

1 LAND USE COMMISSION

2 STATE OF HAWAII

3 Hearing held on April 15, 2021

4 Commencing at 9:00 a.m.

5 Held via ZOOM by Interactive Conference Technology

6
7 VII. CALL TO ORDER

8 VIII. CONTINUED ACTION (IF NECESSARY)

9 DR21-71- ANDREW GRIER (Maui)

10 Petition for Declaratory Order that the
11 number of dwellings allowed on properties
12 in the Rural District can be more than one
13 per one-half acre if allowed by County
14 Zoning.

12 IX. CONTINUED HEARING AND ACTION

13 A11-791 HG Kauai Joint Venture, LLC-HoKua
14 Place (Kauai)15 Petition to Amend the Land Use District
16 Boundary of Certain Lands Situated at
17 Kapaa, Island of Kauai, State of Hawaii,
18 Consisting of 97 Acres from the Agriculture
19 District to the Urban District,
20 Tax Map Key No. (4) 4-3-003:POR 001

17 X. ADJOURNMENT

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25 BEFORE: Rita King, CSR #373

1 APPEARANCES:

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

6
7 STAFF:

8 DANIEL A. MORRIS, ESQ.
Deputy Attorney General
9
DANIEL E. ORODENKER, Executive Officer
10 RILEY K. HAKODA, Planner/Chief Clerk
SCOTT DERRICKSON, Chief Planner
11 NATASHA A. QUINONES, Program Specialist

12 BRYAN YEE, ESQ.
Deputy Attorney General
13 RODNEY FUNAKOSHI, Planning Program Administrator
State Office of Planning
14 State of Hawaii

15 CHRISTOPHER M. DONAHOE, ESQ
Kauai Corporation Counsel
16 JODI HIGUCHI SAYEGUSA, Kauai Planning Dept, County
of Kauai
17
WILLIAM YUEN, ESQ., Counsel for Petitioner
18 JANNA AHU, ESQ.
For Petitioner A11-791
19 HG Kauai Joint Venture LLC

20 BIANCA K. ISAKI, ESQ.
LANCE COLLINS, ESQ.
21 For Intervenor

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INDEX

PETITIONER'S WITNESSES:	PAGE
David Rietow	
Direct Examination	14
Cross-Examination/County	20
Cross-Examination/Intervenor	28
Randall Okaneku	
Direct Examination	60
Cross-Examination/County	68
Cross-Examination/OP	96
Cross-Examination/Intervenor	106
Redirect Examination	162
Recross-Examination/Intervenor	165
Paul Richard Kaunahoakalani "Ricky" Cassidy	
Direct Examination	167

1 CHAIRPERSON SCHEUER: Aloha mai kakou and
2 good morning. This is the April 15th, 2021 portion
3 of the Land Use Committee meeting for April 14th
4 and 15th and it is being held using interactive
5 conference technology, linking video conference
6 participants and the other interested individuals
7 and members of the public via the Zoom internet
8 conferencing program. We're doing this, of course,
9 to comply with state and county official
10 operational directives during the COVID-19
11 pandemic. Members of the public are able to view
12 the meeting via the Zoom webinar platform.

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

25 The Zoom conferencing technology allows

1 the parties and each participating commissioner
2 individual remote access to the meeting proceedings
3 via our own personal digital devices. Also, please
4 note due to matters entirely outside of our
5 control, occasional disruptions to connectivity may
6 occur for one or more members of the meeting at any
7 given time. If this occurs, please let us know and
8 please be patient as we try to reestablish
9 audiovisual signals so we can conduct business
10 during the pandemic.

11 From time to time I will be taking breaks
12 today. My name is Jonathan Likeke Scheuer, and I
13 have the honor and pleasure of serving as the Land
14 Use Commission chair at this time. Along with me,
15 Commissioners Ed Aczon, Dawn Chang, Arnold Wong,
16 our Executive Officer Daniel Orodener, our Chief
17 Planner Scott Derrickson, our Chief Clerk Riley
18 Hakoda, our Deputy Attorney General Dan Morris, our
19 Program Specialist Natasha Quinones, and our court
20 reporter for today Rita King, are all on the island
21 of Oahu. Commissioner Gary Okuda is also on the
22 island of Oahu and will be joining us sometime
23 before 10 o'clock when he is done with a court
24 appearance. Commissioner Nancy Cabral is on Hawaii
25 Island, Commissioner Lee Ohigashi is on Maui, and

1 Commissioner Dan Giovanni, who will also be joining
2 us at 10 o'clock, is on the island of Kauai. We
3 currently have eight seated commissioners of a
4 possible nine. For the commissioners who miss all
5 or a portion of a hearing may review the
6 transcripts. I note for today in addition to the
7 current absence of Commissioners Okuda and
8 Giovanni, that Commissioner Chang will be absent
9 from 10:30 a.m. to 1:00 p.m.

10 On March 25th the Commission last heard
11 docket number DR -- oh, sorry, excuse me. Nix
12 that. We got through all of our business
13 yesterday, so today our next agenda item is Docket
14 No. A11-791 HG Kauai Joint Venture, LLC, HoKua
15 Place, Kauai, petition to amend the land use
16 district boundary of certain lands situated at
17 Kapaa, Island of Kauai, State of Hawaii, consisting
18 of 97 acres from the agricultural district to the
19 urban district, Tax Map Key No. (4) 4-3-003, a
20 portion of lot one.

21 Will the parties please identify
22 yourselves for the record.

23 MR. YUEN: William Yuen and Jenna Ahu, on
24 behalf of Petitioner HG Kauai, LLP.

25 CHAIRPERSON SCHEUER: Thank you,

1 Mr. Yuen.

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

7 CHAIRPERSON SCHEUER: Nice to see you
8 both.

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

13 CHAIRPERSON SCHEUER: It's nice to see
14 you, Bryan.

15 MR. COLLINS: Aloha, good morning. Lance
16 Collins and Bianca Isaki for Intervenor
17 Liko-0-Kalani Martin, who is also present on the
18 Zoom.

19 CHAIRPERSON SCHEUER: Welcome.

20 On March 24th -- I'm going to update the
21 record. On March 24th additional public testimony
22 was received on this matter. Also on the 24th the
23 Commission received the Petitioner's revised
24 witness exhibit lists, Exhibits 39 through 43, as
25 well as the certificate of service. On March 25th,

1 the Commission received the Petitioner's revised
2 witness exhibit list, Exhibit 45 and the
3 certificate of service.

4 On April 1st we emailed the meeting
5 agenda for the April 14th and 15th, 2021 meetings
6 to the parties in this docket and to our statewide
7 and county mailing lists. On the same date,
8 April 1st, the Commission received Intervenor
9 Martin's motion to confirm deadlines for
10 Commission's decision-making shall be extended. On
11 April 5th, the Commission mailed out the meeting
12 agenda to the parties in this docket and to the
13 statewide and county mailing lists.

14 On April 9th, the Commission received
15 five additional pieces of public testimony. On
16 April 12th, the Commission received the Office of
17 Planning's response to the Intervenor's motion to
18 confirm deadlines for Commission decision-making
19 shall be extended. And on the same date the
20 Commission received additional public testimony.

21 Finally, on April 13th, the Commission
22 received the Petitioner's opposition, the
23 Intervenor's motion to confirm deadlines.

24 Having updated the record, let me briefly
25 go over our procedures today. I will first

1 recognize the additional written testimony that has
2 been submitted in this matter. I will note for any
3 members of the public who are listening in, on
4 March 10th and 11th the Commission allowed oral
5 public testimony on this matter. After oral public
6 testimony had been heard on March 10th, I made it
7 clear to all parties and members of the public that
8 public testimony was then closed in order to move
9 forward with the evidentiary portion of the docket.
10 The Commission will continue to accept written
11 testimony until a final decision is reached. We
12 may also allow for oral testimony if and when a
13 proposed decision and order is considered, but no
14 more testimony, orally, will be accepted during the
15 evidentiary portion of this docket.

16 On March 25th, the Commission established
17 a continuation of the proceeding with Petitioner's
18 presentation for today. Petitioner will resume
19 their presentation with the next witness on their
20 list. If and when the Petitioner is completed with
21 their presentation, they will be followed in turn
22 by the County of Kauai, the state Office of
23 Planning, and then by Intervenor Liko-O-Kalani
24 Martin.

25 And as I noted before, from time to time,

1 approximately once per hour, I will seek to take a
2 ten-minute break and additional time for lunch.

3 Are there any questions from the parties
4 for our procedures for today?

5 Mr. Yuen?

6 MR. YUEN: Do you know approximately what
7 time we're going to go to?

8 CHAIRPERSON SCHEUER: No, I do not. I
9 will poll the Commission when we're all here. We
10 went until 4:30 yesterday.

11 Any further questions, Mr. Yuen?

12 MR. YUEN: No. Thank you.

13 CHAIRPERSON SCHEUER: Mr. Donohue, any
14 questions on our procedures?

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

16 CHAIRPERSON SCHEUER: Mr. Yee?

17 MR. YEE: No questions.

18 CHAIRPERSON SCHEUER: Mr. Collins.

19 MR. COLLINS: None at this time. Thank
20 you.

21 CHAIRPERSON SCHEUER: I now want to
22 recognize any written public testimony that has
23 been received on this docket. On the 24th we
24 received written testimony -- and these have been,
25 I believe, all posted to the Commission's website

1 and will be included as part of the record of this
2 docket. We received testimony from Greg Gonsalves,
3 on March 24th, from Patricia Lawrence and B.A.
4 McClintock, as well as Susan Staton and Donald
5 Urway and Carl Arumay on the 9th of April, and Dee
6 Austin on April 12th.

7 Mr. Hakoda or Mr. Derrickson, has there
8 been any additional written testimony received on
9 this docket?

10 MR. DERRICKSON: This is Scott
11 Derrickson. Not up to this point, no.

12 CHAIRPERSON SCHEUER: Thank you.

13 As I said, additional written testimony
14 will continue to be received and will be posted to
15 the website.

16 So now we will continue with our
17 presentation. Mr. Yuen, what is the order of your
18 witnesses for this morning?

19 MR. YUEN: First, we have David Rietow,
20 followed by Randall Okaneku and Ricky Cassidy. I
21 believe Mr. Rietow is in the audience.

22 CHAIRPERSON SCHEUER: I have promoted
23 Mr. Rietow to be a panelist. If you will enable
24 your audio and video, Mr. Rietow.

25 Mr. Rietow, if you could enable your

1 audio and video. If you have a way of contacting
2 your client, Ms. Ahu.

3 MS. AHU: Yes, I'm going to give him a
4 call right now.

5 CHAIRPERSON SCHEUER: Commissioner Chang?

6 COMMISSIONER CHANG: Thank you,
7 Mr. Chair. I apologize that I am going to be gone
8 for portions of today but I wanted to ask Mr. Yuen:
9 When did they intend to call Nancy McMahon, as I
10 would like to make sure I'm present for her
11 testimony.

12 CHAIRPERSON SCHEUER: Mr. Yuen.

13 MR. YUEN: Either at the next meeting or
14 in one of the May meetings. I'm not sure because
15 she works on Thursday at a different employer, so
16 I'm trying to accommodate her when we have a
17 Wednesday hearing.

18 COMMISSIONER CHANG: Thank you for
19 confirming that.

20 Thank you, Mr. Chair.

21 CHAIRPERSON SCHEUER: Thank you,
22 Commissioner Chang.

23 Mr. Collins?

24 MR. COLLINS: Mr. Chair, while we're
25 waiting for Mr. Rietow, I was wondering if the

1 Commission had made a decision on when it's going
2 to consider our motion.

3 CHAIRPERSON SCHEUER: The motion on the
4 extension of time, no, we have not actually made a
5 decision on when we're going to consent to that
6 motion. Thank you, Mr. Collins.

7 MR. COLLINS: Thank you.

8 CHAIRPERSON SCHEUER: Give it another
9 couple minutes and if Mr. Rietow is not
10 available -- I'd like to try to be efficient in our
11 management of time, Mr. Yuen.

12 MR. YUEN: We're talking to him on the
13 phone right now, trying to get him.

14 CHAIRPERSON SCHEUER: What is the nature
15 of the problem?

16 MR. YUEN: He's muted and he's not quite
17 sure how to unmute himself. Janna's talking to him
18 right now.

19 MS. AHU: Mr. Chair, can you promote
20 Mr. Rietow again, he's trying to get back in.

21 CHAIRPERSON SCHEUER: He's promoted.

22 MR. YUEN: Not everyone has had to become
23 proficient in Zoom.

24 CHAIRPERSON SCHEUER: I see Mr. Rietow.
25 We can hear you now, Mr. Rietow. Hello.

1 MR. RIETOW: You can see me and you can
2 hear me, right?

3 CHAIRPERSON SCHEUER: Yes, and I will
4 swear you in and then Mr. Yuen will ask you
5 questions.

6 (David Rietow was sworn.)

7 CHAIRPERSON SCHEUER: Thank you.

8 Please proceed Mr. -- well, who is doing
9 the cross?

10 MR. YUEN: I'm going to do it.

11 MS. AHU: Mr. Chair, can I share my
12 screen, please, I have his PowerPoint.

13 CHAIRPERSON SCHEUER: You may.

14

15 DIRECT EXAMINATION

16 BY MR. YUEN:

17 Q. Mr. Rietow, will you please state your
18 name and address for the record.

19 A. David Rietow, 64-5314 Puukapu Street,
20 Kamuela, Hawaii, 96743.

21 Q. Mr. Rietow, what is your profession and
22 your business affiliation?

23 A. Business agriculture is what I am. I
24 have a degree from Arizona State University in
25 agronomy, which is a soil science.

1 Q. Can you briefly describe your experience
2 in agricultural in the State of Hawaii?

3 A. Well, I came back -- I'm born and raised
4 in Hawaii and I came back from the military in late
5 June of '69 and I went to work for Maui pineapple
6 company. I'd been working in agricultural for a
7 little more than 40 years so I spent ten years with
8 Maui Pine, in pineapple. I got hired by Mac Farms
9 of Hawaii in south Kona, which is a 4,000-acre
10 macadamia orchard. I then went into a flower and
11 foliage company, which a partner and I bought, and
12 from there on out I came back into managing
13 tropical fruit and coffee.

14 MR. YUEN: I'd like to qualify Mr. Rietow
15 as an expert in agriculture.

16 CHAIRPERSON SCHEUER: I note that we, at
17 the previous hearing, we went through a long
18 discussion over the qualification of experts in
19 this proceeding and we declined to do so.

20 BY MR. YUEN:

21 Q. Mr. Rietow, turning to your PowerPoint,
22 can you first describe the productivity
23 classifications of the HoKua Place property.

24 A. The primary one is the Land Study Bureau,
25 and they are A being good and E being bad. And

1 most of the qualifications are not A, there are no
2 A qualifications, it's B, C, D and E. That means
3 it's not prime ag land.

4 Q. Under the ALISH system, what is the
5 classification?

6 A. You know, it basically tries to signify
7 lands of importance but it doesn't say anything
8 about it.

9 Q. Could you please describe the suitability
10 of the HoKua Place property for agriculture.

11 A. Well, if I was going to farm someplace I
12 probably wouldn't farm in that area because you've
13 got the northeast trades coming right at you, so
14 you've got a wind problem, you've got a salt air
15 problem, your land itself is not flat, it's got
16 some slopes, and what-have-you, in it. And right
17 now it's got a bigger problem, which is it's right
18 next to the Kapaa Middle School and it's got
19 residences and subdivisions around it, so that is
20 one of the biggest problems it has.

21 Q. What steps would be required to establish
22 agricultural use on the HoKua Place property?

23 A. Well, you know, I think it's a very hard
24 thing to do because I think this land was sugar
25 land in the very, very long past, and there really

1 wasn't anything around it in those days and it had
2 its own water system, and that's gone, long gone,
3 and you now got a school, you've got houses around
4 them, and the land's not that great. But I think
5 the issues are the Kapaa Middle School and the
6 residential subdivisions because this kind of
7 agriculture is going to create dust, you're
8 spraying crops, which that may float around and --
9 anyway, I think the biggest problem with it right
10 now is the fact that it's near a middle school and
11 it's close to residential subdivisions.

12 Q. Would it be feasible to use an abandoned
13 plantation agricultural irrigation system miles
14 away to furnish water to the HoKua Place property?

15 A. Well, I think when it had crops on it, I
16 think there was a water system but it was a private
17 water system and that's long gone, I don't know if
18 you could even find the pipes now. What you'd have
19 to probably do is install the water system, county
20 water, which is going to cost you a lot more money
21 than if you had a private water system. And,
22 again, you got wind breaks you got to put in.

23 Q. Could you please describe the supply of
24 agricultural land on Kauai.

25 A. There's about 140,000 acres of land

1 classified for agriculture. I think there's
2 63,000 acres actually in some sort of agriculture,
3 most of it being livestock, and there's only about
4 2000, a little over 2000 acres that are in food
5 production, primarily taro and tropical fruit,
6 which leaves about 76,000 acres of agricultural
7 land on Kauai that's not being farmed.

8 Q. Where are the desirable lands for
9 agriculture on Kauai?

10 A. Well, I would, if it were up to me, I'd
11 say it's from Lihue down through Poipu and into
12 Waimea and beyond. That side of the island you've
13 got open land, you've got land that's designated
14 agriculture and you don't, in many cases, don't
15 have a lot of subdivisions that are right up next
16 to the land that is being farmed -- some of it is
17 being farmed now, but that's where I would go with
18 ag land.

19 Q. Are the soil and other growing conditions
20 better on that side of the island?

21 A. Yes, and the land is also flatter, so you
22 don't have a lot of issues with, you know, hills
23 and things that are hard to cultivate.

24 Q. Would you please describe the factors
25 that discourage food sustainability on Kauai.

1 A. I think the issues that we have in
2 agriculture and the development of food on Kauai is
3 we lack skilled and unskilled labor that's willing
4 to be in agriculture. We lack agriculture
5 infrastructure, we lack adequate marketing and we
6 compete with the mainland, especially California,
7 and they can grow and ship to Hawaii food less
8 expensively than we here would grow it and sell it.
9 So you're competing with specifically California,
10 and other places, for a lower cost food product.

11 Q. What conclusions did you reach on the
12 effect reclassifying the HoKua Place property to
13 the urban district will have on agricultural
14 production on Kauai?

15 A. Well, in terms of the 96 acres, I think
16 if you take it out of ag and put it in residential
17 there's going to be absolutely a minimal impact on
18 Kauai in terms of its ability to feed its
19 population. I think the bigger problem is lack of
20 farmers and farm labor, and that's what we've got
21 to come to grips with. And, again, if you look at
22 farming, there are people who can farm very well in
23 Hawaii but because all their supplies come from the
24 mainland, or somewhere else, their cost is going to
25 be bigger than shipping the food directly from a

1 place like California. That's the problem we have
2 here, and so you really got to convince people to
3 buy local food or you really have a problem.

4 MR. YUEN: I have no further questions
5 for this witness.

6 CHAIRPERSON SCHEUER: Okay. Let's start
7 with the county. Do you have questions for
8 Mr. Rietow?

9 MR. DONAHOE: Thank you, Chair.

10

11

CROSS-EXAMINATION

12 BY MR. DONAHOE:

13 Q. Good morning, Mr. Rietow.

14 A. Good morning.

15 Q. I want to give a little history, just so
16 that I'm clear. You mentioned in your Powerpoint
17 presentation the Land Study Bureau ratings. So the
18 Land Study Bureau of the University of Hawaii, they
19 prepared an inventory and evaluation of the state's
20 land resources during the '60s and '70s, correct,
21 is that your understanding?

22 A. Well, that's -- yeah, I guess that is my
23 understanding.

24 Q. And then the Bureau grouped all the lands
25 in the state, except those in the urban districts,

1 into homogenous units of land types that described
2 their condition and environment, they rated the
3 land on its overall quality in terms of
4 agricultural productivity, correct?

5 A. Yes.

6 Q. And they also appraised the performance
7 for different selected alternative crops and
8 delineated various other land types and groupings
9 based on the soil properties and productive
10 capabilities as well.

11 A. Yeah, I haven't seen that but if you have
12 it in front of you, that's what it is.

13 CHAIRPERSON SCHEUER: Sorry, just one
14 moment, Mr. Donahoe. I just want to note that
15 Commissioner Okuda has joined the meeting.

16 COMMISSIONER OKUDA: This is Gary Okuda,
17 that is correct. Thank you.

18 BY MR. DONAHOE:

19 Q. Mr. Rietow, would you disagree that that
20 was the purpose in the process of how the Land
21 Study Bureau came up with its rating?

22 A. You know, I really don't know how they've
23 came up with those ratings, I've been farming for
24 40 years and I've not used them. I look at the
25 land and decide what it can do for me and I go from

1 there, but I personally have never used the
2 ratings.

3 Q. And then you testified that on page 3 of
4 your PowerPoint that the Land Study Bureau
5 classified the soils as B, C, D and E, correct?

6 A. Yeah, I classified a B, C, D and E, but
7 you'd have to go dig into it to find out how much
8 land was B, how much land was C, D, E, and I
9 haven't done that.

10 Q. And so those ratings, in and of
11 themselves, they don't necessarily reflect that
12 agriculture is not possible at the petition area,
13 correct?

14 A. I think, initially, you know, that land
15 was in agriculture, and I think the reason right
16 now for not going back into agriculture is what you
17 have around you. When you're farming, you're
18 spraying insecticides, herbicides, fertilizer,
19 you've got dust and wind blowing from cultivation,
20 and you're sitting in an area with a middle school
21 and a residential subdivision, and a number of
22 residential subdivisions, I think it's crazy to go
23 back in there and farm it. You're not going to get
24 left alone, the people are going to come after you
25 and say you can't do this, dust is coming into my

1 house. So you put up wind breaks, you put up all
2 this kind of stuff and you spend an awful lot of
3 money in an area where you really don't have to
4 spend the money, I mean there's -- what is it --
5 70,000 acres or so of land that's not being used on
6 Kauai for agriculture.

7 Q. Do you have an opinion or would you agree
8 that the Land Study Bureau ratings that were
9 developed in the 1960s and '70s may require an
10 update because many, obviously, rezonings have
11 happened since 1972 and agricultural priorities may
12 have changed across Hawaii?

13 A. I would agree with that. Like I said,
14 I've been farming for 40 years and I really haven't
15 used them much. I can go out there and look at the
16 land but that's not what we're talking about right
17 now.

18 Q. And you also mentioned ALISH lands as
19 prime agricultural lands. So just to clarify,
20 ALISH established the three classes of
21 agriculture-important lands to assist with the
22 assessment of long-term implications of various
23 land use options.

24 Is that accurate?

25 A. I don't use it so I couldn't tell you

1 whether it's accurate or not.

2 Q. So you don't know what the three classes
3 of prime agricultural land are.

4 A. No, I've gotten involved in them way
5 back, quite a few years ago, and some of them I
6 really didn't agree with. And so, like I said, I
7 haven't paid much attention, especially the ALISH,
8 I would pay more attention to the Land Bureau study
9 of A, B, C, D, E.

10 Q. Do you know what the term prime rating
11 means under ALISH?

12 A. Well, prime agricultural land is land
13 that should be farmed as prime land but, again,
14 that goes back to what are you growing and what do
15 you have around you. In the old days we didn't
16 have these issues, there wasn't a school there,
17 there wasn't residential subdivisions there.

18 Q. So do you know approximately, since you
19 don't usually use the ALISH system, approximately
20 how much land in the petition area would be
21 considered prime agricultural lands under ALISH?

22 A. On that piece of property I don't think
23 you really have any prime agricultural land, I mean
24 it's -- you know, if you're farming large acreage,
25 like sugar, pineapple, that kind of stuff, you can

1 afford to have some substandard land, as long as it
2 connects up with what you're doing. This is
3 isolated right now and it's severely isolated. You
4 could take the soil and look at the soil and say,
5 well, part of this is great soil, part of it's
6 rocky soil, part of it's on a hilltop, you know, to
7 me it's immaterial at this point. It's not a good
8 place to be farming right now. With everything
9 that's around it you just -- people are just going
10 to rag you until you leave.

11 Q. And you testifying that the 96-plus acres
12 of agricultural land, if it was made into urban
13 development it would have a minimal impact on
14 Kauai's ability to feed its population.

15 Is that what you testified to?

16 A. Yes.

17 Q. And then again, how is specifically that
18 conclusion developed? I believe you mentioned
19 something about the west side.

20 A. Well, if you go back through the
21 agricultural land on Kauai, you've got 76,000 acres
22 of ag land that's not being used, so it's
23 classified "agriculture." And if you look at the
24 west side, the west side is, you know, you don't
25 have a lot of subdivisions wrapped around your farm

1 land, you've got a lot of open space farm land that
2 could be used. It's not hill-and-dale, it's pretty
3 flat and pretty easy to use and the soil's pretty
4 good. So you know, if it were me, farming, you
5 know, I wouldn't touch the land on the windward
6 side if I could get land on the other side.

7 Q. But doesn't the west side have issues
8 regarding what you mentioned, spraying, dust,
9 chemicals, which are near residences in the
10 proximity of Waimea Canyon Middle School, wouldn't
11 those raise the same issues as it would in what
12 you're talking about with HoKua Place?

13 A. Any land, even if it's zoned agriculture,
14 in the long-term it has been crowded by housing and
15 subdivisions and whatever else. I said, yes,
16 that's going to cause trouble but I think there is
17 more open land on the west side of the island, and
18 it's better land, so why would you mess with a
19 piece of land that's sitting there with the
20 tradewinds hitting it and a school around it and
21 residential subdivisions around it. I mean, I
22 wouldn't do it.

23 Q. So you believe that agriculture should be
24 focused on the west side; is that true?

25 A. Yeah, I'd focus it on the west side. I

1 mean you've already got -- I don't know how many
2 thousands of acres on the very end of the west
3 side, there's farming now. It's not food farming
4 but it's still farming.

5 Q. Are there any other areas that you would
6 consider that agriculture on the island would be
7 sustainable?

8 A. I'd have to take a hard look at it. I
9 haven't spent a lot of time working on Kauai over
10 the last couple of years. If somebody said go out
11 and correct the numbers that we have on our, right
12 now in front of us, because they're probably
13 somewhat old numbers, yeah, you could go out and
14 look at those numbers and get a better handle on
15 what's going on and what's possible. But I think
16 the more residential lots and subdivisions you
17 have, the harder it's going to be.

18 Q. The harder agriculture is going to be.

19 A. Oh, yeah. People just don't like to have
20 dust in their face and herbicides and spray dust.
21 I mean you know the drill. A subdivision should be
22 nice and peaceful and calm without dust going
23 through it and threat of pesticides, and all that
24 kind of stuff, which are part of farming.

25 MR. DONAHOE: Excellent. Thank you,

1 Mr. Rietow. Thank you, Chair. Thank you,
2 Commission. I have nothing further.

3 CHAIRPERSON SCHEUER: Thank you,
4 Mr. Donohue.

5 Mr. Yee.

6 MR. YEE: Thank you. The Office of
7 Planning has no questions of this witness.

8 CHAIRPERSON SCHEUER: Mr. Collins or
9 Ms. Isaki, which one of you will -- Ms. Isaki.

10 MS. ISAKI: Thank you, Chair. Yes, I'll
11 be asking the questions.

12

13 CROSS-EXAMINATION

14 BY MS. ISAKI:

15 Q. Good morning, Mr. Rietow.

16 A. Good morning.

17 Q. Picking up on your last point, and this
18 was actually from your presentation on slides
19 for -- you wrote that the proximity of Kapaa Middle
20 School and residential subdivisions are going to
21 require extensive buffers and terrace farming to
22 prevent dust, spray, drift and noise, correct?

23 A. Correct.

24 Q. And you've testified and also written
25 that, for instance, in your 2018 report that part

1 of the FEIS, that that will be a major constraint.

2 That's the major constraint on
3 agricultural development on HoKua Place?

4 A. Yes.

5 Q. Is that correct?

6 A. Yes.

7 Q. And are you aware -- thank you.

8 Are you aware of any federal, state or
9 Kauai County requirements for buffers for
10 agriculture by schools or residences?

11 A. No, I'm not.

12 Q. Are you aware of the Hawaii Right to Farm
13 Act, which is HRS, Hawaii Revised Statutes,
14 Chapter 165?

15 A. I'm aware of it, I haven't read it.

16 Q. So you're not aware that no farming
17 operation could be declared a nuisance for any
18 reason if the farming operation has been conducted
19 in a manner that's consistent with generally
20 accept --

21 CHAIRPERSON SCHEUER: Ms. Isaki, the
22 audio cut out and we lost you partway through a
23 sentence.

24 BY MS. ISAKI:

25 Q. I'll repeat my last sentence, hopefully

1 it's the one.

2 Are you aware that no farming operation
3 may be declared a nuisance, for any reason, if it's
4 being conducted in a manner consistent with
5 generally-accepted agricultural management
6 practices?

7 A. I'm generally aware of it but I've not
8 read it. I don't know how strict it is or how
9 unstrict it is.

10 Q. Thank you.

11 And then also on your presentation, I
12 think it's page 4, you talked about salt spray
13 limiting crop selection.

14 Is it correct that the following crops
15 have a high salt tolerance; bell peppers, broccoli,
16 cabbage, kale, cumquats, spinach and tomato?

17 A. Yeah, I think every crop's got its own
18 issues with salt spray and all that kind of stuff.
19 Salt spray, in many cases, isn't a huge problem,
20 but if you can farm on open land that's not getting
21 hit by salt spray you're better off.

22 Q. And could trees, like ulu or bamboo be
23 grown there?

24 A. You can grow bamboo with salt spray.
25 Ulu, I'm not sure.

1 Q. And are the following plants tolerant to
2 wind that could be grown in an area with a lot of
3 wind, blueberries, currents, raspberries,
4 strawberries, lemons, pomegranate, arugula, bok
5 choy, beans, carrots, chard, garlic, kale, leeks,
6 lettuce, potatoes, zucchini and tomatoes?

7 A. Let me just give you a little study that
8 I did on orchard crops now. If we planted orchard
9 crops behind a wind break and we planted orchard
10 crops out in the wind, and the growth in the crops
11 that were behind the wind break grew twice as fast
12 as the crops that were out into the open wind, you
13 know, salt spray or no salt spray. So the wind is
14 an issue with anything that you grow. If you're
15 going to put yourself out there in a high wind
16 environment then you need to create wind brace, you
17 need to create other things that keep that wind
18 from retarding your plant.

19 Q. What were the kind of orchard crops that
20 you're describing now?

21 A. Well, orchard crops, the big orchard
22 crops, I mean macadamia is what I've spent a lot of
23 time with, and my tests were on macadamia, the one
24 I just described.

25 Q. Are you aware of the farming and crop

1 growing activities in the surrounding area?

2 A. Say that again.

3 Q. Are you aware of any farming or are you
4 aware of the farming and crop growing activities in
5 the surrounding area in Kapaa?

6 A. No.

7 Q. On slide five of your presentation you
8 mentioned extensive brush clearing and application
9 of soil amendments required; is that correct?

10 A. In item five. I think that area right
11 now is, it's got small trees and shrubs and stuff
12 on it, so you'd have to clear it, if that's where
13 you're headed.

14 Q. Have you ever applied soil amendments to
15 your macadamia nut farm soils or orchard or flower
16 soils?

17 A. What was the question, have I used soil
18 amendments, is that what you said?

19 Q. Yes.

20 A. Let's see, how do I get to this one. I
21 think there's some basic issues with soil
22 amendments and farming, what-have-you. A lot of
23 your fine root systems are near the surface, and
24 then you have a deeper root system, but the feeding
25 root systems are a lot closer to the surface than

1 the deep root systems are. And the conflict you
2 have in farming is if you spray a lot of
3 pesticides, let's say on a macadamia orchard, your
4 nuts fall onto the ground, you've got to go and
5 pick them up, and if you have a bunch of weeds in
6 there it's difficult to find them. So you use a
7 little bit of herbicide under the trees to keep the
8 weeds down so you can find the macadamia nuts,
9 okay, and that's your crop. In doing so you've
10 hurt the feeder roots that are near the surface.
11 So it's a compromise situation, it depends on what
12 you want on the surface.

13 Q. So is your testimony -- I'm sorry, by
14 soil amendments are you referring to pesticides?

15 A. Soil amendments, you put soil amendments
16 under your trees, right? And the rain or the water
17 or the irrigation moves those down a ways. Most of
18 the feeder roots which are going to feed on that
19 herbicide are going to get it up near the surface.
20 And if you put herbicide on top of that to get rid
21 of the weeds so you can find the nuts, you're
22 damaging some of those feeder roots that are right
23 on the surface, so that's the compromise you make.
24 Do you want to have a bunch of weeds and have
25 trouble finding your crop or do you want to have a

1 little bit of compromise, but it is a compromise on
2 your feeder roots.

3 Q. So perhaps my question is: Have you made
4 that compromise in your other crops, have you
5 applied soil amendments to your other crops?

6 A. Have I applied soil to other crops?

7 Q. Soil amendments, I'm assuming you mean
8 fertilizer?

9 A. Yes.

10 Q. Yes, okay, thank you. That is actually a
11 more simple question, I think.

12 A. We also take samples, leaf tissue
13 samples, and we analyze them to see what nutrients
14 are being drawn up into the plant, and so if we're
15 not getting enough of the nutrients that we feel we
16 need -- as an example, phosphorus in an orchard, if
17 you don't provide phosphorus you have what they
18 call crown die-back, the top of the tree starts to
19 lose its leaves and that's a sign that you're not
20 fertilizing properly, so you got to go back in
21 there and do something.

22 Q. Thank you.

23 On your slide on number six, that one's
24 the one titled Agricultural Land on Kauai. Does
25 aggregate land -- do you want me to put that slide

1 up, are you trying to find it?

2 A. I have it here. That's item five or six?

3 Q. Six, the one titled Agricultural Land on
4 Kauai?

5 A. Well, this one says lack of agricultural
6 infrastructure --

7 Q. I'm sorry, I think I was looking at the
8 PDF page.

9 A. Come again?

10 Q. I think I was looking at the PDF page.
11 Yeah, mine is number six, but it's the one that
12 says Agricultural Land on Kauai, but you remembered
13 having a slide like that in your presentation,
14 correct?

15 A. What was the heading on that one again?

16 Q. Agricultural Land on Kauai.

17 A. Yeah, I have it here. Number eight on
18 mine.

19 Q. I'm not sure why mine is different.

20 A. We went through that a few minutes ago.

21 Q. Right, right, that's the one.

22 Does aggregate land that has access to
23 water sources like streams from those who do not in
24 your assessment of Agricultural Land on Kauai?

25 A. Well, these numbers come from university

1 or somewhere else, I didn't create these numbers.

2 Q. Right, okay, thank you for that.

3 Are you aware that the Hawaii Department
4 of Agriculture lists this parcel as within the
5 service area of the East Kauai irrigation system?

6 A. Run that by me again.

7 Q. Are you aware that the Hawaii Department
8 of Agriculture lists this parcel as within the
9 service area of the East Kauai irrigation system?

10 A. No.

11 Q. Are you aware of the streams passing by
12 and through the parcel?

13 A. The stream is quite ways away from that
14 property.

15 Q. So you're not aware of any streams
16 passing adjacent to or through the property?

17 A. Well, yeah, there are, and if you're
18 saying let's go get water from the stream, it's
19 ways away. It runs through the Bette Midler
20 property.

21 Q. In your agricultural master plan, which
22 was included in the EIS for this project, you noted
23 approximately 50 inches of annual rainfall,
24 correct?

25 A. I guess that's correct.

1 Q. And it's your testimony that that is not
2 enough rain to conduct agriculture.

3 A. We generally use 60 inches of rainfall as
4 the optimum, and, again, you've got to have it --
5 you can't have it in one month and then hope for
6 the best so it's an annual 60 inches of rainfall
7 will give you basically a good crop if it's
8 diversified enough. That's what I use anyway.

9 Q. Okay, thank you.

10 And also for that EIS, for this project,
11 you prepared an agricultural master plan that
12 described a goat farm, correct?

13 A. It did what?

14 Q. Your agricultural master plan that you
15 prepared and is part of the EIS for this project,
16 it is for a goat farm, correct?

17 Have you ever operated a goat farm?

18 A. No.

19 Q. And, sorry, I have my last batch of
20 questions here. This is your seventh slide, it's
21 my second to last one, and it's about food
22 sustainability on Kauai, and you described a lack
23 of agricultural infrastructure.

24 Would growing food on parcels close to
25 residential areas, including the subject parcel,

1 reduce cost of transportation between crops and
2 consumer markets?

3 A. Sure. But I think you have much more
4 flexibility with your farming if you don't have a
5 school around you or residences around you. People
6 who live in homes and who do not farm, they're
7 accountants or something like that, really don't
8 understand the farming concept, so they just
9 don't -- in my opinion, you know, you're limited if
10 you're around a school or subdivision, or
11 what-have-you, you're just limited in what you can
12 do.

13 Q. Are you aware of any litigation, a
14 nuisance claim against any farm that's been brought
15 in Hawaii, successfully?

16 A. No, I don't.

17 Q. Are you aware of a Kauai food hub which
18 brings local produce to market in Hawaii?

19 A. Run that by me again.

20 Q. Have you heard of something called a
21 Kauai food hub?

22 A. No, I haven't.

23 Q. Okay, thank you.

24 And in response to the county, you
25 discussed the -- actually -- sorry, I'll withdraw

1 that.

2 When you described California competition
3 for agricultural markets, would that not be a
4 problem for all agricultural activities in Hawaii?

5 A. It is, yes.

6 MS. ISAKI: Thank you. That's my last
7 question.

8 CHAIRPERSON SCHEUER: Folks, it's 9:52.
9 I'm going to suggest that we take a 10-minute
10 break, resume at 10:02 a.m., with Commissioner
11 questions of the witness. Recess until 10:02.

12 (The hearing was at recess.)

13 CHAIRPERSON SCHEUER: It's 10:02, we're
14 back on the record. We're going to start
15 Commissioners questioning of the witness with
16 Commissioner Chang, who has to leave at 10:30.

17 Commissioner Chang.

18 BY COMMISSIONER CHANG:

19 Q. Thank you, Mr. Chair.

20 Good morning, Mr. Rietow, thank you for
21 being here this morning to provide your testimony.

22 A. Good morning.

23 Q. I just have a few questions.

24 You made a statement: I look at the land
25 and I decide what to do. So have you looked at

1 this land where the subject, prior, project is?

2 A. Yes.

3 Q. When did you look at the land?

4 A. Oh, it's been a couple of years since
5 I've been up there.

6 CHAIRPERSON SCHEUER: Mr. Rietow, could
7 you adjust your -- if you're on a laptop, your
8 laptop screen, or your body, yes, thank you, so
9 that we get the full presence. Thank you.

10 Sorry, Commissioner Chang.

11 BY COMMISSIONER CHANG:

12 Q. No, thank you.

13 So, Mr. Rietow, a couple of years ago,
14 was it when you prepared the EIS; do you recall?

15 A. It was 2018.

16 Q. And you walked the lands, where the
17 96 acres, you walked the site?

18 A. Yes.

19 Q. And you knew that it was previously in
20 sugar cane, it was in plantation for many decades.

21 A. Well, that was my understanding, that was
22 why the water system was there.

23 Q. And when you reference agriculture use,
24 you assume that there will be herbicides,
25 pesticides and spraying. Are there other kinds of

1 crops that can be grown without the use of those
2 chemicals?

3 A. Yes, I think people do, it's more costly,
4 but I know of people who do not use pesticides or
5 any of that and do fine.

6 Q. Because your assumption that the biggest
7 problem is the middle school and the residential
8 area because of the spraying and the dust. If the
9 agricultural activity on the land did not generate
10 or did not utilize herbicides, pesticides or was
11 the kind of crop that created dust, would your
12 assumption change about the property?

13 A. Well, I think farming in Hawaii is
14 expensive, and so what you're trying to do is
15 you're trying to farm a crop that you can sell,
16 economically, and you don't have a lot of
17 unnecessary money spent to compensate for
18 residential areas and compensate for the school and
19 this kind of stuff. I mean, if that were my
20 92 acres, I'd look for something else to do with
21 it.

22 Q. Well, it's not your 92 acres --

23 A. I know.

24 Q. So it could be used -- I mean there could
25 be small crop farmers who may be interested in

1 doing more organic farming, smaller kind of crops.

2 Would you agree that is an option for
3 that land?

4 A. Yeah, you can do a lot of things with the
5 land if you're willing to spend the money and you
6 can get a profit back, or if you don't want to get
7 a profit back, you can. In most cases a business
8 is about getting an income from whatever you're
9 doing. Nobody farms for a loss, that I know of.

10 Q. And you're right, I have a very good
11 friend, Richard Ha, on Hawaii island who told me
12 exactly the same thing.

13 A. I know who he is.

14 Q. And Richard said: If a farmer's not
15 going to make money, he's not going to farm.

16 A. Exactly.

17 Q. So let me ask you this. You raise a
18 question about sustainability, that most of our
19 crops, most of our produce, they're coming from,
20 they're being shipped in and they're coming from
21 California at a very cheap rate.

22 A. They're coming from other places as well,
23 they're coming from Venezuela and all kinds of
24 places.

25 Q. Exactly. And isn't that the point, that

1 we ship, we have to import over 95 percent of our
2 goods. Would you agree with that, between 90 to
3 95 percent?

4 A. Well, I don't know but it's a big number.

5 Q. So if we are to promote sustainability,
6 sustainable ag, wouldn't utilizing all ag lands in
7 alternative crops, diversified crops, help us get
8 to this sustainable ag?

9 A. Yeah, but you've got about 76,000 acres
10 on Kauai right now that could be farmed that's not
11 being farmed.

12 Q. And Mr. Rietow, do you know that almost
13 13,300 acres are used by the SEA-CROP industry,
14 which is not sustainable ag that is not used,
15 right?

16 A. Yes, I agree with you.

17 Q. Okay. So that's 13,000 acres of that
18 seven, and that's in Waimea, that's in the west end
19 that you talked about.

20 A. Right.

21 Q. So if we're going to promote sustainable
22 ag, shouldn't we be looking -- because right now
23 I'm looking at your, the FEIS, it's on page 131
24 called: 2015, Crop Summary by Acreage.

25 On the island of Kauai, only 1,199 acres

1 are diversified crops. So wouldn't that be
2 beneficial to the people of Kauai that we use
3 available agricultural lands to promote sustainable
4 ags?

5 A. Yeah, I think that's right. I think that
6 the County of Kauai, its government, needs to spend
7 an awful lot more time promoting and helping
8 farmers. That's one of our problems now. You
9 know, they say, oh, we want food, we want to grow
10 our own food and then nobody does anything.

11 Q. Well, here we've got 96 acres of
12 available ag land that possibly could help the
13 people on the east end, or at least in Kapaa, to be
14 more sustainable. Because based upon your
15 assumptions, that if the type of crop they use,
16 herbicides, pesticides and created dust, that would
17 be the problem with the schools and the residential
18 area. If there were alternative crops that didn't
19 use those pesticides, didn't create dust, then that
20 land might be -- then those, the burden or the
21 hindrance to do ag, that you said it was the school
22 and the residential area, may not become such a
23 problem.

24 A. You can do anything with almost anything.
25 All I'm saying is if I was going to bring all my

1 stuff to Kauai and build a house and create a farm,
2 that would be one of the last places I'd go because
3 I see problems with the residents and the school
4 and everything else, so I'd go look for a place on
5 the west side where I don't have those problems.
6 But, yes, you could create a farm. I think the
7 issue becomes how much money are we going to put
8 into it and can you make a profit out of it.

9 Q. But that same question would go to any
10 kind of, to a developer who wants to put in
11 residential homes, right?

12 A. That's what we're all about.

13 Q. Okay, all right, so good.

14 So what I understand your testimony now,
15 is that other kinds of crops could be grown on
16 there that may not affect the schools or the
17 residential area, if you put money into it, but it
18 could be possible.

19 A. Yes, it's possible, I mean that land was
20 in farming before.

21 Q. Right.

22 A. And it had a water system before and, so,
23 you know. Personally, I wouldn't do it but, yes,
24 it's possible.

25 COMMISSIONER CHANG: Okay, very good,

1 that's all that I wanted. Thank you very much,
2 Mr. Rietow, I have no other questions.

3 CHAIRPERSON SCHEUER: Thank you very
4 much, Commissioner Chang.

5 Commissioner Okuda.

6 BY COMMISSIONER OKUDA:

7 Q. Mr. Rietow, let me first apologize to you
8 for not being present when you first gave your
9 testimony, I had to be part of a probate court
10 hearing. I assure you I will review the
11 transcript, like all my other Commissioners do, to
12 be sure that every single word you said is received
13 by me and taken into account. And so if you might
14 have covered this before, let me apologize in
15 advance.

16 You are aware that even though it's not
17 part of the petition area, the landowner here has
18 some, a portion of the property, which is larger
19 than the petition area, designated as HoKua ag
20 lots.

21 Are you aware of that?

22 A. Vaguely, yes. I haven't been up to that
23 property in a number of years.

24 Q. Well, maybe to orient yourself you might
25 want to take a look at some type of map or diagram.

1 For example, I'm looking at Petitioner's
2 Exhibit 34, which is entitled HoKua wetlands map,
3 Exhibit 28 overlay, because even though that map
4 deals with wetland location, it does show the
5 proposed development, it shows a location of the
6 middle school and it shows the location of the
7 HoKua ag lots. And so I just basically have
8 probably just a couple of questions, and let me
9 tell you the reason why I'm asking these questions.
10 I'm just trying to get evidence to evaluate, you
11 know, how we weigh the testimony and the position
12 we're getting, okay.

13 Are you aware that the Land Use
14 Commission has long ruled that to have a dwelling
15 on agricultural land, the dwelling must be a farm
16 lot or a dwelling otherwise authorized for,
17 essentially, ancillary or support of bona fide
18 agriculture. Are you aware of that?

19 A. Vaguely.

20 Q. Well, just so that we're all operating
21 off of the same page of music, with your indulgence
22 let me read just one paragraph from an order from
23 this declaratory relief order, the docket number is
24 DR 83-8, it deals with use of property in an
25 agricultural district. And it's a DR order that

1 was signed September 8, 1983, and actually it was
2 signed by Mr. Yuen, who at that time was the
3 chairman of the Land Use Commission.

4 And let me read the very last paragraph
5 of that order because it goes to my question
6 regarding the use or proposed use of property by
7 the petitioner here. And I quote: Based on the
8 above, the Land Use Commission rules that a single
9 family dwelling can be defined as a farm dwelling
10 only if the dwelling is used in connection with a
11 farm where agricultural activity provides income to
12 the family occupying the dwelling and that a single
13 family dwelling which use is accessory to an
14 agricultural activity for personal consumption and
15 use only is not permissible within the land use
16 agricultural district. This ruling is applicable
17 to all lands located within the state land use
18 agricultural district, close quote.

19 Were you, before today, aware that that
20 was a ruling by the Land Use Commission going back
21 to 1983?

22 A. Yes.

23 Q. In other words, to put it more
24 colloquially, it's not permissible to just simply
25 have a papaya tree, so you can grow papayas to eat

1 for breakfast, if that papaya is not being sold
2 commercially, you cannot justify a residential
3 dwelling on property by simply having a personal
4 papaya tree. Is that your understanding?

5 A. Yes, and I think if you're dealing with
6 papaya trees, or orchard crops, you're going to
7 spend quite, you know, five or six or seven or
8 eight years with no crop at all so you can't be
9 fined for that. You have a house and you plant an
10 orchard around your house, you're farming.

11 Q. Okay, I understand that. And, you know,
12 the reality is sometimes people try to skirt the
13 rules and do things like that. I'm trying to
14 assume that the human beings we're going to deal
15 with are lawful, are motivated by pure motive and
16 do not have motive to skirt the rules.

17 So my question is basically this:
18 Assuming that these ag lots are not going to
19 involve people skirting the rules, in other words,
20 putting up the bogus papaya tree and bogusly making
21 representations that somewhere down the road
22 there's going to be an income crop, in other words,
23 assuming that the owners of these properties are
24 going to strictly comply and in good faith comply
25 with this 1983 order, and, frankly, ever since then

1 the Land Use Commission has been reaffirming that
2 holding, we recently did it in an order dealing
3 with short-term vacation rentals on agricultural
4 land.

5 Let me ask you this: What kind of crops
6 are going to be grown on those HoKua ag lots? And
7 my second question is, because you can answer it at
8 the same time: What evidence in the record is
9 there that the crops that could be grown on these
10 HoKua ag lots cannot also be grown on the land
11 that's in the petition area?

12 A. Well, I think you can grow something on
13 any size of land you want to grow it on. At least
14 Hawaii county, anyway, has created ag land on a
15 one-acre lot which says what are you going to grow
16 there, and you've got a house, you've got a
17 driveway, and you can put in a small orchard, but
18 you're not going to make money at it, you'll have
19 income but not necessarily a profit, but they don't
20 care. As long as you're earning, quote, income
21 from it, then it becomes a farm.

22 Q. Well, let me just say this, and I'm only
23 speaking for myself personally. I care whether or
24 not there is compliance with the law. So let me
25 ask you this. Looking at the plan that's being

1 presented here, and if we assume your testimony
2 about the inability to really conduct agriculture
3 on this property is the credible testimony, does
4 your testimony, in fact, indicate that these ag
5 lots are really a subterfuge undermining an order
6 that Mr. Yuen himself signed in 1983?

7 A. Yeah, we're getting off the track a
8 little bit here.

9 Q. Oh, no, no, no, I think this is relevant
10 to us determining credibility of the person --

11 A. I'll stay with you.

12 CHAIRPERSON SCHEUER: Your counsel can
13 object if they're concerned with the questions, and
14 I will also monitor this hearing, Mr. Rietow.

15 THE WITNESS: You can do an awful lot of
16 things with an awful lot of pieces of land. As a
17 farmer, I go to the area that will give me the most
18 incomes, therefore I can create a profit. The lot
19 I'm talking about, a one-acre lot with some trees
20 on it can become an ag lot with a house on it and
21 then you can have a second house on it because
22 you've hired somebody, as an employee, to farm the
23 lot for you or with you, so now you got two houses
24 on a one-acre lot and a bunch of trees. So does
25 that make sense to you? It's legal. Is that

1 farming? Does that really make sense or should we
2 not have taken that one-acre lot or one-and-a-half
3 acre lot and called it a farm lot? I mean, this is
4 what's happened a lot on the Big Island. I can't
5 say a lot for Kauai because I'm not here a lot. I
6 don't think -- that whole rule doesn't make any
7 sense, it should be converted into residential at
8 that size, not agriculture.

9 Q. And, Mr. Rietow, I will agree with you
10 that we, including all of us in government
11 positions, should really be upfront about what's
12 going on, that if something is going to be done we
13 should be upfront about it and we owe it to the
14 community, we owe it to democracy, and if we're not
15 going to do something we should be upfront about
16 that.

17 Okay. Thank you very much, Mr. Chair,
18 and thank you very much, Mr. Rietow, I really
19 appreciate your expertise in this matter.

20 CHAIRPERSON SCHEUER: Thank you,
21 Commissioner Okuda.

22 Commissioners, are there further
23 questions for this witness?

24 Commissioner Wong.

25 COMMISSIONER WONG: Thank you, Chair.

1 BY COMMISSIONER WONG:

2 Mr. Rietow, I just got one question.
3 Throughout your whole testimony and the FEIS that I
4 read, you're only dealing with plants. Did you
5 ever think about animals, in any aspect, of having
6 like cows, sheeps or goats or, you know, as a farm
7 on those parcels?

8 A. Not on that parcel, but on Kauai you have
9 a very sizable amount of land that is in livestock.
10 Ag land and it's in livestock.

11 Q. No, I just was thinking because, you
12 know, certain places we went to in the past, you
13 couldn't really grow anything but you could have,
14 you know, grazed sheeps and stuff, so I just was
15 wondering if you ever thought about that during
16 your process.

17 A. There are people who do it.

18 Q. Okay. That's it. Thank you, Mr. Rietow,
19 thank you Chair.

20 CHAIRPERSON SCHEUER: Thank you.

21 Commissioners?

22 Commissioner Cabral, are you really going
23 to give up an opportunity to discuss agriculture?
24 He didn't mention horses, I know, but.

25 COMMISSIONER CABRAL: You know me too

1 well. Well, I was actually contemplating whether I
2 needed to disclose at this point in time that I do
3 have an agricultural business and I do raise
4 cattle, and I will agree that it is, one, not
5 profitable but the loss does help offset my other
6 gains in tax positions. And I do have to agree, as
7 a property manager over here on the Big Island, I
8 manage a lot of different residential properties
9 and condominiums, and the mix of those is really
10 negative, so it's not really a question, it's
11 almost in support. Residents complain about
12 everything. They can hear the roosters, you know,
13 a mile away at 3:00 in the morning, they can smell
14 the pigs, they can, you know. So they're not very
15 compatible and the amount of space you would need
16 even between a cow and a tenant is pretty large, so
17 it's an attitude and the more people get -- the
18 further they get away from agriculture the more
19 they expect that eggs just kind of hatch at a
20 grocery store somewhere. So I will comment that
21 agriculture and residential are not good mixes. So
22 I'll support our speaker at that point. So, thank
23 you, though, for my opportunity to talk about cows
24 and horses.

25 CHAIRPERSON SCHEUER: You're welcome,

1 Commissioner.

2 Are there any other questions for this
3 witness?

4 If not, I have a few questions for the
5 witness, Mr. Rietow.

6 BY CHAIRPERSON SCHEUER:

7 Q. I first want to sort of just preface my
8 comments by acknowledging your 40 years, what used
9 to be called alternative agriculture in Hawaii, you
10 were talking about growing things other than sugar
11 and pineapple when that was not popular and was, in
12 fact, frowned upon and fought against, I think is a
13 fair characterization, so I want to thank you for
14 your historic leadership on these issues.

15 With that said, I just want to -- when we
16 have witnesses, we have to ascribe to the
17 witnesses, the weight of their testimony that we
18 believe is appropriate, in terms of their
19 expertise.

20 From your responses to the questions, I'd
21 like you to say "yes" or "no." While your
22 testimony is limited to agriculture being conducted
23 as a commercial enterprise for profit as its main
24 motivation; is that correct?

25 A. Yes.

1 Q. So then I guess my second, really, set of
2 questions that I have for you, because that helps
3 me understand the limitations of your testimony, to
4 go to the slide of your testimony entitled Food
5 Sustainability on Kauai.

6 Could you share with us what you mean
7 when you use the word "sustainability"?

8 A. As a long-term farmer, I would like to
9 see more food crops grown on these islands, because
10 if we ever get into a situation where we can't haul
11 stuff in here from the mainland we're in serious
12 trouble, from a food standpoint. So I've always
13 supported more food, regardless of what it is,
14 cattle is food, vegetables are food, that kind of
15 stuff, so that, as an economy, we've got something
16 to fall back on if things go wrong around here.

17 And personally what I do is, I buy in a supermarket
18 and elsewhere, I buy as much local food as I
19 possible can, first, even though it costs more
20 money. And if I have to I'll buy food that comes
21 from Argentina or California or wherever else, but
22 that's my personal stand on the food issue in
23 Hawaii. I think we're in deep trouble if we just
24 say, well, we're going to rely on food coming from
25 somewhere else or everywhere else. A lot of people

1 who farm are getting old and their offspring, or
2 the people of the next generation, really don't
3 want to farm, so that's another problem.

4 Q. Thank you, Mr. Rietow.

5 So to summarize your response, if I heard
6 you correctly, when you describe food
7 sustainability on Kauai, you're primarily
8 discussing food security issues.

9 A. I think that's true. But I'll preface
10 this, I know that the food I buy that's grown
11 locally is much better quality and fresher than
12 anything I can buy coming from the mainland or
13 Argentina or wherever, that's another reason I buy
14 it.

15 Q. Thank you.

16 Is there hunger on Kauai now?

17 A. I don't know of any.

18 Q. Is there hunger on Hawaii island right
19 now?

20 A. I think there's food and most of it's
21 coming from somewhere else, that's my only issue.
22 I don't see a lack of food but I do see a lack of
23 food grown here and the freshness that that creates
24 and the security that I think it creates down the
25 road.

1 Q. And then I'm just going to build slightly
2 on the questions from the Intervenor's counsel and
3 this is -- when I did my master's work, I worked at
4 the Waipa Foundation on the North Shore of Kauai,
5 in Hale Lea. Are you familiar with the Waipa
6 Foundation and their farming there?

7 A. Vaguely.

8 Q. Are you familiar with the Common Ground
9 food hub in Hale Lea?

10 A. Not really.

11 Q. The Kilauea agricultural park?

12 A. No. I've heard these names but I don't
13 have any contact with them.

14 Q. I just know that, at least from my
15 familiarity with the island of Kauai, while
16 certainly people from the west side might echo and
17 embrace your fondness for the west side, people
18 from Hale Lea might draw some concerns about your
19 dismissal of Hale Lea as an important place for
20 food on Kauai. That's more of a statement than a
21 question for you.

22 A. Okay, I got it.

23 CHAIRPERSON SCHEUER: Is there anything
24 further, Commissioners? If not, Mr. Yuen, do you
25 have some redirect for the witness?

1 MR. YUEN: I have no redirect for this
2 witness.

3 CHAIRPERSON SCHEUER: Mr. Rietow, we're
4 done with you. Thank you very much for your
5 testimony today.

6 THE WITNESS: Thank you.

7 CHAIRPERSON SCHEUER: Mr. Yuen, your next
8 witness is -- sorry, help me out here. You're
9 muted, sir.

10 MR. YUEN: Randall Okaneku is our next
11 witness.

12 CHAIRPERSON SCHEUER: Mr. Okaneku, if
13 you're in the attendees, I do not see you.

14 MR. YUEN: He's here. My name is under
15 him.

16 CHAIRPERSON SCHEUER: He's here as an
17 attendee or he's already been promoted?

18 MR. YUEN: He is here under my name.

19 CHAIRPERSON SCHEUER: Oh, I see, he is
20 physically with you.

21 MR. YUEN: I signed him in under the same
22 name.

23 CHAIRPERSON SCHEUER: I understand.
24 Thank you.

25 Mr. Okaneku, can you hear me and can we

1 hear you?

2 MR. OKANEKU: Yes, I can.

3 (Mr. Okaneku was sworn.)

4 CHAIRPERSON SCHEUER: Thank you.

5 Mr. Yuen.

6 MS. AHU: Mr. Chair, can I share my
7 screen, please?

8 CHAIRPERSON SCHEUER: Yes, you may.

9 Thank you, Ms. Ahu.

10 MS. AHU: Thank you.

11

12 DIRECT EXAMINATION

13 BY MR. YUEN:

14 Q. Mr. Okaneku, please state your name and
15 address for the record.

16 A. My name is Randall Okaneku. My office is
17 at 1188 Bishop Street, Honolulu, Hawaii.

18 Q. What is your professional and your
19 business affiliation?

20 A. I'm a professional engineer, licensed in
21 the State of Hawaii. I am the principal of The
22 Traffic Management Consultant.

23 Q. Please describe your professional
24 background in traffic engineering.

25 A. I founded The Traffic Management

1 Consultant about 30 years ago. I have prepared
2 traffic impact analysis reports throughout the
3 State of Hawaii.

4 Q. Did you prepare the traffic analysis
5 report for HoKua Place in 2017?

6 A. Yes, I did.

7 Q. First, what is a TIAR?

8 A. Traffic Impact Analysis Report is --
9 well, the purpose of the Traffic Impact Analysis
10 Report is to analyze the traffic impacts from
11 developments, such as HoKua Place, to make
12 recommendations for mitigation measures, to improve
13 the traffic impacts that are identified.

14 Q. And you prepared a report in 2017, did
15 you not?

16 A. Yes, I did.

17 Q. And you have not updated the traffic
18 report in the last year. Can you explain why.

19 A. Well, as everyone knows, in the past year
20 the economic activity in the State of Hawaii has
21 reduced dramatically. As a result, visitor
22 traffic, school traffic, commuter traffic has been
23 down across the state. In Kauai, I believe, it's
24 been as low as 50 percent of pre-pandemic 2019
25 conditions.

1 Q. So you did not believe that any physical
2 traffic counts would provide an accurate indicator
3 of the traffic in the area.

4 A. Yes, the traffic conditions in the past
5 year cannot be characterized as normal.

6 Q. Would you please describe the scope and
7 the methodology of your TIAR.

8 A. It begins with a field investigation with
9 basically traffic count surveys and roadway
10 inspections primarily during the peak periods of
11 traffic, AM and PM. The next thing we do is
12 estimate future traffic without the project, this
13 is to establish a baseline to measure the traffic
14 impact of the development. Then we estimate the
15 trip generation from HoKua Place and we superimpose
16 that over the study area, and then we analyze the
17 traffic impacts of the project, and then finally we
18 propose mitigation measures that would improve the
19 traffic conditions.

20 Q. Before I ask you to summarize your
21 conclusions, can you please describe the study
22 area.

23 A. Okay, the study area contains 12
24 intersections that we identified as relevant to the
25 project site. If you want to start at the mauka

1 end, mauka of the project site, we had included the
2 intersection of Olohena Road and Kaapuni Road, and
3 then we went down to the roundabout at the Olohena
4 Road and the Kapaa Bypass. And then through town
5 we went through three intersections on Kukui
6 Street, ending at Kuhio Highway. To the north we
7 went as far as Lehua Street and Kuhio Highway, and
8 then to the south we went as far as the Kapaa
9 Bypass at Kuhio Highway.

10 Q. Could you please summarize the
11 conclusions of your TIAR.

12 A. Well, the construction of Road A is going
13 to become a major connector roadway between Olohena
14 Road mauka of Kapaa Middle School and the Kapaa
15 Bypass. This would provide another mauka/makai
16 corridor for traffic coming out of Kapaa Valley.

17 Q. And this Road A, is this the main roadway
18 through the project?

19 A. Yes, it's a main spine road going through
20 the project.

21 Q. Please describe the access point.

22 A. The primary access for HoKua Place will
23 be on the Kapaa Bypass. We propose to construct a
24 single lane roundabout intersection. At the mauka
25 end of Road A there's going to be

1 a Tee-intersection with Olohena Road, just mauka of
2 Kapaa Middle School, and then I think Phase 1 has a
3 driveway access on Olohena Road, for the first
4 phase.

5 Q. Can you please tell the Commission how
6 many trips you anticipate being generated by HoKua
7 Place at full buildout.

8 A. We estimate that HoKua Place will
9 generate approximately 443 trips during the morning
10 peak hour and 509 trips during the afternoon peak
11 hour.

12 Q. And what are your conclusions in the TIAR
13 regarding the intersection of Kuhio Highway and
14 Kukui Street?

15 A. Well, Kukui Street operates as level
16 service F in the AM peak hour, currently, and level
17 service E in the PM peak hour. We do not expect
18 this level service to change with or without the
19 project.

20 My observation of the intersection is
21 that the signals are timed so that Kuhio Highway is
22 favored, because of the higher volumes and such, so
23 the side street is going to be penalized with
24 higher delays than you would normally see.

25 Q. Does the proposed extension of Kapaa

1 Bypass Road, would that mitigate the level of
2 service E and F conditions on Kukui Street?

3 A. Yes, the extension of the Kapaa Bypass
4 Road northbound would complete the bypass around
5 Kapaa Town, where now the traffic going northbound
6 has the cutoff at Olohena Road, and either turn off
7 at Lehua Street or at Kukui Street off Kuhio
8 Highway.

9 Q. Please describe the impact of the project
10 on traffic on other intersections.

11 A. Starting at north again, the Lehua Street
12 is expected to operate -- it already operates on
13 level service F, and it is expected to do so in the
14 morning, and then level service E in the afternoon,
15 with or without the project and under existing
16 conditions. Road A is actually expected to improve
17 the roundabout intersection of Kapaa Bypass and
18 Olohena Road. I think without the project it's
19 going to operate at level service E, and it would
20 actually improve to level service D in the morning.
21 And in the afternoon we expect the Road A to
22 mitigate the project's impact on the roundabout.
23 If you go south to the Kapaa Bypass intersection
24 near Coconut Plantation, let's see. There is a
25 delay on the left turn movement coming out of the

1 Kapaa Bypass but the volumes are relatively low,
2 whereas most of the traffic are turning right, and
3 that there is a congestion in the PM peak hour
4 which should be mitigated by the proposed widening
5 of Kuhio Highway by DOT.

6 Q. What traffic improvements do you
7 recommend that HoKua Place include?

8 A. Well, at the primary access on Kapaa
9 Bypass we are recommending a roundabout
10 intersection. We had looked at a conventional
11 Tee-intersection but it required traffic
12 signalization which we thought was not appropriate
13 for the Kapaa Bypass with the existing roundabout
14 at Olohena Road and possible roundabout when the
15 Kapaa Bypass is extended. Also, at the north end,
16 it's a standard Tee-intersection with Olohena Road.

17 Q. And what would be positive impact Road A
18 would have on the overall traffic conditions?

19 A. Well, we expect Road A to divert about
20 200 vehicles per hour during the AM peak hour from
21 the roundabout intersection. And during the PM
22 peak hour we expect the roundabout, the Road A, to
23 divert about 300 vehicles per hour during the PM
24 peak hour from the roundabout intersection.

25 Q. Could you explain why you or whether you

1 studied off-peak traffic in the area?

2 A. In 2017, we collected data throughout the
3 day. I took a look at off-peak, primarily because
4 of the Kapaa Middle School, I wanted to see if that
5 created a peak hour, which it did not, so we
6 proceeded with just analyzing the AM and PM peak
7 hours of traffic.

8 Q. Could you comment on the impacts of the
9 proposed improvements to the Kuhio Highway that the
10 state Department of Transportation is presently
11 proposing and conducting?

12 A. Well, state DOT is widening Kuhio Highway
13 from three lanes to four lanes, from Coconut
14 Plantation down to Kuamoo Road. This would replace
15 the coning, that they currently do it in the
16 morning peak hours, so it would improve the
17 northbound capacity during the AM peak hour and
18 basically improve the southbound capacity in the PM
19 peak hour.

20 Q. Is that project presently under
21 construction?

22 A. Yes, it is. I believe it began in March
23 and then it's expected to be completed in 2023, I
24 think is the expected date.

25 Q. What about the proposed widening of the

1 Kapaa Bypass Road from Olohena Road in the
2 northbound direction?

3 A. With the Kapaa Bypass Extension, it's
4 currently planned. However, my latest contact with
5 DOT indicated that it has been deferred, or
6 delayed.

7 MR. YUEN: Thank you. I have no further
8 questions for this witness.

9 CHAIRPERSON SCHEUER: Thank you very
10 much.

11 Mr. Donohue.

12 MR. DONAHOE: Thank you, Mr. Chair.

13

14 CROSS-EXAMINATION

15 BY MR. DONAHOE:

16 Q. Good morning, Mr. Okaneku.

17 A. Good morning.

18 Q. So the Traffic Impact Analysis Report
19 that you completed in support of the petition, the
20 original date on it was September 29, 2017,
21 correct?

22 A. That's correct.

23 Q. And then so the figures in there are
24 almost four years old.

25 A. Yes, they are.

1 Q. Are you aware if the TIAR was updated in
2 2019?

3 A. The TIAR was updated? No.

4 Q. And then one of the county concerns is
5 that an updated TIAR would have to be done prior to
6 the county zoning district boundary amendment,
7 subdivision approval in zoning permit approvals.

8 So would you agree that any county
9 approval was subject to a completion of an updated
10 TIAR?

11 A. That's my understanding.

12 Q. And that updated TIAR would address some
13 of the county concerns regarding traffic that I'm
14 going to ask you questions about. Okay?

15 A. Yes.

16 Q. So, first, the TIAR that was included on
17 page 131 of the final, of the FEIS, recommended
18 seven traffic improvements that are required to
19 mitigate traffic impacts with and without the
20 proposed projects.

21 Did you review those recommended seven
22 traffic improvements?

23 A. Yes.

24 Q. However, it's the county's position that
25 four of the seven recommendations without the

1 project should have been excluded from the analysis
2 because they're either not achievable or will have
3 little to no impact to mitigate traffic impacts
4 despite being achievable. For instance, and I'll
5 list them for you. According to the county's
6 statements in the written testimony, which would be
7 corroborated by the live testimony, the following
8 recommendations without project that are listed in
9 the FEIS that are not achievable are, number three,
10 to re-stripe parking and shoulder lane on Kuhio
11 Highway, through Kapaa Town, to provide additional
12 through and/or left turn lanes. And seven, to
13 extend the mediation refuge lane, two-way left turn
14 lane, on the north leg of Kuhio Highway at Lehua
15 Street.

16 Were you aware that that was the county's
17 position?

18 A. Yes.

19 Q. Also, the County of Kauai previously
20 objected to the recommendation that there be a
21 re-stripping of parking and shoulder lanes on Kuhio
22 Highway, through Kapaa Town, to provide through
23 and/or left turn lanes.

24 And that recommendation still remains in
25 the updated TIAR and FEIS, correct?

1 A. Yes.

2 Q. And then, third, it's the county's
3 position that the parking and shoulder lanes on
4 Kuhio Highway, through Kapaa Town, would have
5 severe economic consequences for commercial
6 activity and it would also create significant
7 safety concerns for all roadway users, especially
8 pedestrians.

9 Are you aware of that concern?

10 A. Yes.

11 Q. And then fourth of the recommendations
12 for that project, it's the county's position that
13 to extend the median refuge lane, two-way left turn
14 lane on the north leg of Kuhio Highway at Lehua
15 Street, is not feasible because extending that turn
16 lane through the existing pedestrian crossing north
17 of the intersection would set up a potential
18 multiple threat crash hazard for pedestrians, which
19 is a significant safety concern for pedestrians.

20 So you're aware of that concern as well?

21 A. Yes.

22 Q. My question is: If four of those seven
23 recommendations without the project listed on
24 page 131 of the FEIS should have been excluded from
25 the updated TIAR analysis based on those concerns,

1 wouldn't that cast doubt or, at the very least,
2 have a negative impact, potentially, on the
3 accuracy of the TIAR's conclusion?

4 A. Not necessarily. These are my
5 recommendations, these are what I respect the
6 county of Kauai's traffic engineers. These are my
7 recommendations based upon my observations, based
8 upon my traffic count. And these recommendations,
9 a few of them, anyway, were taken out of the Kapaa
10 transportation solution reports, so it's not
11 something that I originated, I'm just kind of
12 restating it.

13 I don't know if you want to pick any
14 particular one, but the one that comes to mind
15 right now is the parking, removing parking from
16 Kuhio Highway, you know, to Kapaa Town, and I've
17 seen evolution of roadways through small towns that
18 grow bigger and bigger where on-street parking
19 becomes metered parking and then it becomes traffic
20 lanes, and I've actually seen now they're devolving
21 back into bicycle lanes. But in any case, parking
22 is like the first thing to go on a major arterial,
23 you know, through any town, and you can see that
24 statewide, you can see that nationwide.

25 Like I said, while that may be a position

1 of the county and of the public right now, things
2 change in the future, conditions change, people
3 change, businesses are redeveloped, they get
4 off-street parking, they're required to do
5 off-street parking.

6 Again, like I said, it's just a
7 recommendation, it's not something that the county
8 or state is the final decision-making on, whether
9 or not to implement those recommendations. But,
10 again, if they do do it, it's my professional
11 opinion it will work, for traffic.

12 Q. But you're not aware of any alternative
13 parking solutions, plans on the side roads of Kapaa
14 or where these missing parking spaces are going to
15 be suddenly put.

16 A. Well, as properties are developed they
17 need to conform to county code requirements so they
18 would need to provide off-street parking. Kapaa
19 traffic solutions report identified, I think, a
20 couple of sites, off-sites for public parking.

21 Q. And then also with regard to the
22 recommendations of that project, it's the county's
23 position that there are certain recommendations
24 that are achievable but they'll have little benefit
25 toward mitigating traffic impact, such as

1 re-stripping the median on the north leg of Kuhio
2 Highway at the bypass road and adding a right turn
3 bypass lane from southbound Kapaa Bypass Road to
4 mauka-bound Olohena Road at their roundabout
5 intersection.

6 Are you aware of those concerns?

7 A. Yes, sir.

8 Q. And, again, is it still your opinion that
9 that wouldn't cast doubt or have a negative impact
10 on your conclusions in the TIAR?

11 A. No. In general, again, the TIAR, the
12 intent of the TIAR is to mitigate the traffic
13 impact of HoKua Place. So whether or not the
14 traffic impacts are large or minimal, if there is
15 an impact I'm making a recommendation to mitigate
16 those impacts.

17 Going back to that last recommendation
18 where we have an exclusive right turn lane at the
19 roundabout intersection, that is one of the
20 improvements that HDOT has directed us to look at,
21 as part of the regional improvements for Kapaa.

22 Q. And then on page 4, and you touched upon
23 this, you explained traffic counts were not updated
24 in 2020 because obviously traffic was reduced
25 during the COVID pandemic.

1 Would you agree that an accurate basis to
2 predict future traffic in trip generation is
3 minimally required prior to state land use district
4 redistricting?

5 A. Can you repeat that question again.

6 Q. Would you agree that an accurate basis of
7 predicting future traffic in trip generation is a
8 minimal requirement prior to the state land use
9 district redistricting?

10 A. Yes.

11 Q. And, alternatively, would the
12 deficiencies in the -- if there were deficiencies
13 in the TIAR, require the Land Use Commission to
14 grant partial or incremental state land use
15 district redistricting for just a portion of the
16 petition area?

17 A. I don't know if I can answer that. I'm
18 not sure how the land use will approve or
19 disapprove portions of the site.

20 Q. If there are deficiencies in the TIAR, do
21 you agree that that would necessitate an updated
22 TIAR county approval?

23 A. Yes.

24 Q. Perfect. Fair enough.

25 Would you agree that the traffic impact

1 analysis reports are part of the transportation
2 facility development to adequately assess any
3 traffic-related impacts of a development proposal
4 on the existing and planned access system?

5 A. Yes.

6 Q. And do you agree that TIAR are technical
7 engineering studies?

8 A. Yes.

9 Q. Would you agree that the engineering
10 studies, because I reviewed it and it is in the
11 FEIS, it should be comprehensible, like let's say
12 even to a lay person without similar engineering
13 training to assess traffic-related impacts of the
14 development?

15 A. I try to write it as such, yes.

16 Q. But you would agree that diagrams or
17 explanations with the lay person in mind would help
18 at least the public understand what the projected
19 traffic impact caused by the projects may be.

20 A. Yes, I believe the executive summary is
21 directed at the general public, the report is more
22 generated, directed at the reviewing agency.

23 Q. So it's not with the public review
24 process in mind.

25 A. Like I said, the executive summary is at

1 the top of the report, so it's a little more less
2 technical.

3 Q. On page three, and you testified to this
4 in your PowerPoint, it says you analyzed the
5 traffic impacts during the AM and PM peak hours of
6 traffic and midday traffic, correct?

7 A. I did not analyze the midday traffic,
8 they're in the TIAR.

9 Q. So just the peak hours of AM and PM.

10 A. That's correct.

11 Q. You didn't assess the daily trip
12 generation, right?

13 A. No.

14 Q. So the TIAR doesn't assess the added
15 trips to the road per day.

16 A. No.

17 Q. Were the project's impact during off-peak
18 hours assessed?

19 A. No.

20 Q. And the TIAR also didn't analyze where
21 like cars, vehicles, trucks from the petition area
22 will travel, including where people will go for
23 recreation, shopping, working, et cetera, correct?

24 A. No, it does, the Traffic Impact Analysis
25 Report does have a traffic assignment showing where

1 the project's trips will be distributed throughout
2 the study area.

3 Q. But it doesn't break down a percentage of
4 which direction the cars, the vehicles will be
5 traveling to and from the project, correct?

6 A. The volumes or trips going in various
7 directions are depicted in the TIAR.

8 Q. Does a TIAR like assume people won't turn
9 left on the bypass road to head toward Kapaa Town?

10 A. No, no, it does. There's quite a bit of
11 volume that makes a left turn onto the bypass road.
12 It's the roundabout.

13 Q. And the petitioner, that you're aware of,
14 proposes both single family and multifamily uses,
15 correct?

16 A. Yes.

17 Q. And the project overall also includes an
18 agricultural subdivision that is -- it's not part
19 of the petition area, however, you would agree that
20 traffic from that project will also affect traffic
21 conditions in the petition area.

22 A. Let's see. What agricultural
23 subdivisions are we talking about,
24 (indecipherable)?

25 Q. No, the ag lots next to the HoKua Place,

1 with the farm dwelling units on them.

2 A. Yes.

3 Q. And would you agree that multi-family,
4 single family and the large lot ag subdivision
5 properties will each generate different amounts of
6 traffic per unit?

7 A. Yes.

8 Q. Why is that?

9 A. The trip generation manual is the
10 reference I use for trip generation for various
11 land uses and they're categorized by different
12 types of dwelling unit, say single family
13 dwellings, condominium townhouse dwellings, and
14 each of them are based upon specific studies on
15 real developments which have been put together to
16 find a correlation between traffic and the number
17 of dwelling units. So the differences are
18 basically statistical. I don't make a claim on
19 explaining why they're different, just that they
20 are.

21 Q. So would you agree that potentially the
22 high end larger lot units may actually generate
23 more traffic than single family and multi-family
24 residence or units by employing, let's say, yard
25 services, home cleaning services, pool services,

1 home renovation projects, which would increase the
2 traffic, potentially?

3 A. No, the only thing I would look at, at a
4 large lot single family dwelling, is if they have
5 some kind of ohana or some kind of other, a
6 separate unit, another detached unit, basically,
7 then I would analyze it as two single family
8 dwellings on a single lot, but the other activities
9 are not analyzed.

10 CHAIRPERSON SCHEUER: If I may,
11 Mr. Donohue, how much longer do you think you have
12 with this witness?

13 MR. DONAHOE: I have quite a bit, sorry,
14 Chair.

15 CHAIRPERSON SCHEUER: No, that's fine,
16 I'm just trying to manage our proceedings and the
17 various attention and biological needs that we all
18 have. It's 11:02. I'm going to call for a
19 10-minute recess and we will resume at 11:12.

20 (The hearing was at recess.)

21 CHAIRPERSON SCHEUER: Mr. Donohue, it's
22 your witness. We're back on the record.

23 MR. DONAHOE: Thank you, Chair.

24 BY MR. DONAHOE:

25 Q. Mr. Okaneku, did you collect in your

1 analysis, did you collect Hawaii-specific data for
2 comparable developments to assess the traffic
3 impact for this project?

4 A. No, I did not.

5 Q. So you didn't conduct like traffic counts
6 in Princeville or other islands, such as Maui, to
7 analyze the number of daily trips to see if the
8 projected counts in your analysis was accurate?

9 A. No, I did not.

10 Q. On page 7 of your conclusions on your
11 PowerPoint, you state: State DOT proposed Kapaa
12 Bypass Extension is expected to mitigate the LOS E
13 and F conditions on Kukui Street, correct?

14 A. I haven't done the analysis on what the
15 extension of the Kapaa Bypass would have done,
16 whether or not it would actually change the level
17 of service but it would improve it.

18 Q. But, yeah, according to you in your
19 presentation, it says: The proposed Kapaa Bypass
20 Extension is expected to mitigate the LOS E and F
21 conditions on Kukui Street. That's what you state.

22 A. Like I said, I would characterize more as
23 an improvement rather than a mitigation.

24 Q. Let me ask you this. So what if the
25 Kapaa Bypass Extension, it either gets delayed or

1 is never completed, how does that affect your
2 analysis and do you have any other alternative
3 traffic mitigation measures?

4 A. Not other than what I have already
5 recommended in the TIAR.

6 Q. And are you aware of the possible
7 condition to require the petitioners to pay a pro
8 rata share of the costs of road improvements to
9 mitigate regional traffic impacts?

10 A. Yes.

11 Q. But paying the pro rata share of the
12 costs does not guarantee that an improvement will
13 be constructed by the time the project is built,
14 fair to say?

15 A. Yes.

16 Q. And paying the pro rata share of the cost
17 will not insure that regional traffic is actually
18 reduced, right?

19 A. Yes.

20 Q. So on page 10 of your Powerpoint
21 presentation, you recommend constructing a new
22 Tee-intersection at Road A and Olohena Road.

23 A. Yes.

24 Q. Can you please describe the stop control
25 anticipated at the intersection.

1 A. Road A is going to be stop-controlled
2 while Olohena Road would have the right-of-way.

3 Q. Would it be a one-way stop sign, a
4 three-way stop sign, a traffic signal?

5 A. It's a one-way stop, only Road A is going
6 to have a stop sign.

7 Q. The proposed Tee-intersection, that would
8 be right next to Kapaa Middle School, correct?

9 A. Right, just mauka of the middle school.

10 Q. Did you analyze whether that intersection
11 would impact, delay and safety of school, traffic
12 and functioning, especially at pickup and drop-off
13 times, including those who may be walking or
14 biking?

15 A. I did not analyze the school's traffic
16 circulation, only at the intersection itself.

17 Q. And did you analyze potential delay in
18 any safety issues for those entering or exiting the
19 project access road in relation to school
20 functioning, especially at the pickup and drop-off
21 times?

22 A. Again, my analysis is only at the
23 intersection of Road A.

24 Q. Just at the intersection of Road A.

25 A. Right. I mean it's for the same period,

1 time period. It would not, like I said, at the
2 schools' driveways.

3 Q. Would you agree that the traffic
4 generated from the 769 proposed residential units
5 concentrated at two intersections would be a
6 significant amount of traffic concentrated at just
7 two access points?

8 A. It would be significant. I've seen worse
9 for units on a single access, but.

10 Q. But it would be significant, in your
11 opinion.

12 A. Sure.

13 Q. How do you see emergency services timely
14 and safely accessing the project area during an
15 emergency through these two access points if
16 there's a significant increase in traffic?

17 A. I don't see any impediments by emergency
18 services, that's because there's another
19 mauka/makai corridor for access to the valley that
20 may actually improve the EMS responses.

21 Q. And despite the county's request, the
22 traffic analysis, it didn't contain any analysis of
23 including a roundabout at the intersection of Road
24 A and Olohena Road instead of the Tee-intersection,
25 correct?

1 A. I looked at it but I did not include it
2 in the TIAR, no.

3 Q. Wouldn't you agree that a roundabout
4 would greatly improve traffic safety?

5 A. Well, in my opinion, a roundabout should
6 not be constructed on a inclining roadway. My, I
7 guess, inspection of the intersection location,
8 Olohena Road goes down at about a 5 to 6 percent
9 grade, and because of that you like to have -- a
10 roundabout needs to be flat, so if you're going to
11 try to flatten the roundabout you're going to have
12 to change the grade of Olohena Road, to actually
13 kind of bring it to a flat, and then, you know,
14 back down to normal grade. So it's going to be a
15 lot of work, actually, to do a roundabout,
16 basically for safety, for sight distances and so
17 forth. That's kind of a general geometric
18 recommendation for roundabouts.

19 Q. But you didn't include any of that
20 analysis in your traffic report.

21 A. No, I did not.

22 Q. So would you consider a roundabout at the
23 intersection of Road A?

24 A. It depends on where Road A intersects. I
25 understand that the location of Road A is going to

1 be moved, or they're thinking about moving it, so
2 if they can find a nice level location, you know,
3 that might be feasible.

4 Q. By "location," could the roundabout be
5 the mauka side of the school?

6 A. Yeah, that's what I'm thinking, the
7 intersection would be on the mauka.

8 Q. So it's possible that the roundabout
9 could be there.

10 A. Yes. Well, like I said, not at the
11 location shown on the map, that's the location that
12 I looked at. I understand that --

13 CHAIRPERSON SCHEUER: Mr. Okaneku, you
14 need to slow down. Like the Kapaa crawl, you need
15 to slow down.

16 THE WITNESS: It's my understanding that
17 the County of Kauai has asked the developer to move
18 that intersection further mauka of where it is
19 shown on the development plan. So I inspected the
20 location where it's shown on the development plan,
21 and it was my opinion that Olohena Road is too
22 steep to construct a roundabout intersection.

23 BY MR. DONAHOE:

24 Q. Would you agree that if in any updated
25 TIAR, that would be required to be completed during

1 the county review process, that the TIAR must
2 analyze the inclusion of a roundabout at the
3 intersection of Road A and Olohena Road versus
4 utilizing the stop control at the same location,
5 including an analysis of capacity and level of
6 service?

7 A. If that's the county's request, sure.

8 Q. Would you agree that the sidewalk in
9 front of Kapaa Middle School should be expanded to
10 connect to the intersection of Road A, regardless
11 of whether there's a Tee-intersection, two-stop
12 intersection or roundabout?

13 A. I think there's other alternatives. I'm
14 not sure if the sight cam is developed so that
15 there's direct pedestrian connection to the school
16 from the site, rather than going through the
17 highway, a little shorter distance between the
18 site, but I'm not sure how the border of the school
19 is configured.

20 Q. And I wanted to focus a little bit on
21 multimodal transportation. Are you aware that the
22 petition states that the proposed project will
23 include a multimodal main roadway through HoKua
24 farm lots and the project, and will include bus
25 stops, sidewalks and a bicycle and walking path

1 connecting from Olohena Road adjacent to Kapaa
2 Middle School through the project to the Kapaa
3 Bypass roads, facilitating sustainable travel to
4 and from Kapaa Town, correct?

5 A. Yes.

6 Q. And are you familiar with the conceptual
7 project plans included in the FEIS, as well as
8 petitioner's exhibits that are currently associated
9 with this project?

10 A. Yes.

11 Q. Would you agree that, as currently
12 conceived, the Tee-intersection provides no
13 multimodal connection to Kapaa Town, as well as
14 presents potential traffic and safety concerns
15 especially during the school's rush hours?

16 A. No, I don't agree.

17 Q. You don't agree with -- you agree that
18 the conceived plans has a multimodal transportation
19 connection to Kapaa Town from the middle school?

20 A. I think Road A is required to conform to
21 the complete streets design. Whether or not that
22 continuation goes through state highways, Kapaa
23 Bypass, Olohena Road, Kukui Street, all the way to
24 Kapaa Town, is something that's outside of the
25 project's control.

1 Q. Are you aware that the conceptual plans
2 and the TIAR include no pedestrian crosswalks or
3 sidewalks within the project area and no
4 connections to areas outside of the project, would
5 you agree with that or no?

6 A. I don't think there's enough detail in
7 the project area to decide whether or not, where
8 crosswalks will be striped.

9 Q. So as it stands now, the answer to that
10 is no, it doesn't include any of those details.

11 A. Every intersection has a legal crosswalk
12 unless there's a sign saying "no pedestrian
13 crossing," whether it's striped or not.

14 Q. Are you aware that the conceptual plans
15 contain no areas reserved for bus stops or other
16 multimodal mobility hubs that encourage, let's say,
17 alternatives other than the use of cars?

18 A. Again, the plan that I've seen is in
19 conceptual form so, no, it does not specifically
20 identify bus stops and any other kind of
21 park-and-ride such facilities.

22 Q. Would you agree that the project, though,
23 must support pedestrian programs throughout the
24 development, especially surrounding the Kapaa
25 Middle School?

1 A. Yes.

2 Q. Would you also consider that the proposed
3 project must include the creation of connected and
4 safe bicycle networks that accommodate all riders?

5 A. I would agree that any kind of a bicycle
6 facility should be included in the project streets,
7 the project limits.

8 Q. And then would you agree that the
9 multimodal connectivity within the project, as well
10 as connectivity out of the project area, are key to
11 encourage a reduction of the vehicle trips by the
12 project residents?

13 A. Yes.

14 Q. And has the project considered any plans
15 for transit passes, that you're aware of, provided
16 by like a Homeowners' Association to encourage
17 residents to use county transit instead of
18 vehicles?

19 A. I am not aware of that.

20 Q. Would you agree that it would be
21 beneficial for the project to have a direct bike
22 and pedestrian connection to Kapaa Middle School?

23 A. Yes.

24 Q. Would you agree that affordability
25 includes other factors, other than a residential

1 unit cost? For example, like decreasing
2 transportation costs could decrease housing costs
3 overall.

4 A. That's probably a little out of my
5 expertise.

6 Q. Would you agree that any proposed traffic
7 or multimodal transportation plan would have to
8 comply with county street design manuals?

9 A. Yes.

10 Q. And would you also agree that any
11 proposed traffic and multimodal transportation plan
12 will comply with KCC Section 9-2.3 which states
13 that the street design must accommodate multimodal
14 circulation networks and travel by bicyclists,
15 public transportation vehicles and their passengers
16 and pedestrians of all ages and abilities, taking
17 into account local context and sensitivity to
18 community character?

19 A. Yes.

20 Q. Are you aware that if roads are
21 anticipated for dedication to the county, the
22 county must agree that the roadways have to meet
23 minimum county standard requirements?

24 A. Yes.

25 Q. Are you familiar with the county's

1 subdivision code which includes maximum block
2 lengths and other street requirements?

3 A. Not specifically, no.

4 Q. So you wouldn't know if the current
5 subdivision layout as submitted by the applicant
6 meets the county subdivision code requirements for
7 street layout or not.

8 A. No, I do not.

9 Q. On some of the design issues for the
10 multimodal proposal, as part of your analysis did
11 you conduct a site visit of the petition area?

12 A. I did a site visit of the surrounding
13 streets.

14 Q. Would you agree that the terrain and the
15 slope by the intersection of Olohena Road and the
16 Kapaa Bypass along the edge of the petition area,
17 across from the current roundabout and skate park,
18 is fairly steep?

19 A. I don't recall it as being -- between a
20 skate park and the roundabout, I don't recall it --

21 Q. No, between the roundabout and that area
22 of the petition area, coming down --

23 A. Yes.

24 Q. It is steep, correct?

25 A. Yes.

1 Q. Would you agree that the steep slope on
2 the edge of the petition area would make it
3 difficult to have a direct walking and bike
4 connection from this part of the petition area
5 straight down to the roundabout so that Kapaa Town
6 could be accessed?

7 A. I would have to see a final grading plan
8 to make that determination.

9 Q. But would you agree that somehow a
10 walking and bicycle connection to the roundabout,
11 from the HoKua Place development, would be
12 important in improving the walk-ability and
13 bike-ability from the development to Kapaa Town?

14 A. Are you saying a direct connection from
15 the site to the roundabout vicinity?

16 Q. Yes.

17 A. Hum.

18 Q. I'm sorry, I didn't get your answer.

19 A. I'm trying to think. I don't think it's
20 a critical element, if the same thing can be
21 provided from the roadway intersection, you know,
22 to the Olohena roundabout.

23 Q. Do you think it would be feasible and
24 beneficial to place, if that area is steep, to
25 place stairs coming down from the steep slope on

1 the edge of the petition area to connect to the
2 roundabout at the intersection of Olohena Road and
3 the Kapaa Bypass?

4 A. No, I do not.

5 Q. Why not?

6 A. I believe that it won't conform to the
7 disability or handicap wheelchairs, and so forth.

8 CHAIRPERSON SCHEUER: Mr. Donohue, sorry,
9 can you give me a sense of how long you have?

10 MR. DONAHOE: I have about nine more
11 questions.

12 CHAIRPERSON SCHEUER: If you were to put
13 a time estimate on that.

14 MR. DONAHOE: Four minutes.

15 CHAIRPERSON SCHEUER: Wow, okay. Go to
16 it.

17 MR. DONAHOE: I'll go as fast as I can.

18 CHAIRPERSON SCHEUER: To be clear, I'm
19 not trying to prejudice your cross-examination, I'm
20 just trying to manage the proceeding. That's all.

21 MR. DONAHOE: I understand, Chair. Thank
22 you.

23 BY MR. DONAHOE:

24 Q. The slope that's coming down from the
25 edge of the petition area to the roundabout and the

1 Kapaa Bypass, it also goes along, steeply, along
2 the length of the petition area, along, as you
3 travel down the Kapaa Bypass Road, toward the
4 proposed roundabout by Road A, correct?

5 A. Like I say, I'm not familiar with the
6 grade on the site itself.

7 Q. But if it's a similar slope that has
8 similar steepness to the one that you described,
9 the one that was right by the roundabout, do you
10 believe it would be feasible and beneficial to
11 design a bike and walking path that would leave
12 from the roundabout, go along Kapaa Bypass Road
13 horizontally, and then address the steep grade by
14 having various switchbacks that would go back and
15 forth which would cross this slope but only at a
16 maximum grade of about 5 percent, would that be
17 beneficial to walk-ability and bike-ability?

18 A. Yes.

19 Q. Would you agree that there should be
20 pedestrian and bike lanes on both sides of Olohena
21 Road leading from the middle school down to town?

22 A. I don't think bicycle lanes are required.
23 They're beneficial but I don't think they're a
24 requirement of the Kapaa Bypass. Pedestrian
25 crosswalks can be provided at least on one side of

1 the highway. Having a sidewalk on both sides of
2 the Kapaa Bypass are beneficial, but at a very
3 minimum it should be at least on one side of the
4 highway.

5 Q. Would you disagree that if required to
6 have sidewalks on both sides, that that would
7 potentially increase safety?

8 A. Sure.

9 Q. And would you agree that a multimodal
10 path from the roundabout down by Olohena Road, down
11 by the skate park to the entrance access point of
12 HoKua Place could potentially increase safety?

13 A. Yes.

14 MR. DONAHOE: Thank you.

15 Thank you, Chair. Thank you, Commission.

16 I have nothing further. Thank you.

17 CHAIRPERSON SCHEUER: Thank you very
18 much, Mr. Donohue.

19 Mr. Yee.

20 MR. YEE: Thank you.

21
22 CROSS-EXAMINATION

23 BY MR. YEE:

24 Q. Let's just start with an update since
25 your September 2017 final TIAR.

1 When do you send the final TIAR to the
2 state Department of Transportation, if you know?

3 A. Oh, geez, I don't recall specifically the
4 dates. I usually send the draft TIAR as a
5 unofficial submittal to the agency for like a
6 preliminary view, give them a head start. Like I
7 said, I'd have to go back to my file to see the
8 actual date.

9 Q. Did you send a copy of the final TIAR to
10 them?

11 A. No, I did not.

12 Q. Do you remember receiving a reply from
13 the state Department of Transportation with
14 comments?

15 A. Yes.

16 Q. And do you remember roughly when that
17 was?

18 A. It was shortly after my unofficial
19 submittal.

20 Q. And did you send a further reply to them
21 or did you meet with them regarding those concerns?

22 A. My recollection, the initial response
23 from DOT, there were no significant comments.

24 Q. Did the Department of Transportation
25 suggest that further discussion was required?

1 A. Not that I recall.

2 Q. So since the DOT comment letter, you
3 haven't communicated with them further since then;
4 is that right?

5 A. I have discussed the status of some
6 ongoing projects with them.

7 Q. I'm sorry, did you have a discussion with
8 the state Department of Transportation regarding
9 this project TIAR after you received the comment
10 letter from DOT?

11 A. Not on their comments. Like I said, I
12 discussed, I inquired about the Kuhio Highway
13 widening and the Kapaa Bypass Extension, the status
14 of those projects.

15 Q. Generally, if I understand this, would
16 you agree that the TIAR will need to be updated at
17 some point? That's a question. I think you're
18 muted as well, by the way.

19 A. No, I'm trying to think through. It
20 needs to be updated per the request of DOT as well
21 as Public Works. But in my opinion I think the
22 TIAR as written could stand.

23 Q. Typically, is it your understanding that
24 a TIAR requires approval by both the state's DOT,
25 as well as the county, before final county

1 approvals can be given?

2 A. Yes.

3 Q. And would it also be true that
4 typically -- well, have you been involved in other
5 matters involving the Land Use Commission?

6 A. Yes.

7 Q. So is it your understanding that the TIAR
8 is typically not finally approved at the time of
9 the LUC review?

10 A. The TIAR is generally not necessarily
11 approved but accepted, with comments, normally, at
12 the end of the Land Use Commission reviews.

13 Q. You typically then, as well, if there's
14 an issue about which you cannot reach an agreement,
15 would essentially the developer have to change the
16 TIAR to meet the state and county concerns?

17 A. Depending on what the concern is.

18 Q. Well, if you don't get the state DOT
19 agreement, then you don't get your county
20 approvals; isn't that right?

21 A. My understanding is that DOT's approval
22 of the traffic study is -- how should I say this.
23 The county approval is basically with the county.
24 Those defer the state's facilities to DOT, but I
25 don't think DOT has direct control over the

1 project, it's the county that's the enforcing
2 agency.

3 Q. Are you familiar with typical Land Use
4 Commission conditions requiring state DOT approval
5 before county approvals are made, are given? Are
6 you familiar with that condition in Land Use
7 Commission matters?

8 A. Yes.

9 Q. So then if that condition was imposed in
10 this case, the petitioner would be in violation of
11 the LUC conditions if it failed to get state DOT
12 approval; isn't that true?

13 A. If it does not meet DOT conditions, yes.

14 Q. So if DOT doesn't agree with the final
15 TIAR, the developer will be in violation of the LUC
16 condition, correct, if it doesn't get agreement and
17 they open up?

18 A. I've seen examples where the conditions
19 are deferred to a later date when DOT has a chance
20 to review actual plans, roadway plans and such.
21 Like I said, it depends on what the conditions are.

22 Q. Do you think that there's any intent by
23 this developer to proceed getting their final
24 subdivision approval without final agreement from
25 the state Department of Transportation?

1 A. I can't speak for the developer.

2 Q. Would it be your recommendation that this
3 project open up without getting state DOT approval?

4 A. No.

5 Q. The TIAR typically determines what
6 impacts occur due to traffic, correct?

7 A. Yes.

8 Q. It also looks at what local improvements
9 or what improvements should be made to deal with
10 local traffic impacts, correct?

11 A. Yes.

12 Q. And based upon the impacts, the TIAR are
13 also used to determine what regional improvement
14 contributions should be made by the developer,
15 correct?

16 A. No, not necessarily.

17 Q. Well, isn't the TIAR the basis by which
18 reasonable contributions are determined?

19 A. Not to my experience.

20 Q. Okay. Can you remember a project in
21 which the state, in which the TIAR was ignored in
22 order to reach a determination on reasonable
23 contributions?

24 A. I'm not sure if the TIAR is ignored.
25 Regional contribution involves a monetary amount

1 which is really beyond the scope of a TIAR.

2 Q. One of the issues that's important to
3 look at in a TIAR, the assumptions being used in
4 its creation, correct?

5 A. Can you repeat that question again.

6 Q. One of the important aspects of a TIAR
7 are the assumptions that are used in order for the
8 TIAR to reach its conclusions, correct?

9 A. Yes.

10 Q. Some of those assumptions would include
11 what traffic improvements will be in place at the
12 time the project opens, correct?

13 A. Yes.

14 Q. Is it true the Department of
15 Transportation disagrees with you as to the
16 assumptions you've made regarding the improvements
17 that will be in place at the time the project opens
18 up?

19 A. That's my understanding.

20 Q. You consider that to be not a substantial
21 disagreement with the TIAR?

22 A. The TIAR did not assume any improvements
23 other than the widening of the Kuhio Highway, which
24 is ongoing.

25 Q. And let me be clear about that. The

1 Kuhio widening project you're referring to, is that
2 the construction from Kuamoo Road to the temporary
3 bypass road?

4 A. Yes.

5 Q. That does not include, though, the
6 widening from the plantation road to Kuamoo, the
7 current contraflow cone segment; is that right?

8 A. What contraflow segment are you talking
9 about?

10 Q. The Kuhio widening project, from
11 plantation road to Kuamoo, which is the current
12 contraflow cone segment, is not currently in
13 construction, correct?

14 A. Yes.

15 Q. It's also not a planned project which has
16 programmed money for it, correct?

17 A. I'm misunderstanding which segment of the
18 highway you're talking about.

19 Q. We'll clarify that in DOT's testimony,
20 about some of the assumptions that you're making in
21 your testimony.

22 One of the other assumptions, of course,
23 is the number of trips and which direction those
24 trips go in the AM and PM, correct?

25 A. Yes.

1 Q. And so you said there are 443 trips, is
2 the assumption you've made, correct, in the AM?

3 A. Yes.

4 Q. It's also important to know how many of
5 those trips are going to go towards Lihue and how
6 many are going to go away from it, correct?

7 A. Yes.

8 Q. And that has significant impacts on the
9 conclusions that you will reach, right?

10 A. Yes.

11 Q. So if the Department of Transportation
12 had a disagreement about that, that disagreement
13 needs to get resolved in order for the TIAR to be
14 valid, right?

15 A. Yes.

16 Q. And then would it be your understanding
17 that the various concerns from the county and the
18 state have to be resolved to their satisfaction
19 before this project will get its final approvals
20 and is able to open up?

21 A. Yes.

22 Q. Did you review the Office of Planning's
23 Exhibit 7?

24 A. Probably, but I'm --

25 CHAIRPERSON SCHEUER: Excuse me. You

1 were speaking at the same time and that's not
2 possible for the court reporter to get.

3 Mr. Yee, will you repeat the question.

4 BY MR. YEE:

5 Q. I was going to explain. OP Exhibit 7 is
6 a letter from the Department of Transportation.

7 Did you see that letter?

8 A. Yes.

9 Q. And is that the letter, the concerns in
10 that letter, were they concerns that you think are
11 not substantial?

12 A. No, those came a lot later than the
13 initial comments that I received.

14 Q. And are these the kinds of concerns that
15 have to get resolved before the final approvals can
16 be made?

17 A. Yes.

18 MR. YEE: That's all the questions I
19 have. Thank you.

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

22 MS. ISAKI: It will be me, Chair.

23 CHAIRPERSON SCHEUER: How long do you
24 think you have?

25 MS. ISAKI: At least half an hour.

1 CHAIRPERSON SCHEUER: Let's go until
2 noon, we'll break at noon, continue at 1:00 p.m.

3 Ms. Isaki, it's your witness.

4 MS. ISAKI: Thank you.

5
6 CROSS-EXAMINATION

7 BY MS. ISAKI:

8 Q. Mr. Okaneku, I'm not sure if I
9 understood. You said that DOT deferred the
10 proposed lighting of Kapaa Bypass Road. That's the
11 part that's south of the parcel, not the other one.

12 A. Going north on the roundabout back to the
13 Kuhio Highway.

14 Q. Oh, okay. So it is the widening from
15 Kapaa Bypass Road, from Olohena to Kuhio Highway.

16 And how did you find out that it was
17 deferred?

18 A. My conversation with the planning branch
19 assessed.

20 Q. And when did that conversation occur,
21 approximately?

22 A. Let's see. Within the past couple of
23 months. Earlier this year.

24 Q. And I'm also looking at your, this is in
25 your, the 2017 TIAR that was part of the -- the

1 updated one that was part of the EIS. Did you just
2 consider the Kauai long-range land transportation
3 projections in order to calculate traffic
4 increases?

5 A. Yes.

6 Q. I think you told the county this but I
7 want to make sure. You didn't look at the actual
8 plan development in East Kauai or in Kauai to
9 assess (indecipherable) development, correct?

10 A. Not specific developments, no.

11 Q. And you used the year 2030 peak hour
12 traffic without the project to estimate background
13 growth in traffic, correct?

14 A. Yes.

15 Q. Is the project presumably built out by
16 2030?

17 A. That's the assumption the TIAR made.

18 Q. And so in regard to timelines or studies,
19 assuming everything's going to be built in ten
20 years, correct?

21 A. Yes. That's the assumption, yes.

22 Q. Can we look also at your -- this is in
23 the EIS. I would like to share my screen, briefly.
24 This is the EIS, which is Intervenor's Exhibit 2,
25 this is your 2017 TIAR, page 18, and I'll pull it

1 up first. Just so we know what we're talking
2 about, the same thing.

3 Is it permitted that I share my screen
4 share?

5 CHAIRPERSON SCHEUER: Yes.

6 MS. ISAKI: Thank you.

7 BY MS. ISAKI:

8 Q. So in this you said, I'm not sure if you
9 can see my pointer, but Kapaa Transportation
10 Solutions also identifies Road A as a new connector
11 road, blah blah blah, which was prioritized beyond
12 the 10-year timeframe, and the construction costs
13 of the connector road was estimated at 25,824,000.

14 That's a correct statement? I'm reading
15 correctly from your TIAR?

16 A. Yes.

17 Q. Thank you.

18 What was meant by "prioritized beyond the
19 10-year timeframe"?

20 A. Well, that's how the Kapaa Transportation
21 Solutions study estimated the completion of the
22 roadway.

23 Q. So that's not your estimate, it's going
24 to happen before ten years.

25 A. Yes. That's the Kapaa Transportation

1 Solutions' estimate.

2 Q. And the \$25 million estimate, is that
3 from that transportation solutions plan or another
4 source?

5 A. That's from the transportation solutions
6 study, yes.

7 Q. Do you know if that estimate includes
8 bike lanes or sidewalks?

9 A. I assume it includes all county standard
10 roadway requirements.

11 Q. Would it also include the stop sign and
12 building the roundabout that HoKua Place is
13 proposing?

14 A. I don't believe so, no.

15 Q. When would Road A be prioritized within
16 the construction of HoKua Place or the -- like when
17 would it be phase, would it be Phase I or towards
18 the end?

19 A. I don't think it would be in Phase I.
20 Phase I is just a small agricultural subdivision at
21 the top of the (indecipherable), but it would be
22 the second phase.

23 Q. I'm sorry, I forgot. So I guess what I
24 meant to say is, will Road A be built first, before
25 anything else, or will other things be built before

1 Road A?

2 A. I guess a portion of the roadway would
3 need to be built to provide access to the site.
4 Whether or not it goes all the way up to Olohena
5 depends -- it's really up to the contractor and
6 developer.

7 Q. So a portion of Road A will be built
8 initially, at the beginning; is that correct?

9 A. That would be my assumption, yes.

10 Q. Do your traffic studies disclose traffic
11 impacts during the development phase before Road A
12 is operational? Like you said, it connects to
13 Olohena?

14 A. That's correct.

15 Q. So your testimony is that your traffic
16 studies do disclose project traffic impact during
17 the development phase before Road A is constructed.

18 A. I'm sorry, it analyzes traffic impacts
19 without Road A, without the project without Road A.
20 So basically if HoKua Place is not developed what
21 would happen in the year 2030, so that's the
22 baseline condition where I'm measuring the traffic
23 impacts.

24 Q. And so to clarify, you're not looking at
25 project traffics during the development phase.

1 A. No.

2 Q. I think that the Office of Planning asked
3 you something like this. The Department of
4 Transportation is taking a TIAR that includes
5 regional improvements to be provided on a prorated
6 basis, a proportional share impact fee estimate
7 shall be done based on the project's percentage of
8 trip.

9 Is that a correct statement of the DOT
10 comment?

11 A. That's my understanding, yes.

12 Q. And is it correct that regional
13 improvements are separate from the specific
14 project-related improvements that HoKua Place is
15 proposing to fund?

16 A. Well, in my TIAR, I identified Road A as
17 a regional improvement, which is also what the
18 Kapaa Transportation Solutions also included as a
19 regional improvement.

20 Q. Good point. Is that the only regional
21 improvement that is included in your study?

22 A. In the TIAR?

23 Q. Yes.

24 A. No, I think I made a recommendation over
25 at the Olohena roundabout, as well as smaller

1 improvements along Kuhio Highway.

2 Q. And those would be funded by HoKua Place
3 as well?

4 A. I can't speak to that.

5 Q. Have you or anyone estimated the prorated
6 fee that the Department of Transportation
7 referenced in its comments?

8 A. I have not yet looked at that estimate.

9 Q. So these costs, the prorated fee, that
10 would not be included in any infrastructure costs
11 that have already been provided for this project.

12 A. I don't believe so.

13 Q. Did you testify that the Kapaa Bypass
14 widening just south of the parcel will relieve the
15 need for contraflow coning?

16 A. Kuhio Highway, you mean.

17 Q. Sorry, Kuhio Highway.

18 A. Yes.

19 Q. Will that only relieve the need for
20 contraflow from the bypass to the bridges, and
21 after that portion to Lehua will still need
22 contraflow coning; is that correct?

23 A. Yes, that's correct.

24 Q. In your studies you chose three
25 intersections to study that connect to Kuhio

1 Highway in addition to your evaluation of the Kapaa
2 Bypass, correct?

3 A. I think there's four intersections along
4 Kuhio Highway. But go on. I think there's a
5 fourth.

6 Q. Okay, there's a fourth. The data
7 collected for these four intersections were
8 collected in March 2017, correct?

9 A. Yes.

10 Q. And when it was collected, it was
11 collected to study AM peak, midday peak and PM
12 peak, correct?

13 A. I collected the midday peak but I did not
14 analyze it in the TIAR.

15 Q. So when the 2017 TIAR was released, and
16 up until January 25th, 2021 when you released your
17 supplemental memorandum, the data that revealed
18 midday peak numbers is not included or not
19 disclosed, correct?

20 A. I believe the supplemental shows the
21 midday peak hours.

22 Q. And that was only disclosed in
23 January 25th, 2021.

24 A. Yes.

25 Q. The midday -- so Mr. Bracken earlier

1 testified to the Commission that he was in contact
2 with the contractors as to their work that was
3 being done.

4 Did you release all of your data to the
5 project managers once you had completed your 2017
6 survey?

7 A. Not directly, the data is included in the
8 traffic study.

9 Q. Was the midday peak data included in your
10 2017 TIAR?

11 A. No, I believe the roundabout intersection
12 has a midday peak but other than that they were
13 included in the supplemental memorandum that was
14 completed earlier this year.

15 Q. And so in your supplemental report you
16 explained that the Institute of Transportation
17 Engineers, their manual, doesn't suggest including
18 midday peak data because usually AM and PM peak
19 hours of traffic are about 80 to 140 percent
20 higher, correct?

21 A. Yes, that's correct.

22 Q. But if we examine the 2017 or the data
23 that you provided for the AM and PM peak hours as
24 compared to the midday peak hours, there isn't a
25 significant difference in the peak, the data does

1 not show that 80 to 140 percent drop during the
2 midday peak; is that correct?

3 A. I believe the percentage you're talking
4 about is the project shift generation decreases
5 between 40 and 70 percent during the midday.

6 Q. So to restate that, you're saying like
7 the traffic generated from the project is predicted
8 to drop between 80 to 140 percent during the
9 midday.

10 A. I believe it's between 40 and 70 percent,
11 but, yes.

12 Q. Can we look at your exhibit -- I'm going
13 to put it up there -- it's your traffic memorandum,
14 just so we make sure that this is your supplemental
15 one.

16 CHAIRPERSON SCHEUER: It's 12:02,
17 Ms. Isaki. How much further do you want to go?

18 MS. ISAKI: We can stop here and I'll
19 just pick up with my screen share later.

20 CHAIRPERSON SCHEUER: It's 12:03. We're
21 going to go into recess. We will reconvene at
22 1 o'clock. Before we go to recess, so we will
23 finish with Mr. Okaneku, then we will move on to
24 Mr. Cassidy, following that. I've been advised by
25 one of the Commissioners they need to leave at 3:00

1 today, in response to Mr Yuen's procedural
2 question. One of the Commissioners needs to leave
3 by 3:30. Are there any other constraints by our
4 Commissioners?

5 CHAIRPERSON SCHEUER: Commissioner
6 Giovanni?

7 MR. GIOVANNI: 4:30.

8 CHAIRPERSON SCHEUER: Mr. Yuen, should we
9 be so fortunate as to get through Mr. Okaneku and
10 Mr. Cassidy, do you have another witness you're
11 prepared to call?

12 MR. YUEN: I frankly am not prepared to
13 call anyone else. I thought it was going to take a
14 full day to get through Mr. Okaneku and
15 Mr. Cassidy.

16 CHAIRPERSON SCHEUER: So let's shoot to
17 be completed with both of them by 3 o'clock,
18 hopefully no later than 3:30, which would put a
19 burden on one of our Commissioners to have to read
20 that person's transcript.

21 It is 12:04. We will reconvene at
22 1 o'clock.

23 (The hearing was at recess.)

24 CHAIRPERSON SCHEUER: We're back on the
25 record, it's 1:01 p.m., and we are continuing the

1 cross-examination of petitioner's witness on
2 transportation and traffic issues by the
3 intervenor.

4 Are you ready, Ms. Isaki?

5 MS. ISAKI: Yes, I'm ready.

6 BY MS. ISAKI:

7 Q. Is the witness ready?

8 A. Yes.

9 Q. Mr. Okaneku, I'm going to share my
10 screen, just so we're both on the same page,
11 literally, this is Exhibit 19, your traffic
12 memorandum in 2021. I'm looking at this last
13 paragraph on this page, Exhibit 19, and this is a
14 long paragraph but I'm going to start here.

15 With the exception of Kuhio Highway and
16 Kukui Street, the midway peak hour traffic at the
17 other intersections were either lower or about the
18 same as the AM and/or PM peak hour traffic. The
19 midday peak hour of traffic at the intersection of
20 Kuhio Highway and Kukui Street occurred between
21 9:15 a.m. and 10:15 a.m. The midday peak hour
22 traffic at the intersection was about 3 percent and
23 12 percent higher than the AM and PM peak hour
24 traffic, respectively. The ITE trip, generated by
25 a multifamily residential development during the AM

1 and PM peak hours of traffic, are about 80 percent
2 higher and 140 percent higher than the midday peak
3 hour trips, respectively.

4 That's a correct statement from your
5 memorandum?

6 A. Yes.

7 Q. And you're saying here that residential
8 development traffic is generally predicted to be 80
9 to 140 percent greater for AM and PM as compared to
10 midday peak, correct?

11 A. Yes.

12 Q. I'm going to stop my share.

13 But here, what you found in existing
14 conditions, that the midday peak is lower but not
15 80 to 40 percent lower or about the same or at one
16 intersection is actually higher than AM or PM
17 traffic, correct?

18 A. No, the 80 percent to 140 percent is the
19 chips generated by the HoKua Place.

20 Q. Oh, so the chips generated.

21 A. Right. So, in other words, the peaks
22 occur for residential development will occur in the
23 AM peak and the PM peak.

24 Q. But here, for the existing conditions,
25 you don't see a midday peak that is -- or for trips

1 generated. Would the trips generated -- sorry, let
2 me rephrase my question.

3 Would trips generated translate to more
4 traffic?

5 A. During the AM and PM peak hours, yes.

6 Q. In the existing conditions, though, we
7 don't see a midday peak or the midday numbers are
8 not significantly lower than the AM and PM hour
9 traffic.

10 A. Ambient traffic, yes.

11 Q. Is it a significant finding that Kapaa
12 traffic or area traffic is not relieved during
13 midday?

14 MR. YUEN: If you know.

15 THE WITNESS: I don't know if it's
16 significant, it's not unique. Because generally if
17 you look at a resort, the resort will have a midday
18 peak because of the visitor traffic. Downtown
19 Honolulu has a midday peak because of the workers.
20 Well, it used to have, anyway.

21 Does that answer your question?

22 BY MS. ISAKI:

23 Q. But this would not -- so the 80 to
24 140 percent number of trips generated, that would
25 be something different than or that is not, that

1 would be additional to what we're finding in the
2 study that showed all the numbers in the day peak
3 and AM and PM traffic.

4 A. Can you restate the question. I'm not
5 sure if I understand what you're asking.

6 Q. What you're describing as 80 to
7 140 percent higher trip generation, that will be
8 additional to what you're finding or what your
9 surveys disclose.

10 A. The 80 to 140 percent represent the AM
11 and PM peak hours of traffic on the project, other
12 projects' generated trips. Now, what we do is we
13 put that, the AM and PM peak hour, overlay that on
14 the commuter AM and PM peak hour traffic.

15 Q. And the existing conditions, the AM and
16 PM commuter traffic is not significantly greater,
17 it's the same throughout the day.

18 A. Kukui Street is the only one that I found
19 to have a higher peak in the morning. The others
20 were, the peaks were the AM and PM peak hours.

21 Q. I'm sorry, you said the peaks were the AM
22 and PM hours but they did not translate to what you
23 were predicting for Kapaa or for the HoKua Place,
24 which is 80 to 140 percent trips generated
25 increase, correct?

1 A. The AM and PM peak hours are higher than
2 the midday peak, that's what the 80 and 140 percent
3 means. In other words, there's two spikes when you
4 see a graph of the trips generated by the project.
5 There will be two peaks, one in the AM, one in the
6 PM and it will drop off.

7 Q. I guess I'm just restating the data that
8 you showed in your 2021 memorandum, which is that
9 you don't see those two peaks across-the-board for
10 other areas of existing traffic in the area. Is
11 that a correct statement?

12 A. You're talking about different peaks, I
13 guess. 80 to 140 percent is a peak traffic on the
14 project, coming out of the project. Now, the peaks
15 that I'm talking about in the midday peak is the
16 ambient traffic, the existing traffic throughout
17 the day.

18 Q. Correct. And you don't see an AM and PM
19 peak that would map onto the 80 to 140 percent that
20 you're predicting in the existing traffic, correct?

21 A. Okay, I think I understand. Yes.

22 Q. And this information was not disclosed in
23 your 2017 TIAR.

24 A. That's correct.

25 Q. And the existing conditions, traffic is

1 congested all day long. Is that correct?

2 A. Again, the 2021 assessment shows that
3 these major intersections, the peak hours still
4 occur during the AM and PM peak hours of traffic,
5 with the exception of Kukui Street.

6 Q. And you did not say that at least one
7 other intersection, and you only looked at, you
8 said, three or four intersections?

9 A. Yeah, I looked at the four major
10 intersections.

11 Q. I'm debating if I want to drag us through
12 all of the different intersections. I think maybe
13 your study speaks for itself and I can do that in
14 written.

15 But you did say in that one paragraph
16 that I read, the summary, that the midday peak is
17 lower but, as you said, not 80 to 140 percent
18 lower, or about the same and then as to AM and/or
19 PM peak hour traffic, correct?

20 A. Again, you're describing two different
21 peaks. The 80 to 140 percent is the
22 project-generated traffic, so what's coming out of
23 the project is 80 to 140 percent lower during the
24 midway than the peak hours, that's why we focus on
25 the peak hours because that's the greatest impact,

1 and that's what we're looking at, impacts of
2 traffic that comes out of HoKua Place, so that's
3 the reason why we look at the AM and PM peaks.

4 Q. I was actually just restating what was
5 written in your memorandum, but I will leave that
6 for now.

7 You said that this information was not in
8 your 2017 TIAR. Is it possible that this
9 information now is disclosed to the county? And
10 I'm not sure, has it been disclosed to DOT?

11 A. The TIAR?

12 Q. Has information in your January 2021
13 memorandum been disclosed to the Department of
14 Transportation?

15 A. I'm not sure.

16 Q. Is it possible that information on this
17 existing condition of midday peak, is it possible
18 that this information will change the Department of
19 Transportation's comments and recommendations?

20 A. I don't believe so.

21 Q. I will move on to my next group of
22 questions.

23 Do either the 2017 or 2021 memorandums
24 respond to the county's concern regarding the basis
25 for the level of congestion calculations, that is

1 the recommendation that the TIAR compare actual
2 observed traffic conditions with calculated delays
3 and level of service?

4 A. Wait, can you repeat that again.

5 Q. Does your 2021 memorandum, does it
6 respond to the county's concern regarding the basis
7 for your level of service calculations? They
8 specifically recommended that the TIAR compare
9 observed traffic conditions with calculated delays
10 and levels of service offering explanations for the
11 difference in the observed level of service and the
12 calculated level of service.

13 A. No, it does not.

14 Q. Does your 2021 study reflect a level of
15 service for movements along Kuhio Highway as
16 opposed to the intersections? And if you could
17 please help me find that number.

18 A. No, it does not.

19 Q. Does your traffic study consider impacts
20 and delays consequent to future sea level rise
21 during the life of the project?

22 A. No, it does not.

23 Q. Your study does not address the loss of
24 sections of Kuhio Highway that would push
25 north/south traffic up towards the bypass road.

1 A. No, it does not.

2 Q. So I want to go back to the mitigation.
3 The mitigations that you've described, and this is
4 in your presentation, slide 11, and it was the one
5 that was titled HoKua Place Traffic Improvements.
6 I can put it on the screen, if that helps to jog
7 your memory.

8 The HoKua Place Traffic Improvements,
9 those are the ones that only HoKua Place is going
10 to pay for, or HG Kauai, the petitioner, correct?

11 A. I believe so.

12 Q. And when combined with other
13 publicly-funded mitigations, say the DOT ones, the
14 level of service will stay at a level, like at the
15 present level or slightly better when HoKua project
16 impacts are considered.

17 A. Yes.

18 Q. So HoKua Place is depending on these
19 publicly-funded government improvements to keep the
20 level at the present level or slightly better.

21 A. Well, the report just makes the
22 recommendations to improve these levels of service
23 to mitigate the project's impact. The payment, who
24 pays for it, who bills it, when it's billed, is not
25 part of this scope of the TIAR.

1 Q. Going to one of those improvements, Road
2 A, the spine road. You said that there's going to
3 be an intersection just mauka of Kapaa Middle
4 School. We discussed this with the county.

5 This was correct, right?

6 A. Yes.

7 Q. And is it true that just mauka of Kapaa
8 Middle School, along Olohena Road, there are
9 already two feeder roads to that Olohena section,
10 Kaehulua Road?

11 A. Yes.

12 Q. So this will be a third contributing road
13 to Olohena, the Road A.

14 A. Yes.

15 Q. In that same segment.

16 A. Yes.

17 Q. And you did no studies to evaluate
18 traffic impacts.

19 A. I did analyze the intersection of Olohena
20 and Kaapuni. The intersection of Olohena Road and
21 Kaapuni Road where it was included in the traffic
22 impact analysis.

23 Q. But not with the contribution of Road A.

24 A. Yes, with the contribution of Road A,
25 with and without Road A.

1 Q. And this is in your 2017 TIAR?

2 A. Yes.

3 Q. Okay, thank you. I will look at that.

4 And are you aware that tourist visitors
5 on Kauai increased between 2017 through early 2020?

6 A. No, I'm not aware of the numbers.

7 Q. Do you have any plan for a bypass at the
8 Kapaa Bypass if this project gets built?

9 A. Excuse me, a bypass of the by -- I'm not
10 sure what you're referring to.

11 Q. Are you aware of any plans for an
12 additional bypass if this project gets built?

13 A. No, I'm not aware of any additional
14 bypass.

15 Q. When exactly are you planning to conduct
16 your next traffic survey?

17 A. The next traffic survey will be conducted
18 when traffic returns to pre-pandemic conditions.

19 Q. Do you have a projected date?

20 A. Not really. I've heard professionals say
21 it might take five years to come back to
22 pre-pandemic conditions. Others say, you know,
23 once we open up it will but, again, we'll have to
24 see. Because the State of Hawaii is monitoring
25 statewide the traffic conditions, so that's what

1 I'm going to be checking on.

2 MS. ISAKI: Okay, thank you, I have no
3 other questions.

4 CHAIRPERSON SCHEUER: Thank you,
5 Ms. Isaki.

6 Commissioners. Do we have questions for
7 the witness?

8 Commissioner Giovanni.

9 BY COMMISSIONER GIOVANNI:

10 Q. Thank you so much, Chair, I have a few
11 questions. And thank you, Mr. Okaneku, appreciate
12 you being here today.

13 First, I'd like to thank representatives
14 from the county and the state and the intervenor
15 for asking the detailed questions they did, it
16 saved me a lot of time and I appreciate that.

17 The first question I had regards, and
18 there's already been some questioning on this, is
19 about an update to the 2017 TIAR.

20 What's your understanding of the plans
21 for that?

22 A. Let's see. The study has been delayed.
23 It was supposed to have begun early last year, but
24 when the pandemic hit, it shut down, delayed it at
25 least, it delayed it until normal conditions will

1 return.

2 Q. So I just heard you say they may not
3 return for five years. Does that mean you're not
4 going to do it for five years?

5 A. If that's the case, yes, it wouldn't be
6 reasonable for me to go out there and do it when,
7 say, traffic is 25 percent below pre-pandemic
8 conditions.

9 Q. So similarly, does it make sense for you
10 to do the study while the DOT project is ongoing
11 about adding that new lane on Kuhio Highway that's
12 not supposed to be finished until late 2023?

13 A. It depends on where the work is being
14 done.

15 Q. Could you explain that.

16 A. Well, if traffic is being that backed up
17 during the peak hours of traffic, I'm not sure what
18 the work hours are for the highway. Normally they
19 would stay out of the AM and PM peak periods of
20 traffic, so if that's the case then I probably
21 could do the analysis, the construction be done
22 during the midday or evenings.

23 Q. When you embarked on the update to the
24 traffic study that was interrupted by the pandemic,
25 was the scope of that update similar to what you

1 had done previously or did it expand the scope of
2 that study as it considered additional questions,
3 like those you've heard today and like those that
4 were raised at the LUC hearing when we accepted the
5 final EIS?

6 A. It was expanded to include some of the
7 comments received from DOT and public works, as
8 well as the Land Use Commission.

9 Q. So do you have a written scope of work of
10 what that was planned for that TIAR?

11 A. Yes.

12 Q. Would you be agreeable to make that
13 available in evidence in this proceeding?

14 A. I don't have it with me, it's in my
15 office. But, sure, if the (indecipherable) is
16 willing to divulge the scope, sure. I will
17 probably be discussing it with DOT anyway before I
18 start.

19 Q. Yeah, I think that would be helpful so
20 thank you for that, and we'll proceed with the
21 petitioner's representation to see if we can get a
22 copy of that as part of the evidence in the case.

23 I'd like to turn to the assumptions that
24 you had in your studies and your analysis for the
25 intersection of Road A and the bypass road. I

1 think you said that you're envisioning a
2 roundabout, a single lane roundabout for that new
3 intersection. Is that correct?

4 A. Yes.

5 Q. So we've heard testimony from the
6 petitioner and his representatives that one of the
7 features of this development is that it would
8 promote and allow and encourage and make feasible
9 the residents to visit on a regular basis, bicycle
10 or by walking to Kapaa Town from the development;
11 is that correct?

12 A. Well, I believe that the design of the
13 roundabout would accommodate, yes, pedestrians,
14 bicycles, buses, if bus routes go through there.

15 Q. Can you explain to me how that would work
16 and whether or not that was taken into account in
17 your study?

18 A. Well, the design of a roundabout includes
19 crosswalks. Any roadway will include
20 accommodations for bicycles and buses, not
21 necessarily bus lanes or bicycle lanes but still
22 it's just a shared roadway.

23 Q. So one form of traffic or the other would
24 be interrupted, is that not true, in order to cross
25 the actual crossing of the bypass?

1 A. Well, I mean pedestrians will have to
2 yield, like at any intersection.

3 Q. So your view is that the bicycles and the
4 pedestrians would wait until traffic was clear and
5 then go across where the traffic would otherwise be
6 that was traveling on the bypass?

7 A. Well, both bicycles, vehicles and buses
8 will have to yield until there's an opening in the
9 roundabout, in the circle intersection at the
10 roundabout.

11 Q. So does your traffic analysis at these
12 levels of traffic analyze that and see what type of
13 interruption might occur?

14 A. Yes, it does.

15 Q. And that would be included in your
16 updated TIAR?

17 A. It was included in the 2017 TIAR, but it
18 will be included, yes, in the updates.

19 Q. Okay, thank you for that.

20 Are you familiar with what the cost might
21 be for an intersection of this sort?

22 A. I've heard numbers like a million dollars
23 but can't hold me to it, it's just a number that's
24 thrown out there.

25 Q. Does a million dollars sound reasonable

1 to you?

2 A. Yes.

3 Q. It's reasonable because it's viewed as a
4 appropriate cost or an accurate cost?

5 A. I think it's probably a little higher
6 than accurate.

7 Q. So you think it can be done for a million
8 dollars.

9 A. Well, again, it's a number that's been
10 thrown out. And, like I say, if somebody asked me,
11 without any analysis, I would say a million
12 dollars.

13 Q. Did any of your analysis consider the
14 potential impact of sea level rise in the areas
15 affecting any of the roadways in Kapaa, Wailua?

16 A. No, it did not.

17 Q. So one of the concerns that I personally
18 have about traveling in traffic in Kapaa Town is
19 that relatively congested, as the intervenor was
20 asking you about, all day long until the late
21 evening hours. But what's really troubling is when
22 there's any kind of disruption to either a bypass
23 road or Kuhio Highway in the vicinity of Kapaa,
24 then they really back up.

25 What I'm describing is that if you're

1 going from north to south on the island or from
2 south to north on the island and you have to pass
3 through Kapaa, it's common for motorists to look at
4 which of those two thoroughfares is the most
5 congested or the least congested and to pick one or
6 the other. However, when there's any type of
7 disruption, whether it be for an accident, whether
8 it be for construction, whether it be for striping,
9 whether it be for vegetation control, one or the
10 other will plug up and that will be disrupted and
11 then both of them become very heavily congested.

12 Is anything like that evaluated in your
13 TIAR that you did in 2017?

14 A. No, it did not.

15 Q. Can an analysis of the type that you do
16 be done in such a way to address issues such as
17 that?

18 A. The Traffic Impact Analysis Report
19 analyzes what we call recurring congestion, we
20 don't analyze incidents like you're speaking about,
21 like accidents or some kind of flood or, you know,
22 a bridge giving out, that kind of thing, it's not
23 considered recurring congestion. Something that
24 you see kind of almost on a daily basis, that's the
25 kind of impact that we would be addressing.

1 Q. I wish that was the case. Unfortunately,
2 I feel like some of those things feel like a
3 recurring scenario on Kauai in that area,
4 unfortunately.

5 The last question I have has to do with
6 sequencing. I understand, I think I understand
7 correctly, and if not please correct me, that your
8 vision is what the traffic would look like when the
9 mitigations are implemented and the housing
10 development is complete and everything is kind of
11 operating, construction is done; is that correct?

12 A. Yes.

13 Q. What would be your perspective on the
14 appropriate sequencing of the infrastructure and
15 mitigation work relative to the development of the
16 housing and the occupancy of that housing in order
17 to sustain a reasonable level of traffic, not a
18 substantial increase in traffic but a traffic level
19 that is at or better than what we have today, what
20 would be the proper sequencing of the
21 infrastructure versus the housing development and
22 occupancy of that housing?

23 A. That kind of scope is usually included in
24 what's called a construction traffic management
25 plan, which is something that is the contractor, or

1 possibly the developer, might put together to kind
2 of explain the phasing of a project and to analyze
3 the construction impact, construction traffic
4 impact. Whereas just the TIAR basically is a
5 before and after kind of a snapshot.

6 Q. I think you misinterpreted my question a
7 little bit. I'm not talking about
8 construction-generated traffic, I'm talking about
9 the effectiveness of mitigations that are needed in
10 order to accommodate the additional occupancy of
11 the housing, and it seems to me, as a layman, that
12 it would be appropriate to have those mitigations
13 in place before the people started moving in not
14 after. Would you agree with that?

15 A. I don't think I can speak to that, that's
16 something that needs to be decided between the
17 state, county and the developer.

18 Q. From an analytical point of view, are you
19 able to evaluate the impact of the housing being
20 occupied prior to the mitigations being done?

21 A. I have not analyzed the impact of any
22 housing occupied prior to mitigation.

23 Q. Are you capable of doing so if asked by
24 the developer?

25 A. If I were to do a phase development

1 analysis where you have a first phase, second phase
2 and third phase, so forth, yes.

3 Q. So theoretically the updated TIAR, which
4 you are commissioned to do, which you have
5 suggested would be appropriate to do about five
6 years from now when the traffic returns to
7 pre-pandemic levels, could accommodate a phase
8 development analysis for construction?

9 A. Yes.

10 COMMISSIONER GIOVANNI: Thank you, I have
11 no other questions.

12 CHAIRPERSON SCHEUER: Thank you very
13 much, Commissioner Giovanni.

14 Commissioner Ohigashi.

15 BY COMMISSIONER OHIGASHI:

16 Q. Mr. Okaneku. Is that Okaneku?

17 A. Yes, sir.

18 Q. That's how you pronounce it. I know
19 because when I went to the mainland everybody
20 mispronounced my name, when I went to school there.

21 I have one question: How do we know when
22 things are approaching normal and do we have to
23 wait for pre-pandemic levels to return to assume
24 they are normal or can we make assumptions that we
25 may never reach pre-pandemic levels in order to do

1 the updated TIAR?

2 A. The state Department of Transportation is
3 monitoring traffic on a weekly basis throughout the
4 state, so that's the first indicator of what's
5 happening out there. In my opinion, the update of
6 the existing conditions, it may not be necessary
7 simply because there has not been a major
8 development, you know, since 2017, there's no major
9 roadways. We can certainly use that as a baseline
10 to address the concerns of the county and the state
11 and the Land Use Commission.

12 Q. So I'm not sure what that means --

13 A. What I'm saying is -- (simultaneous
14 talking.)

15 CHAIRPERSON SCHEUER: The witness, you
16 need to not interrupt.

17 BY COMMISSIONER OHIGASHI:

18 Q. I just want to finish my question. I'm
19 not sure what your answer means, but what I'm
20 trying to get at is: Who will tell you, hey, it's
21 now that we got to do this updated TIAR, you know,
22 or are you going to determine that yourself?
23 That's my question.

24 A. Yes, I guess it would be up to me to
25 determine when the TIAR should be updated.

1 Q. And is it your testimony that you will
2 wait until pre-pandemic levels are reached before
3 making the TIAR?

4 A. No, not necessarily. I was starting to
5 say that, in my opinion, I can update the TIAR
6 based upon 2017 conditions and address all the
7 concerns of state, the county and the Land Use
8 Commission, still using the 2017 baseline.

9 Q. So is there any reason why that update
10 cannot occur now then?

11 A. It really depends on the acceptance of
12 the agencies of the 2017 baseline data, whether or
13 not the county and the state will accept that data.

14 Q. Have you attempted to, or have you
15 submitted those data to the various agencies for
16 them to be accepted?

17 A. Only in the 2017 TIAR, that's the only
18 submittal that's been done.

19 Q. What I'm trying to get at is,
20 Mr. Okaneku, what is stopping us from getting an
21 updated TIAR? I'm just curious.

22 A. My initial scope called for a new field
23 investigation, in 2020, early 2020, because the
24 comments -- my understanding, the comment was that
25 the 2017 traffic data was too old.

1 Q. I'm not sure if you answered my question
2 but I'm still in a quandary. If you don't need to
3 return to pre-pandemic levels, you need to get
4 approval of the agencies to accept the 2017 data,
5 it would appear, then, that those two conditions
6 can be met kind of easily and a updated TIAR can be
7 done.

8 A. Yes.

9 Q. That's the conclusion that I'm reaching.
10 Tell me if I'm wrong.

11 A. That's correct.

12 COMMISSIONER OHIGASHI: No further
13 questions.

14 CHAIRPERSON SCHEUER: Thank you,
15 Commissioner Ohigashi.

16 Commissioner Chang.

17 COMMISSIONER CHANG: Thank you,
18 Mr. Chair.

19 BY COMMISSIONER CHANG:

20 Q. Thank you, Mr. Okaneku. I don't intend
21 to keep you too long. I'm actually going to get
22 right to the chase, I'm not too much into the
23 details. I consider you the traffic expert,
24 although you haven't been qualified as the expert
25 but I consider you the traffic expert for the

1 petitioner in this case.

2 So in your opinion would the proposed
3 project, when it's built out, have an adverse
4 impact on traffic?

5 A. No.

6 Q. Interesting. Why won't it have an
7 adverse impact on traffic?

8 A. The proposal recommendations are expected
9 to mitigate whatever traffic impact that are a
10 result of the HoKua Place.

11 Q. You stepped ahead of me. One, you only
12 do mitigation because you have adverse effect. So
13 you are obviously going to have an adverse effect
14 because that's why you're doing the mitigation
15 measures, right, does that make sense?

16 A. Yes.

17 Q. So that's my next question. Based upon
18 your expertise, what are you recommending as
19 mitigation for this adverse effect?

20 A. The primary mitigation improvement, in my
21 opinion, is going to be the construction of Road A.

22 Q. And is that -- because I heard there's
23 other improvements being proposed by the state and
24 the county. Is that improvement Road A being built
25 by the developer?

1 A. Yes.

2 Q. Do you have a cost for that?

3 A. No, I don't.

4 Q. Who would provide the developer that cost
5 estimate?

6 A. Probably the civil engineer and the
7 contractor, ultimately.

8 Q. Is that the only mitigation for the
9 adverse impact?

10 A. Well, the other mitigations are
11 intercession improvements, which is fairly minor,
12 which is striping. The other major one might be
13 the bypass lane that I'm proposing at the Olohena
14 roundabout intersection.

15 Q. So I guess I'm just trying to
16 distinguish. What is the developer paying for
17 versus improvements that are being proposed by the
18 government at taxpayer's expense?

19 A. At this point, my understanding is the
20 developer is paying for Road A and intercessions
21 with Olohena Road and the Kapaa Bypass.

22 Q. And the civil engineer would be the one
23 who would provide me the cost estimates for that.

24 A. Yes.

25 COMMISSIONER CHANG: All right.

1 Actually, you have answered my question. Thank you
2 very much.

3 CHAIRPERSON SCHEUER: Thank you,
4 Commissioner Chang.

5 Commissioners, are there further
6 questions for Mr. Okaneku?

7 Incidentally, Commissioner Ohigashi,
8 people mispronounced my name here, and when I went
9 to college on the continent I was dismayed to find
10 out people mispronounced my name there as well.

11 Commissioner Okuda.

12 BY COMMISSIONER OKUDA:

13 Q. Thank you very much, Chair.

14 Mr. Okaneku, the reason why I'm going to
15 ask the following questions is to make sure we're
16 in compliance with that Hawaii Supreme Court case,
17 Unite Here! Local 5 versus City and County of
18 Honolulu. I've given that case citation before so
19 I won't repeat myself.

20 My first question deals with what can be
21 done, it's not what should be done, okay. So can
22 you please give me a list of the things that can be
23 updated in your TIAR.

24 A. Well, what can be updated in the TIAR,
25 it's a look at the Kapaa Bypass Extension, the

1 north leg, going up to Kuhio Highway. And then we
2 will take a look at the midday peak, if so
3 instructed, to show what the impacts are during the
4 middays, midday peak hours.

5 Q. Are there anything else in your report
6 that can be updated?

7 A. I guess the request by DOT as the
8 project's contribution, in terms of percentage of
9 traffic to the region, can be determined.

10 Q. Is there anything else that can be
11 updated in your report?

12 A. Well, the final thing, what we talked
13 about earlier, to update the existing conditions,
14 from the 2017 to 2020, whatever it's going to be,
15 the baseline conditions.

16 Q. And it is possible also for you to update
17 your report to include conditions up to the start
18 of the pandemic, correct?

19 A. I only have 2017. I have some, let's
20 see, 2018 data in the region, so that's what I
21 would be relying on if I were not to do another
22 field investigation.

23 Q. Besides what you've testified up until
24 now, is there anything else in your report that can
25 be updated?

1 A. Well, any changes to the standards of the
2 state and county since 2017 will have to be taken a
3 look at and included in the analysis.

4 Q. Besides that and all the other things
5 you've listed up until now, are there anything else
6 that can be updated with respect to your TIAR?

7 A. That's all I can think of at the moment.

8 Q. Now, you testified in response to a prior
9 question that you had a proposal to update or to
10 provide additional work with respect to the TIAR,
11 correct?

12 A. Yes.

13 Q. Can you briefly describe or list the
14 items that comprised what your proposal entailed.
15 In other words, what was the scope, to the best of
16 your recollection, of what was included in that
17 scope?

18 A. We would do another field investigation,
19 which would include the study area in the 2017
20 study, except it would also include the north
21 junction of Kapaa Bypass and Kuhio Highway. We
22 would take a look at the extension of the Kapaa
23 Bypass to Kuhio Highway and then we'll also take a
24 look at the midday peak hour.

25 Q. Can you tell us briefly the reasons why

1 you made that proposal? In other words, did
2 someone ask you to present such a proposal or was
3 it something that you thought of proposing on your
4 own or can you give us the background why that
5 proposal was made.

6 A. My understanding is that the update of
7 the 2017 TIAR was a result of a comment by one of
8 the Land Use Commissioners in a previous hearing.

9 Q. Do you know whether or not you made that
10 proposal before or after the final environmental
11 impact statement was submitted?

12 A. The proposal was made after the final
13 impact statement.

14 Q. Backing up a little bit to your answers
15 about the list that you just gave me in response to
16 my question about the things that could be updated
17 in your TIAR. Can you please tell me all the
18 reasons why these things were not updated as of
19 today?

20 A. Well, the update hinged on another field
21 investigation that would start the update. Now if
22 the agencies were to accept 2017 data, and maybe
23 some 2018 data that I collected later on, that
24 would proceed, but we haven't got that far yet.

25 Q. Did you understand that at least some of

1 the reviewing parties, including the Land Use
2 Commission -- and let me be more specific --
3 reviewing parties meaning parties that are part of
4 either the state or county governments had concerns
5 about whether or not your report contained stale,
6 S-T-A-L-E, information, as that term is used in the
7 Unite Here! Local 5 case?

8 A. I'm not sure what the acronym is.

9 Q. Well, did you understand that persons
10 that were part of either the state or county
11 government were concerned that your TIAR was based
12 on information which was considered or could be
13 considered stale?

14 A. I'm not aware of the term "stale."

15 Q. Well, did you understand that there was a
16 concern that your report could not be fully relied
17 on unless it was updated?

18 A. My understanding, that there were some
19 concerns that the state and county had expressed,
20 but I don't believe they talked about the baseline,
21 the 2017 data that needed to be updated, that came
22 out of a Land Use Commission hearing I think last
23 year.

24 Q. Well, then at least of last year you
25 understood that at least someone on the Land Use

1 Commission had a concern about the -- and if we're
2 not going to use my word "staleness" we could use
3 whatever equivalent word you might have in mind
4 which is equivalent to the word stale. But that
5 type of information, you understood that the Land
6 Use Commission, at least certain members, might
7 have a concern about that quality of information in
8 your report, correct?

9 A. Yes.

10 Q. Did you have a discussion with anyone on
11 the development team, including attorneys,
12 engineers, other consultants, about whether or not
13 this concern being raised by the Land Use
14 Commission about staleness, or whatever other
15 equivalent term you want to use, should be
16 addressed or considered?

17 A. Yes.

18 Q. And who did you have that discussion
19 with?

20 A. That would be the attorney for the
21 petitioner.

22 Q. Can we have a name, to be specific?

23 A. Bill Yee.

24 Q. What did you say about --

25 CHAIRPERSON SCHEUER: Sorry, excuse me.

1 Can the witness repeat your answer of the name.

2 THE WITNESS: The attorney, Bill.

3 CHAIRPERSON SCHEUER: And you said the
4 last name.

5 THE WITNESS: Lee.

6 CHAIRPERSON SCHEUER: Yuen?

7 THE WITNESS: Yuen. Sorry, William Yuen.

8 CHAIRPERSON SCHEUER: Thank you.

9 Sorry for interrupting, Commissioner
10 Okuda.

11 COMMISSIONER OKUDA: No, thank you,
12 Mr. Chair. I should have made sure the record was
13 clear. I apologize.

14 Q. And did you raise the issue about the
15 staleness, or whatever equivalent term you want to
16 use, about the information, or did Mr. Yuen raise
17 it to you?

18 A. Mr. Yuen raised it to me.

19 Q. What did he tell you about the
20 information on that topic or issue?

21 A. He had indicated that one of the
22 commissioners had said the 2017 data was rather old
23 and that the update of the TIAR should be prepared.

24 Q. And what was your response?

25 A. Well, my response was I presented a

1 proposal to update the 2017 TIAR.

2 Q. And was there a specific agreement or
3 plan about when the information would be updated?

4 A. No.

5 COMMISSIONER OKUDA: Thank you very much,
6 Mr. Chair. I have no further questions. Thank
7 you, Mr. Okaneku.

8 CHAIRPERSON SCHEUER: Thank you,
9 Mr. Okuda, and I apologize for the interruption,
10 again.

11 Commissioner Giovanni.

12 BY COMMISSIONER GIOVANNI:

13 Q. Thank you, Chair. Just a follow-up.
14 So the assessment of the current
15 condition, the characterization of the pre -- what
16 do you call it -- the pre-project conditions is
17 based on the 2017 data; is that correct.

18 A. Yes.

19 Q. And, in particular, as a reliance on what
20 I think you termed field investigations, that was
21 done; is that correct?

22 A. Yes.

23 Q. Could you comment or clarify what was the
24 totality of your time that you and your firm
25 actually were on Kauai to experience and

1 characterize the traffic in Kapaa as part of your
2 field investigations in support of the 2017 study.

3 A. The field investigation took about a
4 week.

5 Q. So the totality of your information
6 gathering on site in Kauai, in Kapaa, to
7 characterize that traffic situation was about a
8 week in 2017 with a -- and I'm going to take it one
9 step farther -- a focus on the AM and PM hours at
10 selected intersections; is that correct?

11 A. Yes.

12 Q. We have an abundance of public testimony
13 in this hearing, in this case, in which the traffic
14 conditions are, in lay terms, characterized by the
15 general public as being horrific, terrible, you
16 know, words to the effect.

17 In the field investigations that you did,
18 would you come to a conclusion that -- how would
19 you characterize, in lay terms, the traffic
20 situation in Kapaa, morning, afternoon and evening?

21 A. What I observed during the AM and PM peak
22 hours of traffic, that the congestion, the backup,
23 the stop-and-go conditions that a lot of people
24 associate with congestion occurred outside the
25 study area. When I looked at the Lehua Street

1 intersection, there was a blockage that was further
2 north that backed up traffic to the Lehua Street
3 intersection. The same thing happened at the Kapaa
4 Bypass intersection, at Coconut Plantation, there
5 was a backup further south, downstream, that backed
6 up traffic to this intersection. So there was
7 nothing that I saw within the study area that had
8 stop-and-go traffic that some of the people, you
9 know, we would characterize as congestion.

10 Q. So the study area is basically the inside
11 of Kapaa Town and not where the thoroughfares meet
12 at the extremities of Kapaa Town. Is that your
13 testimony?

14 A. Well, Lehua Street and Kapaa Bypass are
15 the obvious limits of the study area which connects
16 to Kuhio Highway.

17 Q. So am I to generally interpret your
18 perspective, as what you were describing, is that
19 in Kapaa, in the innermost part of Kapaa, there's
20 not traffic congestion as a general rule?

21 A. There were not any stop-and-go type of
22 conditions that I saw within Kapaa Town, no.

23 Q. Well, you were there in a very fortunate
24 time if that was your experience, I'll just say
25 that. Good for you.

1 No further questions.

2 CHAIRPERSON SCHEUER: Thank you very
3 much, Commissioner Giovanni.

4 Are there further questions for
5 Mr. Okaneku? Commissioner Wong.

6 COMMISSIONER WONG: Hold on, Chair.
7 Chair, thank you. Thank you for the time.

8 BY COMMISSIONER WONG:

9 Q. Mr. Okaneku, sorry, I just have a couple
10 questions following up on Commissioner Chang. Just
11 please explain this to me, because I don't
12 understand it that well, on traffic issues. So if
13 I got it wrong please explain.

14 What happened was, you said that or
15 Commissioner Chang's thought or statement was
16 something about the mitigation portion, there will
17 be no change in traffic after mitigation. What do
18 you mean by that, you know, I mean I kind of
19 confused. That means if we don't do anything
20 traffic still going to be the same, and if we
21 mitigate traffic going to be the same. How does
22 that make sense?

23 A. What I concluded in the Traffic Impact
24 Analysis Report is that the mitigation measures are
25 intended to mitigate all the traffic impact that

1 result from HoKua Place.

2 Q. So after it's built, the traffic will be
3 whatever happened, you know, it will be the same if
4 it wasn't built; is that correct?

5 A. That's correct, yes.

6 Q. You know, sometimes I go see my auntie on
7 Kauai and she lives in Kapaa side and, you know,
8 just try to go back to the airport from Kapaa is
9 nuts, so I'm amazed that you guys didn't see that
10 much traffic. So I just was wondering. You know
11 when you do your study by Coconut Grove area, the
12 bridges, you know, it get back up so -- I mean, did
13 you get one guy there, you know, like how I see
14 some guys sometimes before sitting there with the
15 little clicker under the umbrella or -- I mean how
16 did that work?

17 A. No, what I do, is to install video
18 cameras at the intersection so I have
19 documentation. I could show you the videos.

20 Q. That's okay, thank you. No, I was just
21 wondering because, you know, I was thinking about
22 this whole issue -- you know, I'm from Oahu, of
23 course, not neighbor islands, so like Commissioner
24 Giovanni would have a better understanding of the
25 area. But you know what, I come from Aiea going to

1 H1/H2 merge, and that sucker, you know, in the
2 morning gets buss up. And so, you know, I can't
3 see how -- you know, if coral ridge(phonetic) comes
4 up, you know, there's going to be more traffic, you
5 know all these places are going to have more
6 traffic. Like on Kauai, if you add a place, not
7 going to have that much traffic with that
8 mitigation.

9 A. Well, again, the intent of the traffic
10 impact analysis report is to mitigate the traffic
11 that is being generated by HoKua Place, it's not
12 going to solve all the traffic problems that
13 currently exist but whatever additional traffic
14 that is a result of HoKua Place intends to be
15 mitigated.

16 Q. Sorry, I'm still trying to get it around
17 my head in terms of somehow, I mean, you have this
18 big, big hose, and somehow you're going to add all
19 these big, make the holes bigger, and somewhere
20 along the line the hose is going to become small,
21 so it takes it up somewhere. You don't think it's
22 going to be taken up by the bridge?

23 A. Are you talking about the Wailua River
24 bridge?

25 Q. Yeah, yeah, over there.

1 A. That would be the next bottleneck.

2 Q. I just was wondering. That's it, thank
3 you sir. Thank you, Chair.

4 CHAIRPERSON SCHEUER: Thank you,
5 Commissioner Wong.

6 Commissioners, are there further
7 questions? If not, Mr. Okaneku, and hopefully I
8 will do this long and not take us much past the
9 full hour.

10 BY CHAIRPERSON SCHEUER:

11 Q. In your own words, can you describe for
12 me your understanding of the role of the Land Use
13 Commission in this process.

14 A. Well, my understanding is the Land Use
15 Commission is responsible for the changes in state
16 land use throughout the State of Hawaii, and it
17 relies on the agencies for technical reviews of any
18 kind of reports, studies and so forth of that land
19 parcel.

20 Q. Is there standards or criteria that we're
21 supposed to follow or are we simply to pass through
22 this for developmental expertise?

23 A. I'm not sure there's standards and
24 criterias for environmental review, and that's
25 where the traffic studies usually fall under,

1 whether it's an environmental or EIS.

2 Q. So based on the understanding that you've
3 expressed in your words of what our role is, can
4 you describe what your role is in this proceeding,
5 in your own words.

6 A. In my opinion, my role is to answer all
7 the questions that commissioners perform, all the
8 agencies, as well as the general public.

9 Q. I was looking for, I guess, perhaps a
10 more substantive rather than procedural description
11 of your role.

12 A. In general, to educate. That has always
13 been my intent.

14 Q. Do you believe the Land Use Commission
15 needs to rely upon a preponderance of evidence from
16 the petitioner in order to rule that a land use
17 district reclassification is justified?

18 A. Yes.

19 Q. And are you part of the provision to us
20 of a preponderance of that evidence?

21 A. Yes.

22 Q. So I have a couple more questions.

23 Given the very extensive questioning by
24 your direct testimony, the cross-examination from
25 the county, the state and my fellow commissioners

1 and the stated concerns on the record from the
2 County of Kauai and the state Department of
3 Transportation with the limitations associated with
4 your 2017 TIAR, do you believe that we have
5 sufficient evidentiary basis, as of now, to grant
6 this petition?

7 A. I believe the concerns of the state and
8 the county can be resolved.

9 Q. That was not my question. Mr. Okaneku,
10 that was not my question. Please answer my
11 question. I will repeat my question.

12 A. Yes, please.

13 Q. Do you believe that we have, as the Land
14 Use Commission, based on your testimony and the
15 noted deficiencies by the county and the state of
16 the 2017 TIAR, do we have a sufficient evidentiary
17 basis to grant this petition, at the current time,
18 or, alternately, if further updates in TIAR are
19 necessary, if we are to grant this petition?

20 A. I believe that we can resolve the
21 concerns of the state and the county without an
22 update of the traffic study.

23 Q. Can you resolve the concerns of this Land
24 Use Commission based on the evidence on the record
25 now?

1 A. Yes.

2 Q. Can you point to what those resolutions
3 are of these concerns, particularly the fact that
4 there have been multiple statements about the
5 limitations of the 2017 study. The form of your
6 answer could be you disagree with the state and the
7 county's contesting the limitations to the study
8 and you believe that they offer us sufficient
9 evidence.

10 A. I need an opportunity to respond to the
11 state and the county's concerns to explain why the
12 study did address some of their concerns.

13 Q. Sorry, are you stating that you have done
14 that in your testimony today?

15 A. No, I have not.

16 Q. When was that going to be done,
17 Mr. Okaneku?

18 A. It depends how we proceed from here. If
19 we were to do a update of the study then I would
20 have a discussion with the county and the state, as
21 far as the scope of the update. If the update is
22 not feasible because of the pandemic, I would
23 propose to meet with the state and the county to
24 resolve some of their issues without actually doing
25 an update of the study.

1 Q. What product would be produced to resolve
2 those issues without an update of the study?

3 A. It would probably be some letter format,
4 letter report responding directly to their
5 concerns.

6 Q. But that is not in evidence before us, is
7 it?

8 A. Not yet, no.

9 Q. My last question, Mr. Okaneku, is: You
10 know, based on your expertise, you've stated that
11 there is no impact if the project gets built out.
12 The traffic's going to be bad but it's not going to
13 be worse, to summarize in sort of plain English.

14 What if you're wrong, who is responsible
15 and who bears the burden?

16 A. Ultimately, the accepting agencies.

17 Q. Bear the burden or are wrong?

18 A. Bear the burden.

19 Q. Not the people who drive through the
20 traffic?

21 A. I'm saying, if you want to call it blame,
22 that's what I'm thinking of, so the burden of your
23 proving whatever I did wrong.

24 CHAIRPERSON SCHEUER: Thank you very
25 much.

1 I see that Commissioner Okuda has a
2 further question. After this I'd like to take a
3 break, if there's anything further.

4 Commissioner Okuda.

5 COMMISSIONER OKUDA: Thank you,
6 Mr. Chair. It's not a question, and it's more than
7 a technicality. You are correct, Mr. Chair, that
8 it's preponderance of the evidence is the standard,
9 but HRS 205-4(h) makes clear the standard is the
10 clear preponderance of the evidence. So even
11 though that's a minor word addition, I think it has
12 significance. That's all I'd like to say. Thank
13 you, Mr. Chair.

14 CHAIRPERSON SCHEUER: Thank you,
15 Commissioner Okuda.

16 Commissioners, is there anything further
17 for the witness at this time? If not, I give the
18 petitioner the opportunity to either do your
19 redirect now, if you have any, or wait until after
20 a break.

21 MR. YUEN: I'd like to wait until after a
22 break.

23 CHAIRPERSON SCHEUER: Okay. It's
24 2:09 p.m., we will reconvene at 2:19, conclude with
25 Mr. Okaneku, and as we begin, perhaps, with our

1 final witness of the day.

2 Recess until 2:19.

3 (The hearing was at recess.)

4 CHAIRPERSON SCHEUER: We're back on the
5 record, it is 2:21.

6 Redirect by Mr. Yuen of Mr. Okaneku.

7

8 REDIRECT EXAMINATION

9 BY MR. YUEN:

10 Q. Mr. Okaneku, I'd like you to clarify your
11 remarks to the last series of questions by Chair
12 Scheuer regarding your procedures or how you would
13 conduct an update of the TIAR.

14 A. To update the TIAR, say next week,
15 without any field investigation, I would rely on
16 the 2017 data. I would collect data prior to the
17 pandemic shutdown in Kapaa and use that as a basis
18 to update the traffic study.

19 Q. But wouldn't you have to consult with the
20 Department of Transportation and the county
21 Department of Public Works to see whether a update
22 of that kind without additional field information
23 would be acceptable to them?

24 A. Yeah, to my knowledge, neither the county
25 or the state has stated that the 2017 data is

1 stale, so that's something that needs to be
2 discussed before we begin.

3 Q. But at this point do you think that the
4 existing report does provide a sufficient basis for
5 the Commission to approve the project, conditioned
6 upon a completion of a new TIAR, before applying
7 for county zoning as recommended by the County of
8 Kauai?

9 A. Yes.

10 MR. YUEN: I have no further questions.

11 CHAIRPERSON SCHEUER: Thank you.

12 Thank you, Mr. Okaneku, you're done.

13 And, Mr. Yuen, where is your next
14 witness?

15 MR. YUEN: Mr. Ricky Cassidy should be
16 in the audience.

17 CHAIRPERSON SCHEUER: Mr. Collins.

18 MR. COLLINS: Mr. Chair, we, I guess, are
19 requesting, under HAR 15-15-59(e)4, that we have
20 the opportunity to recross the witness.

21 CHAIRPERSON SCHEUER: Mr. Morris.

22 One moment, Mr. Collins.

23 MR. MORRIS: That is correct, in terms of
24 the directive of the administrative rule, that
25 witnesses shall be called on the following order in

1 a district boundary amendment proceeding, and it
2 does provide for the recross, so I don't see any
3 problem with allowing that, Chair Scheuer.

4 CHAIRPERSON SCHEUER: If you will,
5 Mr. Morris, help me, other than Mr. Collins would
6 have the opportunity to recross?

7 MR. MORRIS: Well, I also want to point
8 out that generally the scope of cross-examination
9 and recross will be limited to the scope of the
10 testimony provided in the previous segment of
11 testimony, so that will be at least one limitation.
12 The requirement of the recross-examination is not
13 limited to a particular party.

14 CHAIRPERSON SCHEUER: Mr. Ohigashi, I
15 recognized you raised your hand.

16 MR. OHIGASHI: I was just going to ask
17 the same question Mr. Morris answered, about the
18 scope of the recross, and it should be limited to
19 only what was listed out.

20 CHAIRPERSON SCHEUER: Other than the
21 intervenor, is there anybody else who the county or
22 the state wishes to recross?

23 MR. DONAHOE: Not by the county, Chair.

24 CHAIRPERSON SCHEUER: Mr. Yee?

25 MR. YEE: No recross.

1 CHAIRPERSON SCHEUER: Commissioners?

2 Go ahead, Mr. Collins, I'll check with
3 the Commissioners one last time.

4 MS. ISAKI: Thank you, Chair. Actually,
5 I'll be doing the recross.

6 CHAIRPERSON SCHEUER: Sorry. Excuse me.

7

8 RECCROSS-EXAMINATION

9 BY MS. ISAKI:

10 Q. You said you would update the TIAR with
11 2017 data. So you would not use the 2018 data that
12 you told Commissioner Okuda that you collected; is
13 that correct?

14 A. I would be using the 2018 data, which is
15 collected, which was outside the study area,
16 actually.

17 Q. And did you discuss your clarification as
18 response to Chair Scheuer's inquiries with Mr. Yuen
19 during the break?

20 A. I'm not sure what you're asking.

21 Q. When you responded to Mr. Yuen's question
22 when he asked you to clarify your remarks to Chair
23 Scheuer regarding procedures for how to do a TIAR
24 update, did you discuss that clarification of
25 response with Mr. Yuen during the break?

1 A. Yes.

2 MS. ISAKI: Thank you. That's all.

3 CHAIRPERSON SCHEUER: Commissioners,
4 anything further? If not, I believe now,
5 Mr. Okaneku -- In fact, am I correct here,
6 Mr. Morris, we're done? Okay. Thank you,
7 Mr. Okaneku.

8 I will admit Mr. Cassidy. But I'm going
9 to note, I'm bringing in Mr. Cassidy, we lose one
10 Commissioner at 3:00 and another at 3:30. So we
11 could start and then have a break until we next
12 gather to continue the examination and
13 cross-examination of Mr. Cassidy. Or, given the
14 somewhat unpredictable nature of these proceedings,
15 we could defer until the next time.

16 Do the parties have thoughts on this
17 matter?

18 MR. YUEN: Why don't we start.
19 Mr. Chairman, I suggest that we at least start with
20 Mr. Cassidy.

21 CHAIRPERSON SCHEUER: I've admitted him.
22 If, Mr. Cassidy, you'll enable your
23 audio and video.

24 (Paul Richard Kaunahoakalani "Ricky"
25 Cassidy was sworn.)

1 CHAIRPERSON SCHEUER: Thank you.

2 Your witness, Mr. Yuen.

3 MS. AHU: Chair, can I share my screen,
4 please.

5 CHAIRPERSON SCHEUER: Go ahead, Ms. Ahu.

6

7

DIRECT EXAMINATION

8 BY MR. YUEN:

9 Q. Mr. Cassidy, please state your name and
10 address for the record.

11 A. Paul Richard Kaunahoakalani Cassidy
12 Junior. I have a house in Honolulu and a house in
13 Kauai. I'm on Kauai now. The home address is 1029
14 Iwi Street, Honolulu, 96816.

15 Q. What is your profession?

16 A. I have a day and a night job for about
17 30 years. Well, about 40 years I've done market
18 research, 30 years in Hawaii on housing. And then
19 the night job is, 15 years ago I became trustee of
20 my great grandmother's estate, which is on Kauai,
21 and so I, as the trustee, handle my beneficiary and
22 try and manage the land. My real estate consult --
23 sorry.

24 Q. I was going to say, can you please
25 describe your professional background in real

1 estate, marketing analysis and your consulting
2 work.

3 A. On that score, I started working for
4 Gentry Homes when they were the second largest
5 developer on the island back in the mid '80s. Five
6 years later went to the first largest home producer
7 in the state, Castle & Cooke. At Gentry, I did
8 market analysis of the buyers and I had an
9 interface with the public agencies in terms of
10 zoning, counting our affordables and getting the
11 city to pass each of the affordable applications.

12 When I went to Castle & Cooke it
13 expanded, I did peer review of studies that they
14 did in housing and housing projections. When I
15 left there I became an independent outside
16 third-party consultant, and that was about 25 years
17 ago, and in that capacity basically people come to
18 me with a need for analysis and projection based on
19 data to help with their financing, help with their
20 projections, help maximize their revenues. So I do
21 long-range projections for public entities that
22 need them and then short-term feasibility studies
23 for private entities that need them, and then the
24 hybrid would be like KS that has a long-time
25 horizon, and I merged the two disciplines.

1 Q. Would you please describe your analysis
2 of housing market trends on Kauai.

3 A. I have the benefit of being able to use
4 data since 1980 and, again, for clients I will grab
5 the data and tell them what's happening at that
6 moment, what's happened in the past and what's
7 going to happen in the future, again, a projection.

8 When I did it for this, as you can see
9 from the screen, I saw that new single family
10 units, and I focused on those since this is what
11 the project's going to do. The brand-new newly
12 built price would be over 1.2 million and resale
13 significantly under that, 800,000. Did the same
14 for new condo units, again, their prices were over
15 a million and resale was 550,000. I focused on
16 average Kauai two-bedroom unit sales price and
17 rental rate because this project is weighted
18 heavily in multi-family and the two-bedroom unit is
19 the most populous, or frequently built unit. So in
20 that I showed, 2019, the sales price was roughly
21 580,000 and rentals was roughly 1600.

22 When I looked at the 2020 data, and bear
23 in mind that this was taken before the pandemic had
24 slowed down. And I mention that because I'm going
25 to read the price of 2020 as below the 2019 price,

1 significantly below, and I can -- I analyze that as
2 follows, that in 2020 the pandemic hit, demand
3 dried up, hardly anybody was buying. The buying
4 that was happening back then, in let's say fall of
5 2020, was in the high-end single family sector of
6 the market.

7 And then again if you look at long-term
8 market trends a couple things appear. But there's
9 this -- I call it, usually it's a step where
10 closings will vacillate, prices are like a ladder
11 and keep going up. And in this context, when the
12 pandemic hit, we were, you know, kind of going
13 along okay, slight rises and everything. After the
14 pandemic and with the benefit of hindsight, the
15 demand for housing right now, on this island today,
16 is much greater than one would have expected in
17 lieu of the pandemic. Those are some of the
18 long-term trends, but I'm sure you guys will get
19 into it with me down the road.

20 Q. What about the trend in housing supply?

21 A. Oh, housing supply. The last one there
22 was 2019, less than 200 single family buildings,
23 permits were issued, no condo building permits were
24 issued. Multi-family is really hard to build
25 profitably, it's not just that you have to put a

1 lot of money up front and, you know, whereas single
2 family can build one, sell it, build one, sell it.

3 But the other thing that also makes the
4 risk of building condos greater than single family
5 is that you can have a class action lawsuit against
6 you if, you know, ten years after somebody bought
7 it something leaked and the contractor said, well,
8 that's a design fault, the developer shouldn't have
9 sold that to you and you get in a lawsuit, but
10 that's down in the grass roots. The big picture is
11 that there weren't a lot of building permits
12 issued.

13 Q. Please describe your analysis of the
14 demand for housing on Kauai in general and East
15 Kauai in particular.

16 A. Again, with the benefit of foresight
17 being here, right now the demand is strong.
18 There's a couple ways to see demand. Most people
19 just look at the paper and get the monthly stats
20 from HPR or Kauai Board of Realtors. But often in
21 the long-term you like to look at population trends
22 and then extrapolate from that trend series. What
23 does this mean for housing? And so population is,
24 numbers are created on an annual basis. I have
25 numbers running back to 2000 that I did for the

1 county and DBEDT and HHFDC to do a long-term rental
2 housing study, affordable rental housing study, so
3 I was able to track the population changes. And so
4 if you look at the thing, at the table, you'll see
5 the year, 2018, the population 72,741, households
6 created is a function of the population increase,
7 uses stock factor of 2.9, depending on what the
8 year is, to divide the increase and that then tells
9 you the average home is 2.9 people, therefore, the
10 number of 198 was arrived at.

11 And then you look at housing production,
12 and you can get that from the TMK data that all the
13 counties produce, showing what unit was brought
14 into service, and by that I mean is now a taxable
15 entity, it's a housing completion, and you get that
16 from that data. And then I did a simple thing of
17 subtracting what the population-generated household
18 demand would be against the housing production and
19 that becomes need versus production. In that one,
20 year of 2018, you know, demand for eight was
21 generated. And then you have a cumulative need
22 column and that looks back in time and says, okay,
23 back in time, you know, if there was more
24 households created than housing produced then you
25 have this unmet, unsatisfied demand, and I call it

1 cumulative need, and you carry it forward.

2 So if you look at the table, you can see
3 2018, '19 and '20 estimated the population, and I
4 carried the idea across with households created,
5 housing production, need versus production and
6 cumulative need, so that I've arrived at an
7 estimation in 2020 of cumulative need of
8 1,465 units on the house, you know, on the island
9 in general.

10 Now, you can interpret this -- one
11 interpretation is this is just the whole island,
12 and then it doesn't speak to the demand across the
13 income sectors. So what I'm saying is most housing
14 production is -- a lot of it is the high-end
15 because that's profitable. Therefore, if you
16 attribute that, if you understand that, you can
17 assume that there's fewer housing being produced
18 for the mid and the lower income, and therefore,
19 you know, this cumulative need, it might be skewed.
20 But, you know, data is data.

21 Then the East Kauai in general, housing
22 demand is pretty strong because it's the central
23 area of the island, a lot of people say Lihue is
24 but it's between Lihue and Kapaa, Kapaa has all
25 that land mauka where people have houses, nice big

1 houses, and the proclivity on Kauai in general is
2 to live in a single family home, rural community,
3 traditional, all that. But East Kauai, like many
4 other segments of the island is, you know, running
5 out of land and the demand here is pretty good.

6 There was a survey done, you can see in
7 the last table of, you know, what is the conditions
8 of your housing. It was impressionistic so, you
9 know, a survey that you ask for free sometimes you
10 get good, sometimes you get bad, but DBEDT and
11 HHFDC uses them pretty much, and basically it says
12 that there's a bunch of houses out here where you
13 have two households, called doubling up, at 975
14 households that are crammed into one unit. And
15 then a further read on that is how many people in
16 your house -- how many bedrooms and how many people
17 and then they do a simple division and get to
18 whether there's more than two people per bedroom,
19 and you have that, and then you can see that the
20 848 and the 975 result in a total of 1723, just
21 households that need more housing. Or households
22 that are suffering from crowding and could
23 appreciate more housing.

24 Q. Please describe the HoKua Place
25 affordable housing program.

1 A. Per the county's affordable housing
2 requirements, you take the 679 total units and
3 you -- here, what was applied was a 20 percent
4 ratio and then an additional 10 percent ratio,
5 that's down on the fourth line. So 20 percent of
6 769 is 154 homes, and that's the count, those
7 individual units have to comply with the affordable
8 requirements for the county. So, again, per the
9 regulation, that 20 percent was divvied up
10 6 percent, 8 percent and 6 percent. And then the
11 first 6 percent, or 46, have to be sold to families
12 making up to 80 percent of -- county AMI is defined
13 by HUD. And the next line, 8 percent, 62 units,
14 that's 80, 1 percent to 100 percent of AMI and then
15 46 is 100 to 120 percent of AMI.

16 This development on top of that is
17 pledging to provide another 10 percent, 72 homes,
18 to be sold at affordable housing prices, 3 percent
19 or 21 percent of the units would be in the 100 to
20 120 AMI, and 7 percent, or 56 units, would go to
21 120 to 140 of AMI. And then on top of that, you
22 know, with the affordable being the base or the
23 most numerous product, then on top of that you have
24 gap price homes, those will be provided on top of
25 that, a smaller number of market base, well, maybe

1 not a smaller number but -- not a smaller number,
2 sorry, I correct myself. That's the affordable
3 housing requirement.

4 Q. Please describe your analysis of the
5 proposed, of the potential demand for affordable
6 housing units in East Kauai.

7 A. This is a pretty simple chart, it's used
8 by HUD and HHFDC to determine whether a new project
9 wanting tax credits has a level of supply that's
10 lower than the level of potential demand, that's
11 why it's called project supply versus potential
12 demand. The red thing that culls out requirement,
13 that is project-specific, this is the requirement
14 that this project will provide, produce, and it's
15 done by the AMI. AMI is, you know, a salary band
16 and it changes every year. So in order for
17 planners to visualize where the demand is, using
18 AMI, you then translate that income range and then
19 you get the demographics of the number of
20 households that are one person, two person and
21 three person, which basically makes up most of the
22 market, and you can quantify how many families or
23 households, how many one-person households there
24 are in the market. So the 80 percent is 546
25 households who would fit into the county's

1 definition of qualifying you as an affordable
2 housing, a renter or buyer. So basically it's
3 saying one person, 546, demanding it, two persons
4 468, three persons 358. And then that's the
5 potential demand and the project's going to supply
6 46 units, much less than the potential demand, and
7 that goes for 100 percent AMI, 120 percent AMI, 140
8 AMI. So more demand than affordable supply.

9 Q. Please describe your analysis of
10 rationale and market support for the HoKua Place
11 project.

12 A. Well, simply put, since Hawaii, no fault
13 of our own, and we're all here because of it, has
14 one of the highest quality of life in the world.
15 That is a comparative advantage that is seen, given
16 the demand for people wanting to live here, and
17 that's been true since -- when I was a kid growing
18 up in Kahuku and all the surfers came over from
19 California, I noticed it then and it's the same
20 now. You got this incredible demand and then at
21 the same time you have very poor supply, and poor
22 is quality. You have to realize that, you know,
23 our supply line, we're the most isolated piece of
24 land in the world and the supply line is very long,
25 and warehousing over here is going to be very

1 expensive, we don't have labor popping all over the
2 boundary, they have to get on a plane and go five
3 hours, and that's just some of the supply
4 conditions. And then over time, you know, as
5 people here have grown up they've noticed that
6 things are getting more and more crowded. There
7 was a general sentiment, that grew up in my
8 lifetime, that we got to slow down development, and
9 so because of that there was, you know, levels of
10 regulation grew and grew and grew. As usual with
11 the pendulum, regulations swung extremely to the
12 side of limiting supply. So classic economics:
13 Low supply, high demand, high prices. That's, I
14 guess, how I'd characterize housing.

15 Q. Please describe the potential pricing for
16 HoKua Place and the rate of absorption of the
17 project.

18 A. As part of the study I went out to the
19 market and looked at what the retail prices per
20 unit would be for each categories of housing that's
21 going to be produced. The top two are house lot
22 packages, very common in Kapaa, one on a big lot,
23 one on a smaller lot, and then you can see next to
24 it the total units and the retail price per unit.
25 And then I threw in a home site only price band

1 just to give people an idea of what those prices
2 are like.

3 The single family component of this is
4 pretty small, the multifamily is huge, so the big
5 one would be the multifamily dwelling, a four-plex
6 unit at eight dwelling units per acre. You have,
7 you know, 452 of those, and the retail price for a
8 new home in a master-planned community is 350 to
9 425. I thought that was accurate when I did it, it
10 might be a little light given current conditions.
11 It might be a little bit higher on the retail
12 thing.

13 And then the last would be the affordable
14 housing, housing dwellings, 12 dwelling units per
15 acre, 231 of those, and those are very easy to do
16 because I just took the affordable prices that are
17 required of this development, and it shows 225 to
18 325.

19 And then with the pricing idea, I was
20 then able to start projecting what the sales rates
21 would be for each of these products and that's the
22 table below, these are closings and large lots, 7,
23 6, 7, 8, 8 of 36, those are going to be demanded.
24 8, 8, 9, 9, 9, 7, medium. People want, on Kauai,
25 single family. The multi-family market units, 30,

1 40, 50, 60, 65, 70, 70, 67, it starts slow and it
2 grows, I mean people on Kauai are going to have to
3 get used living in condos, and I think it's obvious
4 that that's going to happen because the
5 alternative's so bad. Affordables, you can see 40,
6 45, 50, 50, 46. So, yeah, I spread it all out from
7 2025 to 2032, and that's the table.

8 Q. Next, I'm going to turn to the economic
9 impacts to Kauai as a result of HoKua Place. Can
10 you please describe the impact that expenditures
11 for development and construction on the project
12 infrastructure and the housing would have on
13 Kauai's economy.

14 A. On the economic benefit side, your
15 investment of infrastructure and vertical
16 construction, meaning the package is about
17 \$300 million. There's two columns here, one is the
18 construction period when you build out, and then
19 the residual is what's called occupancy, or annual,
20 and that then happens because now you've got this
21 plan, this housing stock that needs to be taken
22 care of and there's a number of ongoing jobs, from
23 management to groundskeeping, that will happen
24 every year thereafter.

25 The table shows, goes through these

1 economic benefits. You start with the initial
2 investment called construction costs, you increase
3 it with an economic output multiplier that comes
4 from DBEDT, DBEDT does all this modeling to try and
5 figure out how, you know, economic stuff, what's
6 the impact of a hotel or a shopping center, this is
7 for housing. So the factor for that multiplier is
8 2.12, and then you end up with 638 million in
9 change of increased output. You get the same on
10 the, alongside of it is \$672,767 increased output
11 annually thereafter. Then by the same token
12 there's a factor that creates direct jobs, this
13 will generate 4,651 direct jobs. Of that, a number
14 will be construction jobs, 1736, and then you apply
15 the standard construction wage that's blended
16 across all the trades to come up with \$137 million
17 of wages.

18 So you have wages and you have suppliers
19 and you have profits. The wage and the profits
20 result in taxes and there's a multiplier against
21 the construction costs and the jobs that results in
22 36 million a year going into the state tax coffers.
23 So that's the state's economic benefit that grows
24 their ability to meet their responsibilities. You
25 have private sector earning's multiplier of 2.02.

1 So, again, if you take the total output multiplier
2 by the DBEDT factor of 2.02, you can see
3 \$277 million in earnings, again, that will be
4 taxed. And then there's a multiplier of 0.61, and
5 that's because there's a ripple effect, private
6 sector makes some money, they go out and, you know,
7 if they -- they go out and buy stuff. So if it's
8 pono market down the way that's making laulau, they
9 go to the farmer and buy the tea leaves, and so on
10 and so forth.

11 So I've gone through that table pretty
12 much on the construction period. Occupancy, the
13 last column on the right, has those very same
14 numbers, so that's that table.

15 Q. Please describe the projected conveyance
16 tax revenues from the sale of HoKua Place units and
17 homes.

18 A. This is a big one because the conveyance
19 sect goes into affordable housing, to fund
20 affordable housing. I took a blended average of
21 what units there would be, what sales it would be,
22 whether they're market, whether they're affordable
23 and came up with a gross sales figure and for
24 multifamily and single family. Then did the tax
25 off of that and arrived at how much the total

1 contribution would be. And then that will be a
2 one-time shot to the arm of this.

3 Then the next layer that you look at is
4 income and GE tax revenue, and, again, you look at
5 the overall investment. Income and GE tax in the
6 construction period will generate \$36 million of
7 money, and then the recurring one of 38,000 per
8 year. You add the conveyance tax and you end up
9 with a one-time shot of, during the construction,
10 of \$36 million.

11 And then the last table is the annual
12 property tax revenue following completion of
13 buildout, and I paid particular attention to that
14 because this is money that goes straight to the
15 county, the host county, Kauai, in this instance.
16 Looking at this, I had to make a determination of
17 how many of these units are going to be
18 owner-occupied, how many are going to be investor.
19 And by investor, at this price range you're looking
20 at mainly a local investor who has some extra
21 money, has some kids in the house, wants to buy
22 them something, looks at the rents that are
23 happening, says, okay, I can buy a place and rent
24 it out, cover my expenses.

25 So the formula was look at the

1 owner-occupant tax revenue based on the tax rate of
2 property, do it for multifamily, single family and
3 then do it for the investors. And then what you're
4 seeing when you get to (indecipherable), is that
5 there's about \$1.9 million of property taxes that
6 will be increased every year after completion.

7 MR. YUEN: Let the record reflect that
8 the charts the witness was referring to have been
9 marked as Exhibit 31, and I have no further
10 questions for this witness.

11 CHAIRPERSON SCHEUER: Thank you very
12 much. Can you stop screen sharing, Ms. Ahu.

13 We're at 3 o'clock. Commissioner Wong we
14 have lost, I believe.

15 MR. HAKODA: Chair, this is Riley. Yes.

16 CHAIRPERSON SCHEUER: We could either go
17 a half hour more, until 3:30, when we lose another
18 Commissioner, or we could stay the proceedings and
19 go on to the cross-examination at our next
20 gathering.

21 Mr. Donohue, it would most directly
22 affect the county.

23 MR. DONAHOE: Thank you, Chair. The
24 county would have, given my -- I don't know how
25 long my cross-examination's going to run. The

1 county would have no objection to deferring so we
2 can do it all at once at the next session.

3 CHAIRPERSON SCHEUER: Any objection from
4 any of the other parties? Office of Planning?

5 MR. YEE: No objection.

6 CHAIRPERSON SCHEUER: Intervenors?

7 MR. COLLINS: We don't have an objection
8 but just want to note that we don't want our
9 non-objection to be somehow weaponized against us
10 in our motion to confirm that the deadline has been
11 extended because of the state of emergency.

12 CHAIRPERSON SCHEUER: Understood.

13 Commissioners, any concerns?

14 Hearing none.

15 MR. YEE: Could I have a procedural
16 question, Chair, whenever it's convenient.

17 CHAIRPERSON SCHEUER: You know, I see
18 Mr. Donohue has raised his hand. I'm going to call
19 on Mr. Donohue, and then Mr. Yee.

20 COMMISSIONER DONAHOE: Thank you, Chair.

21 I just wanted to clarify for the record,
22 I don't know if you had said this earlier. The
23 county did file a statement of no position
24 regarding the -- it came in yesterday so I don't
25 know if the Commission got it.

1 CHAIRPERSON SCHEUER: It came in too late
2 to be noted as part of the record. I will read it
3 in the next introduction when we meet again on this
4 matter.

5 MR. DONAHOE: Understood. Thank you so
6 much, Chair.

7 CHAIRPERSON SCHEUER: Thank you. That's
8 a challenge with filings that come right before our
9 meeting.

10 Mr. Yee.

11 MR. YEE: Thank you.

12 At the last hearing I believe there was a
13 question about exhibits and witnesses and what the
14 cutoff, et cetera, and I think you had said we'll
15 give everyone one last chance and then after that,
16 really, you need to get a showing of good cause,
17 and then we ended the hearing without asking anyone
18 if they had anything to add. I was wondering if we
19 could do that today.

20 CHAIRPERSON SCHEUER: I'm going to ask
21 Mr. Orodenger to chime in here.

22 MR. ORODENKER: Mr. Chair, I believe I
23 sent a letter addressed to all the parties amending
24 the pleadings, which includes exhibits in this
25 list, and any other evidentiary pleadings. After

1 the hearing begins they have to be approved by the
2 Chair. In other words, the permission has to be
3 granted by the Chair.

4 As far as staff is concerned, it's our
5 opinion that, pursuant to the rules, everything's
6 closed, and that to reopen it would require your
7 granting and permission.

8 CHAIRPERSON SCHEUER: And I would note
9 that on March 24th and 25th the Commission received
10 the petitioner's revised witness list already, so I
11 had viewed that as responsive to the discussion at
12 the last hearing.

13 MR. YEE: My understanding is after we
14 received it, you had said at the end of the hearing
15 you'd ask the parties one last time. If it's not
16 your understanding and the parties need to file
17 motions, if they want to make any further
18 amendments, that's fine, but, I mean, that's my
19 recollection of your statement at the last hearing,
20 and then we never came back to it at the end of the
21 hearing to ask if any of the parties had additional
22 exhibits or witnesses.

23 CHAIRPERSON SCHEUER: You know, I don't
24 have quite the same recollection but I'm not going
25 to defend my recollection against yours at this

1 hour, Mr. Yee.

2 MR. YEE: Let me just say, the Office of
3 Planning, we'll be happy to file a motion, just to
4 let you know then. It's our intention now to ask
5 for witnesses from DOFA -- I'm sorry, from Aquatic
6 Resources to also testify regarding the wetlands,
7 and that we may be filing a revised testimony from
8 the Office of Planning to take into account
9 information that we received at the hearing.

10 CHAIRPERSON SCHEUER: So that will be
11 done in the form of a motion.

12 MR. YEE: As long as it's understood that
13 all the parties have to do that, we're happy to
14 file a motion.

15 CHAIRPERSON SCHEUER: That is the
16 understanding.

17 MR. YEE: Thank you for the clarity.
18 Sorry.

19 CHAIRPERSON SCHEUER: Are there any other
20 procedural matters for us?

21 Commissioner Okuda?

22 COMMISSIONER OKUDA: Thank you,
23 Mr. Chair.

24 Along that line, I believe the petitioner
25 had placed and identified an exhibit, it was

1 described as a placeholder for the budget, or
2 whatever that financial document description was,
3 and unless it's been filed and I just overlooked
4 it, can I ask the Chair: How is that going to be
5 handled if that document, you know, there's a
6 placeholder there but the document hasn't been
7 filed? And if the document has been filed, if my
8 misunderstanding could be corrected. Thank you.

9 CHAIRPERSON SCHEUER: Has the document
10 been filed, Mr. Orodenger or Mr. Hakoda?

11 MR. ORODENKER: It has not, to our
12 knowledge, Chair.

13 CHAIRPERSON SCHEUER: Commissioner Okuda,
14 do you have a suggestion, procedurally?

15 COMMISSIONER OKUDA: No, I don't. It's
16 just that if there is a procedure which the Office
17 of Planning is filing where they have to file a
18 motion to submit a document, I think the rule
19 should apply to everybody, and I'm not sure if just
20 filing a fly sheet as a placeholder really, you
21 know, satisfies that procedure, otherwise everybody
22 could just file a bunch of fly sheet placeholders
23 and then dump in documents later. That's just a
24 comment, Chair. Whatever, in your discretion, you
25 want is within your authority. Thank you.

1 CHAIRPERSON SCHEUER: Thank you.

2 Mr. Collins, were you speaking to this
3 issue or another issue?

4 MR. COLLINS: As to this issue, we -- in
5 that previous --

6 CHAIRPERSON SCHEUER: Limit your comments
7 for now to this issue and then I will take up any
8 other issues you have.

9 MR. COLLINS: So my recollection partly
10 with what is, I think, in alignment with what
11 Mr. Yee's recollection was, but that was in part
12 based on a concern that we had raised that the
13 petitioner is sort of not following 15-15-58(b),
14 with respect to limitations on filing exhibits and
15 amending their witness lists and so forth. So we
16 continued to have that concern, a little bit. And
17 also, I think as was stated very succinctly by
18 Commissioner Okuda, about the concern about
19 basically filing placeholders and then changing it
20 later and us not having sufficient notice to be
21 able to review that material.

22 CHAIRPERSON SCHEUER: So regarding the --
23 this is the only placeholder that was filed by the
24 petitioner, Mr. Yuen or Ms. Ahu?

25 MR. YUEN: The reason we did that is

1 because we have a specific request from at least
2 one Commissioner for a overall budget for the
3 project. It has not been prepared yet, but they're
4 responding to that request.

5 CHAIRPERSON SCHEUER: Sorry, Mr. Yuen, my
6 question was: Was that the only placeholder you
7 filed?

8 MR. YUEN: That's the only placeholder,
9 yes.

10 CHAIRPERSON SCHEUER: I think that the
11 suggestion of -- frankly, I believe Mr. Yee,
12 Mr. Collins and Commissioner Okuda are basically in
13 alignment, that the petitioner should try to bring
14 this into the record by a motion is reasonable and
15 I will ask for that to be done when that is ready.
16 And I would hope, also, that that would be ready
17 not too far further into our proceedings, because
18 it might have material affect on our deliberations
19 and our questioning of witnesses.

20 Mr. Collins, do you have something
21 further?

22 MR. COLLINS: Yes. I just wanted to
23 actually ask about our pending motion but I also
24 wanted to put in a statement that we don't have any
25 opposition to the Office of Planning's position,

1 that the motion's consideration be deferred until
2 the close of the petitioner's case-in-chief, but I
3 just wanted to --

4 CHAIRPERSON SCHEUER: Sorry, the motion
5 referring to your motion.

6 MR. COLLINS: Yes, the motion to confirm
7 that the deadline has been extended due to the
8 state of emergency.

9 CHAIRPERSON SCHEUER: Commissioner
10 Ohigashi.

11 COMMISSIONER OHIGASHI: I just have a
12 concern. Apparently, you don't have an agenda
13 motion so I'm not sure if we can talk about
14 scheduling or anything like that. If it plans to
15 be agenda for the next session then I'm sure
16 that this discussion can take place then. However,
17 I don't know if we can speak about it, discuss what
18 was contained within the response in that motion.
19 So I'm throwing it to Mr. Morris.

20 CHAIRPERSON SCHEUER: Mr. Morris? And
21 you are on mute.

22 MR. MORRIS: Give me a minute. Am I
23 correct that the motion we're referencing was made
24 during the course of the hearing?

25 CHAIRPERSON SCHEUER: No, it was a

1 written motion, I believe.

2 Is that correct, Mr. Collins?

3 MR. COLLINS: Yes, filed April 1st.

4 CHAIRPERSON SCHEUER: That's what I
5 thought.

6 MR. MORRIS: My impression at this point
7 is that a motion like this doesn't have to be
8 separately agendized apart from the proceedings
9 that we're having that include that motion. If
10 anybody has a different view let me know, but
11 that's my read of the rules on motions.

12 CHAIRPERSON SCHEUER: Mr. Orodenger?

13 MR. ORODENKER: With all due respect, I'm
14 not sure that that's correct. The motion to be
15 formally taken up would have to be agendized, in my
16 opinion. However, given that we are in the middle
17 of the proceedings, a discussion of how -- I'm just
18 going to stick with what I said, I believe it has
19 to be agendized. That's just my opinion.

20 MR. MORRIS: And I'm looking at admin
21 Rule 15-15-70, that refers to a motion and a
22 situation where a hearing on the motion has not
23 been requested, a separate hearing, that the
24 commissioners can decide that matter on the
25 pleadings or hold a hearing on the matter.

1 So, to me, that sort of suggests that if
2 the Commissioners want to hold a hearing on that
3 motion, then I would agree that we should probably
4 agendize that, but the Commission may also decide
5 that matter. Now, I'm not sure the procedural
6 posture, whether a separate hearing has been
7 requested but if there has been a hearing requested
8 I guess the safest route would be to agendize it.

9 CHAIRPERSON SCHEUER: Mr. Yee, you're
10 muted.

11 MR. YEE: Just to comment, that the
12 practice of the Commission is to include the motion
13 on the agenda when it is going to talk about the
14 substance of the motion. I don't think there was a
15 problem, necessarily, in talking about the
16 procedures involved with it, as the parties were
17 simply trying to get a better understanding of the
18 process the Land Use Commission was going to follow
19 in scheduling it. I don't think the discussion of
20 scheduling is the problem today and I don't think
21 anyone is proposing that you actually decide it
22 today. But when you decide it, and the when is at
23 the Chair's discretion, then I think the practice
24 has been to put it onto the agenda. I don't think
25 anything's gone wrong so far, and I think you can

1 correctly or in conformity with past practice do it
2 whenever it comes up at your discretion. Thank
3 you.

4 MR. ORODENKER: Thank you. I would agree
5 with -- Mr. Chair, this is Dan Orodenker.

6 Bryan put that a little more succinctly
7 than I did. I don't think there's a problem with
8 talking about scheduling.

9 CHAIRPERSON SCHEUER: It's often the case
10 that Mr. Yee puts things more succinctly than you.
11 I tease.

12 MR. ORODENKER: Thank you, Mr. Chair.

13 CHAIRPERSON SCHEUER: Commissioner
14 Ohigashi, does that address the concern that you
15 raised?

16 COMMISSIONER OHIGASHI: That's fine if
17 you're just going to stick to scheduling the motion
18 rather than indicating everybody's position on it
19 that we haven't even read.

20 CHAIRPERSON SCHEUER: We're discussing
21 scheduling of it, and at this point it is still at
22 the discretion of the Chair. I do intend to
23 agendize it, when it's up for discussion. I need
24 to, frankly, discuss this more with the staff,
25 among other things.

1 Does that resolve the concerns around
2 this issue and its scheduling at this point,
3 parties?

4 MR. COLLINS: Yes, Mr. Chair.

5 CHAIRPERSON SCHEUER: Anything further?

6 Is there any further business?

7 (Collective no.)

8 CHAIRPERSON SCHEUER: If not, I declare
9 this meeting adjourned. Thank you everyone.

10 (The hearing adjourned at 3:17 p.m.)

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1 STATE OF HAWAII)
)
2 COUNTY OF HONOLULU) ss.

3 BE IT KNOWN that the foregoing hearing was
4 taken on April 15, 2021, before me, RITA KING, a
5 Certified Shorthand Reporter for the State of
6 Hawaii; that the witnesses before testifying were
7 duly sworn to testify to the whole truth; that the
8 questions propounded to the witnesses and the
9 answers of the witnesses thereto were taken down by
10 me in shorthand and thereafter reduced to print by
11 computer-aided transcription under my direction;
12 that the foregoing pages are a full, true and
13 accurate transcript of all proceedings and
14 testimony had and adduced upon the taking of said
15 hearing, all done to the best of my skill and
16 ability.

17 I FURTHER CERTIFY that I am in no way
18 related to nor employed by any of the parties
19 hereto nor am I in any way interested in the
20 outcome hereof.

21 DATED at Honolulu, Hawaii, this 2nd day
22 of May, 2021.

23

24 /s/ Rita King

25 RITA KING, RPR, CSR No. 373