertical, for the vertical construction.

21 So we have cost to grade the multi-family
22 subdivision parcels. You can see cost that's titled
23 "main roadway" which is the spine roadway that comes
24 through the middle of the property and connects up
25 Olohena to the Bypass Road.

1 There's cost for offsite sewer. For two
2 intersections, as you can see there; well development
3 cost. We got these cost from Tom Nance. Booster
4 pumps and so forth, and it's with a 20 percent
5 contingency on top of that.

6 So that's where I arrived at the budget
7 estimate of just under \$83 million.

8 COMMISSIONER OHIGASHI: I remember some
9 testimony, maybe some comment that there was a main
10 road would run 25 or \$26 million. Is that part of
11 this or anything like --

12 THE WITNESS: Yes. My cost estimate is
13 titled Main Road right about in the middle, 3,350
14 lineal feet. That's a cost of 1,300 per foot, which
15 is for all the utilities that run in the road,
16 drainage, water, sewer, and that totals to 4,355,000.

17 COMMISSIONER OHIGASHI: I'm just trying to
18 get an idea. The roadway -- the development, was
19 that the Bypass Road, is that the main road which
20 would detail paving and grading and all that, is that
21 the main road?

22 THE WITNESS: That's correct.

23 COMMISSIONER OHIGASHI: 3,350 feet of that
24 main road?

25 THE WITNESS: Right. That would run from

1 Olohena, up north, all the way through the site,
2 tying into the Bypass Road. So that's about three
3 quarters of a mile.

4 COMMISSIONER OHIGASHI: This includes
5 off-site infrastructure?

6 THE WITNESS: Correct. I have off-site
7 sewer infrastructure at a cost of -- small cost, just
8 under 400,000.

9 COMMISSIONER OHIGASHI: Is there -- did you
10 include in this estimate anything to do with
11 improvements to the wastewater facility as an
12 offsite?

13 THE WITNESS: I don't -- no, we did not,
14 because I don't know what is needed.

15 COMMISSIONER OHIGASHI: So there may be
16 additional offsite improvements that have not been
17 considered as part of the estimate; is that right?

18 THE WITNESS: That's correct.

19 COMMISSIONER OHIGASHI: And is this for the
20 entire development, or is it broken down into some
21 kind of phasing or just one whole amount?

22 THE WITNESS: It' for the entire
23 subdivision. So full build out.

24 COMMISSIONER OHIGASHI: Thank you for
25 letting me understand Exhibit Number 45.

1 THE WITNESS: You're welcome.

2 CHAIRPERSON SCHEUER: Thank you very much,
3 Commissioner Ohigashi.

4 Commissioners, any further questions for
5 Mr. Bow?

6 Mr. Bow, I think -- Commissioner Chang?
7 No. It was taken away.

8 COMMISSIONER CHANG: I couldn't let you get
9 past that one.

10 Just one final question in light of
11 Commissioner Ohigashi's questions about Exhibit 45,
12 because I didn't have this when I was asking Mr. Bow
13 questions the other day.

14 So, Mr. Bow, you said this was for the full
15 build out of the entire project that is the subject
16 of the dba; is that correct?

17 THE WITNESS: That's correct.

18 COMMISSIONER CHANG: But you also said that
19 some of these other offsite improvements, you don't
20 know what they are because you don't know what the
21 design is; is that also correct?

22 THE WITNESS: That's correct.

23 COMMISSIONER CHANG: So is it fair to say
24 that the \$83 million would be the minimum or the
25 floor upon which additional cost for offsite

1 improvements may be added to the 83 million?

2 THE WITNESS: I think if you look at it, I
3 have 20 percent contingency. There's \$14 million
4 built into this. So I don't know if you have
5 \$14 million of offsite improvements. But we did
6 budget for the unforeseen. We don't know what that
7 is going to be.

8 COMMISSIONER CHANG: What is the standard
9 practice for a contingency fund? Ten percent,
10 20 percent? Don't you normally include a contingency
11 fund?

12 THE WITNESS: Yes, we do.

13 At this juncture of the design, which there
14 really isn't any design, it's basically we have these
15 diagrams that show the multi-family is going to be
16 here, and then 30 acres single families here, so
17 we're just basing on acreage.

18 So the costs are based, real crude cost,
19 although they are real cost, based on our experience
20 on Kauai. And we show that on the second page, the
21 Kauai workforce housing project, and the Waimea
22 affordable housing project.

23 So we have real numbers here. These are
24 projects constructed within the last year. So these
25 are very current numbers that we are applying on a

1 per acre basis.

2 Not knowing any infrastructure, any
3 roadways or utility sizes, this is the best we have
4 at this point in time.

5 COMMISSIONER CHANG: And you appear to be
6 an extremely diligent professional person, and I
7 greatly appreciate that. And you are obviously
8 someone of great integrity, I can see that as well
9 through your testimony.

10 You know, the difficulty, at least for me
11 as a Land Use Commissioner, is having to approve a
12 project that may appear to be extremely speculative.

13 And so this project seems to have a lot of
14 unknowns to it, and which makes me extremely anxious.
15 Your numbers have been the first numbers that I have
16 seen that provide a realistic cost estimate for the
17 project upon which we can build upon to evaluate
18 whether this is a real project and they're serious.

19 But what I'm also -- I mean, the realities
20 of construction in Hawaii -- and I won't even begin
21 to talk to you about the rail project -- 20 percent
22 contingency may not be that unrealistic, given cost
23 delays, given regulatory processes, but you wouldn't
24 necessarily disagree with me if I said, based upon
25 your testimony and the information that we have,

1 including a lot of the unknown mitigation, you know,
2 climate change, the wastewater, all these other
3 changes, that your \$83 million may be closer to the
4 floor, the baseline of construction cost for the
5 development, and a lot of these potential offsite
6 improvements may only add to that estimate.

7 Would I be unreasonable to conclude that?

8 THE WITNESS: Yes. I'll tell you why.

9 The reason is that with rail, you used that
10 as an example, it's a corridor that has numerous
11 utilities, right? There was acquisition of land,
12 right? All these factors go into it.

13 This, using my term, is a clean slate.
14 It's a blank piece of land. There's no unforeseen.
15 So there really isn't any unforeseen similar to what
16 they're encountering in rail.

17 I think our cost -- I stand by my cost.
18 The only thing we don't know is the offsite and what
19 the requirement will be for us to participate on
20 improvements to offsite, whether wastewater or what
21 have you.

22 So we still need to work that out with the
23 County, right?

24 So at this juncture, I think as far as
25 onsite, I'm very confident on these numbers here.

1 I'm not confident on the offsite, because we haven't
2 had the discussions with the County. That's really
3 the next step in this process.

4 COMMISSIONER CHANG: Let me ask you one
5 final question, and I do promise this is my final
6 question.

7 Is it -- would it be unreasonable for the
8 Land Use Commission to require a performance bond to
9 cover the cost of construction, your estimated cost
10 to ensure that --

11 THE WITNESS: I'm sorry.

12 If I understand your question, what you're
13 asking is, would it be appropriate -- would it be
14 appropriate, in my opinion, for the Land Use
15 Commission to require a bond for the construction of
16 the project; is that correct?

17 COMMISSIONER CHANG: Yes, that's correct.

18 THE WITNESS: So my opinion would be it
19 would not be appropriate for the Land Use Commission
20 to impose a bond. A bond performance, material bond
21 is usually imposed when you have clear contract
22 documents. We have nothing here. We have no
23 documents whatsoever.

24 You have my best guess on an acreage basis.
25 As you said is this the just floor or ceiling? I'm

1 thinking this would be, I'm hoping, it's the ceiling,
2 you know, but that's my point.

3 Usually a bond is on a prepared set of
4 drawings, and it's there to protect the buyer, right?
5 So if a contractor pulls a bond, if he defaults, then
6 you can call on the bond to finish the project.

7 In this case there is nothing. There is no
8 drawings. There's nothing on paper yet, nothing to
9 cost out.

10 You have my preliminary, but that's what it
11 is, just preliminary. And I don't believe you can
12 acquire a bond for something this preliminary.

13 COMMISSIONER CHANG: I'm not going to ask
14 you a question. So I'm going to stay true to my last
15 statement, I'm going to make a comment though.

16 Your comment about ensuring the
17 performance. What this developer is asking the Land
18 Use Commission is to approve a project with so many
19 unknowns, what guarantees can we provide the
20 community that these infrastructures are going to be
21 built before all those homes are built, and they're
22 able to sell their market homes?

23 That is the dilemma that I feel, as a Land
24 Use Commissioner. How do we protect the community to
25 ensure that those infrastructure is built per their

1 representation?

2 So you don't have to answer. That's just
3 my final comment.

4 Thank you, Mr. Chair.

5 CHAIRPERSON SCHEUER: Thank you,
6 Commissioner Chang.

7 Commissioners, anything further? I have a
8 couple of questions for Mr. Bow.

9 Anything Commissioners? No.

10 Mr. Bow, I want to refer to your
11 Exhibit 25, specifically the water analysis portion
12 on Section 2.4, page 8.

13 I believe you're referring to or
14 summarizing results from Tom Nance's study.

15 A test trial was drilled at the proposed
16 location. Was pumped for 12 hours at 550 gallons per
17 minute --

18 COURT REPORTER: I'm sorry, Chair. Can you
19 slow down a little bit? I'm not getting each word
20 clearly.

21 CHAIRPERSON SCHEUER: Section 2.4, proposed
22 water source states: Based on the results, it was
23 determined that a capacity 500 gpm, or gallons per
24 minute, was sustainable for a properly developed
25 well.

1 And that further pump testing of the new
2 well will be conducted to observe the aquifer
3 response to the well.

4 Am I reading that correctly, Mr. Bow?

5 THE WITNESS: I'm looking for it. I'm
6 sorry, so you're on page one?

7 CHAIRPERSON SCHEUER: Page 8, Section 2.4,
8 proposed water source, third line.

9 THE WITNESS: Hold on.

10 Do you have a copy of it? Sorry,
11 Commissioner. Let me pull a copy out so we're
12 looking at the same thing.

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

14 CHAIRPERSON SCHEUER: Please.

15 Go to page 8, please. Scroll up, third
16 line.

17 Based on the results it was determined that
18 a capacity of 500 gallons per minute is sustainable
19 for a properly developed well.

20 How much, if pumped at 24-hours-a-day, how
21 much water would that produce?

22 THE WITNESS: Hold on. Let me -- 500
23 gallons per minute times 60 times 24, 728,000
24 gallons.

25 CHAIRPERSON SCHEUER: .72 mgd?

1 THE WITNESS: Right.

2 CHAIRPERSON SCHEUER: Have you been
3 involved with the dedication of water systems to the
4 Counties?

5 THE WITNESS: I have not. Not wells, I've
6 done water piping systems. I believe these numbers,
7 the dedication of well will be done by Tom Nance
8 Water Resources.

9 CHAIRPERSON SCHEUER: So then you might not
10 be familiar with the fact that the amount of water
11 credits that a County will give is often typically in
12 Hawaii, they will first say you're not going to pump
13 a well 24-hours a day, you're going to calculate that
14 actual functional production as two-thirds of that,
15 16 hours a day.

16 THE WITNESS: That's right.

17 CHAIRPERSON SCHEUER: On top of that the
18 County often reserves one-third of the credits for
19 their own use, even if you fully develop the source,
20 storage and transmission.

21 So the actual production would be
22 two-thirds of two-thirds. So can you tell me how
23 much water, if this well was dedicated to the County
24 under that formula, would actually be available to
25 the development?

1 THE WITNESS: I think -- I can run the
2 numbers. So two-thirds of that and two-thirds of
3 that, 323,000.

4 CHAIRPERSON SCHEUER: And then if, Ms. Ahu,
5 if you would scroll up to the bottom of page 6. I
6 believe the three columns that you have there are the
7 average daily demand, the maximum daily demand, and
8 the peak hour.

9 So the average daily demand exceeds the
10 amount that might be available if you dedicated this
11 system to the County, correct?

12 THE WITNESS: Yes, that's correct.

13 CHAIRPERSON SCHEUER: So where is the extra
14 water going to come from?

15 THE WITNESS: Bigger well. I think this is
16 a good question for Tom Nance. He's the one that ran
17 the well test.

18 I know he's planning to build -- drill a
19 bigger well. He ran some pump tests on a smaller
20 case well. So I know he's proposing to put in a
21 larger casing in there. I'm not sure if that well --
22 I don't know what the sustainable yield would be. I
23 think that's a question for Tom.

24 CHAIRPERSON SCHEUER: Well, I realize
25 that's a question for Tom.

1 Ms. Ahu, can you stop sharing screen?

2 But really, I'm asking you the question
3 about your report, which asserted that this well
4 would be sufficient for this project based on that
5 pump size.

6 THE WITNESS: Right. Based on the pump
7 capacity that we provided, the 500 gallons,
8 notwithstanding the allowances and factor safety that
9 you mentioned, that they're built into it.

10 It appears as though we're a little short,
11 right? So we still need to have a discussion with
12 the Department of Water Supply, because we're not
13 sure whether we maybe have some additional sources, I
14 may not need a larger well here.

15 So that conversation still needs to be had
16 with Department of Water.

17 CHAIRPERSON SCHEUER: But you would agree
18 that it's within the broad scope of LUC to at least
19 have some assurance that there is water available for
20 a project?

21 THE WITNESS: Yes, I agree.

22 CHAIRPERSON SCHEUER: Mr. Giovanni,
23 Commissioner Giovanni, did you have a question or can
24 I continue with mine?

25 COMMISSIONER GIOVANNI: I do have a

1 question, but I would prefer you continue and my
2 question is relatively simple.

3 CHAIRPERSON SCHEUER: My second question,
4 set of questions for you, Mr. Bow, has to do with the
5 well.

6 Are you are you familiar with what the UIC
7 line is?

8 THE WITNESS: Yes.

9 CHAIRPERSON SCHEUER: Can you explain what
10 the underground injection control line is?

11 THE WITNESS: It's a line to protect the
12 groundwater.

13 CHAIRPERSON SCHEUER: So typically drinking
14 water wells are not allowed makai of the UIC line,
15 correct?

16 THE WITNESS: Correct.

17 CHAIRPERSON SCHEUER: But this well is
18 makai of the UIC line?

19 THE WITNESS: Correct.

20 CHAIRPERSON SCHEUER: Was any analysis of
21 the capture zone of this proposed well done?

22 THE WITNESS: I believe --

23 CHAIRPERSON SCHEUER: The area of which
24 contamination might flow into this well?

25 THE WITNESS: I understand that Tom did do

1 a pump test and took samples of the water. Recent
2 samples that were submitted, I'm not sure if it was
3 submitted as documents to the Commission or not.

4 CHAIRPERSON SCHEUER: If I may, Mr. Bow.
5 There are, but that's not an analysis of the capture
6 zone. The capture zone lays out on a map the area in
7 which you generally try to prohibit development
8 because contamination could flow from that area into
9 the water source.

10 Was there any analysis of the potential
11 impact of your drainage basins on the water source?

12 THE WITNESS: No.

13 CHAIRPERSON SCHEUER: Any analysis of the
14 potential impacts that you're aware of the potential
15 agricultural lots and uses on the agricultural lots
16 on the water source?

17 THE WITNESS: Not to my knowledge.

18 CHAIRPERSON SCHEUER: That's all I have for
19 you, Mr. Bow. I realize we're going a little bit
20 past time, but I would like to, after your tremendous
21 patience with us, get through and be able to release
22 you at least for now.

23 Commissioner Giovanni.

24 COMMISSIONER GIOVANNI: Thank you, Chair.

25 I want to refer back to Exhibit 45 and

1 followup on the line of questioning from Commissioner
2 -- regarding whether or not these estimates, how we
3 should view these estimates, and thank you for
4 bringing them forth, I agree with that.

5 And just by example, let's take your
6 assumption for these intersections for the roadway,
7 there's two of them offsite.

8 This was based off of the Nanini Street
9 point intersection with Kukui Highway and a
10 conversion from concrete to asphalt at \$800,000.

11 Is that an intersection that provides for
12 safe transit of walkers and bicyclers across the
13 Bypass Road?

14 THE WITNESS: No, it does not. Are you
15 familiar with the intersection of Nanini Point?

16 COMMISSIONER GIOVANNI: I am. I live here.

17 THE WITNESS: There is no sidewalks in the
18 area, just grass shoulders, no crossing.

19 COMMISSIONER GIOVANNI: The example, out
20 costs can creep up, as Commissioner Chang was
21 alluding to, once we start considering things like
22 sidewalks and stoplights and roundabouts and
23 overpasses and underpasses.

24 Would you agree that these costs could grow
25 considerably?

1 THE WITNESS: I think it's possible it
2 could grow. I don't know what "considerably" means.
3 Maybe you know, I don't know. I can't have an
4 opinion on that.

5 COMMISSIONER GIOVANNI: Then describe what
6 the intersection would look like based on the
7 estimate that you provided at \$800,000.

8 THE WITNESS: It would contain left-turn
9 pockets. This one here contains left-turn pockets,
10 acceleration lane/deceleration lanes. I believe the
11 length of intersection was about 1500 feet in length
12 with the accel/decel lanes coming into it. Quite
13 substantial, because of the speed along that highway.

14 So in this area here, I think the speed
15 limit is a little more than that of Kukui Highway.

16 COMMISSIONER GIOVANNI: But no provisions
17 for pedestrian or bicyclist?

18 THE WITNESS: I don't think -- we will be
19 designing the project to a complete street standard
20 and will be providing bike path and walkways, so
21 forth.

22 I wouldn't necessarily put a bike lane or
23 walkway across an intersection like this, you know.
24 I would probably route it further down toward the
25 roundabout and head it in that way.

1 This would be an unsafe location to put in
2 crosswalks, in my opinion.

3 COMMISSIONER GIOVANNI: In my opinion, I
4 agree with your last statement.

5 Thank you very much.

6 CHAIRPERSON SCHEUER: Commissioners, is
7 there anything further?

8 Ms. Ahu, any redirect or Mr. Yuen?

9 MR. YUEN: Yes.

10 REDIRECT EXAMINATION

11 BY MR. YUEN:

12 Q Mr. Bow, in response to questions by
13 Commissioner Chang, you stated it would be
14 preliminary to obtain a performance bond for this
15 project; is that right?

16 A That's correct.

17 Q After the -- should the LUC approve our
18 reclassification to Urban District, what is the next
19 step?

20 A Have to go for a rezoning through the
21 County.

22 Q And so assuming the County rezones the
23 property to an appropriate residential or other
24 district, what then would you have to do in order to
25 obtain the permit to build the project?

1 A We would have to prepare contract
2 construction drawings for the various subdivisions,
3 whether it be multi-family or single family, the park
4 site. And too, the phasing plan that the developer
5 is heading toward for a ten-year build out. So it
6 wouldn't be done all at once.

7 Q But would you have to go to the County for
8 subdivision approval?

9 A That's correct.

10 Q At that time would it be appropriate to
11 post a performance bond for the various subdivision
12 improvements that developer would have to make in
13 order to create buildable lots for the project?

14 A It would be required as part of the grading
15 permit.

16 Q And have you had experience dealing with
17 sureties in the course of assisting clients to obtain
18 performance bonds?

19 A Yes, I have.

20 Q And in all cases, do the sureties require
21 in the plans sometimes contract estimates, firm
22 contracts before they will award or issue a bond for
23 a project?

24 A Yes.

25 Q I have no further questions.

1 CHAIRPERSON SCHEUER: Thank you.

2 Folks, it is well past the time I promised,
3 and we have been going awhile. Thanks to everyone,
4 particularly our court reporter for your stamina.

5 Our next hearing on this matter, scheduled
6 right now to be April 15th, followed by April 29th,
7 May 13th and May 27th, but obviously the parties will
8 need to keep in close touch with LUC staff on that
9 matter.

10 Mr. Collins?

11 MR. COLLINS: I just wanted to get clarity
12 that our opportunity to recross this witness will
13 occur at the next meeting, or is that going to be at
14 some other point?

15 CHAIRPERSON SCHEUER: You ask many
16 questions, Mr. Collins, which nobody ever asks in
17 front of the LUC.

18 We don't typically have recross on our
19 witness.

20 MR. COLLINS: Oh, I'm sorry, I thought
21 because they added a new exhibit, and he got asked a
22 whole bunch of questions about that. I thought that
23 was what was agreed when they were going to bring in
24 the new exhibit. No? I'm sorry. I must have
25 misunderstood.

1 CHAIRPERSON SCHEUER: I believe there was
2 earlier, however, if I recall correctly, and I will
3 let the various parties weigh in on this. We asked
4 for the right to call back Mr. Bow, if necessary,
5 after other testifiers had gone, particularly when he
6 was testifying but deferred to certain items.

7 But the length of the hearing that we've
8 had, I would have to look at the transcript to
9 confirm that my recollection is correct.

10 Is that generally what is understood, Ms.
11 Ahu, Mr. Yuen, that Mr. Bow could be recalled on
12 certain matters?

13 MR. YUEN: I believe that would be at the
14 Commission's discretion if the Commission feels his
15 testimony is necessary, additional testimony is
16 necessary.

17 CHAIRPERSON SCHEUER: Okay. Mr. Yee.

18 MR. YEE: My recollection is that it was --
19 normally recross is not allowed. Because the exhibit
20 had not been produced during Mr. Collins' initial
21 cross-examination, he had asked for permission to
22 question the witness solely on the issue of the
23 exhibit, whenever the exhibit was introduced.

24 And so just to be clear what I think he's
25 referring to, I think there was a discussion about

1 that, and his reservation of the right to ask to
2 recross when the exhibit was provided.

3 CHAIRPERSON SCHEUER: Okay. Ms. Chow, does
4 that ring a bell? You were not with us for the
5 entire time, but perhaps you were for this.

6 MS. CHOW: I was there for that portion and
7 I believe Mr. Yee is correct.

8 CHAIRPERSON SCHEUER: So let's put Mr. Bow
9 back into the lineup for this particular recross on
10 that particular exhibit, but if it's okay, rather
11 than drag Mr. Bow back three more times, we might --
12 or twice, we might -- I'm open to suggestions, but we
13 might wait until after we have heard from Mr. Nance,
14 because there is at least some overlap of testimony
15 with Mr. Nance where Mr. Bow has referred to Mr.
16 Nance, but if Mr. Nance cannot answer the questions,
17 we might to talk to Mr. Bow after that.

18 Mr. Collins, how does that sound?

19 MR. COLLINS: Mr. Chair, we don't have any
20 problem with that at all. I'm sorry that I confused
21 the two issues, which was the possibility of
22 recalling him if the other witnesses can't answer the
23 questions that we were trying to ask him, as opposed
24 to this exhibit.

25 There is no problems in terms of the

1 sequencing. I don't think Mr. Bow is going to change
2 what he's going to answer based on what other people
3 say.

4 CHAIRPERSON SCHEUER: Commissioner
5 Giovanni.

6 COMMISSIONER GIOVANNI: I like that general
7 idea, but I would prefer that Mr. Bow be called back
8 after Mr. Nance, and the witness for the Petitioner
9 on the traffic questions, because to my reading,
10 Exhibit 45 is in conflict with some of the
11 information that is presented in the TIAR, and I
12 would like to hear from the traffic person and then
13 refer back to Mr. Bow as a final opportunity.

14 CHAIRPERSON SCHEUER: With those caveats,
15 it would be helpful Mr. Yuen and Ms. Ahu, if prior to
16 our next hearing, you give us the order of witnesses
17 that you have planned for our next tentative date.

18 I'm sorry, just for scheduling purposes,
19 Mr. Collins, do you have a sense of how long you
20 would want Mr. Bow?

21 MR. COLLINS: If it's with respect to
22 Exhibit 45, yeah. It would be -- I would be
23 surprised if we go past four or five minutes. Just
24 have a few questions.

25 CHAIRPERSON SCHEUER: That's helpful for

1 all the parties.

2 Is there any other procedural matters that
3 we have before us?

4 MR. YUEN: Do we have a full day on the
5 15th of April, or a partial day?

6 CHAIRPERSON SCHEUER: Mr. Derrickson.

7 CHIEF PLANNER: Yes, aloha.

8 It's a partial day. They're sharing space
9 on the docket for another -- some other docket.

10 So each of the dates that we have
11 tentatively scheduled in the future for this project
12 are shared dockets.

13 MR. YUEN: About what time do you estimate
14 we go on?

15 CHIEF PLANNER: We will set you up to go
16 after the initial docket or dockets, so it won't be
17 right at the start.

18 CHAIRPERSON SCHEUER: I will say after
19 six-and-a-half years on this Commission, Mr. Yuen, my
20 only solution was to never schedule anything else on
21 LUC days. I can never predict how long things take.
22 And I think that if we were qualifying experts, we
23 might qualify me as an expert on the length of time
24 it takes to do things in front of the LUC. I wish we
25 could give a better answer, but we probably cannot.

1 MR. YEE: Chair, could I make this comment
2 just this once so I don't make it again?

3 We have a September 18, 2021 deadline to
4 complete this case, and we obviously need to include
5 time it will take to draft documents, reply to them,
6 get back to them. Then for the decision by LUC, then
7 for any subsequent meetings you may or may not need.

8 So to the extent we can encourage maybe,
9 you know, double booking some of these things as much
10 as possible. I am very worried that we're going to
11 run late, and then you're going to force the parties
12 to shorten the time that we have to -- more
13 importantly the time the Office of Planning has to
14 prepare our objections or our case, even worse,
15 simply because we took so much time on Petitioner's
16 case.

17 And I'm not faulting the amount of time,
18 but I'm just concerned about that, given the pace we
19 have gone through so far.

20 I think I can stop in making that
21 statement.

22 CHAIRPERSON SCHEUER: Your audio is
23 conveniently cut out when you chose to stop. Your
24 comment is noted, Mr. Yee.

25 Anything further from the parties?

1 Commissioners? If not, thank you some much to
2 everyone, and I declare this meeting adjourned.

3 (The proceedings adjourned at 3:48 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 25, 2001, 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 25th 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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